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WHEN: Tuesday, May 10, 2011
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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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.

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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.

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Presidential Documents

Title 3—

The President

Proclamation 8657 of April 22, 2011

Earth Day, 2011

By the President of the United States of America

A Proclamation

For over 40 years, our Nation has come together on Earth Day to appreciate and raise awareness about our environment, natural heritage, and the resources upon which generations of Americans have depended. Healthy land and clean water and air are essential to the health of our communities and wildlife. Earth Day is an opportunity to renew America's commitment to preserving and protecting the state of our environment through community service and responsible stewardship.

From the purity of the air we breathe and the water we drink to the condition of the land where we live, work, and play, the vitality of our natural resources has a profound influence on the well-being of our families and the strength of our economy. Our Nation has a proud conservation tradition, which includes countless individuals who have worked to safeguard our natural legacy and ensure our children can benefit from these resources. Looking to the future of our planet, American leadership will continue to be pivotal as we confront the environmental challenges that threaten the health of both our country and the globe.

Today, our world faces the major global environmental challenge of a changing climate. Our entire planet must address this problem because no nation, however large or small, wealthy or poor, can escape the impact of climate change. The United States can be a leader in reducing the dangerous pollution that causes global warming and can propel these advances by investing in the clean energy technologies, markets, and practices that will empower us to win the future.

While our changing climate requires international leadership, global action on clean energy and climate change must be joined with local action. Every American deserves the cleanest air, the safest water, and unpolluted land, and each person can take steps to protect those precious resources. When we reduce environmental hazards, especially in our most overburdened and polluted cities and neighborhoods, we prioritize the health of our families, and move towards building the clean energy economy of the 21st century.

To meet this responsibility, Federal and local programs will continue to ensure our Nation's clean air and water laws are effective, that our communities are protected from contaminated sites and other pollution, and that our children are safe from chemicals, toxins, and other environmental threats. Partnerships and community-driven strategies, like those highlighted by the America's Great Outdoors Initiative, are vital to building a future where children have access to outdoor places close to their homes; where our rural working lands and waters are conserved and restored; and our parks, forests, waters, and other natural areas are protected for future generations.

On Earth Day, we recognize the role that each of us can play in preserving our natural heritage. To protect our environment, keep our communities healthy, and help develop the economy of the future, I encourage all Americans to visit www.WhiteHouse.Gov/EarthDay to learn ways to protect and preserve our environment for centuries to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 22, 2011, as Earth Day. I encourage all Americans to participate in service programs and activities that will protect our environment and contribute to a prosperous, healthy, and sustainable future.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of April, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2011–10397
Filed 4–27–11; 8:45 am]
Billing code 3195–W1–P

Rules and Regulations

Federal Register
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0010; Airspace Docket No. 11–AAL–1]

RIN 2120–AA66

Amendment of Federal Airways; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends all Anchorage, AK, Federal airways that are affected by the relocation of the Anchorage VHF Omnidirectional Range (VOR) navigation aid. This action is necessary for the safety and management of Instrument Flight Rules (IFR) within the National Airspace System.

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: Ken McElroy, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On March 4, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Federal airways in Alaska, (76 FR 11978). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received objecting to the cost of relocating the Anchorage VOR because the relocation results from the construction of a wind farm by the Cook Inlet Regional Native Corporation. This commenter believes that the wind farm, built in part with government grants, is a "waste of taxpayer dollars", and that the FAA should not cooperate with the Cook Inlet Regional Native Corporation by moving the VOR. The FAA notes that the agency has not been involved in the decision process related to the wind farm's location or funding. The responsibility of the FAA is to provide navigation aids to assure safe flight of aircraft, and this requires relocating the VOR. During the comment period, the FAA conducted flight inspections of the proposed routes and reviewed the results to evaluate the safety and efficiency of the proposed routes. Based on the results of the inspections, and on further refinements to the route designs, the FAA determined that a change was required to the description of Q–45 by adding the NONDA fix to the route. With the exception of the change described above, this amendment is the same as that proposed in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 amending Federal airways that currently use the Anchorage (ANC) VOR located on Fire Island, AK. The ANC VOR was upgraded to a Doppler VOR and redesignated as the Anchorage (TED) VOR.

The TED VOR was moved onto the Ted Stevens Anchorage International Airport property affecting 15 Low Altitude Federal airways (Victor Airways and T-Routes), and 14 High Altitude Federal airways (Jet Routes and Q-Routes). In addition to these airways using the TED VOR as the new reference point, the descriptions were adjusted, where necessary, to show new radials to describe airway intersections.

VOR Federal airways, United States Area Navigation Routes (low), Jet Routes, Alaska Area Navigation Routes, and United States Area Navigation Routes (high), are published in paragraphs 6010, 6011, 2004, 2005, and 2006, respectively, of FAA Order 7400.9U, dated August 18, 2010 and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Federal airways listed in this document will be published subsequently in the Order.

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 Department of Transportation (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 proposed 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 United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Federal airways in Alaska.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Polices and Procedures paragraph 311a This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

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 part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6010 VOR Federal airways.

* * * * *

V–319 [Amended]

From Yakutat, AK, via Johnstone Point, AK, INT Johnstone Point 291° and Anchorage, AK, 125° radials; Anchorage, AK; Sparrevohn, AK; Bethel, AK; Hooper Bay, AK; to Nanwak, AK, NDB.

V–320 [Amended]

From Anchorage, AK, INT Anchorage 133° and Johnstone Point, AK, 271° radials; to Johnstone Point.

* * * * *

V–388 [Amended]

From Anchorage, AK, to INT Anchorage 208° and Kenai, AK, 067° Kenai, AK.

* * * * *

V–427 [Amended]

From King Salmon, AK, to INT King Salmon 042° and Anchorage, AK, 247° radials.

* * * * *

V–436 [Amended]

From Anchorage, AK, via INT Anchorage 335° and Talkeetna, AK, 195° (T)/176° (M) radials; Talkeetna; Nenana, AK; Chandalar Lake, AK, NDB; to Deadhorse, AK.

* * * * *

V–438 [Amended]

From Kodiak, AK, via Homer, AK; Anchorage, AK; Big Lake, AK; Fairbanks, AK; Fort Yukon, AK; Deadhorse, AK; to Barrow, AK.

* * * * *

V–440 [Amended]

From Nome, AK, via Unalakleet, AK; to McGrath, AK; Anchorage, AK; Middleton Island, AK; Yakutat, AK; Biorka Island, AK; to Sandspit, BC. To Victoria, BC, Canada. The airspace within Canada is excluded.

V–441 [Amended]

From Middleton Island, AK, via the INT of Middleton Island, AK 298° and Anchorage 171° radials to Anchorage, AK.

* * * * *

V–462 [Amended]

From Cape Newenham, AK, NDB via Dillingham, AK; to INT Dillingham 059° and Anchorage, AK 247° radials to Anchorage, AK.

* * * * *

V–510 [Amended]

From Emmonak, AK via Anvik, AK, NDB; McGrath, AK, INT McGrath 121° and Big Lake, AK 294° radials; Big Lake.

Paragraph 6011 United States Area Navigation Routes (T-Routes)

* * * * *

T–223 EHM to TED [Amended]

EHM	NDB/DME	(Lat. 58°39′24″ N., long. 162°04′17″ W.)
DLG	VOR/DME	(Lat. 58°59′39″ N., long. 158°33′08″ W.)
NONDA	Fix	(Lat. 60°19′16″ N., long. 153°47′58″ W.)
TED	VOR/DME	(Lat. 61°10′04″ N., long. 149°57′37″ W.)

* * * * * * *

T–227 SYA to SCC [Amended]

SYA	VORTAC	(Lat. 52°43′06″ N., long. 174°03′44″ E.)
JANNT	WP	(Lat. 52°04′18″ N., long. 178°15′37″ W.)
BAERE	WP	(Lat. 52°12′12″ N., long. 176°08′09″ W.)
ALEUT	Fix	(Lat. 54°14′17″ N., long. 166°32′52″ W.)
MORDI	Fix	(Lat. 54°52′50″ N., long. 165°03′15″ W.)
GENFU	Fix	(Lat. 55°23′18″ N., long. 163°06′21″ W.)
BINAL	Fix	(Lat. 55°46′00″ N., long. 161°59′56″ W.)
PDN	NDB/DME	(Lat. 56°57′15″ N., long. 158°38′51″ W.)
BATTY	Fix	(Lat. 59°03′57″ N., long. 155°04′42″ W.)
AMOTT	Fix	(Lat. 60°52′27″ N., long. 151°22′24″ W.)
BGQ	VORTAC	(Lat. 61°34′10″ N., long. 149°58′02″ W.)
FAI	VORTAC	(Lat. 64°48′00″ N., long. 148°00′43″ W.)
SCC	VOR/DME	(Lat. 70°11′57″ N., long. 148°24′58″ W.)

* * * * * * *

T–244 OME to TED [Amended]

OME	VOR/DME	(Lat. 64°29′06″ N., long. 165°15′11″ W.)
TED	VOR/DME	(Lat. 61°10′04″ N., long. 149°57′37″ W.)

* * * * * * *

T–246 BRW to TED [Amended]

BRW	VOR/DME	(Lat. 71°16′24″ N., long. 156°47′17″ W.)
GAL	VOR/DME	(Lat. 64°44′17″ N., long. 156°46′38″ W.)
MCG	VORTAC	(Lat. 62°57′04″ N., long. 155°36′41″ W.)
TED	VOR/DME	(Lat. 61°10′04″ N., long. 149°57′37″ W.)

* * * * * * *

T–269 ANN to BET [Amended]

ANN	VOR/DME	(Lat. 55°03′37″ N., long. 131°34′42″ W.)
BKA	VORTAC	(Lat. 56°51′34″ N., long. 135°33′05″ W.)
YAK	VOR/DME	(Lat. 59°30′39″ N., long. 139°38′53″ W.)

JOH	VOR/DME	(Lat. 60°28′51″ N., long. 146°35′58″ W.)
TED	VOR/DME	(Lat. 61°10′04″ N., long. 149°57′37″ W.)
SQA	VOR/DME	(Lat. 61°05′55″ N., long. 155°38′04″ W.)
BET	VORTAC	(Lat. 60°47′05″ N., long. 161°49′28″ W.)

* * * * *

Paragraph 2004 Jet Routes.

* * * * *

J–115 [Amended]

From Shemya, AK, NDB; Mount Moffett, AK, NDB; Dutch Harbor, AK, NDB; Cold Bay, AK; King Salmon, AK; INT King Salmon 053° and Kenai, AK, 239° radials; Kenai; Anchorage, AK; Big Lake, AK; Fairbanks, AK; Chandalar, AK, NDB; to Deadhorse, AK.

* * * * *

J–124 [Amended]

From Big Lake, AK, via Gulkana, AK; to Northway, AK.

J–125 [Amended]

From Kodiak, AK, via Anchorage, AK; INT Anchorage 335° and Talkeetna, AK, 195° radials; Talkeetna; to Nenana, AK.

* * * * *

J–127 [Amended]

From King Salmon, AK; to INT King Salmon 042° and Anchorage, AK, 247° radials.

* * * * *

J–133 [Amended]

From Galena, AK, via Anchorage, AK; Johnstone Point, AK; Orca Bay, AK NDB; via INT Orca Bay NDB 114° and Sitka, AK NDB 308° bearings, to Sitka, AK NDB.

* * * * *

J–511 [Amended]

From Dillingham, AK; via INT Dillingham 059° and Anchorage, AK 247° radials, to Anchorage, AK; Gulkana, AK; to Burwash Landing, YT, Canada, NDB, excluding the portion which lies over Canadian territory.

* * * * *

Paragraph 2005 Alaska Area Navigation Routes.

* * * * *

J–804R Anchorage, AK, to FRIED [Amended]

Waypoint name	Location	Reference facility
Anchorage, AK	61°10′04″ N., 149°57′37″ W.	Anchorage, AK.
NOWEL	60°29′02″ N., 148°28′31″ W.	Middleton Island, AK.
Middleton Island, AK	59°25′19″ N., 146°21′00″ W.	Middleton Island, AK.
SNOUT	57°53′26″ N., 141°45′19″ W.	Yakutat, AK.
EEDEN	55°53′59″ N., 137°00′06″ W.	Biorka Island, AK.
FRIED	54°13′19″ N., 133°37′57″ W.	Annette Island, AK.

* * * * *

J–889R NOWELL to LAIRE [Amended]

Waypoint name	Location	Reference facility
NOWEL	60°29′02″ N., 148°28′31″ W.	Anchorage, AK.
ARISE	60°00′00″ N., 146°09′13″ W.	Middleton Island, AK.
KONKS	59°33′02″ N., 144°00′07″ W.	Middleton Island, AK.
LAIRE	58°48′15″ N., 140°31′43″ W.	Yakutat, AK.

* * * * *

Paragraph 2006 Alaska Area Navigation Routes (Q-Routes).

* * * * *

Q–8 GAL to TED [Amended]

GAL	VORTAC	(Lat. 64°44′17″ N., long. 156°46′38″ W.)
TED	VOR/DME	(Lat. 61°10′04″ N., long. 149°57′37″ W.)

* * * * * * *

Q–43 TED to FAI [Amended]

TED	VOR/DME	(Lat. 61°10′04″ N., long. 149°57′37″ W.)
BGQ	VORTAC	(Lat. 61°34′10″ N., long. 149°58′02″ W.)
FAI	VORTAC	(Lat. 64°48′00″ N., long. 148°00′43″ W.)

Q–44 OME to TED [Amended]

OME	VOR/DME	(Lat. 64°29′06″ N., long. 165°15′11″ W.)
TED	VOR/DME	(Lat. 61°10′04″ N., long. 149°57′37″ W.)

Q–45 DLG to AMOTT [Amended]

DLG	VOR/DME	(Lat. 58°59′39″ N., long. 158°33′08″ W.)
NONDA	Fix	(Lat. 60°19′16″ N., long. 153°47′58″ W.)
AMOTT	Fix	(Lat. 60°52′27″ N., long. 151°22′24″ W.)

* * * * * * *

Q–47 AKN to AMOTT [Amended]

AKN	VORTAC	(Lat. 58°43′29″ N., long. 156°45′08″ W.)
AMOTT	Fix	(Lat. 60°52′27″ N., long. 151°22′24″ W.)

* * * * *

Q–49 ODK to AMOTT [Amended]

ODK	VOR/DME	(Lat. 57°46′30″ N., long. 152°20′23″ W.)
AMOTT	Fix	(Lat. 60°52′27″ N., long. 151°22′24″ W.)

Issued in Washington, DC, on April 19, 2011.

Gary A. Norek,

Acting Manager, Airspace, Regulation and ATC Procedure Group.

[FR Doc. 2011–10240 Filed 4–27–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM09–9–000; Order No. 751]

Version One Regional Reliability Standards for Facilities Design, Connections, and Maintenance; Protection and Control; and Voltage and Reactive

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: Under section 215 of the Federal Power Act, the Commission hereby approves four revised regional Reliability Standards developed by the Western Electricity Coordinating Council and approved by the North American Electric Reliability Corporation, which the Commission has certified as the Electric Reliability Organization responsible for developing and enforcing mandatory Reliability Standards. These regional Reliability Standards have been designated by the Western Electricity Coordinating Council as FAC–501–WECC–1—Transmission Maintenance, PRC–004–WECC–1—Protection System and Remedial Action Scheme Misoperation, VAR–002–WECC–1—Automatic Voltage Regulators, and VAR–501–WECC–1—Power System Stabilizer. Reliability Standard FAC–501–WECC–1 addresses transmission maintenance for specified transmission paths in the Western Interconnection. Reliability Standard PRC–004–WECC–1 addresses the analysis of misoperations that occur on transmission and generation protection systems and remedial action schemes in the Western Interconnection. Reliability Standard VAR–002–WECC–1 is meant to ensure that automatic voltage regulators remain in service on synchronous generators and condensers in the Western Interconnection. Reliability Standard VAR–501–WECC–1 is meant to ensure that power system stabilizers remain in service on synchronous generators in the Western Interconnection. In addition, the Commission approves five new regional definitions applicable within the Western Interconnection.

DATES: *Effective Date:* This rule will become effective June 27, 2011.

FOR FURTHER INFORMATION CONTACT:

Nick Henery (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8636.

Scott Sells (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6664.

A. Cory Lankford (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6711.

SUPPLEMENTARY INFORMATION:

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135 FERC ¶ 61,061

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

Issued April 21, 2011

1. Under section 215 of the Federal Power Act (FPA),[1] the Commission hereby approves four revised regional Reliability Standards developed by the Western Electricity Coordinating Council (WECC) and approved by the North American Electric Reliability Corporation (NERC), which the Commission has certified as the Electric Reliability Organization (ERO) responsible for developing and enforcing mandatory Reliability Standards. These regional Reliability Standards have been designated by WECC as FAC–501–WECC–1—Transmission Maintenance, PRC–004–WECC–1—Protection System and Remedial Action Scheme Misoperation, VAR–002–WECC–1—Automatic Voltage Regulators, and VAR–501–WECC–1—Power System Stabilizer. Reliability Standard FAC–501–WECC–1 addresses transmission maintenance for specified transmission paths in the Western Interconnection. Reliability Standard PRC–004–WECC–1 addresses the analysis of misoperations that occur on transmission and generation protection systems and remedial action schemes in the Western Interconnection. Reliability Standard VAR–002–WECC–1 is meant to ensure that automatic voltage regulators remain in service on synchronous generators and condensers in the Western Interconnection. Reliability Standard VAR–501–WECC–1 is meant to ensure that power system stabilizers remain in service on synchronous generators in the Western Interconnection. In addition, the Commission approves five new regional definitions applicable within the Western Interconnection.

I. Background

A. Mandatory Reliability Standards

2. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[2]

3. Reliability Standards that the ERO proposes to the Commission may include Reliability Standards that are proposed to the ERO by a Regional Entity to be effective in that region.[3] A Regional Entity is an entity that has been approved by the Commission to enforce Reliability Standards under delegated authority from the ERO.[4] When the ERO reviews a regional Reliability Standard that would be applicable on an Interconnection-wide basis and that has been proposed by a Regional Entity organized on an Interconnection-wide basis, the ERO must rebuttably presume that the regional Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[5] In turn, the Commission must give "due weight" to the technical expertise of the ERO and of a Regional Entity organized on an Interconnection-wide basis.[6]

4. In Order No. 672, the Commission urged uniformity of Reliability Standards, but recognized a potential need for regional differences.[7] Accordingly, the Commission stated that:

> As a general matter, we will accept the following two types of regional differences, provided they are otherwise just, reasonable, not unduly discriminatory or preferential and in the public interest, as required under the statute: (1) a regional difference that is more stringent than the continent-wide Reliability Standard, including a regional difference that addresses matters that the continent-wide Reliability Standard does not; and (2) a regional Reliability Standard that is necessitated by a physical difference in the Bulk-Power System.[8]

B. Western Electricity Coordinating Council

5. On April 19, 2007, the Commission accepted delegation agreements between NERC and each of eight Regional Entities.[9] In its order, the Commission accepted WECC as a Regional Entity organized on an Interconnection-wide basis. As a Regional Entity, WECC oversees transmission system reliability in the Western Interconnection. The WECC region encompasses nearly 1.8 million square miles, including 14 western U.S. states, the Canadian provinces of Alberta and British Columbia, and the northern portion of Baja California in Mexico.

6. In June 2007, the Commission approved eight regional Reliability Standards for WECC including the currently-effective WECC PRC–STD–001–1, PRC–STD–003–1, PRC–STD–005–1, VAR–STD–002a–1 and VAR–STD–002b–1.[10] The Commission directed WECC to develop certain modifications to WECC PRC–STD–001–1, PRC–STD–003–1, PRC–STD–005–1, VAR–STD–002a–1 and VAR–STD–002b–1, as identified by NERC in its filing letter for the current standards.[11] For example, the Commission determined that: (1) Regional definitions should conform to definitions set forth in the NERC Glossary of Terms Used in Reliability Standards (NERC Glossary), unless a specific deviation has been justified; and, (2) documents that are referenced in the Reliability Standard should be attached to the Reliability Standard. The Commission also found that it is important that regional Reliability Standards and NERC Reliability Standards achieve a reasonable level of consistency in their structure so that there is a common understanding of the elements.

C. Proposed Regional Reliability Standards

7. On March 25, 2009, NERC submitted a petition (NERC Petition) to the Commission seeking approval of four WECC regional Reliability

[1] 16 U.S.C. 824o (2006).

[2] 16 U.S.C. 824o(e)(3).

[3] 16 U.S.C. 824o(e)(4).

[4] 16 U.S.C. 824o(a)(7) and (e)(4).

[5] 18 CFR 39.5 (2010).

[6] 16 U.S.C. 824o(d)(2).

[7] *Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, 71 FR 8662 (Feb. 17, 2006), FERC Stats. & Regs. ¶ 31,204, at P 290, *order on reh'g,* Order No. 672–A, 71 FR 19814 (Apr. 18, 2006), FERC Stats. & Regs. ¶ 31,212 (2006).

[8] *Id.* P 291.

[9] *North American Electric Reliability Corp.,* 119 FERC ¶ 61,060, at P 432 (2007).

[10] *North American Electric Reliability Corp.,* 119 FERC ¶ 61,260 (2007).

[11] *Id.*

Standards.[12] The four proposed WECC regional Reliability Standards are designated as FAC–501–WECC–1, PRC–004–WECC–1, VAR–002–WECC–1 and VAR–501–WECC–1.[13] In its petition, NERC explains that the four proposed regional Reliability Standards are meant to replace certain currently-effective regional Reliability Standards:

- FAC–501–WECC–1 is intended to replace the current approved WECC PRC–STD–005–1;
- PRC–004–WECC–1 is intended to replace WECC PRC–STD–001–1 and WECC PRC–STD–003–1;
- VAR–002–WECC–1 is intended to replace WECC VAR–STD–002a–1; and
- VAR–501–WECC–1 is intended to replace WECC VAR–STD–002b–1.

NERC states that the NERC board of trustees approved the proposed regional Reliability Standards on October 29, 2008, on the condition that WECC address certain shortcomings raised during the comment periods in the next revision of the Reliability Standards.

8. NERC requests an effective date for FAC–501–WECC–1, VAR–002–WECC–1 and VAR–501–WECC–1 of the first day of the first quarter after Commission approval. For PRC–004–WECC–1, NERC requests an effective date of the first day of the second quarter after approval by the Commission.

9. On December 17, 2010, the Commission issued a Notice of Proposal Rulemaking (NOPR) in which it proposed to approve the four revised regional Reliability Standards. In addition, under section 215(d)(5) of the FPA, the Commission proposed to direct WECC, working through its standards development process, to develop modifications to these regional Reliability Standards.[14]

10. As indicated in Appendix A, fourteen entities filed comments in response to the NOPR.

II. Discussion

11. As discussed below, we approve Reliability Standards FAC–501–WECC–1, PRC–004–WECC–1, VAR–002–WECC–1, and VAR–501–WECC–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. We find that the revised WECC Reliability Standards are more stringent than the corresponding NERC Reliability Standards either because they address issues not covered in the requirements of the corresponding NERC Reliability Standards or because they offer more detailed requirements than the corresponding NERC Reliability Standards. For these same reasons, we find that the requirements of these revised regional Reliability Standards are not redundant of the requirements of the corresponding NERC Reliability Standards. Moreover, we find that these revised WECC Reliability Standards are sufficient to maintain the reliability of the Bulk-Power System in the Western Interconnection.

12. We also find that the revised regional Reliability Standards offer several improvements over the currently-effective regional Reliability Standards. Consistent with the Commission's directives in its June 2008 order, the revised regional Reliability Standards replace the former sanctions table with violation risk factors and violation severity levels. The revised regional Reliability Standards also remove compliance-related information and elements from the requirements.

13. In addition, we direct WECC to address a concern pertaining to the applicability of FAC–501–WECC–1 and PRC–004–WECC–1, which reference tables of major transmission paths and remedial action schemes posted on the WECC Web site. We also adopt our NOPR to direct NERC to remove the WECC regional definition of Disturbance from the NERC Glossary to ensure consistency between the regional and NERC defined terms.

A. FAC–501–WECC–1 Transmission Maintenance

NERC Petition

14. In its petition, NERC explained that proposed FAC–501–WECC–1 is intended to replace approved WECC PRC–STD–005–1. The proposed regional Reliability Standard would apply to transmission owners that maintain transmission paths listed in the table titled "Major WECC Transfer Paths in the Bulk Electric System" (WECC Transfer Path Table), which is no longer an attachment to the Reliability Standard but is maintained on the WECC Web site. Proposed FAC–501–WECC–1 contains three main provisions. Requirement R1 provides that each transmission owner must have a transmission maintenance and inspection plan, and each transmission owner must annually review and update as required its transmission maintenance and inspection plan. Requirement R2 states that each transmission owner must include specified maintenance categories[15] when developing its transmission maintenance and inspection plan. Requirement R3 states that each transmission owner must implement and follow its transmission maintenance and inspection plan.

15. In its petition, NERC recommended approval of FAC–501–WECC–1, stating that the proposed regional Reliability Standard addresses matters that the NERC Reliability Standard does not. Specifically, according to NERC, FAC–501–WECC–1 requires, for specified transmission paths, a highly detailed maintenance and inspection plan for all transmission and substation equipment components, beyond the relay and communication system maintenance and testing required by the corresponding NERC Reliability Standard.[16]

NOPR Proposal

16. In the NOPR, the Commission proposed to approve FAC–501–WECC–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission stated that, as explained by NERC, proposed FAC–501–WECC–1 appears to be more stringent, by virtue of its requirement for a highly detailed maintenance and inspection plan, compared to the corresponding NERC Reliability Standard.

17. The Commission pointed out that, in approving the currently-effective WECC PRC–STD–005–1, the Commission directed WECC to make certain modifications to the regional Reliability Standard. The Commission stated that the proposed regional Reliability Standard appeared to address these directives by no longer referencing any WECC forms, and removing text regarding the Compliance Monitoring Period. The Commission also pointed out that the proposed regional Reliability Standard no longer refers to a regional definition of Disturbance, which conflicted with the definition of Disturbance in the NERC Glossary. Since the term is not included in any of the proposed regional Reliability Standards, the Commission proposed to direct NERC to remove this regional definition from the NERC Glossary of Terms upon Commission approval of

[12] *See* 18 CFR 39.5(a) (requiring the ERO to submit regional Reliability Standards on behalf of a Regional Entity).

[13] The proposed regional Reliability Standards are not attached to the Final Rule. They are, however, available on the Commission's eLibrary document retrieval system in Docket No. RM09–9–000 and are posted on the ERO's Web site, *available at: http://www.nerc.com.*

[14] *Version One Regional Reliability Standards for Facilities Design, Connections, and Maintenance; Protection and Control; and Voltage and Reactive,* Notice of Proposed Rulemaking, 75 FR 80,397 (Dec. 22, 2010), FERC Stats. & Regs. ¶ 32,667 (2010).

[15] The maintenance categories to be included in the transmission maintenance and inspection plan are included in Attachment 1 of FAC–501–WECC–1—"Transmission Line and Station Maintenance Details."

[16] NERC Petition at 11, 14.

FAC–501–WECC–1. The proposed regional Reliability Standard also removes the sanctions table and includes violation risk factors, violation severity levels, measures and time horizons, as directed by the Commission. The Commission proposed to find that the proposed removal of the sanctions table and inclusion of violation risk factors, violation severity levels, measures and time horizons, appeared generally consistent with the Commission's directives, and signify meaningful improvement. Accordingly, the Commission proposed to approve FAC–501–WECC–1 and NERC's petition to retire currently-effective WECC PRC–STD–005–1.

18. The Commission also sought comment on two issues regarding FAC–501–WECC–1: (1) The use of the WECC Transfer Path Table and (2) the use of the term "system operating limit," as discussed below.

1. WECC Transfer Path Table

19. Regional Reliability Standard FAC–501–WECC–1 applies to transmission owners that maintain transmission paths listed in the most current WECC Transfer Path Table provided on WECC's Web site. The table currently posted on WECC's Web site identifies the same 40 major paths as the table attached to the currently-effective regional Reliability Standard, WECC PRC–STD–005–1.

NOPR Proposal

20. In the NOPR, the Commission expressed concern that, by referencing the WECC Transfer Path Table posted on the WECC Web site, the applicability of FAC–501–WECC–1 could change without review and approval by NERC and the Commission. The Commission explained that the possibility for the applicability of the Reliability Standard to change at any time could create confusion for entities that need to comply as well as any compliance or enforcement staff trying to determine which entities are responsible for complying with the Reliability Standard. Accordingly, the Commission proposed to direct WECC to develop a modification to FAC–501–WECC–1 to address this concern.

21. The Commission offered examples of how WECC might address the Commission's concern. First, the Commission suggested that WECC could include its criterion for identifying and modifying major transmission paths listed in the WECC Transfer Path Table and make an informational filing each time it makes a modification to the table. A second option the Commission proposed was that WECC file its criterion with the Commission and post revised transfer path tables and associated catalogs on its Web site before they become effective with concurrent notification to NERC and the Commission. Alternatively, the Commission suggested that the Regional Entity could include the WECC Transfer Path Table as an attachment to the modified Reliability Standard. In this way, the Commission would be able to verify that the Regional Entity is applying the requirements of FAC–501–WECC–1 in a just and reasonable manner.

Comments

22. WECC, as well as Bonneville, PacifiCorp, and SDG&E, support the Commission's proposal to require WECC to provide greater certainty regarding the applicability of FAC–501–WECC–1 based on the WECC Transfer Path Table. WECC supports the Commission's second approach and suggests that the Commission direct WECC to file its criterion for identifying and modifying major transmission paths listed in the tables. Moreover, WECC commits to publicly post any revisions to the table on the WECC Web site with concurrent notification to the Commission, NERC, and industry. WECC explains that posting the WECC Transfer Path Table to the Web site is preferred because the current WECC Regional Reliability Standards development process and subsequent NERC and FERC approval processes do not result in timely updates to the table.

23. Likewise, Bonneville, PacifiCorp, and SDG&E support the Commission's proposal to require WECC to develop and file criterion to clarify how major transmission paths are included in or excluded from the WECC Transfer Path Table. Bonneville believes that filing such criterion would provide transparency for transmission owners that are affected by changes to the table. PacifiCorp comments that WECC should not be required to include the criterion or the WECC Transfer Path Table as an attachment to the Reliability Standard because it would require a modification to the standard and, thus, added delay, every time WECC proposed a change to the criteria or the table. By contrast, the Bureau of Reclamation recommends that the Commission approve the proposed Reliability Standard and direct WECC to append the current WECC Transfer Path Table.

Commission Determination

24. Consistent with our NOPR proposal and WECC's comments the Commission directs WECC to file, within 60 days from the issuance of this Final Rule, its criterion for identifying and modifying major transmission paths listed in the WECC Transfer Path Table. Moreover, the Commission accepts WECC's commitment to publicly post any revisions to the WECC Transfer Path Table on the WECC Web site with concurrent notification to the Commission, NERC, and industry. We believe that this process balances the interests of WECC in developing timely revisions to the WECC Transfer Path Table with the need for adequate transparency for transmission owners that are affected by changes to the WECC Transfer Path Table.

2. System Operating Limits

25. WECC proposes to replace references to Operating Transfer Capability limits in WECC PRC–STD–001–1 with System Operating Limits in FAC–501–WECC–1. Currently, WECC determines transfer capability based on a "rated system path" methodology and the WECC Transfer Path Table and associated catalog identify the facilities that make up each rated system path. Unlike a System Operating Limit, WECC's definition of Operating Transfer Capability limits is restricted to direct or parallel transmission elements between or within specific transmission operators. Moreover, the rating of a System Operating Limit, which is based on an operating criterion that is either thermally (based on facility ratings) or stability-based (based on transient stability, voltage stability, or system voltage limits), is the first element to calculate in order to determine the Operating Transfer Capability limit rating.

NOPR Proposal

26. In the NOPR, the Commission expressed concern that the terms Operating Transfer Capability limit and System Operating Limit were not interchangeable. Specifically, the Commission expressed concern that the introduction of the NERC Glossary definition of System Operating Limit in Requirement R1 of the proposed regional Reliability Standard could create confusion regarding which transmission owners are required to maintain a transmission maintenance and inspection plan. The Commission expressed further concern that, by using the term System Operating Limit, Requirement R1 could apply to more transmission facilities than identified in the WECC Transfer Path Table and associated catalog.

Comments

27. WECC, supported by SDG&E, urges the Commission to approve FAC–

501–WECC–1 as filed. NERC and several other commenters support the Commission's proposal to approve FAC–501–WECC–1.[17] WECC agrees that there are slight differences between the definitions of Operating Transfer Capability limits and System Operating Limits but contends that the intent and the effect is the same and the applicability is clear. WECC explains that both limits are calculated using the same methodologies and result in the same values. WECC further explains that it made this change to address the Commission's concerns related to the proliferation of regional terms. Moreover, WECC states that, beginning with the 2008–2009 winter System Operating Limit seasonal study report and continuing to the present, WECC has defined the limits calculated as System Operating Limits. WECC states that it uses these seasonal studies to formulate the correct System Operating Limits for transmission paths in the West.

28. SDG&E and TANC support the use of System Operating Limits instead of Operating Transfer Capability limits. SDG&E comments that the methodology for determining System Operating Limits is the same as for Operating Transfer Capability limits and that there is no confusion related to the use of System Operating Limit in Requirement R1. TANC comments that an interpretation of Requirement R1 that requires transmission owners of major paths to be responsible for maintaining and inspecting transmission facilities owned by other entities whose facilities may be necessary to maintain System Operating Limits associated with the major path would be infeasible, overly burdensome on the individual owners of the major paths and inconsistent with the spirit of the proposed regional Reliability Standard as written. TANC suggests that using the term Operating Transfer Capability limit as a substitute for System Operating Limit may resolve any confusion, as could a modification clarifying that each major path transmission owner's responsibility is to inspect and maintain its own facilities.

29. Bonneville and PacifiCorp also support the use of the term System Operating Limit instead of the term Operating Transfer Capability because both terms result in the same requirement that maintenance be performed to ensure that each path is capable of operating up to the path's limit. Nevertheless, Bonneville and PacifiCorp comment that Requirement R1 is unclear as to which facilities are covered and who is responsible for the maintenance of those facilities. Bonneville contends that the transmission owner should be responsible only for the facilities it owns, and the standard should make this clear. PacifiCorp suggests that Requirement R1 should be modified to reflect that transmission owners should have a transmission maintenance and inspection plan detailing their requirements "that apply to all transmission facilities identified by the Transmission Operator of the transmission path as necessary" for System Operating Limits associated with each of the transmission paths identified in the WECC Transfer Path Table.

30. By contrast, in light of the concerns raised by the Commission in the NOPR, CDWR asks the Commission to consider maintaining current Reliability Standard PRC–STD–005–1.

Commission Determination

31. The Commission finds that the Regional Entity has adequately explained its intended use of System Operating Limits as a replacement for Operating Transfer Capability limits. As WECC and others have described, transmission owners within the Western Interconnection will continue to identify capability limits associated with their own paths listed in the WECC Transfer Path Table using the same methodology as they have used under the currently-effective WECC PRC–STD–001–1. We accept the substitution of terms based on WECC's explanation that all it has done is to replace references to Operating Transfer Capability limits with System Operating Limits in order to address the Commission's concern regarding the proliferation of regional terms.

32. In response to our concern that use of the term System Operating Limit could expand the applicability of FAC–501–WECC–1 to transmission facilities that are not listed in the WECC Transfer Path Table, we accept WECC's explanation that the applicability of the Reliability Standard is clear. Consistent with comments filed by Bonneville and PacifiCorp, we find that it would be unreasonable to interpret FAC–501–WECC–1 as requiring transmission owners to be responsible for maintaining and inspecting transmission facilities related to System Operating Limits on paths that they do not own. Nevertheless, we believe that this could be clearer in the language of Requirement R1. Accordingly, we recommend that WECC consider the comments of Bonneville, PacifiCorp and TANC when it develops future modifications to FAC–501–WECC–1.

3. Summary

33. We adopt our NOPR proposal and approve FAC–501–WECC–1 as just, reasonable, not unduly discriminatory or preferential and in the public interest. We find that the revised regional Reliability Standard is more stringent than the corresponding NERC Reliability Standard, PRC–005–1, by virtue of its requirement for a highly detailed maintenance and inspection plan for all transmission and substation equipment components associated with transmission paths identified in the WECC Transfer Path Table.

B. PRC–004–WECC–1

NERC Petition

34. Regional Reliability Standard PRC–004–WECC–1 is intended to replace two currently-effective WECC Reliability Standards, PRC–STD–001–1 and PRC–STD–003–1. In its petition, NERC explained that PRC–004–WECC–1 is more stringent than the currently-effective corresponding NERC Reliability Standards because the former requires that all transmission and generation protection system and remedial action scheme misoperations on major WECC transfer paths be analyzed and mitigated within a specific timeframe. In contrast, corresponding NERC Reliability Standard PRC–003–1 requires Regional Entities to establish procedures for review, analysis, reporting, and mitigation of transmission and generation protection system misoperations, but it does not specifically address the owners of the transmission and generation facilities. NERC also explained that NERC Reliability Standard PRC–004–1 has requirements for protection system misoperations, but does not provide for the additional requirements included in PRC–004–WECC–1.[18]

35. Regional Reliability Standard PRC–004–WECC–1 contains three provisions. Requirement R1 provides that "System Operators and System Protection Personnel" of transmission owners and generator owners must analyze all protection system and remedial action scheme operations. Requirements R1.1 and R1.2 identify time limits for the review and analysis

[17] *E.g.* Bonneville, Reclamation, PacifiCorp.

[18] *See* NERC Petition at 11, 19–20. In Order No. 693, the Commission found that PRC–003–1 was a fill-in-the-blank Reliability Standard in part because its requirements apply to the Regional Reliability Organizations, now called Regional Entities, which the Commission was not persuaded NERC can enforce a Regional Entity's compliance with a Reliability Standard. *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs., Regulations Preambles 2006–2007 ¶ 31,242, at P 1460–1461, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

of transmission element tripping, remedial action scheme operations and protection systems. Requirement R2 identifies actions required by transmission owners and generator owners for each protection system or remedial action scheme misoperation, including identifying timelines for removing the equipment that failed from service. Requirement R3 states that transmission owners and generator owners must submit an incident report for each misoperation or repair of equipment that misoperated.

36. Both the currently-effective and proposed regional Reliability Standards apply to transmission owners and transmission operators. However, PRC–004–WECC–1 also applies to generator owners that own facilities listed in the the table titled "Major WECC Remedial Action Schemes" (WECC Remedial Action Schemes Table), which is available on WECC's Web site.[19] In addition, WECC proposes four new regional definitions for Functionally Equivalent Protection System, Functionally Equivalent Remedial Action Scheme, Security-Based Misoperation and Dependability Based Misoperation.

NOPR Proposal

37. The Commission proposed to approve PRC–004–WECC–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest.[20] The Commission also proposed to approve NERC's petition to withdraw currently-effective WECC PRC–STD–001–1 and WECC PRC–STD–003–1. The Commission explained that PRC–004–WECC–1 appears more stringent than the corresponding NERC PRC–004–1. Moreover, PRC–004–WECC–1 addresses Commission directives to develop modifications to the currently-effective regional Reliability Standards.

38. The Commission noted that, in approving the currently-effective WECC PRC–STD–001–1 and WECC PRC–STD–003–1, the Commission directed WECC to make certain modifications in developing replacement Reliability Standards. To address these directives, WECC no longer references any WECC forms and the text regarding the compliance monitoring period has been removed from the proposed Standard. In addition, the revised regional Reliability Standard does not reference the regional definition of Disturbance, which did not match the NERC definition of Disturbance in the NERC Glossary. The revised regional Reliability Standard also removes the definition of Business Day. Since these terms are not included in any of the existing or proposed regional Reliability Standards, the Commission proposed to direct NERC to remove these regional definitions from the NERC Glossary upon approval of PRC–004–WECC–1. The revised regional Reliability Standard also removes the sanctions table and includes violation risk factors, violation severity levels, measures and time horizons. The Commission commended WECC for addressing these directives.

39. The Commission sought comment on two issues concerning PRC–004–WECC–1: (1) The use of the WECC Transfer Path Table and the WECC Remedial Action Schemes Table to define applicability and (2) the need for the four new regional definitions to be added to the NERC Glossary of Terms.

1. WECC Transfer Path Table and WECC Remedial Action Schemes Table

40. Similar to regional Reliability Standard FAC–501–WECC–1, discussed above, the applicability of Reliability Standard PRC–004–WECC–1 is dependent upon references to the WECC Transfer Path Table and the WECC Remedial Action Schemes Table, which WECC posts on its Web site. The NOPR raised the same applicability concerns as discussed above in the context of FAC–501–WECC–1. In turn, WECC offered to file the criteria for identifying paths and remedial action schemes associated with these tables.

Commission Determination

41. Consistent with our NOPR proposal and WECC's comments the Commission directs WECC to file, within 60 days from the issuance of this Final Rule, its criteria for identifying and modifying major transmission paths listed in the WECC Transfer Path Table and major remedial actions schemes listed in the WECC Remedial Action Schemes Table. Moreover, the Commission accepts WECC's commitment to publicly post any revisions to the WECC Transfer Path Table, WECC Remedial Action Schemes Table, and the associated catalogs on the WECC Web site with concurrent notification to the Commission, NERC, and industry. We believe that this process balances the interests of WECC in developing timely revisions to the WECC Transfer Path Table with the need for adequate transparency for transmission owners that are affected by changes to the WECC Transfer Path Table and the WECC Remedial Action Schemes Table. Regional Definitions Associated With PRC–004–WECC–1

NERC Petition

42. The revised regional Reliability Standard includes four new regional definitions meant to apply only in WECC. Two of the proposed definitions (Functionally Equivalent Protection System and Functionally Equivalent Remedial Action Scheme) have added "functionally equivalent" to terms that already exist in the NERC Glossary.[21] In addition, WECC has developed two regional definitions for the term Misoperation, as it is defined in the NERC Glossary. NERC explains that the terms Security-Based Misoperations and Dependability-Based Misoperations are meant to address: (1) Incorrect operation of a protection system (Security-Based Misoperation); and (2) absence of a protection system to operate (Dependability-Based Misoperation).

NOPR Proposal

43. In the NOPR, the Commission expressed concern about the unnecessary proliferation of glossary terms and whether the proposed WECC definitions were unnecessary variations of terms already defined in the NERC Glossary.[22] With regard to the definitions of Functionally Equivalent Protection System and Functionally Equivalent Remedial Action Scheme, the Commission expressed concern that the new definitions do not add any further clarity to the NERC Glossary terms. Accordingly, we sought an explanation from WECC and other interested commenters regarding whether these new terms are more inclusive than the corresponding NERC Glossary definitions and, if so, how.

44. The Commission also noted that WECC proposes to define Functionally Equivalent Protection System as "[a] Protection System that provides performance as follows: Each Protection System can detect the same faults within the zone of protection * * *"[23] The Commission expressed concern that the meaning of the phrase "detect the same faults" was unclear in this definition. Accordingly, we sought comment on the meaning of the phrase "the same faults" within the definition.

45. With regard to the bifurcation of the term Misoperation, the Commission expressed concern that the two new regional definitions may be confusing because at least some of the requirements for each type of

[19] *See* proposed regional Reliability Standard PRC–004–WECC–1, Section 4 (Applicability).

[20] NOPR, FERC Stats. & Regs. ¶ 32,667 at P 32.

[21] *See* NERC Glossary definitions for Protection System and Remedial Action Scheme.

[22] NERC Glossary of Terms used in Reliability Standards, *available at: http://www.nerc.com/files/GlossaryofTerms2011Mar15.pdf.*

[23] *See* Proposed Reliability Standard PRC–004–WECC–1, proposed definition of Functionally Equivalent Protection System.

misoperation appear to overlap. Accordingly, we sought an explanation from WECC and other interested commenters regarding why these two new regional terms are necessary or desirable within the context of the proposed regional Reliability Standard, and how they will enhance reliability.

Comments

46. WECC, supported by SDG&E, contends that the addition of the terms Functionally Equivalent Protection System and Functionally Equivalent Remedial Action Scheme adds clarity because they apply only to a subset of protection systems and remedial action schemes and are thus less inclusive than the corresponding NERC Glossary definition. WECC explains that a Functionally Equivalent Protection System or Functionally Equivalent Remedial Action Scheme is a protection system or remedial action scheme that provides redundancy to the specific protection system or remedial action scheme that failed. WECC further explains that a Functionally Equivalent Protection System or Remedial Action Scheme is not identical to the one that misoperated but rather provides redundancy over the same part of the Interconnection as the remedial action scheme or protection system that misoperated. Finally, WECC explains that the phrase "detect the same faults" is intended to take on its plain meaning, i.e., that both protection systems (the primary and the functionally equivalent protection system) can detect and protect against the same problem on the system.[24]

47. Bonneville and PacifiCorp generally agree that the terms Functionally Equivalent Protection System and Functionally Equivalent Remedial Action Scheme are useful because they describe a protection system or remedial action scheme that is able to provide the necessary functionality of a protection system or remedial action scheme without the loss of any necessary dependability for the system. PacifiCorp further suggests that the Commission direct NERC to consider the development of a continent-wide definition of Functionally Equivalent Protection System and Functionally Equivalent Remedial Action Scheme.

48. WECC, supported by SDG&E, Bonneville, and PacifiCorp, contends that definitions of Security-Based Misoperation and Dependability-Based Misoperation should be retained because they provide clarity in the implementation of PRC–004–WECC–1. WECC states that these two definitions were developed recognizing that misoperations can be grouped into two types, incorrect operation and failure to operate. WECC explains that a Dependability-Based Misoperation occurs during a system fault, and its impact to the bulk electric system is minimal if other functionally equivalent redundancies exist to eliminate, or at least minimize, any impact from any single misoperation. By contrast, a Security-Based Misoperation isolates an element from the bulk electric system unnecessarily either when another protection system is already responding to contingency conditions or when noise in a communication system trips an element even though no fault occurred. WECC comments that PRC–004–WECC–1 therefore requires different actions based on which category of misoperation has occurred.

Commission Determination

49. In view of the comments supporting these regional definitions, the Commission accepts the four new defined terms to be applicable only in the Western Interconnection. However, similar to our policy set forth in Order No. 672 that favors the development of uniform Reliability Standards,[25] the Commission believes NERC, as a rule, should develop definitions that apply uniformly across the different Interconnections and strive to minimize the use of regional definitions and terminology.

50. We will not direct NERC to consider PacifiCorp's suggestion that the Commission direct NERC to consider the development of a continent-wide definition of functionally equivalent protection system and functionally equivalent remedial action scheme. We note that NERC has an ongoing project that could address this issue.[26] We encourage NERC to consider the comments of PacifiCorp in this proceeding during the development of Project 2009–07 and encourage PacifiCorp to participate in this NERC project.

2. Summary

51. The Commission adopts its NOPR proposal to approve PRC–004–WECC–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. As discussed above, we direct WECC to file its criteria for identifying and modifying major transmission paths listed in the WECC Transfer Path Table and major remedial action schemes listed in the WECC Remedial Action Schemes Table. We also accept WECC's explanation regarding its need for the four new regional definitions to be added to the NERC Glossary of Terms.

C. VAR–002–WECC–1

52. Regional Reliability Standard VAR–002–WECC–1 applies to generator operators and transmission operators that operate synchronous condensers. Requirement R1 provides that each generator operator and transmission operator shall have automatic voltage regulators in service and in automatic voltage control mode for synchronous generators and synchronous condensers during 98 percent of all operating hours unless exempted by the transmission operator. Sub-requirements R1.1 through R1.10 detail the type of exemptions that the transmission operator may grant to the generator operator to excuse the generator from operating the automatic voltage regulator in automatic voltage control mode. Requirement R2 states that each generator operator and transmission operator must have documentation identifying the number of hours excluded for each sub-requirement R1.1 through R1.10.

53. Consistent with the Commission directives, the revised regional Reliability Standard replaces the former sanctions table with violation risk factors, violation severity levels, measures and time horizons.[27] WECC also proposes a new glossary term, Commercial Operation, applicable only in the Western Interconnection.

NERC Petition

54. The NERC Petition requested Commission approval of VAR–002–WECC–1. In addition, the Petition explained that, during the standards development process, NERC expressed concern regarding two aspects of the regional Reliability Standard, and that WECC responded in writing to NERC's concerns. First, with regard to Requirement R1 of VAR–002–WECC–1, WECC explained that the requirement to keep automatic voltage regulators in service and in automatic voltage control mode during 98 percent of all operating hours is a translation of the limits set in the levels of non-compliance associated

[24] *See* WECC Comments at page 11.

[25] Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 290 ("The Commission believes that uniformity of Reliability Standards should be the goal and the practice, the rule rather than the exception. Greater uniformity will encourage best practices, thereby enhancing reliability and benefiting consumers and the economy").

[26] NERC Project 2009–07 Reliability of Protection Systems, *available at: http://www.nerc.com/filez/standards/Project2009-07_Reliability_of_Protection_Systems.html.*

[27] *See North America Electric Reliability Corp.,* 119 FERC ¶ 61,260 at P 117.

with the current regional Reliability Standard.[28] In addition, WECC explained that the two percent allowance provides more time to start up generating facilities when the automatic voltage regulators are not yet in voltage control mode and allows for evaluation when a generator operator responds to an unforeseen event.[29]

55. Second, NERC expressed concern regarding sub-requirement R1.1, which includes an exemption for units operating less than five percent of all hours during a calendar quarter, because the provision "excludes the hours attributed to the synchronous generator or condenser that operates for less than five percent of all hours during any calendar quarter." [30] WECC responded by explaining that (1) this exemption is a carryover from the currently effective regional Reliability Standard and (2) the five percent exclusion permits the continued practice of allowing the operation of peaking units without penalty for having an out-of-service automatic voltage regulator per the manufacturer's recommendations.[31]

NOPR Proposal

56. The Commission proposed to approve VAR–002–WECC–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. Further, the Commission proposed the concurrent retirement of currently-effective WECC VAR–STD–002a–1. The Commission proposed to find that VAR–002–WECC–1 is more stringent than the corresponding NERC Reliability Standard. In addition, the Commission sought comment on several issues concerning VAR–002–WECC–1 including: (1) The automatic voltage regulator in-service requirement, (2) the exclusion of synchronous generators that operate less than five percent of all hours during a calendar quarter, (3) the replacement period for automatic voltage regulators, and (4) automatic voltage regulator performance.

1. Automatic Voltage Regulator In-Service Requirement

57. Requirement R1 of regional Reliability Standard VAR–002–WECC–1 provides that "Generator Operators and Transmission Operators shall have [automatic voltage regulators] in service and in automatic voltage control mode 98 [percent] of all operating hours for synchronous generators or synchronous condensers." [32] Requirement R1 then identifies ten circumstances in which a generator operator or transmission operator is excused from this requirement.

NOPR Proposal

58. In the NOPR, the Commission proposed to find that, by specifying the circumstances in which a generator operator or transmission operator is excused from operating with automatic voltage regulator in-service and in automatic voltage control mode, Requirement R1 is more stringent than the requirement in NERC VAR–002–1.1b. Nevertheless, the Commission expressed its concern that, where installed, automatic voltage regulators should be in-service at all times except in circumstances when the generator is operating at an output level that is not within the design parameters of the automatic voltage regulator or when operations of the automatic voltage regulator would result in instability. Accordingly, we sought comment on whether the Commission should direct WECC to develop a modification to the proposed regional Reliability Standard to address our concern. The Commission offered, for example, that WECC could develop a modification replacing the blanket two percent exemption with a list of specific exemptions that would accommodate generating units that are starting up or responding to unforeseen events and are operating outside of applicable facility ratings.

Comments

59. WECC, supported by CDWR, urges the Commission to approve VAR–002–WECC–1 with its exemption from using automatic voltage regulators during two percent of all operating hours. WECC contends that this exemption is not new and is included in WECC VAR–STD–002a–1, which addresses automatic voltage regulators. WECC explains that the current regional Reliability Standards includes levels of non-compliance that assess no penalty for generator operators that operate with their automatic voltage regulators in service at least 98 percent of the time. WECC contends that moving this exemption from the levels of non-compliance to the revised requirement was necessary to meet the Commission's violation severity level guideline 3, which states that violation severity levels "should not appear to redefine or undermine the requirement." [33]

60. WECC further contends that a directive reducing the two percent exemption will not increase the reliable performance of the Western Interconnection. WECC explains that the exemption is reasonable and a best business practice developed to enhance and protect reliability. WECC further explains that generator operators need the flexibility to take their automatic voltage regulator out of service when an operator is not comfortable with the performance of the automatic voltage regulator. WECC contends that requiring automatic voltage regulators to be in service 100 percent of all operating hours would be an onerous requirement that may, in fact, create a perverse incentive for generator operators to take their generation off-line rather than risk non-compliance with a more stringent requirement. Furthermore, WECC contends that the Commission's suggestion that WECC develop a list of specific exemptions is untenable. WECC explains that it is difficult to define all of the reasons why it may be necessary to take an automatic voltage regulator out of service unless the exclusions were written more broadly. WECC also contends that when a generator operator is responding to alarms, it may not have sufficient time to determine if the situation complies with a list of exemptions.

61. Although EPSA states that it supports the requirement that equipment such as automatic voltage regulators and power system stabilizers be available for a high percentage of the time a generator is in-service, EPSA urges the Commission to not mandate 100 percent availability for such ancillary equipment. EPSA contends that requiring equipment on generators to be available 100 percent of the time would not improve the reliability of the bulk electric system and would remove valuable generation from the grid, possibly due to what might be merely a minor problem associated with the ancillary equipment.

62. The Bureau of Reclamation comments that the NOPR and revised regional Reliability Standard do not use consistent terminology when referring to the operation of the automatic voltage regulator. The Bureau of Reclamation explains that the use of the terms "[automatic voltage regulator] in service" and "[automatic voltage regulator] in automatic voltage control mode" is misleading making it hard to

[28] The levels of non-compliance assigned to the currently-effective regional Reliability Standard specify that there shall be a level 1 non-compliance if automatic voltage regulators are in service less than 98 percent but at least 96 percent or more of all hours during which the synchronous generating unit is on line for each calendar quarter.

[29] NERC Petition at 34–35.

[30] *Id.* at 34–35.

[31] *Id.* at 35.

[32] Regional Reliability Standard VAR–002–WECC–1, Requirement R1.

[33] WECC Comments at 15, *citing North American Electric Reliability Corp.,* 123 FERC ¶ 61,284, at P 32 (2008) (*Violation Severity Level Order*).

determine the basis for compliance. The Bureau of Reclamation states that, in discussing this issue with members of the drafting team, the intent was to capture the hours the excitation system was in automatic voltage regulator mode but the language of the standard is unclear. The Bureau of Reclamation suggests that Requirement R1 of VAR–002–WECC–1 should state: "Generator Operators and Transmission Operators shall have the excitation system in [automatic voltage regulator] mode 98% of all operating hours for synchronous generators or synchronous condensers."

63. Mariner comments that there is an inadequacy in VAR–002–WECC–1. Mariner states that a voltage schedule is needed to appropriately program the automatic voltage regulator to operate in automatic voltage control mode. However, the continent-wide Reliability Standard VAR–001–1 allows transmission owners to provide either a voltage schedule *or* a reactive power schedule to the generator operators. Mariner comments that a reactive power schedule does not provide a generator operator with enough information to appropriately program the automatic voltage regulator to operate in automatic voltage control mode as required, such that the reactive power output must continuously be monitored and manually adjusted throughout the day, thereby defeating the purpose of the "automatic" voltage regulator. Mariner further states that operating with these continuous manual adjustments to maintain a constant reactive power output could actually harm the reliability of the system. Accordingly, Mariner recommends that the Commission remand regional Reliability Standard VAR–002–WECC–1.

Commission Determination

64. We recognize that the stated exemption from operating automatic voltage regulators during two percent of all operating hours is included in the levels of non-compliance associated with the currently-effective WECC VAR–STD–002a–1. We find that, by moving the exemption from the levels of non-compliance to the revised requirement, the revision is consistent with the Commission's guidelines on violation severity levels.[34] We also accept that requiring an exhaustive list of exemptions could result in overly broad exemptions that could allow generator operators to operate without automatic voltage regulators for more than two percent of all operating hours. If this were to occur, reliability could be diminished.

65. The Commission understands that the purpose of the two percent exemption is to allow the generator operator to remove the automatic voltage regulator from service when the generator operator determines that automatic voltage regulator operation would jeopardize the generator or reliability of the Bulk-Power System. All hours included in the two percent exemption must be consistent with the purpose of the revised Regional Reliability Standard, which is to ensure the reliability of the Bulk-Power System within the Western Interconnection by ensuring that automatic voltage regulators on synchronous generators and condensers are kept in service and controlling voltage.[35] We will not direct WECC to modify the two percent exemption for automatic voltage regulator operation.

66. In response to the comments filed by the Bureau of Reclamation, we agree that there is a difference between the automatic voltage regulator being "in service" and the automatic voltage regulator being "in automatic voltage control mode." As the Bureau of Reclamation explained, modern excitation systems can include several control function modes, one of which is automatic voltage regulator mode. If the excitation controller is operating in automatic voltage regulator mode, then the generator is operating in automatic voltage control mode. If the excitation controller is operating in another mode, the generator is not operating in automatic voltage control mode. Accordingly, we believe that VAR–002–WECC–1 makes this distinction clear by requiring synchronous generators and synchronous condensers to have the automatic voltage regulator in service and in automatic voltage control mode.

67. With regard to Mariner's concern, we note that WECC has an ongoing project to address this issue.[36] We encourage WECC to consider the comments of Mariner in this proceeding during the development of its Project WECC–0046 and encourage Mariner to participate.

2. Exclusion of Synchronous Generators That Operate Less Than Five Percent of All Hours During a Calendar Quarter

68. Requirement R1.1 of regional Reliability Standard VAR–002–WECC–1 allows exclusion of any synchronous generator or synchronous condenser that "operates for less than five percent of all hours during any calendar quarter" from operating with automatic voltage regulator in service and in automatic voltage control mode. During the Reliability Standard development process of the revised regional Reliability Standard, NERC expressed concern regarding the exclusion of these hours.[37] WECC explained that the "exclusion below the five percent threshold during a calendar quarter permits the continued practice of allowing the operation of peaking units without penalty for having an out-of-service [automatic voltage regulator] per the manufacturer recommendations" since "[p]eaking units often operate, for short periods, at low megawatt levels (below where manufacture[r]s recommend placing the [automatic voltage regulators] in-service)."[38]

NOPR Proposal

69. In the NOPR, the Commission observed that it appears that WECC developed the five percent threshold provision to account for out-of-service automatic voltage regulators per the manufacturer recommendations regarding automatic voltage regulator design limitations. The Commission expressed concern, however, that the provision is written more broadly than necessary. The Commission stated that it appears inefficient to allow an exemption for any synchronous generator or synchronous condenser that "operates for less than five percent of all hours during any calendar quarter" in order to address concerns about operation limits based on manufacture

[34] *See Violation Severity Level Order,* 123 FERC ¶ 61,284 at P 32; *see also North American Electric Reliability Corp.,* 119 FERC ¶ 61,260 at P 109 (directing that a substantive compliance responsibility be set forth in the Requirement of a Reliability Standard); Order No. 693, FERC Stats. & Regs., Regulations Preambles 2006–2007 ¶ 31,242 at P 253 (stating "while Measures and Levels of Non-Compliance provide useful guidance to the industry, compliance will in all cases be measured by determining whether a party met or failed to meet the Requirement given the specific facts and circumstances of its use, ownership or operation of the Bulk-Power System").

[35] NERC states that WECC explained "the two percent allowance provides for time to start up generating facilities * * * It also allows for evaluation when the Generator Operators respond to unforeseen events." NERC Petition at 34. In addition, WECC states "Generator Operators need the flexibility to take either their [automatic voltage regulator] or [power system stabilizer] out of service when an operator is not comfortable with the performance of the [automatic voltage regulator] or [power system stabilizer]. * * * Furthermore, when a Generator Operator is responding to alarms, there is not sufficient time to determine if the situation complies with the Standard's exclusions. Giving the Generator Operator the time to evaluate the situation impacting the performance of an [automatic voltage regulator] or [power system stabilizer], rather than taking the generator out of service, provides for situational awareness and enhances reliability." WECC Comments at 15–16.

[36] WECC Project WECC–0046—VAR–001–WECC–1 Voltage and Reactive Control can be followed at: *http://www.wecc.biz/Standards/Development/Pages/default.aspx.*

[37] NERC Petition at 34–35.

[38] *Id.* at 35.

recommendations, and that such an exemption could potentially exempt other generator operators and transmission operators. Thus, the Commission sought comment on whether it should direct WECC to develop a modification through its Reliability Standards development process that addresses this concern. The Commission suggested that one reasonable solution would be to develop a replacement requirement that directly addresses the need for an exemption for peaking units operating automatic voltage regulators when necessary to satisfy manufacturer recommendations regarding the operation of an automatic voltage regulator.

Comments

70. WECC, supported by SDG&E, comments that the five percent exemption is not new and is included in the applicability sections of WECC VAR–STD–002a–1 and VAR–STD–002b–1. WECC contends that the retention of this exclusion in VAR–002–WECC–1 will not diminish the reliability of the bulk electric system in the Western Interconnection. WECC further contends that it would not be cost-effective for some older generators that are used for short periods to replace, repair, or upgrade their automatic voltage regulator. WECC contends that it is more likely that these generators would be retired rather than make such repairs and, thus, they would no longer be available during peak periods. Thus, WECC argues, removing the five percent exemption could have a negative impact on reliability.

71. EPSA supports an exemption from requiring ancillary equipment such as automatic voltage regulators on facilities that are online five percent or less of the time each year if the unit is not required to meet system operating limits or interconnection reliability operating limits.

Commission Determination

72. The Commission recognizes that an exclusion for synchronous generators or synchronous condensers that operate for less than five percent of all hours during a calendar quarter from compliance with the requirement to have an automatic voltage regulator in service and in automatic voltage control mode exists as part of the "applicability" provision of currently-effective WECC VAR–STD–002a–1. We also understand that it may not be cost-effective for some older generators that are used only for short periods of time to replace, repair, or upgrade their automatic voltage regulator.

The Commission, therefore, accepts this exclusion on the basis of WECC's explanation that the retention of this exclusion will not diminish the reliability of the bulk electric system in the Western Interconnection. Even with the additional stringency of the regional Reliability Standard, generator operators must still comply with the requirements of NERC VAR–002–1.1b, which requires generators with automatic voltage regulators to operate each generator in the automatic voltage control mode unless the generator operator has notified the transmission operator.

3. Automatic Voltage Regulator Replacement

73. Sub-requirement R1.6 of VAR–002–WECC–1 lengthens the automatic voltage regulator replacement timeline due to component failure from 15 months to 24 months "to accommodate design and procurement especially for nuclear units." [39] NERC supported the extension of the outage time frame for the automatic voltage regulators.

NOPR Proposal

74. The Commission, giving due weight to WECC and NERC, proposed to accept the Reliability Standard with this revision. Nevertheless, the Commission expressed concern that allowing an additional nine months of non-operation of an automatic voltage regulator is not necessary for many, if not most, units. The Commission commented that the additional replacement time could lead to a decrease in generation that can react in automatic voltage regulator mode. In the event of a contingency, this decrease in generation could have an impact on bulk electric system reliability. The Commission suggested that it may be appropriate for the Commission to direct WECC to develop a modification to this provision to address our concern. As an example, the Commission suggested that WECC could allow fifteen months for replacement with an opportunity to seek an extension up to nine months where justified. Alternatively, WECC could retain a fifteen month replacement period for non-nuclear generator units, and a twenty-four month replacement period for nuclear generator units. The Commission sought comment regarding the historical replacement period for nuclear and non-nuclear units, and the appropriateness of the Commission proposal.

[39] NERC Petition at Exhibit C, "Consideration of Comments for VAR–002–WECC–1—Automatic Voltage Regulator Comments were due January 2, 2008."

Comments

75. WECC comments that it has gained considerable knowledge on this subject since its previous standard was approved by the Commission. WECC states that drafting team members reviewed replacement experiences for a number of different types of generators and concluded that a 15-month replacement requirement was extremely tight. In addition, WECC states that because many automatic voltage regulators date back to the early 1970s or earlier, extensive refinements must be made to the design of the automatic voltage regulator and the excitation system to integrate an old analog system with a new digital system. WECC also points out that strict procurement regulations, contracting requirements, the limited number of suppliers, delivery, and installation time all make a 15-month deadline infeasible. WECC further contends that the number of units that are operating without an automatic voltage regulator in service at the same time due to component failure is typically very limited. Thus, WECC argues, the additional time allowed for replacement would have very little to no impact on the overall reliability of the bulk electric system.

76. EPSA also contends that 15 months is an insufficient period in which to require a generator to replace an automatic voltage regulator because of the length of the procurement period and the importance of fulfilling compliance requirements with respect to the replacement equipment. Accordingly, EPSA contends that the 24-month period represents an improvement that should be adopted by the Commission. SDG&E agrees that the replacement period should be extended to 24 months based on industry experience with these generator components.

Commission Determination

77. We recognize, as WECC points out, that replacing an old automatic voltage regulator may require significant refinements to the design of the automatic voltage regulator and the excitation system to integrate a new digital system with an existing analog system, thereby requiring additional time. We also recognize that, as WECC and EPSA explain, procurement periods for new automatic voltage regulators might require more than 15 months. Although we did not receive any specific details regarding historical automatic voltage regulator replacement timeframes, WECC states that the drafting team members reviewed replacement experiences for a number

of different types of generators and concluded the 15-month replacement requirement was "extremely tight."[40] Based on these explanations, we approve the regional Reliability Standard with the modified provision, Requirement R1.6, which allows up to 24 months for replacing an excitation system due to component failure.

4. Automatic Voltage Regulator Performance

78. The current regional Reliability Standard provides that "[a]ll synchronous generators with automatic voltage control equipment shall normally be operated in voltage control mode and set to respond effectively to voltage deviations." The revised Reliability Standard VAR–002–WECC–1 removes this requirement.

NOPR Proposal

79. The Commission noted that the NERC Petition does not provide any explanation for, or potential impact of, removing the provision. Accordingly, the Commission sought further comment on the impact of removing this provision from the currently-effective WECC regional Reliability Standard. The Commission expressed concern that, by removing the requirement for automatic voltage regulators to respond effectively to voltage deviations, the proposed regional Reliability Standard would not require entities to assess the performance of the automatic voltage regulators to ensure they are appropriately responding to voltage deviations to support reliability of the Bulk-Power System.

Comments

80. WECC comments that it removed the requirement for generators with automatic control equipment to operate in automatic voltage control mode because NERC Reliability Standard VAR–002–1.1b already requires generator operators to operate each generator connected to the interconnected transmission system in the automatic voltage control mode unless the generator operator has notified the transmission operator. Thus, WECC contends, exclusion of this requirement from VAR–002–WECC–1 will have no impact on the reliability of the bulk electric system because generators must still comply with the requirements of NERC Reliability Standard VAR–002–1.1b. WECC further contends that including this requirement in the revised regional Reliability Standard would unnecessarily expose entities in the West to the possibility of non-compliance with the same requirement in two different Reliability Standards.

81. The Bureau of Reclamation also contends that it is unnecessary to maintain a requirement for automatic voltage regulators to respond to voltage deviations. The Bureau of Reclamation explains that the requirement to ensure proper tuning and performance of automatic voltage regulators is covered under the MOD series of Reliability Standards, specifically MOD–012–1 and MOD–013–1.

Commission Determination

82. As WECC points out, Requirement R1 of NERC Reliability Standard VAR–002–1.1b requires generator operators to "operate each generator connected to the interconnected transmission system in the automatic voltage control mode (automatic voltage regulator in service and controlling voltage)." WECC explains that it understood the currently-effective regional requirement for all synchronous generators with automatic voltage control equipment to be normally operating in voltage control mode and set to respond effectively to voltage deviations to be duplicative of Requirement R1 of NERC Reliability Standard VAR–002–1.1b. The Commission believes that, if a generator operator with an installed automatic voltage regulator complies with the NERC requirement to have the generator in automatic voltage control mode, generators should be set to respond effectively to voltage deviations. Thus, we find that there will be no impact to the reliability of the bulk electric system if this provision is removed from the regional Reliability Standard because the requirement remains enforceable under NERC Reliability Standard VAR–002–1.1.b.

83. The Commission disagrees with the Bureau of Reclamation's comment that NERC Reliability Standards MOD–012–0 and MOD–013–1 address requirements for ensuring proper tuning and performance of automatic voltage regulators.[41] The Commission agrees that the requirements in MOD–012–0 require entities to provide dynamic system modeling and simulation data, including data regarding "excitation systems, voltage regulators, turbine-governor systems, power system stabilizers, and other associated generation equipment" to the Regional Entities and NERC for use in reliability analysis of the interconnected transmission system.[42] These Reliability Standards do not require proper performance and tuning of an automatic voltage regulator, but the data required by NERC Reliability Standard MOD–012–0 could help identify improper performance of an automatic voltage regulator when employed in certain reliability analyses.

84. Accordingly, in view of WECC's comments that NERC Reliability Standard VAR–002–1.1b subjects WECC generators to the requirement for generators to be normally operated "in voltage control mode and set to respond effectively to voltage deviations," and that a similar regional Reliability Standard requirement would be duplicative, we will not direct any modifications to VAR–002–WECC–1.

5. Summary

85. For the reasons discussed above, the Commission adopts its NOPR proposal to approve VAR–002–WECC–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission also approves NERC's petition to retire currently-effective WECC–VAR–STD–002a–1. Based on the comments received from WECC and other entities, we will not, at this time, direct any modifications to Reliability Standard VAR–002–WECC–1.

D. VAR–501–WECC–1

86. Regional Reliability Standard VAR–501–WECC–1 contains two requirements that are intended to ensure that power system stabilizers on synchronous generators are kept in service. Requirement R1 provides that each generator operator with a synchronous generator equipped with a power system stabilizer must have the power system stabilizer in service during 98 percent of all operating hours. NERC explains that a power system stabilizer is part of the excitation control system of a generator used to increase power transfer levels by improving power system dynamic performance. Sub-requirements R1.1 through R1.12 set forth exceptions to the operating requirement in Requirement R1. Requirement R2 states that each generator operator must have documentation identifying the number of hours excluded for each sub-requirement R1.1 through R1.12.

[40] WECC Comments at 18.

[41] Order No. 693 approved Reliability Standard MOD–012–0 as mandatory and enforceable. However, Order No. 693 deemed MOD–013–0 as a fill-in-the-blank Reliability Standard in part because its requirements apply to the Regional Reliability Organizations, now called Regional Entities, which the Commission was not persuaded NERC can enforce a Regional Entity's compliance with a Reliability Standard. *See* Order No. 693, FERC Stats. & Regs., Pregulations Preambles ¶ 31,242 at P 301.

[42] Reliability Standard MOD–013–1, Requirement R1.2.

NOPR Proposal

87. In the NOPR, the Commission proposed to approve VAR–501–WECC–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission also proposed to approve NERC's proposed retirement of currently-effective WECC VAR–STD–002b–1. Nevertheless, the Commission sought comment on certain provisions of VAR–501–WECC–1 including: (1) The power system stabilizer in-service requirement, (2) the exclusion of synchronous generators that operate for less than five percent of all hours during a calendar quarter, (3) the replacement period for power system stabilizers, and (4) power system stabilizer performance.

1. Power System Stabilizer In-Service Requirement

88. Requirement R1 of VAR–501–WECC–1 provides that "Generator Operators shall have [power system stabilizers] in service 98 [percent] of all operating hours for synchronous generators equipped with [power system stabilizers]."[43] Requirement R1 also sets forth twelve circumstances in which a generator operator is excused from this requirement.

NOPR Proposal

89. In the NOPR, the Commission observed that by specifying the circumstances in which a generator operator is excused from keeping its power system stabilizer in service, the proposed requirement appears to be more stringent than the currently-effective requirement in NERC Reliability Standard VAR–002–1.1b, which requires only that a generator operator notify its transmission operator when there is a change in status of its power system stabilizer. Nevertheless, the Commission commented that, where installed, power system stabilizers should be in-service at all times, equipment and facility ratings permitting, unless exempted by the transmission operator.

90. Similar to its concerns with automatic voltage regulators addressed in VAR–002–WECC–1, the Commission stated that an exemption to an in-service requirement might be appropriate to accommodate generating facilities when they are starting up or operating outside of their facility ratings. The Commission expressed concern, however, that the proposed regional Reliability Standard provides no limitation as to when generating units may use the two percent exemption. Accordingly, we sought comment on whether the Commission should direct WECC to develop a modification to the proposed regional Reliability Standard that would address our concern. The Commission suggested, as an example, that WECC could develop a modification to replace the blanket two percent exemption with a more specific list of exemptions that would accommodate generating units that are starting up or are operating outside of applicable facility ratings.

Comments

91. WECC, supported by CDWR, urges the Commission to approve VAR–501–WECC–1 with its exemption for using power system stabilizers two percent of all operating hours. WECC comments that VAR–501–WECC–1 addresses an issue that is not covered by any NERC Reliability Standard. In addition, WECC contends that this exemption is not new and is included in WECC VAR–STD–002b–1, which addresses power system stabilizer operation. WECC explains that the current regional Reliability Standard includes levels of non-compliance that assess no penalty for generator operators that operate with their power system stabilizers in service at least 98 percent of the time. WECC contends that moving this exemption from the levels of non-compliance to the revised requirement was necessary to meet the Commission's violation severity level guideline 3, which states that violation severity levels "should not appear to redefine or undermine the requirement."[44]

92. WECC further contends that a directive reducing the two percent exemption will not increase the reliable performance of the Western Interconnection. WECC explains that the exemption is reasonable and a best business practice developed to enhance and protect reliability. WECC further explains that generator operators need the flexibility to take their power system stabilizers out of service when an operator is not comfortable with the performance of the power system stabilizer. WECC contends that requiring power system stabilizers to be in service 100 percent of all operating hours would be an onerous requirement that may, in fact, create a perverse incentive for generator operators to take their generation off-line rather than risk non-compliance with a more stringent requirement. Furthermore, WECC contends that the Commission's suggestion that WECC develop a list of specific exemptions is untenable. WECC explains that it is difficult to define all of the reasons where it may be necessary to take a power system stabilizer out of service. WECC also contends that when a generator operator is responding to alarms, it may not have sufficient time to determine if the situation complies with a list of exemptions.

93. The Bureau of Reclamation points out that three of the twelve exceptions for the in-service requirement concern the power output level of the generator: Requirement R1.4 concerns when the unit is operating in synchronous condenser mode; Requirement R1.5 concerns when the unit is generating less power than the design limit for effective power system stabilizer operation; and Requirement R1.6 concerns when the unit is passing through a range of output that is a known "rough zone." The Bureau of Reclamation comments that for most hydro generators the power system stabilizer is always in-service but control of power system stabilizers is performed by the power system stabilizer controller, automatically engaging or bypassing the power system stabilizer when output reaches a certain level. The Bureau of Reclamation contends that, as hydro generators are commonly used for regulation and peaking, these generators could be passing through the power system stabilizer pre-programmed levels several times a day. The Bureau of Reclamation recommends that the Commission remand VAR–501–WECC–1.

Commission Determination

94. We accept the explanation of WECC and other supporting comments on this matter. We recognize that the stated exemption from operating power system stabilizers two percent of all operating hours is included in the levels of non-compliance associated with the currently-effective WECC VAR–STD–002b–1. Further, we find that, by moving the stated exemption from the levels of non-compliance measures to the revised requirement, the revision is consistent with the Commission's guidelines on violation severity levels and with our determinations in Order No. 693.[45] We also accept that requiring an exhaustive list of exemptions could

[43] Proposed regional Reliability Standard VAR–501–WECC–1, Requirement R1.

[44] WECC Comments at 15, *citing Violation Severity Level Order,* 123 FERC ¶ 61,284 at P 32.

[45] *See Violation Severity Level Order,* 123 FERC ¶ 61,284 at P 32; *see also North American Electric Reliability Corp.,* 119 FERC ¶ 61,260 at 109 (directing that a substantive compliance responsibility be set forth in the Requirement of a Reliability Standard); Order No. 693, FERC Stats. & Regs., Regulations Preambles 2006–2007 ¶ 31,242 at P 253 (stating "while Measures and Levels of Non-Compliance provide useful guidance to the industry, compliance will in all cases be measured by determining whether a party met or failed to meet the Requirement given the specific facts and circumstances of its use, ownership or operation of the Bulk-Power System").

result in overly broad exemptions that could allow generator operators to operate without power system stabilizers for more than two percent of all operating hours. If this were to occur, reliability could be diminished.

95. The Commission understands that the purpose of the two percent exemption is to allow the generator operator with an installed power system stabilizer to remove the power system stabilizer from service when the generator operator determines that power system stabilizer operation would jeopardize the generator or reliability of the Bulk-Power System. All hours included in the two percent exemption must be consistent with the purpose of the revised regional Reliability Standard, which is to ensure the reliability of the Bulk-Power System within the Western Interconnection by ensuring that power system stabilizers on synchronous generators are kept in service and controlling voltage.[46] We will not direct WECC to modify the two percent exemption for power system stabilizer operation.

2. Exclusion of Synchronous Generators That Operate for Less Than Five Percent of All Hours During a Calendar Quarter

96. Requirement R1.1 of regional Reliability Standard VAR–501–WECC–1 allows exclusion of any synchronous generator that operates for less than five percent of all hours during any calendar quarter from the requirement that it operate with power system stabilizers in service. In its petition, NERC explained that, during the Reliability Standard development process of the regional Reliability Standard, NERC expressed concern regarding the exclusion of these hours.[47] WECC responded by explaining that the "exclusion below the five percent threshold during a calendar quarter permits the continued practice of allowing the operation of peaking units without penalty for having an out-of-service power system stabilizer per the manufacturer recommendations" since "[p]eaking units often operate, for short periods, at low megawatt levels (below where manufacture[r]s recommend placing the [power system stabilizer] in-service)."[48]

NOPR Proposal

97. In the NOPR, the Commission noted that it appears that WECC developed the five percent threshold to account for out-of-service power system stabilizer per manufacturer recommendations. We sought comment on whether the proposed provision is written more broadly than necessary. Based on the comments received, the Commission stated that it might propose to direct WECC to develop a modification through its Reliability Standards development process that addresses this concern. The Commission suggested that one reasonable solution would be to develop a replacement requirement that directly addresses the need for an exemption for peaking units that may not operate with power system stabilizers to satisfy manufacturer recommendations.

Comments

98. WECC, supported by SDG&E and EPSA, comments that the five percent exemption is not new and is included in the applicability sections of WECC VAR–STD–002a–1 and VAR–STD–002b–1. WECC contends that the retention of this exclusion in the VAR–501–WECC–1 will not diminish the reliability of the bulk electric system in the Western Interconnection. WECC further contends that it would not be cost-effective for some older generators that are used for short periods to replace, repair, or upgrade their power system stabilizers. WECC contends that it is more likely that these generators would be retired rather than make such repairs and, thus, they would no longer be available during peak periods. Thus, WECC contends, removing the five percent exemption could have a negative impact on reliability.

Commission Determination

99. We recognize that a stated exclusion for synchronous generators that operate for less than five percent of all hours during a calendar quarter from compliance with the requirement to have a power system stabilizer in service exists in the applicability section of the currently-effective WECC VAR–STD–002b–1. We also understand that it may not be cost-effective for some older generators that are used only for short periods of time to replace, repair, or upgrade their power system stabilizers. We, therefore, agree that this exclusion will not diminish the reliability of the bulk electric system in the Western Interconnection. We believe that the requirement is acceptable because there is no corresponding NERC requirement for power system stabilizers and, thus, the revised standard is more stringent than the requirements of the NERC Reliability Standards. Accordingly, we are satisfied with WECC's explanation on this matter.

3. Power System Stabilizer Replacement

100. Proposed sub-requirement R1.10 lengthens the power system stabilizer replacement timeline due to component failure from 15 months to 24 months "to accommodate design and procurement especially for nuclear units."[49]

NOPR Proposal

101. The Commission proposed to accept this requirement even though WECC provided limited evidence in the record to support the extension of the outage time frame for power system stabilizers from 15 months to 24 months. However, since the rationale provided for the increased replacement period is based on the needs of nuclear power generators, the Commission expressed concern whether the additional nine months are necessary for many, if not most, units. The Commission explained that the additional replacement time could lead to a decrease in generation units operating with power system stabilizers. The Commission commented that, in the event of a contingency, such a decrease could have an impact on bulk electric system reliability. Accordingly, the Commission sought comment regarding the historical replacement period for nuclear and non-nuclear units, and the appropriateness of the Commission proposal.

Comments

102. WECC comments that it has gained considerable knowledge on this subject since the Commission approved the currently-effective regional Reliability Standard in 2007. WECC states that drafting team members reviewed replacement experiences for a number of different types of generators and concluded that a 15 month replacement requirement was extremely tight. In addition, WECC states that because many power system stabilizers date back to the early 1970s or earlier, extensive refinements must be made to the design of the power system stabilizer and the excitation system to integrate an old analog system with a new digital system. WECC also points out that strict procurement regulations, contracting requirements, the limited number of suppliers, delivery, and installation time all make a 15 month deadline infeasible. WECC further contends that the number of units that are operating without a power system stabilizer in service at the same time due to component failure is typically very limited. Thus, WECC argues, there

[46] *See supra* note 35.

[47] NERC Petition at 40.

[48] *Id.*

[49] NERC Petition at Exhibit C, "Consideration of Comments for VAR–501–WECC–1—Power System Stabilizer Comments were due January 2, 2008."

would be very little, if any, impact on bulk electric system reliability that would result from an increase in the outage time frame to 24 months.

103. EPSA comments that 15 months is an insufficient period in which to require a generator to replace a power system stabilizer because of the length of the procurement period and the importance of fulfilling compliance requirements with respect to the replacement equipment. Accordingly, EPSA advocates that the 24-month period represents an improvement that should be adopted by the Commission. SDG&E agrees that the replacement period should be extended to 24 months based on industry experience with these generator components.

Commission Determination

104. We recognize, as WECC points out, that replacing an old power system stabilizer may require significant refinements to the design of the power system stabilizer and the excitation system to integrate a new digital system with an existing analog system, thereby requiring additional time. We also recognize that, as WECC and EPSA explain, procurement periods for new power system stabilizers might require more than 15 months. Although we did not receive any specific details regarding historical power system stabilizer replacement timeframes, WECC states that the drafting team members reviewed replacement experiences for a number of different types of generators and concluded the 15-month replacement requirement was "extremely tight." [50] Based on these explanations, we approve the regional Reliability Standard with the modified provision, Requirement R1.6, which allows up to 24 months for replacing a power system stabilizer and excitation system due to component failure.

4. Power System Stabilizer Performance

105. The current regional Reliability Standard requires all generators with power system stabilizers to be properly tuned in accordance with the WECC requirements.[51] The proposed regional Reliability Standard removes the tuning requirement without explanation or analysis of the potential impact of removing the provision.

NOPR Proposal

106. In the NOPR, the Commission expressed its belief that, if a power system stabilizer is in-service, it must be properly tuned to enhance system damping and maintain system stability. The Commission, therefore, sought further explanation from WECC and NERC, and public comment, on the impact of removing the tuning requirement.

Comments

107. WECC states that the Commission is correct that a properly-tuned power system stabilizer is necessary to enhance system damping. WECC contends, however, that a power system stabilizer tuning requirement is not necessary because, in order for a generator operator to meet the in-service requirements of VAR–501–WECC–1 without experiencing inappropriate system oscillations, that generator operator typically must have a properly tuned power system stabilizer. WECC adds that VAR–501–WECC–1 is a performance, not a tuning standard, which is why WECC's standards development drafting team excluded this requirement from the revised regional Reliability Standard.

108. Moreover, WECC contends that power system stabilizer tuning should not be added to VAR–501–WECC–1 because tuning is highly site and unit specific, making it difficult to enforce a "proper tuning" requirement. WECC further contends that identifying whether or not a power system stabilizer or excitation system is properly tuned is very dependent upon the professional opinion of the expert performing the tuning. WECC also points out that older analog power system stabilizers are being replaced with newer digital versions, which do not require any further adjustments unless changes are made to the system configuration. Moreover, WECC contends that because the new digital power system stabilizers, unlike the older analog versions, do not drift, the periodic testing requirement which sought to address drift by requiring a five-year tuning power system stabilizer testing program is no longer necessary.

109. EPSA comments that a generator operator can purchase, install and tune power system stabilizer equipment but regional entities may have the tools to measure proper tuning. EPSA contends that an out-of-tune power system stabilizer could be identified faster using analyses performed by the transmission operator or regional entity than the owner of the power system stabilizer could identify by routinely checking power system stabilizer tuning parameters. Moreover, EPSA comments, new power system stabilizers are digital, so less component drift takes place than in older power system stabilizers that would need to be checked periodically. EPSA predicts that it may not be long before new power system stabilizers are self-learning and self-tuning.

110. In contrast, PacifiCorp suggests modifying the proposed regional Reliability Standard to include language that the power system stabilizer shall be tuned in accordance with WECC requirements, without prescribing any intervals. PacifiCorp further suggests that carrying over this requirement from the current standard would ensure any power system stabilizer will be properly tuned.

Commission Determination

111. Although a properly-tuned power system stabilizer is necessary to enhance system damping, we accept the exclusion of the current tuning requirement based on WECC's explanation that, in order for a generator operator with an installed power system stabilizer to meet the in-service requirements of VAR–501–WECC–1, the power system stabilizer must be properly tuned to prevent experiencing inappropriate system oscillations. A tuning requirement would require removal of the power system stabilizer from service, which may cause the generator operator to be non-compliant with the performance requirements of VAR–501–WECC–1. Accordingly, we will not direct any modifications to VAR–501–WECC–1 regarding a power system stabilizer tuning requirement. If, in the future, WECC develops a requirement for power system stabilizer tuning, we urge WECC to consider the comments submitted by PacifiCorp to include such a tuning requirement.

5. Reporting Burden

NOPR Proposal

112. In the NOPR, the Commission noted that the revised WECC Reliability Standards do not modify or otherwise affect the burdens related to the collection of information already in place. Thus, the Commission preliminarily concluded that the revised WECC Reliability Standards will neither increase the reporting burden nor impose any additional information collection requirements.

Comments

113. Melissa Kurtz, USACE NWW, USACE Portland, USACE Seattle contend that, contrary to the Commission's burden estimate in the NOPR, compliance with VAR–501–

[50] WECC Comments at 18.

[51] *Id.* Requirement WR1 of the currently-effective regional Reliability Standard provides: "Power System Stabilizers on generators shall be kept in service at all times, unless one of the exemptions listed in Section C (Measures) applies, and shall be properly tuned in accordance with WECC requirements."

WECC–1 will impose an additional burden on entities that must now track when a power system stabilizer is off. These commenters state that the power system stabilizer is largely handled by the generator exciter, which is programmed to activate and deactivate the power system stabilizer depending on generator loading conditions. They explain that the exciter automatically turns the power system stabilizer off when the unit is passing through a rough zone, when the unit is generating less power than its design limit for effective power system stabilizer operation, or when the unit is condensing. They contend that VAR–501–WECC–1 will require tracking the status of the power system stabilizer that is turning on and off automatically along with the reason it is turned off. They also explain that a power system stabilizer is a piece of remote equipment that sits on the powerhouse floor and is not conveniently located for observation. Thus, they argue that the required tracking is not reasonable and will not add to system reliability because it uses scarce resources to track the information. Further, commenters state that tracking this information would require hardware and software modifications by staff. They suggest that evidence of compliance through system settings is more beneficial than micromanaging the results of a machine.

114. The Bureau of Reclamation states that it has no process to track the minutes that the power system stabilizer is in a bypass condition and to develop such a process, as would be required under Requirement R2 of VAR–501–WECC–1, would be very burdensome. The Bureau of Reclamation further comments that tracking such a transient condition does not add to the reliability of the bulk electric system. Finally, the Bureau of Reclamation points out that the current regional Reliability Standard does not include a requirement to track and document the time the power system stabilizer controller places the power system stabilizer in bypass condition.

Commission Determination

115. The Commission finds that VAR–501–WECC–1 does not impose any new reporting requirements. Under Requirement R3.1 of NERC Reliability Standard VAR–002–1.1b a generator operator must notify its transmission operator as soon as practical but no later than 30 minutes after a "status or capability change on any generator Reactive Power resource, including the status of each automatic voltage regulator and power system stabilizer and the expected duration of the change in status or capability." [52] Thus, generator operators already must monitor and report changes in status of their power system stabilizers.

116. We believe that the documentation requirement for exempt outages of power system stabilizers under Requirement R2 of VAR–501–WECC–1 is consistent with the existing reporting requirement under Requirement R3.1 of NERC VAR–002–1.1b. If a generator operator must already notify its transmission operator of a change in status of each power system stabilizer, it should not create an added burden to document those changes. Thus, we do not expect implementation of VAR–501–WECC–1 to result in an increased reporting burden to generator operators. If, however, generator operators in the Western Interconnection continue to be concerned about their compliance with either of these Reliability Standards, we believe that such a concern is best addressed through the compliance programs at either WECC or NERC.

6. Summary

117. The Commission adopts its NOPR proposal to approve VAR–501–WECC–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. We accept WECC's explanations for the issues raised in the NOPR. Accordingly, we will not, at this time, direct WECC to develop any modifications to VAR–501–WECC–1. We also dismiss arguments raised by Melissa Kurtz, USACE NWW, USACE Portland, and USACE Seattle that the revised regional Reliability Standard creates an undue reporting burden.

E. NERC VAR–002–1.1b

118. In the NOPR, the Commission sought comment as to whether it should direct NERC to develop a modification to VAR–002–1.1b to clarify that, if a generator has an automatic voltage regulator or power system stabilizer installed, it must be in-service at all times, equipment and facility ratings permitting, unless exempted by the transmission operator.

119. The Commission noted that NERC Reliability Standard does not address power system stabilizer tuning. The Commission stated that a properly tuned power system stabilizer is necessary to enhance system damping. If a power system stabilizer is installed, periodic review of the power system stabilizer tuning is a significant component of maintaining system stability to ensure that system changes have not impacted the performance of the power system stabilizer in supporting system stability. Accordingly, the Commission sought comment on whether it should propose to direct NERC to develop a continent-wide Reliability Standard to address this concern. The Commission added that any resulting proposal to direct the development of modifications to the NERC Reliability Standards would be addressed in a separate proceeding.

Comments

120. NERC comments that it has not performed the technical analysis necessary to determine whether it is necessary for Bulk-Power System reliability to develop a tuning requirement for power system stabilizers. If the Commission receives comments that would compel it to direct NERC to develop such a requirement, NERC asks that the Commission allow NERC enough flexibility so that it can appropriately prioritize the directive.

Commission Determination

121. The Commission will not, at this time, commence a new proceeding to propose a directive to NERC to develop a requirement on power system stabilizer tuning. We recognize that the need for a requirement on power system stabilizer tuning is reduced as generator operators install new digital power system stabilizers, which are less prone to drifting and should not require adjustment unless changes are made to system configurations. Nevertheless, we may revisit this proposal as more practical experience with the new digital technology progresses.

F. Violation Risk Factors and Violation Severity Levels

122. In the event of a violation of a Reliability Standard, consistent with NERC practices, WECC establishes the initial value range for the corresponding base penalty amount. To do so, WECC assigns a violation risk factor for each requirement of a Reliability Standard that relates to the expected or potential impact of a violation of the requirement on the reliability of the Bulk-Power System. In addition, WECC defines up to four violation severity levels—Lower, Moderate, High, and Severe—as measurements for the degree to which the requirement was violated in a specific circumstance.

123. Violation risk factors and violation severity levels are not part of the Reliability Standard and, thus, are appropriately treated as an appendix to

[52] NERC Reliability Standard VAR–002–1.1b, Requirement R3.1.

NERC's Rules of Procedure.[53] Revisions of violation severity levels do not modify the Reliability Standard. Accordingly, NERC and the regional entities are not required to comport with the Reliability Standards development provisions of section 215 of the FPA when revising a violation risk factor or violation severity level assignment.[54]

124. In Order No. 705, the Commission approved 63 of NERC's 72 proposed violation risk factors for the version one FAC Reliability Standards and directed NERC to file violation severity level assignments before the version one FAC Reliability Standards become effective.[55] Subsequently, NERC developed violation severity levels for each requirement of the Commission-approved FAC Reliability Standards, as measurements for the degree to which the requirement was violated in a specific circumstance.

125. On June 19, 2008, the Commission issued its Violation Severity Level Order approving the violation severity level assignments filed by NERC for the 83 Reliability Standards approved in Order No. 693.[56] In that order, the Commission offered four guidelines for evaluating the validity of violation severity levels, and ordered a number of reports and further compliance filing to bring the remainder of NERC's violation severity levels into conformance with the Commission's guidelines. The four guidelines are: (1) Violation severity level assignments should not have the unintended consequence of lowering the current level of compliance; (2) violation severity level assignments should ensure uniformity and consistency among all approved Reliability Standards in the determination of penalties; [57] (3) violation severity level assignments should be consistent with the corresponding requirement; and (4) violation severity level assignments should be based on a single violation, not a cumulative number of violations.[58] The Commission found that these guidelines will provide a consistent and objective means for assessing, *inter alia,* the consistency, fairness and potential consequences of violation severity level assignments. The Commission noted that these guidelines were not intended to replace NERC's own guidance classifications but, rather, to provide an additional level of analysis to determine the validity of violation severity level assignments.

126. On August 10, 2009, NERC submitted an informational filing setting forth a summary of revised guidelines that NERC intends to use in determining the assignment of violation risk factors and violation severity levels for Reliability Standards. NERC states that these revised guidelines were consistent with Commission's guidelines. On May 5, 2010, NERC submitted an informational filing as a supplement to its pending March 5, 2010 Violation Severity Level Order compliance filing.[59] In that May 5, 2010 filing, NERC proposes to assign a violation severity level only to each main requirement. Thus, a violation of any number of sub-requirements would trigger only a single violation of the main requirement. This proposed "roll-up" methodology is currently pending before the Commission in Docket No. RR08–4–005.

WECC Proposal

127. As discussed above, WECC has developed violation risk factors and violation severity levels for each of these revised regional Reliability Standards. WECC states that it developed these violation risk factors and violation severity levels in response to comments from NERC and the Commission that it should replace its existing sanctions tables. In addition, NERC states in its petition that WECC has agreed to conform the format of the violation severity levels to that of the NERC Reliability Standards in revisions to the four regional Reliability Standards.

Commission Determination

128. The Commission approves the violation risk factors and violation severity levels assigned to FAC–501–WECC–1, PRC–004–WECC–1, VAR–002–WECC–1, and VAR–501–WECC–1. We note, however, that there appear to be some missing violation risk factors and severity levels. Even with these potential gaps, however, the requirements of the WECC Reliability Standards approved in this Final Rule shall be enforceable upon their implementation.

129. In FAC–501–WECC–1, the Lower violation severity level applies when the transmission maintenance and inspection plan does not include facilities for one of the paths in the WECC Transfer Path Table, but the transmission owners are performing maintenance and inspection for those facilities. The Moderate violation severity level applies when the transmission maintenance and inspection plan does not include facilities for two of the paths in the WECC Transfer Path Table, and the transmission owners are not performing maintenance and inspection for those facilities. Based on these two violation severity level assignments, it is ambiguous which violation severity level would apply if the transmission maintenance and inspection plan does not include facilities for one of the paths in the WECC Transfer Path Table, and the transmission owners are not performing maintenance and inspection for those facilities.

130. In PRC–004–WECC–1, the violation severity levels for Requirement R2.3 do not define any potential violations for the transmission owner even though both Requirement 2.3 and sub-Requirement 2.3.1 apply to the transmission owner, a situation that could be viewed as violating violation severity level guideline 3. Also in PRC–004–WECC–1, violation risk factors have not been assigned for Requirements R2, R2.4 and R2.4.1. If WECC believes that it would be inappropriate to assign violation risk factors to these requirements, it should submit an explanation.

131. In VAR–002–WECC–1, Requirement R1 requires the automatic voltage regulators to be "in service and in automatic voltage control mode" but the violation severity levels for Requirement R1 specify only that the automatic voltage regulator must be "in service," which could be viewed as violating violation severity level guideline 3. Also, the violation severity levels for VAR–002–WECC–1, Requirement R1 lower the level of compliance from the levels of non-compliance associated with the currently-effective VAR–STD–002a–1. VAR–STD–002a–1 includes four levels of non-compliance (Level 1, Level 2, Level 3, and Level 4) which have been translated into the four violation severity levels (Lower, Moderate, High, and Severe). The four levels of non-compliance are defined by the automatic voltage regulator in service hours being: (Level 1) less than 98 percent but at least 96 percent; (Level 2)

[53] Violation Severity Level Order, 123 FERC ¶ 61,284 at P 15.

[54] *See North American Electric Reliability Corporation,* 120 FERC ¶ 61,145 at P 16.

[55] *Facilities Design, Connections and Maintenance Reliability Standards,* Order No. 705, 121 FERC ¶ 61,296, at P 137 (2007).

[56] Violation Severity Level Order, 123 FERC ¶ 61,284.

[57] Guideline 2 contains two sub-parts: (a) The single violation severity level assignment category for binary requirements should be consistent and (b) violation severity levels assignments should not contain ambiguous language.

[58] Violation Severity Level Order, 123 FERC ¶ 61,284 at P 17.

[59] North American Reliability Corporation, Filing of the North American Electric Reliability Corporation regarding the Assignment of Violation Risk Factors and Violation Severity Levels, Docket No. RR08–4–005 (filed May 5, 2010).

less than 96 percent but at least 94 percent; (Level 3) less than 94 percent but at least 92 percent; and (Level 4) less than 92 percent. The violation severity levels assigned to Requirement R1 of VAR–002–WECC–1 are defined by the automatic voltage regulator in service hours being: (Lower) less than 98 percent but at least 90 percent; (Moderate) less than 90 percent but at least 80 percent; (Higher) less than 80 percent but at least 70 percent; and (Severe) less than 70 percent. This change appears to violate violation severity level guideline 1. In addition, WECC has determined that High and Severe violation severity levels are not applicable to Requirement R2 of VAR–002–WECC–1.

132. In VAR–501–WECC–1, the violation severity levels for Requirement R1 lower the level of compliance from the levels of non-compliance associated with the currently-effective VAR–STD–002a–1. VAR–STD–002b–1 includes four levels of non-compliance (Level 1, Level 2, Level 3, and Level 4) which have been translated into the four violation severity levels (Lower, Moderate, High, and Severe). The four levels of non-compliance are defined by the power system stabilizer in service hours being: (Level 1) less than 98 percent but at least 96 percent; (Level 2) less than 96 percent but at least 94 percent; (Level 3) less than 94 percent but at least 92 percent; and (Level 4) less than 92 percent. The proposed violation severity levels are defined by the power system stabilizer in service hours being: (Lower) less than 98 percent but at least 90 percent; (Moderate) less than 90 percent but at least 80 percent; (Higher) less than 80 percent but at least 70 percent; and (Severe) less than 70 percent. This change appears to violate violation severity level guideline 1. For Requirement R2, only lower and moderate violation severity levels were defined.

133. Consistent with our concerns outlined above, we direct WECC to consider modifications to the violation risk factors and violation severity levels assigned to these four regional Reliability Standards. Accordingly, we direct WECC to submit revisions to or explanations justifying these violation risk factors and violation severity levels within 60 days from the issuance of this order. Consistent with NERC practice, these violation risk factors and violation severity levels should be in table format. Interested parties will have an opportunity to comment on this filing. In addition, the Commission supports WECC's agreement to conform the violation severity levels format to that of the NERC Reliability Standards related to FAC–501–WECC–1, VAR–002–WECC–1 and VAR–501–WECC–1 in future revisions to the regional Reliability Standards.[60] Accordingly, we expect WECC to make future revisions to these and other violation risk factors and violation severity level assignments consistent with any changes in NERC and Commission guidelines.

III. Information Collection Statement

134. The information collection requirements in this Final Rule are identified under the Commission data collection FERC–725E, "Mandatory Reliability Standards for the Western Electricity Coordinating Council." The information collection requirements are being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.[61] OMB's regulations to approve certain information collection requirements imposed by agency rule.[62]

135. The four new regional Reliability Standards (FAC–501–WECC–1, PRC–004–WECC–1, VAR–002–WECC–1, and VAR–501–WECC–1) replace existing regional Reliability Standards PRC–STD–001–1, PRC–STD–003–1, PRC–STD–005–1, VAR–STD–002a–1, and VAR–STD–002b–1, which were approved by the Commission in its June 2007 Order.[63] In addition, the new regional Reliability Standards introduce five new regional definitions for the NERC Glossary: Functionally Equivalent Protection System, Functionally Equivalent Remedial Action Scheme, Security-Based Misoperations, Dependability-Based Misoperations, and Commercial Operation. We find that the requirements of these revised regional Reliability Standards may result in minor changes in burden to applicable entities but, overall, these requirements will not substantially add to or increase burden to entities that must already comply with the existing regional Reliability Standards and the corresponding NERC Reliability Standards.

136. There are, however, two differences with respect to the applicability of the new versus the existing regional Reliability Standards. First, existing regional Reliability Standard WECC PRC–STD–005–1 is applicable to transmission owners or operators that maintain transmission paths indicated in the WECC Transfer Path Table. By contrast, new Reliability Standard FAC–501–WECC–1 is applicable only to transmission owners that maintain transmission paths indicated in the WECC Transfer Path Table. Thus, transmission operators no longer must comply with these regional requirements. Second, existing regional Reliability Standard WECC VAR–STD–002a–1 is applicable only to generator operators of synchronous generators whereas new regional Reliability Standard VAR–002–WECC–1 is applicable to both generator operators and transmission operators of synchronous condensers. Thus, Reliability Standard VAR–002–WECC–1 creates a new burden for transmission operators of synchronous condensers, which we evaluate below.

137. Public Reporting Burden: Our estimate below regarding the number of respondents is based on the WECC compliance registry as of December 2, 2010. According to WECC's compliance registry, as of that date there are 52 transmission operators. As discussed above, new WECC Reliability Standard FAC–501–WECC–1 removes as an applicable entity transmission operators that maintain transmission paths listed in the WECC Transfer Path Table. In addition, new Reliability Standard VAR–002–WECC–1 adds as applicable entities a subset of transmission operators that operate synchronous condensers. Although these requirements apply to a subset of transmission operators, it is unclear which transmission operators should be included and so we base our burden estimate on the total number of transmission operators. Given these parameters, the Commission estimates the savings related with the removal of transmission operators from FAC–501–WECC–1 and the added public reporting burden for transmission operators that must comply with Reliability Standard VAR–002–WECC–1 is as follows:

[60] NERC Petition at 18, 35 and 40.

[61] 44 U.S.C. 3507(d).

[62] 5 CFR 1320.11

[63] *North American Electric Reliability Corp.* 119 FERC ¶ 61,260.

FERC–725E data collection	Number of respondents (A)	Number of annual responses (B)	Hours per respondent (C)	Total annual hours (A × B × C)
Recordkeeping for transmission operators complying with PRC–STD–005–1	52	1	10	[a] (520)
Reporting for transmission operators complying with VAR–002–WECC–1	52	4	10	2,080
Recordkeeping for transmission operators complying with VAR–002–WECC–1	52	4	1	208

[a] (Savings).

Total Estimated Annual Hours for Collection: (Reporting/Compliance + recordkeeping) = 1,768 hours.

Reporting/Compliance = 2,080 @ $120/hour = $249,600.

Recordkeeping = (312) hours @ $28/hour = ($8,736) (savings).

Total Cost = $240,864.

Title: FERC–725E, Mandatory Reliability Standards for the Western Electricity Coordinating Council.

Action: Proposed Revision to FERC–725E.

OMB Control No.: 1902–0244.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On occasion.

Necessity of the Information: This Final Rule approves four regional Reliability Standards that pertain to facilities design, connections, and maintenance; protection and control; and voltage and reactive. This Final Rule also approves the addition of five new terms to the NERC Glossary of Terms. This Final Rule finds the Reliability Standards and related definitions just, reasonable, not unduly discriminatory or preferential, and in the public interest.

138. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, Attn: Ellen Brown, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426, E-mail: *DataClearance@ferc.gov,* Tel: (202) 502–8663, Fax: (202) 273–0873. Comments on the requirements of this 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 should be sent by e-mail to OMB at *oira submission@omb.eop.gov*. Please reference OMB Control Number 1902–0244, RIN 1902–AE17, and the docket number of this Final Rule in your submission.

IV. Environmental Analysis

139. 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.[64] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. The actions directed in this Final Rule fall within the categorical exclusion in the Commission's regulations for rules that are clarifying, corrective or procedural, for information gathering, analysis, and dissemination.[65] Accordingly, neither an environmental impact statement nor an environmental assessment is required.

V. Regulatory Flexibility Act

140. The Regulatory Flexibility Act of 1980 (RFA)[66] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The requirements of the Reliability Standards approved in this Final Rule would apply primarily to transmission owners of major transmission paths and remedial action schemes within the Western Interconnection, generator owners of major remedial action schemes within the Western Interconnection, transmission operators that operate major transmission paths or remedial action schemes in the Western Interconnection, and generator and transmission operators that operate synchronous generators and condensers within the Western Interconnection that are connected to the bulk electric system. Many of these entities do not fall within the definition of small entities but some transmission owners, generator owners, transmission operators and generator operators would be deemed small entities.[67] The new regional Reliability Standards reflect a continuation of existing requirements currently applicable to these entities.

141. There are only two modifications to the applicable entities for this group of regional Reliability Standards. Proposed FAC–501–WECC–1 no longer applies to transmission operators. Proposed VAR–002–WECC–1 has added applicability to transmission operators, but only the subset that operate synchronous condensers that are connected to the bulk electric system.

142. Based on available information regarding NERC's compliance registry, and our best assessment of the application of the proposed regional Reliability Standards, approximately 275 unique entities will be responsible for compliance with the proposed regional Reliability Standards, of which 52 are transmission operators. Of the 52 transmission operators, only a subset that operate synchronous condensers connected to the bulk electric system will be subject to the proposed VAR–002–WECC–1, *i.e.,* required to have automatic voltage regulators in service and in automatic voltage control mode 98 percent of operating hours on synchronous condensers, and document the hours that are excluded from automatic voltage regulator operation. The Commission estimates that this requirement will impose a cost of $4,912 on transmission operators that operate synchronous condensers connected to the bulk electric system. We believe that this figure should not represent a significant portion of operating costs.

143. Based on the foregoing, the Commission certifies that this Final Rule will not have a significant impact on a substantial number of small

[64] Order No. 486, *Regulations Implementing the National Environmental Policy Act,* 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[65] 18 CFR 380.4(a)(5).

[66] 5 U.S.C. 601–612.

[67] The RFA definition of "small entity" refers to the definition provided in the Small Business Act (SBA), which defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. *See* 15 U.S.C. 632. According to the SBA, a small electric utility is defined as one that has a total electric output of less than four million MWh in the preceding year.

entities. Accordingly, no regulatory flexibility analysis is required.

VI. Document Availability

144. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

145. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

146. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

VII. Effective Date and Congressional Notification

147. This Final Rule shall become effective June 27, 2011. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

148. The effective date of the Final Rule is separate from the implementation date of the Reliability Standards approved herein. According to a schedule developed by WECC, FAC–501–WECC–1, VAR–002–WECC–1 and VAR–501–WECC–1 shall become effective as of the first day of the first quarter after Commission approval. In addition, PRC–004–WECC–1 shall become effective as of the first day of the second quarter after approval by the Commission.

Thus, if the Final Rule is published in the **Federal Register** on or before May 2, 2011, the Final Rule would become effective in 60 days, FAC–501–WECC–1, VAR–002–WECC–1 and VAR–501–WECC–1 would be implemented beginning July 1, 2011, and PRC–004–WECC–1 would be implemented beginning October 1, 2011. If, however, the Final Rule is published in the **Federal Register** after May 2, 2011, the Final Rule would become effective in 60 days, FAC–501–WECC–1, VAR–002–WECC–1 and VAR–501–WECC–1 would be implemented beginning October 1, 2011, and PRC–004–WECC–1 would be implemented beginning January 1, 2012.

List of Subjects in 18 CFR Part 40

Electric power, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

APPENDIX A—LIST OF COMMENTERS

Name	Abbreviation
Bonneville Power Administration	Bonneville.
U.S. Bureau of Reclamation	Bureau of Reclamation.
California Department of Water Resources State Water Project	CDWR.
Electric Power Supply Association	EPSA.
Mariner Consulting Services, Inc	Mariner.
Melissa Kurtz	
North American Electric Reliability Corp	NERC.
PacifiCorp	PacifiCorp.
San Diego Gas & Electric Co	SDG&E.
Transmission Agency of Northern California	TANC.
U.S. Army Corps of Engineers NNW	USACE NNW.
U.S. Army Corps of Engineers Portland	USACE Portland.
U.S. Army Corps of Engineers Seattle	USACE Seattle.
Western Electricity Coordinating Council	WECC.

[FR Doc. 2011–10226 Filed 4–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0251]

RIN 1625–AA00

Safety Zone; Pierce County Department of Emergency Management Regional Water Exercise, East Passage, Tacoma, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in East Passage, Tacoma, Washington for a Regional Water Rescue Exercise near Browns Point. A safety zone is necessary to ensure the safety of participating vessels and participants in the water and will do so by prohibiting any person or vessel from entering or remaining in the safety zone unless authorized by the Captain of the Port.

DATES: This rule is effective on June 9, 2011 from 7 a.m. until 5 p.m.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0251 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0251 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail ENS Anthony P. LaBoy, Waterways Management Division, Coast Guard Sector Puget Sound; telephone 206–217–6323, e-mail *SectorPugetSoundWWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program

Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be contrary to the public interest, since the event requiring the establishment of this safety zone would be over before a comment period would end and a Final Rule could be published. Immediate action is necessary to ensure safety of participants in the Regional Water Rescue Exercise.

Basis and Purpose

The Pierce County, Washington, Department of Emergency Management is sponsoring a Regional Water Rescue Exercise in the waters of East Passage near Browns Point. The exercise will involve nineteen various government agencies with over two hundred personnel. Personnel will practice water rescues, search and rescue, dive rescues, law enforcement searches, search patterns, and dewatering exercises. Some of these exercises involve persons in the water. Smoke-producing devices and flares will be used throughout the exercise to simulate fires for training purposes. Additionally, a temporary boom and several buoys will be placed throughout the safety zone. This exercise takes places in an unsheltered area where vessel traffic can pose a hazard to participating vessels and persons. The safety zone will mitigate these hazards by prohibiting maritime traffic from entering or remaining in the safety zone without authorization of the Captain of the Port.

Discussion of Rule

This rule establishes a safety zone encompassing all waters within 900 yards of Browns Point, East Passage, Tacoma, WA. Vessel operators are prohibited from entering or remaining in the zone unless authorized by the Captain of the Port, Puget Sound, or designated representative. The Captain of the Port, Puget Sound will be assisted in the enforcement of the zone by other Federal, State, and local agencies. Any vessel not participating in the Regional Water Rescue Exercise wishing to transit the area during the effective time of this safety zone must coordinate with on scene Patrol Commander, who will ensure that vessels authorized to transit the area do so at a speed that minimizes wake in the exercise area.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard bases this finding on the fact that the safety zone will be in place for a limited period of time and maritime traffic will still be able to transit around the zone. Maritime traffic may request permission to transit through the zone from the Captain of the Port, Puget Sound or Designated Representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to operate near Browns Point, WA on June 9, 2011. This rule will not have a significant economic impact on a substantial number of small entities, because the safety zone is limited in duration and maritime traffic will be able to transit around the safety zone. Maritime traffic may also request permission to transit through the zone from the Captain of the Port, Puget Sound or designated representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C., 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T13–0251 to read as follows:

§ 165.T13–0251 Safety Zone; Pierce County Department of Emergency Management Regional Water Exercise, East Passage, Tacoma, WA.

(a) *Location.* All waters of East Passage encompassed within 900 yards of Browns Point, Washington at position 47°18′21″ N 122°26′39″ W.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no vessel operator may enter or remain in the safety zone without the permission of the Captain of the Port or designated representative. The Captain of the Port may be assisted by other Federal, State, or local agencies with the enforcement of the safety zone.

(c) *Authorization.* All vessel operators who desire to enter the safety zone must obtain permission from the Captain of the Port or designated representative by contacting the South Sound Water Exercise Control on VHF Channel 22A or via telephone at (253) 691–1313. Vessel operators granted permission to enter the zone will be escorted by the on-scene patrol craft until they are outside of the safety zone.

(d) *Enforcement Period.* This rule is effective from 7 a.m. until 5 p.m. on June 9, 2011 unless canceled sooner by the Captain of the Port.

Dated: April 15, 2011.

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2011–10242 Filed 4–27–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0250]

RIN 1625–AA00

Safety Zones: Bellingham Bay, Bellingham, WA and Lake Union, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing two redundant sections from its regulations: Bellingham Bay, Bellingham, WA, and Lake Union, Seattle, WA. This action is necessary to eliminate duplicate safety zones from the regulations. These safety zones are also codified under these regulations: Safety Zones; annual firework displays within the Captain of the Port, Puget Sound Area of Responsibility.

DATES: This rule is effective May 31, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0250 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–0250 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ensign Anthony P. LaBoy, USCG Sector Puget Sound Waterways Management Division, Coast Guard; telephone 206–217–6323, e-mail *SectorPugetSoundWWM@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is unnecessary as this rule's sole purpose is to remove redundant sections from Title 33 of the Code of Federal Regulations. The safety zones that are being removed from the Code of Federal Regulations are already codified under 33 CFR 165.1332.

Basis and Purpose

After reviewing 33 CFR part 165, the Coast Guard has determined that §§ 165.1304 and 165.1306 are no longer necessary because the safety zones in these sections are already codified under 33 CFR 165.1332. The Coast Guard is removing these redundant sections to eliminate possible confusion and to use the more recently established rule governing these safety zones.

Background

On June 10, 2010, 33 CFR 165.1332 Safety Zones; annual firework displays within the Captain of the Port, Puget Sound Area of Responsibility was published in the **Federal Register**. This section simplified the fireworks safety zones. This new section also encompasses the fireworks safety zones contained in 33 CFR 165.1304 and 165.1306. Therefore, the safety zones in 33 CFR 165.1304 and 165.1306 are unnecessary.

Discussion of Rule

The Coast Guard is removing 33 CFR 165.1304 and 165.1306 from the Code of Federal Regulations. 33 CFR 165.1332 establishes and lists a number of safety zones, including those contained in the sections being removed at 33 CFR 165.1304 and 165.1332.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard bases this finding on the fact that this rule does not include creating any new zones only the removal of two sections that were more recently codified under 33 CFR 165.1332.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would not affect any small entities since this rule does not involve creating any new safety zones. Information concerning fireworks safety zones in Puget Sound affecting small entities can be found in docket number: USCG–2010–0063 at *http://www.regulations.gov*.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves removing 33 CFR 165.1304 and 165.1306 as these safety zones are already codified under 33 CFR 165.1332. Under figure 2–1, paragraph (34)(g), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Remove § 165.1304.

■ 3. Remove § 165.1306.

Dated: April 7, 2011.

S.J. Ferguson,

Captain, U. S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2011–10248 Filed 4–27–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 222

RIN 1810–AA94

Impact Aid Programs

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education amends the regulations governing the Impact Aid Discretionary Construction program, authorized under section 8007(b) of the Elementary and Secondary Education Act of 1965, as amended. This program provides competitive grants for emergency repairs and modernization of school facilities to certain eligible local educational agencies (LEAs) that receive Impact Aid formula funds. These final regulations amend a requirement for applying for these Impact Aid funds and will improve the administration and distribution of funds under this program. These final regulations apply to grant competitions in fiscal year (FY) 2012 and later years.

DATES: These regulations are effective May 31, 2011.

FOR FURTHER INFORMATION CONTACT: Kristen Walls-Rivas, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 260–1357 or via e-mail: *Kristen.Walls-Rivas@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On August 13, 2010, the Secretary published a notice of proposed rulemaking (NPRM) for the Impact Aid Discretionary Construction program in the **Federal Register** (75 FR 49432). That notice contained background information and our reasons for proposing the particular changes to the regulations, which were proposed to limit Impact Aid Discretionary Construction program applicants to one application per year and one school per application.

There are no differences between the NPRM and these final regulations.

Analysis of Comments

In response to our invitation in the NPRM, three parties submitted comments, one of which was related to the proposed regulations and the rest of which were outside the scope of the proposed regulations. An analysis of the comments since publication of the NPRM follows. Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize the Secretary to make.

Comment: One commenter suggested that instead of limiting each applicant to one application addressing one construction project, each applicant's total receivable funds should be limited to a percentage of the total amount available for new awards, and applicants should continue to be allowed to submit multiple applications for multiple projects.

Discussion: The program statute, which limits the amount of funds provided under emergency or modernization grants at $4 million per LEA over 4 years (or no limit for LEAs with no practical capacity to issue bonds), precludes the Department from specifying a maximum award amount per LEA based on other criteria, such as a percentage of the total amount of funding available. Because the total award amount varies from year to year, assigning a fixed percentage cap could have the effect of limiting some grantees' awards to levels less than the limit prescribed by the statute. The Department believes that these final regulations are the most effective course of action for ensuring that more applicants have the opportunity to receive grants to meet urgent emergency

and modernization needs in their school facilities.

Changes: None.

Comment: None.

Discussion: Section 222.183 includes several examples immediately following paragraph (a) which, as a result of the substantive change proposed in the NPRM and made final in this document, are no longer necessary. Although we intended for the amendatory language in the NPRM to remove these examples, it is possible that our intent was not clear. Therefore, we are adding specific instructions in the amendatory language to remove these examples from the regulatory text. We are making this change for clarification purposes only.

Change: We have added specific instructions to the amendatory language to make clear that we are removing the examples immediately following paragraph (a) in § 222.183.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this final regulatory action.

We have determined that this final regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

These final regulations are likely to benefit both small and large entities in that they will provide more equitable opportunities for funding of school construction needs.

These final regulations impose no additional administrative or paperwork burden requirements on applicants and no additional requirements with which grant recipients must comply.

The Department incurs no or minimal additional costs to implement these final regulations. In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final regulations justify the costs.

Paperwork Reduction Act of 1995

These final regulations do not contain any information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of our specific plans and actions for this program.

Assessment of Educational Impact

Based on the response to the NPRM and our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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Catalog of Federal Domestic Assistance Number 84.041 Impact Aid Discretionary Construction Program.

List of Subjects in 34 CFR Part 222

Education, Grant programs—education, Application procedures, Construction programs.

Dated: April 22, 2011.

Thelma Mélendez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

For the reasons discussed in the preamble, the Secretary amends chapter II of title 34 of the Code of Federal Regulations as follows:

PART 222—IMPACT AID PROGRAMS

■ 1. The authority citation for part 222 continues to read as follows:

Authority: 20 U.S.C. 7701–7714, unless otherwise noted.

■ 2. Section 222.183 is amended by:

■ a. Revising paragraph (a) as set forth below; and

■ b. Removing Examples 1, 2, and 3 following paragraph (a).

The revision reads as follows:

§ 222.183 How does an LEA apply for a grant?

(a) To apply for funds under this program, an LEA may submit only one application for one educational facility for each competition.

* * * * *

[FR Doc. 2011–10239 Filed 4–27–11; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[PS Docket No. 07–114; FCC 10–176]

Wireless E911 Location Accuracy Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection requirements contained in regulations concerning wireless E911 location accuracy requirements. The information collection requirements were approved on March 30, 2011 by OMB.

DATES: The amendments to 47 CFR 20.18(h)(1)(vi), (h)(2)(iii), and (h)(3) published at 75 FR 70604, November 18, 2010, are effective on April 28, 2011.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact *Patrick.Donovan@fcc.gov* or on (202) 418–2413.

SUPPLEMENTARY INFORMATION: On November 18, 2010 at 75 FR 70604, the Commission published in the **Federal Register** the summary of the Second Report and Order (*2nd R&O*) in PS Docket No. 07–114; FCC 10–176. In the *2nd R&O,* Commission amended 47 CFR 20.18(h) to require wireless licensees subject to standards for wireless Enhanced 911 (E911) Phase II location accuracy and reliability to satisfy these standards at either a county-based or Public Safety Answering Point (PSAP)-based geographic level. The Commission took this step to ensure an appropriate and consistent compliance methodology with respect to location accuracy standards. In the notice at 75 FR 70604, the Commission announced that the amended rule is effective January 18, 2011, except for §§ 20.18(h)(1)(vi), 20.18(h)(2)(iii), and 20.18(h)(3), which contain information collection requirements that have not been approved by OMB. The

Commission also announced that it would publish a document in the **Federal Register** announcing the effective date. The Commission's estimate of burden hours for the information collection approved by OMB also considers the potential filing of waiver requests to provide the Commission and the public safety community, including public safety organizations and State and local jurisdiction and PSAPs, awareness of the wireless carriers and SSPs that are experiencing an inability to comply with the amended location accuracy requirements. In the *2ndR&O,* the Commission declined to adopt any changes to the Commission's existing waiver criteria, which it found have been sufficient to date in addressing particular circumstances on a case-by-case basis and remain available to all carriers. Further, the Commission expected that the rule changes allowing for handset-based and network-based carriers to claim exclusions based on the specified limitations should minimize the need for waiver relief.

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on March 30, 2011, for the information collection requirements contained in 47 CFR 20.18(h). Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number. The OMB Control Number is 3060–1147 and the total annual reporting burdens for respondents for this information collection are as follows:

OMB Control Number: 3060–1147.

Title: Wireless E911 Location Accuracy Requirements.

OMB Approval Date: March 30, 2011.

OMB Expiration Date: March 31, 2014.

Form No.: N/A.

Type of Review: New collection (Request for a new OMB Control Number).

Respondents: Business or other for-profit.

Number of Respondents: 6,000 respondents; 13,700 responses.

Estimated Time per Response: 11.85 hours (average).

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Mandatory.

Total Annual Burden: 71,100 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: No confidentiality is required for this collection.

Needs and Uses: Pursuant to 47 CFR 20.18(h)(1)(vi), wireless carriers using network-based technologies to provide Enhanced 911 (E911) Phase II service may exclude from compliance with the Commission's amended location accuracy standards under 47 CFR 20.18(h)(1)(i)–(v) particular counties, or portions of counties, where triangulation is not technically possible, such as locations where at least three cell sites are not sufficiently visible to a handset. However, carriers must file a list of the specific counties or portions of counties where they are utilizing this exclusion within 90 days following approval from the Office of Management and Budget for the related information collection. This list must be submitted electronically into PS Docket No. 07–114, and copies must be sent to the National Emergency Number Association, the Association of Public-Safety Communications Officials-International, and the National Association of State 9–1–1 Administrators. Further, carriers must submit in the same manner any changes to their exclusion lists within thirty days of discovering such changes. This exclusion will sunset eight years after January 18, 2011.

Pursuant to 47 CFR 20.18(h)(2)(iii), wireless carriers wireless carriers using handset-based technologies to provide Enhanced 911 (E911) Phase II service must file a list of the specific counties or PSAP service areas where they are utilizing an exclusion under 47 CFR 20.18(h)(2)(i)–(ii) to exclude 15 percent of counties or PSAP service areas from the 150 meter requirement based upon heavy forestation that limits handset-based technology accuracy in those counties or PSAP service areas. Such carriers must file the list within 90 days following approval from the Office of Management and Budget for the related information collection. This list must be submitted electronically into PS Docket No. 07–114, and copies must be sent to the National Emergency Number Association, the Association of Public-Safety Communications Officials-International, and the National Association of State 9–1–1 Administrators. Further, carriers must submit in the same manner any changes to their exclusion lists within thirty days of discovering such changes.

Pursuant to 47 CFR 20.18(h)(3), two years after January 18, 2011, all carriers subject to this section shall be required to provide confidence and uncertainty data on a per-call basis upon the request of a PSAP. Once a carrier has established baseline confidence and uncertainty levels in a county or PSAP service area, ongoing accuracy shall be monitored based on the trending of uncertainty data and additional testing shall not be required. All entities responsible for transporting confidence and uncertainty between wireless carriers and PSAPs, including LECs, CLECs, owners of E911 networks, and emergency service providers (collectively, System Service Providers (SSPs)) must implement any modifications that will enable the transmission of confidence and uncertainty data provided by wireless carriers to the requesting PSAP. If an SSP does not pass confidence and uncertainty data to PSAPs, the SSP has the burden of proving that it is technically infeasible for it to provide such data.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–10229 Filed 4–27–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 231

[Docket No. FRA–2008–0116, Notice No. 2]

RIN 2130–AB97

Railroad Safety Appliance Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is amending the regulations related to safety appliance arrangements on railroad equipment. The amendments will promote the safe placement and securement of safety appliances on modern rail equipment by establishing a process for the review and approval of existing industry standards. This process will permit railroad industry representatives to submit requests for the approval of existing industry standards relating to the safety appliance arrangements on newly constructed railroad cars, locomotives, tenders, or other rail vehicles in lieu of the specific provisions currently contained in part 231. It is anticipated that this special approval process will further railroad safety by allowing FRA to consider technological advancements and ergonomic design standards for new

car construction and ensuring that modern rail equipment complies with the applicable statutory and safety-critical regulatory requirements related to safety appliances while also providing the flexibility to efficiently address safety appliance requirements on new designs in the future for railroad cars, locomotives, tenders, or other rail vehicles.

DATES: *Effective Date:* This final rule is effective June 27, 2011.

FOR FURTHER INFORMATION CONTACT: Stephen J. Carullo, Railroad Safety Specialist, Office of Safety, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone 202–493–6480), *stephen.carullo@dot.gov* or Stephen N. Gordon, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6001), *stephen.n.gordon@dot.gov.*

SUPPLEMENTARY INFORMATION:

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I. General

The Association of American Railroads (AAR) submitted a petition to amend 49 CFR part 231 on March 28, 2006. The AAR petition requested that FRA adopt new Federal railroad safety appliance standards to incorporate changes in railcar design that have occurred since the safety appliance regulations were promulgated in their current form. FRA is acting on AAR's request by amending 49 CFR part 231 to add sections 231.33 and 231.35 to the existing regulations. These new sections establish a special approval process similar to what is found in parts 232 and 238. The special approval process enables the railroad industry to submit new rail equipment designs to FRA for approval with respect to the placement and securement of safety appliances on the designs. FRA anticipates that the special approval process will have multiple benefits, including allowing for greater flexibility within the railroad industry and increasing rail safety by incorporating modern ergonomic design standards and technological advancements in construction.

II. Statutory and Regulatory History

The Railroad Safety Appliance Standards set forth in 49 CFR part 231 arose out of an extended legislative and regulatory effort, beginning in the 19th century, to improve the safety of railroad employees and the public. As railroads rapidly began to grow and develop following the Civil War, it became increasingly apparent that new measures were needed to protect railroad employees who were directly involved in the movement of trains. Most vehicles did not have adequate safety mechanisms and many of the practices and procedures used by railroad employees were not safe. For example, employees regularly controlled the speed of (and sometimes stopped) trains by using the handbrakes. In many cases, this required employees to perch themselves on top of freight cars while the cars were moving at high rates of speed over rough track. Additionally, use of the "link and pin" coupler, which was the standard method for coupling railcars, required employees to go between the ends of railcars to operate or adjust the coupler. These practices and others of like type led to excessive numbers of deaths and injuries among train service employees during the expansion of the railroad system following the Civil War. Indeed, during the eight (8) years prior to the passage of the first Safety Appliance Act in 1893, the number of employees killed or injured was equal to the total number of people employed by the railroad in a single year.

The rate at which railroad employees were killed or injured during this time frame spurred efforts to increase workplace safety in at least two areas related to appliances on railroad cars, locomotives, tenders, and other rail vehicles. New technologies such as power brakes and automatic couplers were pursued, but also there were increased calls for regulation. Between 1890 and 1892, Congress responded with the introduction of seventeen (17) bills designed to promote the safety of employees and travelers on the railroad. Ultimately, the first Safety Appliance Act was passed by Congress and signed into law on March 2, 1893. Among other things, the first Safety Appliance Act required the use of power brakes on all trains engaged in interstate commerce as well as requiring all railcars engaged in interstate commerce to be equipped with automatic couplers, drawbars, and handholds. In 1903, Congress passed the second Safety Appliance Act, which extended the requirements of the first Act to any rail equipment operated by a railroad engaged in interstate commerce. Finally, in 1910 the third Safety Appliance Act was passed requiring that all rail vehicles be equipped with hand brakes, sill steps, and, where appropriate, running boards, ladders, and roof handholds. The third Safety Appliance Act also directed the Interstate Commerce Commission (ICC) to designate the number, dimensions, locations, and manner of application of the various safety appliances identified in the Act.

The ICC complied with this mandate by issuing its order of March 13, 1911. The March 13, 1911 order first established the Federal railroad safety appliance standards. This order, as amended, designated the number, dimensions, location, and manner of application for safety appliances on box cars, hopper cars, gondola cars, tank cars, flat cars, cabooses, and locomotives. It also contained a catch-all section for "cars of special construction" that were not specifically covered in the order. In many ways, the March 13, 1911 order continues to serve as the basis for the present day regulations found in part 231. Indeed, although FRA supplanted the ICC as the agency responsible for promulgating and enforcing railroad safety programs in 1966, *see* Department of Transportation Act of 1966, 49 U.S.C. 103, the general framework established by the order of March 13, 1911 is still in existence today.

III. FRA's Approach to the Railroad Safety Appliance Standards in This Final Rule

The Federal railroad safety appliance standards encompassed in part 231 serve the purpose of increasing railroad safety by identifying the applicable safety appliance requirements for various individual railcar types. *See e.g.* 49 CFR 231.1, box and other house cars built or placed into service before October 1, 1966. While these regulations continue to serve their purpose, FRA recognizes the railroad industry has evolved over time. The industry has created and continues to create new railcar types to satisfy the demands for transporting freight as well as passengers on the present-day railroad. Many of the modern railcar types that are presently being built to handle railroad traffic do not fit neatly within any of the specific car body types identified in the existing regulations and ambiguities sometimes arise regarding the placement of safety appliances on these car types.

Because modern designs often cannot be considered a railcar type that is explicitly listed in part 231, they are typically treated as cars of special construction. *See* 49 CFR 231.18. The "cars of special construction" provision does not identify specific guidelines that can be used by the railroad industry to assist it in the construction and maintenance of the safety appliances on modern railcar designs. Instead, § 231.18 directs the industry to use the requirements, as nearly as possible, of the nearest approximate car type. Problems arise because modern designs are often combinations of multiple car types, and the design of any particular car may appear to be one type or another depending on the position of the individual viewing the car. As an example, a bulkhead flat car appears to be a box car when viewed from the A-end or B-end of the car, but appears to be a flat car when viewed from either side. As a result, the industry is forced to use bits and pieces from multiple sections of part 231 in an effort to ensure compliance with the Federal railroad safety appliance standards on bulkhead flatcars and other modern rail equipment.

Another problem for modern railcar designs is that part 231 defines the location of many safety appliances by reference to the side or end of the railcar. While this worked well for the car types that were in existence when the ICC issued its March 13, 1911 order, it often is difficult to define exactly what parts on modern railcars constitute the side or end. This results in ambiguity regarding what is the appropriate location for certain safety appliances, such as handholds and sill steps.

Moreover, the requirements in part 231 sometimes allow for spatial relationships between safety appliances that can result in the placement of appliances in less than optimal locations to ensure the safety of a person working in and around the railcar. For example, in § 231.21, Tank cars without underframes, the center of the tread of the sill step can be up to 18 inches from the end of the car while the outside edge of the horizontal side handhold over the sill step can be up 12 inches from the end of the car. Consequently, a car built using these requirements may be compliant with the regulation even though the sill step and horizontal handhold are not aligned in a manner that maximizes the safety of a person working in and around the car.

Together these factors can make compliance with the Federal railroad safety appliance standards difficult and inefficient when dealing with modern railcar designs. In addition, the current regulations do not contemplate advancements in the design of such vehicles. This means that the current regulations can operate to preclude the application of technological innovations and modern ergonomic design principles that would increase the safety of persons who work on and around rail equipment and use safety appliances on a regular basis.

The AAR Safety Appliance Task Force (Task Force) consists of representatives from the Class I railroads, labor unions, car builders, and government (FRA and Transport Canada participate as a non-voting members), as well as ergonomics experts. The Task Force was created by AAR's Equipment Engineering Committee to develop new industry standards for safety appliance arrangements that could be used to reduce the differences of opinion that can arise in the interpretation of the Federal safety appliance standards contained in part 231. The Task Force has drafted a base safety appliance standard as well as industry safety appliance standards for modern boxcars, covered hopper cars, and bulkhead flat cars. These industry safety appliance standards have been adopted by AAR's Equipment Engineering Committee, and FRA expects them to serve as the core safety appliance criteria that can be used to guide the safety appliance arrangements on railcars that are more specialized in design. The industry safety appliance standards developed by the Task Force incorporate ergonomic design principles that increase the safety and comfort for persons working on and around safety appliance apparatuses. For example, the Task Force standards establish minimum foot clearance guidelines for end platforms that allow for wider and stiffer sill steps to support a person's weight.

The AAR petition to amend part 231 requested that FRA adopt these new industry standards and amend its regulations to recognize changes in railcar design since the safety appliance regulations were promulgated in their current form. Because the standards submitted by AAR in connection with its petition require some modification before they can be approved and adopted by FRA, FRA is not incorporating the standards into part 231 at this time. FRA prefers to utilize the process being established in this final rule to fully evaluate and assess the industry safety appliance standards developed by AAR through the Task Force to ensure that they are complete and enforceable. Thus, FRA is acting on AAR's petition for rulemaking by establishing a special approval process similar to that currently contained in 49 CFR parts 232 and 238.

Section 232.17 allows railroads to adopt an alternative standard for single car air brake tests and use new brake system technology where the alternative standard or new technology is shown to provide at least the equivalent level of safety. Similarly, § 238.21 allows railroads to adopt alternative standards related to passenger equipment safety in a wide range of areas such as performance criteria for flammability and smoke emission characteristics, fuel tank design and positioning, single car air brake testing, and suspension system design, where the alternative standards or new technologies are demonstrated to provide at least the equivalent level of safety. Section 238.230 borrows the process set out in § 238.21. It allows a recognized representative of the railroads to request special approval of industry-wide alternative standards relating to the safety appliance arrangements on any passenger car type considered to be a car of special construction.

The final rule closely follows the processes set forth in §§ 232.17, 238.21, and 238.230. The special approval process for part 231 establishes a process for submitting, reviewing, and approving the use of industry safety appliance standards once they have been developed by the industry. The process will also allow for an industry representative to submit modifications of industry-approved safety appliance standards for FRA's review and approval. Once an existing industry safety appliance standard or modification to an existing industry safety appliance standard is approved by FRA, it will become applicable to the industry for the purposes of new railcar construction. FRA expects that this amendment to part 231 will benefit railroad safety by: (1) Allowing FRA to take into account technological advancements and ergonomic design standards for new car construction, (2) ensuring that modern railcar designs comply with applicable statutory and safety-critical regulatory requirements related to safety appliances, and (3) providing flexibility to efficiently address safety appliance requirements on new railcar and locomotive designs in the future.

IV. Response to Public Comment

General Comments

In response to its Notice of Proposed Rulemaking (NPRM), FRA received a total of four comments representing seven different organizations, including one government entity. There seems to

be general support among various sectors of the railroad industry for FRA to update the Federal railroad safety standards in part 231. AAR commented that it is "pleased that FRA has made this proposal" and notes that modernization of the safety appliance standards is long overdue. Trinity Rail (Trinity), a railcar manufacturer, commented that it is very much in favor of the amendments that FRA has proposed to part 231. Additionally, the Brotherhood of Locomotive Engineers and Trainmen (BLET), the Transportation Communications Union, the Transport Workers Union (TWU), and the United Transportation Union (UTU) (who filed comments jointly and will be collectively referred to as Labor) also agree with the concept of adding a special approval process to part 231 to address the placement and securement of safety appliances on new rail car designs.

The United States Transportation Command (USTRANSCOM), however, on behalf of the Department of Defense (DOD), has provided a number of objections to the proposed rule. Many of the objections are not directed at the special approval process that was proposed but were concerns relating to the outcomes that USTRANSCOM expects to occur once FRA begins to consider industry petitions in the course of the special approval process. FRA will address each of these comments, which it believes are based on a fundamental misunderstanding the proposed special approval process, below.

First, USTRANSCOM argues that the proposed rule requires additional safety appliances on TTX Company (TTX) flat cars that will make it difficult for the military to use commercially-owned cars in the future for transportation of tanks and other military equipment. It contends that commercially-owned TTX flat cars have proven to be safe and any "speculative, limited increase in safety" that would be achieved by modifying the safety appliance arrangements on such cars is not justifiable at the expense of national defense. This rulemaking is not the appropriate forum to address USTRANSCOM's arguments related to commercially-owned TTX flat cars. The comments are beyond the scope of this rulemaking, as USTRANSCOM is commenting on an industry safety appliance standard that is not even being considered in the present rulemaking. At this time, FRA merely seeks to establish a process for consideration of standards that have received final approval from industry (*i.e.,* existing industry safety appliance standards) prior to being submitted to FRA. If AAR submits a standard negatively affecting the military's use of commercially-owned TTX flat cars through the special approval process that is being established in this rulemaking, then FRA expects that USTRANSCOM will submit comments on the industry standard as an interested party, and FRA will give those comments the appropriate attention at that time.

Second, USTRANSCOM argues that the proposed rule is inconsistent with 49 U.S.C. 301, which requires the Secretary to exercise leadership in transportation matters that affect national defense, and 49 U.S.C. 302, which requires the Secretary to consider the needs of national defense in establishing policies for transportation. FRA does not view this rulemaking as impeding compliance with sections 301 and 302. Under the special approval process, FRA would continue to take into account the needs of the DOD in determining whether to grant, deny, or send a petition back for further consideration. However, in light of USTRANSCOM's comment, FRA has decided to add language in § 231.33(f)(3) of this final rule explicitly stating that FRA will consider applicable Federal statutes in determining whether to grant, deny, or send a petition back for further consideration. Similarly, FRA is adding language to §§ 231.33(f)(6) and 231.35(f)(3), allowing a petition that has been granted to be re-opened where there is a showing that approval of the industry standard violates an applicable Federal statute.

Third, USTRANSCOM contends that the special approval process would conflict with 49 U.S.C. 5501, which seeks to promote "a National Intermodal System that is economically efficient and environmentally sound, provides the foundation for the United States to compete in the global economy, and will move individuals and property in an energy efficient way." FRA disagrees and does not view the special approval process being established as being in conflict with § 5501. Instead, FRA envisions that the special approval process will further the stated policy goals of the law by encouraging petitions that factor in concepts of innovation, productivity, growth, and accountability. *See* 49 U.S.C. 5501(b)(6). Indeed, as stated in the NPRM, FRA expects the special approval process to increase economic efficiency by increasing flexibility within the railroad industry and incorporating technological advancements in new railcar construction. Nonetheless, FRA has added language to §§ 231.33(f)(3), 231.33(f)(6), and 231.35(f)(3) that explicitly states that FRA will factor applicable Federal statutes into its decision-making process while reviewing petitions that have been submitted before it.

Fourth, USTRANSCOM asserts that the NPRM is inconsistent with 49 U.S.C. 103(j)(2), which directs the Administrator of the FRA to develop a preliminary national rail plan within one year of the enactment of the Passenger Rail Investment and Improvement Act of 2008. FRA fails to understand the basis for this comment, as FRA already prepared its Preliminary National Rail Plan and delivered it to Congress on October 16, 2009. However, USTRANSCOM's comments again seem to focus on Task Force's rejection of DOD's contention that commercially-owned TTX flat cars could not be efficiently converted to military use under the draft industry safety appliance standard. On this point FRA notes, as explained above, that such an assertion is outside the scope of the rulemaking because FRA has not formally reviewed, much less granted any petitions for special approval of existing industry safety appliance standards at this time.

Fifth, USTRANSCOM contends that the ad hoc process proposed by FRA allows mode-specific associations to establish modal rules and fails to consider outside concerns, including those of the DOD. This comment totally misconstrues the special approval process as laid out in the NPRM and as amended in this final rule. The special approval process merely allows a railroad industry representative to submit petitions for special approval of an existing industry safety appliance standard; however, FRA retains authority to grant, deny, or send a petition back to the industry representative for further consideration. At all times, FRA retains ultimate control over whether a petition is granted, including the authority to impose conditions necessary for approval. Additionally, FRA does not understand USTRANSCOM's argument that the special approval process fails to consider the concerns of the DOD or other outside entities in light the specific language contained in §§ 231.33(e) and 231.35(d) that provides 60 days for any interested party to comment on a petition for special approval or a petition for modification. FRA believes that allowing comments from interested parties, such as DOD, helps to ensure that FRA will be able to adequately consider outside concerns that a petitioner may fail to raise and provides the ability to assess those outside concerns in determining the

appropriate disposition of a submitted petition.

Finally, USTRANSCOM asserts that FRA has adopted AAR's proposal regarding commercially-owned TTX flat cars without any independent Federal government deliberation, testing, or verification, and that FRA's reliance on the AAR and its Task Force constitutes the inappropriate use of an advisory committee under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. As an initial matter, as noted above, FRA has not adopted any industry safety appliance standards for new railcar construction. Moreover, any discussion of the bases for the purported granting or denying of a petition for approval that has not even been submitted to FRA is beyond the scope of this rulemaking. Notwithstanding this statement, FRA will exercise its own judgment in determining whether a petition complies with all applicable Federal statutes, whether the petition complies with each of the requirements established in § 231.33, and whether the existing industry safety appliance standard provides at least an equivalent level of safety as the existing FRA standards prior to granting, denying, or sending a petition back to the industry representative for further consideration.

FRA additionally notes that the FACA is inapplicable to AAR and its Task Force within the context of this rule. In order for a task force to be treated as an "advisory committee" it must be—

(A) Established by statute or reorganization plan, or

(B) Established or utilized by the President, or

(C) Established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government * * *

5 U.S.C. app. 3(2). While USTRANSCOM does not provide a rationale for arguing that the Task Force is an advisory committee that does not comply with the FACA, FRA assumes that USTRANSCOM is not arguing that the Task Force meets the definition of advisory committee under section 3(2)(A) or (B). Instead, FRA understands USTRANSCOM's argument to be that the Task Force was either established by FRA or utilized by FRA in a manner that brings the Task Force within the terms of the FACA. As explained in detail below, the only correct determination is that FRA neither established nor utilizes the Task Force within the meaning of the FACA.

An advisory committee is "established" by an agency only where the agency has actually formed the committee. *See Byrd* v. *U.S. EPA,* 174 F.3d 239, 245 (D.C. Cir. 1999). The Task Force was established by AAR's Equipment Engineering Committee to develop an industry safety appliance standard that reduced the differences of opinion that sometimes arise in interpreting the Federal safety appliance standards in part 231. The Task Force develops industry safety appliance standards which are then submitted to the AAR Equipment Engineering Committee, which votes on whether to adopt the industry standard. FRA agreed to participate in the Task Force as a non-voting member, provided that an ergonomics expert, labor representatives, and Transport Canada were invited to participate along with the railroads, private car owners, and railcar builders. However, FRA does not control participation on the Task Force and does not compensate its participants. Based on these factors, it simply cannot be said that FRA established the Task Force such that it would be considered an advisory committee under FACA. Therefore, the critical factor is whether the Task Force is "utilized" by FRA within the framework established by the special approval process.

While the term "utilized" appears upon first impression to have broad effect such that it would encompass virtually any consultation between a government agency and an outside party, the Supreme Court has construed the term narrowly to prevent sweeping interpretations that extend beyond the intent of Congress. *See Public Citizen* v. *U.S. DOJ,* 491 U.S. 440, 459 (1989). The primary purpose of the FACA "was to enhance public accountability of advisory committees established by the Executive Branch and to reduce wasteful expenditures on them." 491 U.S. at 459. The Supreme Court has noted that Congress added the term "utilized" to the FACA in an apparent attempt to clarify that the statute applies "to advisory committees established by the Federal government in a generous sense of that term," meaning that the use of the term "utilize" in the FACA was merely to ensure that quasi-public agencies established for public agencies were included within the terms of the statute rather than capturing only those committees established by such public agencies. *See* 491 U.S. at 462. As a result, courts interpreting "utilize" have enforced a stringent standard, stressing that the term "denot[es] something along the lines of actual management or control of the advisory committee." *See Washington Legal Foundation* v. *U.S. Sentencing Comm'n,* 17 F.3d 1446, 1450 (DC Cir. 1994).

When considered in this light, it becomes clear that the special approval process does not "utilize" the AAR, the Task Force, or any other group as an advisory committee within the terms of the FACA. The Task Force is chaired by a person chosen by AAR. It does not have a set membership and the number of attendees has fluctuated over time, but it regularly includes representatives from the railroads, private car owners, car builders, labor unions, an ergonomics expert, Transport Canada, and FRA. At the first meeting of the Task Force in June 2002, there were seven participants, which did not include any labor representatives or Transport Canada. At the September/October 2008 meeting, there were 22 participants. The most recent meeting held in January 2011 had 16 attendees. Over the time of the Task Force's existence, FRA has made up a small percentage of the participants. Two employees in FRA's Motive Power & Equipment Division regularly attend the Task Force meetings. FRA's two employees provide input concerning the FRA's safety appliance standards, but, as noted above, they do not vote on matters before the Task Force. FRA recognizes that, by participating in the Task Force, it can exercise some influence over the Task Force's determinations; however, at least one United States Circuit Court of Appeals has noted that "influence is not control." *Washington Legal Foundation,* 17 F.3d at 1451. FRA does not set the Task Force agenda, and the Task Force drafts industry safety appliance standards without any formal assurances from FRA that the industry safety standards will be granted by the agency when included in a petition for approval.

Moreover, it is important to recognize that the industry safety appliance standards created by the Task Force are merely draft standards until approved by the AAR Equipment Engineering Committee. FRA does not regularly participate in AAR Equipment Engineering Committee meetings. As a result, FRA's influence, as it is, on the development of industry safety appliance standards is one step removed from the actual stage where AAR adopts industry safety appliance standards. It is only once AAR formally adopts an industry safety appliance standard that it becomes existing such that the standard can be included in a petition for special approval under the process that this final rule is creating.

Comments Related to 49 CFR 231.33

Paragraph (a) establishes the general framework for the special approval process. It provides that the procedures laid out in the rulemaking will be applicable to petitions for special approval of existing industry safety appliance standards for new construction of railcars, locomotives, tenders, and other vehicles. AAR notes that under certain circumstances equipment owners may want to convert existing equipment to the FRA-approved industry safety appliance standard even though the equipment was built prior to FRA's granting of the petition for special approval. It presumes that there would be no prohibition against converting the existing equipment to the new industry standards once the new standards have been approved; however, AAR contends that such conversion should be voluntary. AAR reads too much into the NPRM. This rule does not propose to allow existing railroad equipment to be converted to an FRA-approved industry safety appliance standard. The special approval process applies only to new construction that occurs after the petition covering the specific car type has been granted by FRA. However, manufacturers and railroads may avail themselves of the waiver process currently in place, where necessary, if they wish to convert applicable existing equipment to an existing industry safety appliance standard upon FRA's approval. Because FRA believes that the waiver process provides an adequate vehicle for applying FRA-approved industry standards to existing railcars on a case-by-case, fact-specific basis, FRA has decided not to extend the rule to cover existing equipment.

FRA received a number of comments related to paragraph (b). In paragraph (b)(2), FRA sets forth the minimum requirements for a petition for special approval of an existing industry safety appliance standard. FRA envisioned that this paragraph would include each of the elements that would be necessary to allow it to make an informed decision on a petition for special approval. As a result, it requested comment regarding whether the information required in this paragraph is necessary and sufficient to allow FRA to make an informed decision. In response, FRA received comments from Trinity, Labor, and AAR. Trinity and Labor found that the minimum requirements were both necessary and sufficient, with Labor specifically noting its agreement with the requirement to demonstrate "the ergonomic suitability of the proposed arrangements in normal use."

AAR did not provide comment about the specific minimum requirements; however, it did raise an issue with the wording of the paragraph. Specifically, AAR notes that the proposed paragraph would require the standard to contain supporting data and analysis. AAR contends that such information should be included in the supporting analysis, but that it would be unusual for the actual industry standard to contain the supporting analysis. FRA agrees with AAR's point and has reordered paragraph (b) to clarify that the supporting data or analysis may be submitted in the petition, but separate from the actual industry safety appliance standard. As a result, paragraph (b)(2) has been split into multiple paragraphs.

The new paragraph (b)(2) provides that the petition must contain an industry-wide standard that identifies the type of the equipment to which the standard is applicable; ensures as nearly as possible that the standard requires the same complement of safety appliances as the nearest approximate car type(s); complies with all of the statutory requirements in 49 U.S.C. 20301 and 20302; and addresses the specific number, dimension, location, and manner of attachment for each safety appliance in the industry standard.

Proposed paragraphs (b)(2)(v)–(vii) have been renumbered as paragraphs (b)(3)–(5). Paragraph (b)(3) requires the petition for special approval to contain appropriate dates or analysis, or both, that will allow FRA to determine if the industry safety appliance standard will provide at least an equivalent level of safety. Paragraph (b)(4) requires that the petition include visual aids, such as drawings or sketches, that provide detailed information about the design, location, placement, and attachment of safety appliances under the industry standard. Finally, paragraph (b)(5) requires a demonstration that the safety appliance arrangements are ergonomically suitable. Revising proposed paragraph (b)(2) in this manner ensures that the FRA is provided with the information that it deems necessary, while allowing the industry safety appliance standards to remain uncluttered with information that is not traditionally found in the Federal railroad safety appliance standards.

Labor supports the requirement in paragraph (b)(6)—which was formerly proposed paragraph (b)(3)—that the petitioner serve the petition upon the designated representatives of the employees affected. It states that serving a copy of the petition on the President of each Union representing the affected employees would be a satisfactory application of this requirement. FRA considers the person named as the designated labor representative to be an internal decision for each union. Once the final rule becomes effective, each union may designate the individual that it deems appropriate.

AAR suggests that paragraph (b)(6) be deleted. It argues that FRA does not normally require service on labor unions. It contends that the only instance where FRA has required service upon labor unions is with respect to the rulemaking requiring certification of conductors. AAR argues that, unlike with conductor certification, this rulemaking will not directly affect employees and there will be numerous labor organizations upon which AAR would potentially have to serve notice. Instead of requiring service upon the labor unions responsible for the equipment's operation, inspection, testing, and maintenance under part 231, AAR contends that FRA can rely merely on the standard practice of notifying interested parties through the publication of notices in the **Federal Register**. AAR further suggests that FRA could set up a special approval docket through *http://www.regulations.gov,* which would enable interested parties to sign up and be notified of any actions with respect to the specific docket.

FRA disagrees with AAR's contention that paragraph (b)(6) should be deleted. First, providing service of the petition upon the designated labor representative and other interested parties ensures that those persons and/or organizations that have an interest in the petition will have an adequate opportunity to review and comment on the petition prior to FRA issuing its decision. Second, in contradistinction from AAR's argument, it is FRA's view that the overriding purpose of establishing this special approval process is to enhance the safety of those employees who use safety appliances on regular basis in the performance of their duties. As a result, FRA considers notification to the applicable labor representatives particularly important to achieving a special approval process that considers all relevant comments. Third, FRA would note that there were only four labor unions that provided comments to the subject NPRM, three of which, the UTU, BLET, and TWU, actively participate in the Task Force. In light of this, FRA does not expect that there will be a substantial number of labor organizations or other interested parties that will require notification for each petition. Finally, FRA would note that the special approval processes

established in parts 232 and 238 similarly require that a petitioner serve a copy of the petition on the designated representative of the employees. *See* 49 CFR 232.17(d)(2)(i) and 238.21(b)(4) and (c)(3). To FRA's knowledge, these provisions have not created a significant hardship for railroads in pursuing special approval of alternative standards for braking systems or passenger equipment. Given these factors, FRA has decided not to remove paragraph (b)(6) in this final rule.

For the same reasons as identified above, AAR argues that paragraph (c)(2) should be deleted. Additionally, with respect to proposed paragraph (c)(2)(iii), AAR states that "FRA does not maintain service lists" and questions the means by which a petitioner will know if an individual has filed a statement of interest. This requirement is no different than that which is found in § 232.17(d), which was promulgated in 2001, after going through the Rail Safety Advisory Committee Process. *See* 66 FR 4104, 4198 (January 17, 2001). To FRA's knowledge this requirement has not presented any difficulties with respect to the special approval process in § 232.17, and FRA does not expect that the requirement will present a significant hardship with respect to the special approval process being established in part 231.

Labor is concerned that FRA allows for a petition to be returned to the petitioner for amendment in paragraph (f)(3)(iii). It believes that such a petition should be denied with the reasons for the denial identified. Labor contends that allowing for amendment will complicate the approval process. Moreover, Labor suggests that returning the petition effectively results in negotiating with the petitioner rather than restarting the process which appears to be counterproductive and potentially confusing. Labor states that "this third option for approval also appears to require all of the same elements as re-filing an amended petition and appears to offer no significant advantage over a restart of the petition process."

In FRA's view, returning the petition for further consideration, as provided for in paragraph (f)(3)(iii), may in some cases be more efficient than denying a petition outright. In FRA's experience with other filings, many times a filing party will substantially comply with the requirements, yet be deficient in some minimal way. It is FRA's belief that, in such circumstances, it is better to work with the filing party to resolve the inadequacies without denying the petition outright and requiring a party to re-submit a new petition. Moreover, given that petitions will be able to be identified by their docket number, FRA does not believe that returning petitions for further consideration will foster confusion.

In paragraph (f)(5), FRA proposed that, if a petition is granted, it shall go into effect on January 1st, not less than one year from the date of approval and not more than two years from the date of approval. FRA received numerous comments on this provision. Taking into account these comments, it has decided to amend paragraph (f)(5) to allow FRA to tailor the effective date based on the information before it at the time that it decides to grant a petition.

AAR provides that it "opposes a general prohibition on compliance with new standards immediately upon FRA approval." It believes that under most circumstances manufacturers will be able to immediately transition to an FRA-approved industry safety appliance standard without adversely affecting safety. As a result, it requests that "[e]quipment may be built to the new standard immediately upon FRA's written notice granting the petition, unless FRA provides otherwise in its written notice."

Labor similarly suggests that FRA-approved industry safety appliance standards should become effective immediately, or at least as soon as reasonably possible, because it feels that the safety appliance arrangements provided for in granted petitions will be superior to the current arrangements provided for in part 231. Labor additionally argues that the effective date should be flexible. This would allow it to be adjusted where it is determined that a new design offers safety improvements.

Trinity contends that it is necessary for a manufacturer to have some lead time before an FRA-approved industry safety appliance standard becomes effective, but suggests revising paragraph (f)(5) to provide greater flexibility. It believes that lead time is necessary for design activity, production planning and the procurement of material. Additionally, Trinity argues that scheduling could be affected by many factors that are beyond the control of the car builder. As a result, it states that there may be times where it is almost impossible to make a change-over precisely on January 1st of any given year. Trinity also contends that car builders may not have any control over delayed material shipments, weather conditions, equipment break downs and customer requested schedule changes. To allow for these variables, Trinity suggests that the proposed rule be modified to allow for a three month window prior to the January 1st mandatory incorporation date of an approved petition where the change-over can take place. Trinity states that because the built date is always stenciled on the car, the determination as to whether a car is in compliance with an approved petition can easily be ascertained. Trinity contends that its proposal would result in earlier compliance with an approved petition and give car builders some flexibility.

FRA is mindful of the fact that lead time is often necessary for design activity, production planning, and the procurement of material, as noted by Trinity. Indeed, this is why FRA initially proposed that once a petition is granted it would have an effective date of January 1st, not less than one year and not more than two years from the date of FRA's written notice granting the petition. However, there seems to be a consensus among the commenters that in many cases the industry safety appliance standards contained in a granted petition should be able to be implemented much more expediently. As a result, FRA is amending paragraph (f)(5) to allow FRA to establish the effective date in its written notice granting a petition. In such cases, where FRA establishes the effective date in writing, FRA's decision will be based on the materials presented in the petition and after fully considering any comments received. This will allow FRA to tailor the effective date to fit with the lead time if any is necessary for design activity, production planning, or the procurement of material. In the event that FRA does not specify an effective date, the effective date will fall back to January 1st, not less than one year and not more than two years from the date of FRA's written notice granting the petition.

Comments Related to 49 CFR 231.35

Paragraph (b) requires that each petition for modification be served upon the designated representatives of employees responsible for the operation, inspection, testing, and maintenance of equipment that is the subject of the petition. Labor requests that FRA continue to require that any petitions for modification be shared in a formal manner with the representatives of the employees impacted by the petition. Labor suggests that all parties involved in the process should collaborate and that, when the need arises to file a petition for approval or a petition for modification, the first consideration of all of the parties involved should be to file a joint petition that includes representatives of the employees that work on the affected equipment. In its

view, collaboration at the basic levels is much more productive than the traditional processes, such as filing waiver petitions without any type of prior notification to the employees or other interested parties. FRA views collaboration between all interested parties favorably. Indeed, one of the recognized benefits of the Task Force is that it receives input from not only railroads, but also private car owners, car builders, and labor representatives. As a result, FRA welcomes petitions filed jointly by representative of the railroads and labor. However, FRA does not think that it would be appropriate to mandate collaboration or the joint filing of petitions, which could result in unnecessary stagnation and delay. Paragraph (b) ensures that designated labor representatives will be served with a copy of a petition for modification and provides 60 days to comment on any such petition. In FRA's view, this is an adequate method to ensure that labor representatives have an opportunity to provide any relevant information that they deem appropriate.

Paragraph (f)(1) establishes an effective date for modified industry safety appliance standards that are approved by FRA. Under this paragraph, a modified industry standard will become effective 15 days after the 60-day comment period unless a commenter or FRA objects to the petition for modification. Trinity believes it is not clear whether paragraph (f)(1) only applies to modifications of petitions already approved under § 231.33 or whether § 231.35 applies to all petitions, including those for new car types. FRA believes that the paragraph clearly applies only to modifications under § 231.35, and this paragraph is not applicable to new petitions that have not been granted approval under § 231.33.

Additionally, while Trinity believes that it may be appropriate to allow for modifications to go into effect 15 days after the 60-day comment period for simple modifications (*e.g.,* relocating handholds), the abbreviated period prior to the effective date will not provide sufficient time to convert production for more extensive modifications because such changes may require ordering substantial new material or the fabrication of new major railcar assemblies. FRA proposed an abbreviated transition period for an unopposed modification because it envisions in most instances that this provision will be used to address minor adjustments that become apparent in the course of using the subject rail equipment. In the event that a petition for modification requests major changes that would require a greater time period to transition into the modification, FRA expects that the petition for modification will make FRA aware of the potential for delays in implementation. Otherwise, upon reviewing the petition, either an interested party or FRA may object to the petition for modification based on the grounds that insufficient time exists to transition to the modified standard, then the timeline for disposition of the modification would revert back to that established by § 231.33(f)(5). FRA views these safeguards as adequate protection against a modified requirement becoming effective prior to there being the capabilities to incorporate the modification.

AAR also submitted similar comments on paragraph (f)(1). It contends that allowing a modified industry standard to go into effect 15 days after the close of the 60-day comment period ignores that a transition period may be needed before the manufacturer can build to the modified standard. It suggests that the transition period for modification be similar to that used for new industry standards approved by FRA. At the outset, FRA finds AAR's comment strange in light of its comments with respect to § 231.33(f)(5), suggesting that FRA require that newly approved industry standards become effective immediately. As noted in the previous paragraph, FRA envisions the modification process to be used for minor changes. As a result, FRA believes that some minimal transition time is necessary, but expects that most changes can easily be accomplished in the time period specified in § 231.35(f)(1).

V. Section-by-Section Analysis

Section 231.33 Procedure for Special Approval of Existing Industry Safety Appliance Standards

This section establishes a process through which a representative of the railroad industry may petition FRA for special approval of an existing industry safety appliance standard. FRA anticipates that this special approval process will minimize uncertainty in vehicle design and maintenance by allowing the industry, through AAR's Safety Appliance Task Force, to create clear industry standards that identify the appropriate safety appliance arrangements on railroad cars, locomotives, tenders, or other rail vehicles. This should lessen the extensive reliance on § 231.18, cars of special construction, under which much of the modern rail equipment presently is built. While AAR's petition for rulemaking requests that FRA adopt new Federal railroad safety appliance standards incorporating changes based on modern railcar design, FRA expects that the special approval process contained in this final rule will better serve the goal of adapting to changes in modern railcar design while also facilitating compliance with statutory and safety-critical regulatory requirements.

FRA recognizes that a necessary adjunct to developing industry standards for new railcar types that would otherwise fall under § 231.18 is to update the standards for cars that are already covered under part 231. The core criteria in these standard car types can then be used as guidelines for other types of cars with more specialized designs. It is FRA's understanding that the industry standards developed by the Task Force include a new base industry safety appliance standard as well as standards for modern boxcars and covered hopper cars, each of which is specifically covered in part 231. It is anticipated that AAR will petition, through the special approval process, to have the industry standards for these car types approved by FRA since such standards must be approved by FRA prior to going into effect. The use of industry safety appliance standards for new car construction related to these car types will ensure consistency in the application of FRA-approved industry standards when applied to other types of rail equipment while also serving as the building blocks towards recognizing safer, more efficient designs.

The regulatory relief provided by this section will allow FRA to review existing industry safety appliance standards created by the railroad industry to ensure that the standards will provide at least an equivalent level of safety as the existing FRA standards. The public will be given notice of and opportunity to comment on any changes to existing regulations that are contained in a special approval petition before FRA acts on the petition in accordance with the Administrative Procedure Act. See 5 U.S.C. 553(b). Where FRA determines that a petition complies with all applicable Federal statutes and the requirements of this section and the existing industry safety appliance standard provides an equivalent level of safety to existing FRA standards, FRA may grant approval to the industry standard for use in new car construction. FRA expects that the special approval process will allow the rail industry to incorporate new railcar designs as well as technological and

ergonomic advancements with greater speed and efficiency.

Paragraph (a) states that the procedures laid out in this section govern the method considering and handling any petition for special approval of an existing industry safety appliance standard. Although there were no comments, FRA has made a minor change to this paragraph by replacing the phrase "similar vehicles" with the phrase "other vehicles." FRA believes that the phrase "similar vehicles" could be interpreted as unnecessarily limiting the scope of the amendment to rail equipment that is similar to railroad cars, locomotives, and tenders. As a result, it has revised the text to better reflect the scope of rail equipment that is covered by this amendment to part 231.

Paragraph (b) establishes the process for submission of a petition for special approval of an existing industry standard for new railcar construction. Petitions will only be accepted from an industry representative and must contain standard(s) that will be enforced industry-wide. Each petition for special approval must include the name, title, address, and telephone number of the primary person to be contacted with regard to review of the petition.

In the NPRM, FRA specifically requested comments on whether the information required is necessary and sufficient to allow FRA to make an informed decision regarding a petition for approval. While the comments received indicated that the information requested is necessary and sufficient, AAR pointed out that the paragraph was structured in a manner that required supporting data and analysis to be included in the industry safety appliance standard. AAR noted that it would be unusual to require the actual industry safety appliance standard to contain supporting information. FRA agrees and has revised this paragraph to clarify that supporting information need not be included in the actual industry standard as long as the information is provided in the petition for approval submitted to FRA.

Paragraphs (b)(2) sets the minimum requirements for an existing industry safety appliance standard that is submitted as part of a petition for special approval. The industry safety appliance standard must identify the type(s) of railcar to which it would be applicable as well as the section or sections within the safety appliance regulations that the existing industry standard would act as an alternative to for new car construction. The standard must, as nearly as possible, based upon the design of the equipment, provide for the same complement of handholds, sill steps, ladders, hand or parking brakes, running boards, and other safety appliances as are required for a piece of equipment of the nearest approximate type(s) already identified in part 231. Because the Federal railroad safety appliance standards encompassed in part 231 were promulgated to enforce specific statutory provisions, paragraph (b)(2) requires that the industry safety appliance standard comply with the requirements contained at 49 U.S.C. 20301 and 20302. The specific number, dimension, location, and manner of application of each safety appliance also must be contained in the industry standard in the petition. Under paragraph (b)(3), the industry representative submitting the petition also must include sufficient information through data or analysis, or both, for FRA to consider in making its determination of whether the existing industry standard will provide the requisite level of safety. This would include identifying where the industry standard deviates from the existing FRA regulation and providing an explanation for any such deviation. Additionally, pursuant to paragraph (b)(4), drawings, sketches, or other visual aids that provide detailed information relating to the design, location, placement, and attachment of the safety appliances must be included in the petition to assist FRA in its decision making process. Paragraph (b)(5) requires the petition to include a demonstration of the ergonomic suitability of the proposed arrangements in normal use. Given that the AAR Task Force regularly includes at least one ergonomic expert, FRA expects that such factors will be considered during the development process of the industry standards that are being submitted for approval. Finally, paragraph (b)(6) requires that the petitioner include a statement affirming that a copy of the petition has been served on the designated labor representatives of the employees responsible for the equipment's operation, inspection, testing, and maintenance under part 231. The statement must include a list of the names and addresses of each person served.

Paragraph (c) sets up the service requirements for the petition for special approval of an existing industry standard for new railcar construction. The petitioner is required to submit the petition to FRA's Docket Clerk. The petitioner is also required to serve a copy of the petition on the appropriate labor representatives and the organizations or bodies to which the special approval pertains or that issued the industry standard that is proposed in the petition. The petitioner also must serve any other person who, at least 30 days, but not more than 5 years prior to the filing of the petition, has filed with FRA a current statement of interest in reviewing special approvals under the particular requirement of part 231. Any such statement of interest shall reference the specific section(s) of part 231 in which the person has an interest. FRA will post any such statement of interest that complies with the regulation in the docket to ensure that each statement is accessible to the public.

Paragraph (d) provides that FRA will publish a notice in the **Federal Register** announcing the receipt of each petition for special approval an existing industry standard for new car construction.

Paragraph (e) establishes a 60-day comment period from the date of publication of the notice in the **Federal Register** concerning a petition. Due to the nature of the special approval process and the fact that the industry standards, if approved, will have an industry-wide effect, FRA seeks to provide sufficient time for all interested parties to comment prior to making its decision disposing of a petition. All comments must set forth the specific basis upon which the comments are made and contain a concise statement of the interest of the commenter in the proceeding.

Paragraph (f) sets up the process for disposing of petitions for special approval. Under this paragraph, FRA may grant the petition, deny the petition, or return it for additional consideration. Normally, FRA will act on a petition within 90 days of the close of the comment period related to the petition; however, if the petition is neither granted nor denied within the 90-day period, then it will remain pending unless withdrawn by the petitioner.

Paragraph (f)(3) sets forth that a petition may be granted where FRA determines that the petition complies with all applicable Federal statutes, that the petition complies with the requirements of § 231.33, and that the existing industry safety appliance standard provides at least an equivalent level of safety to existing FRA standards. Alternatively, a petition will be denied where FRA determines that it does not comply with an applicable Federal statute, it does not comply with the requirements established in § 231.33, or the existing industry safety appliance standard does not provide at least an equivalent level of safety as the existing FRA standard.

In instances where FRA determines that further information is required or that the petition may be amended in a reasonable manner to comply with an applicable Federal statute, comply with the requirements of § 231.33, or ensure that the existing industry standard provides an equivalent level of safety to existing FRA standards; the petition may be returned to the petitioner. In such circumstances, FRA will provide written notice to the petitioner of the item(s) requiring additional consideration. The petitioner is provided with 60 days from the date of FRA's written notice of return for additional consideration to reply. The petitioner's reply must address the item(s) identified by FRA in the written notice of the return of the petition for additional consideration as well as complying with the submission requirements of § 231.33(b) and the service requirements in § 231.33(c). If petitioner fails to submit a response within the prescribed time period, the petition will be deemed withdrawn, unless good cause is shown.

Paragraph (f)(5) provides that when a petition is granted, the effective date may be specified in FRA's written notice granting the petition. If no date is specified in FRA's written notice granting the petition, the existing safety appliance will become effective on January 1st, not less than one (1) year and not more than two (2) years from the date of FRA's written notice granting the petition. FRA decided to amend this paragraph based on the comments received, which uniformly indicated that a lead time of not less than one year would in many cases be unnecessary. As a result, FRA will retain authority to establish an effective date based on the information contained in the petition for approval and the comments received from other parties. However, FRA is mindful of the fact that the industry will need appropriate time to incorporate the standard, train employees, and fit facilities to meet the new requirements.

Paragraph (f)(6) establishes the standard for reopening a granted petition for special approval. A granted petition may be reopened only where there is a showing of good cause. Good cause requires the submission of subsequent evidence that was not previously considered. The subsequent evidence must demonstrate that a granted petition fails to comply with an applicable Federal statute; that the petition fails to comply with the requirements of § 231.33; that the existing industry safety appliance standard does not provide at least an equivalent level of safety as the corresponding FRA regulation for the nearest railcar type; or that further information is required to make such a determination.

Paragraph (g) provides that any industry standard approved pursuant to § 231.33 will be enforced against any person, as defined in 49 CFR 209.3, who violates any provision of the approved standard or causes the violation of any such provision. Civil penalties associated with the failure to follow an approved industry safety appliance standard will be assessed under part 231 by using the applicable defect code contained in Appendix A.

Section 231.35 Procedure for Modification of an Approved Industry Safety Appliance Standard

This section contains the procedural requirements for modifying existing industry safety appliance standards that previously have been approved by FRA. As in § 231.33, FRA believes that notice to the public and an opportunity to comment is necessary under the Administrative Procedure Act. If the petition for modification is minor and there is no objection to the petition for modification by FRA or any other interested party, the modified industry safety appliance standard will automatically become effective fifteen (15) days after the close of the comment period. In those circumstances where FRA or any other interested party objects to the modification petition, the petition will be handled through the special approval process laid out in § 231.33(f). FRA expects that using the framework in § 231.33(f) will allow for a more thorough review by the agency to ensure that the proposed modification provides at least an equivalent level of safety as the corresponding FRA regulation for the nearest railcar type(s) prior to disposing of the petition for modification.

Paragraph (a) provides that an industry representative may seek modification of an existing industry safety appliance standard for new railcar construction after it has been approved under § 231.33. Any such petition for modification must include each of the elements identified in § 231.33(b).

Paragraph (b) covers service of petitions for modification. The procedures for service of petitions for modification is the same as in § 231.33(c).

Paragraph (c) provides that FRA will publish a notice in the **Federal Register** announcing the receipt of each petition for modification received under § 231.35(a).

Paragraph (d) provides for the same 60-day comment period as in § 231.33(e).

Paragraph (e) establishes the process for FRA review of petitions for modification. It is expected that FRA will review the petition for modification during the 60-day comment period. In instances where FRA has an objection to the requested modification, it will provide written notification to the party requesting the modification detailing FRA's objection.

Paragraph (f) sets up the procedure for FRA's disposition of petitions for modification. A modification proposed in a petition for modification will become effective fifteen (15) days after the close of the 60-day comment period if FRA does not receive any comments objecting to the requested modification or if FRA does not issue a written objection to the requested modification. If an objection to the requested modification is raised by either an interested party or FRA, the requested modification will be treated as a petition for special approval of an existing industry safety appliance standard and disposition of the petition will fall under the procedures provided in § 231.33(f). Similarly, a petition for modification that has been granted may be re-opened where good cause is shown, as discussed above.

Paragraph (g) provides that any modification of an industry standard approved by FRA under § 231.35 will be enforced against any person, as defined in 49 CFR 209.3, who violates any provision of the approved standard or causes the violation of any such provision. As with § 231.33, civil penalties will be assessed using the applicable defect code contained in appendix A to part 231.

V. Regulatory Impact

A. Executive Order 12866 and 13563 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. It is not considered a significant regulatory action under either section 3(f) of Executive Order 12866, 58 FR 51735 (September 30, 1993), or Executive Order 13563, 76 FR 3821 (January 18, 2011), and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation. 44 FR 11034 (February 26, 1979). FRA has prepared and placed in the docket a Regulatory Evaluation. Since this rule merely establishes a process for seeking

special approval to use an industry standard instead of the existing regulatory requirements for cars of special construction contained in 49 CFR part 231, the costs associated with this rule are nominal. Since a special approval process will allow FRA to accept new railcar designs incorporating ergonomic design standards and technological advancements without detriment to safety, the benefits would likely exceed the costs.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.,* and Executive Order 13272, 67 FR 53461 (August 16, 2002), require agency review of proposed and final rules to assess their impact on small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), FRA has prepared and placed in the docket a Certification Statement that assesses the small entity impact of this rule, and certifies that this final rule is not expected to have a significant economic impact on a substantial number of small entities. Document inspection and copying facilities are available at the DOT Central Docket Management Facility located in Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available for inspection electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of Chief Counsel, RCC–10, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA–2008–0116.

The U.S. Small Business Administration (SBA) stipulates in its "Size Standards" that the largest a railroad business firm that is "for-profit" may be, and still be classified as a "small entity," is 1,500 employees for "Line-Haul Operating Railroads," and 500 employees for "Switching and Terminal Establishments." "Small entity" is defined in the Act as a small business that is independently owned and operated and is not dominant in its field of operation. Federal agencies may use different "Size Standards" after consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final policy that formally establishes "small entities" as railroads which meet the line haulage revenue requirements of a Class III railroad. The revenue requirements are currently $20 million or less in annual operating revenue. The $20 million limit (which is adjusted by applying the railroad revenue deflator adjustment) is based on the Surface Transportation Board's threshold for a Class III railroad carrier. FRA uses the same revenue dollar limit to determine whether a railroad or shipper or contractor is a small entity.

There are approximately 700 small railroads that could be affected by the regulation. Consequently, this regulation could affect a substantial number of small entities. However, FRA does not anticipate that this regulation, which establishes a permissive process that allows for FRA approval of industry standards, would impose a significant economic impact on such entities.

The final rule would also apply to governmental jurisdictions or transit authorities that provide commuter rail service—none of which is small for purposes of the SBA (*i.e.,* no entity serves a locality with a population less than 50,000). These entities also receive Federal transportation funds. Intercity rail service providers Amtrak and the Alaska Railroad Corporation would also be subject to this rule, but they are not small entities and likewise receive Federal transportation funds.

The final rule will not have a significant economic impact on a substantial number of small entities, as there are no direct costs to small entities. Small entities will not be responsible for preparing the petitions for special approval. Furthermore, FRA does not believe there will not be any significant costs to implementing any approved industry standard as any such standard will likely be a repositioning of existing safety appliances and will only be applicable to newly manufactured units. FRA believes that these construction costs, if any, will be low. Moreover, few small entities purchase newly manufactured equipment; generally, these operators acquire used equipment from larger railroads. Accordingly, FRA does not consider this impact of this proposal to be significant for small entities.

C. Federalism

Executive Order 13132, 64 FR 43255 (August 10, 1999), requires FRA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that 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." Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. The rule would not have a substantial effect on the States or their political subdivisions; it would not impose any compliance costs; and it would not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, the final rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970 (former FRSA), repealed and recodified at 49 U.S.C 20106, and the former Safety Appliance Acts (former SAA), repealed and recodified at 49 U.S.C. 20301–20304, 20306. *See* Public Law 103–272 (July 5, 1994). The former FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the "local safety or security hazard" exception to section 20106. Moreover, the former SAA has been interpreted by the Supreme Court as totally preempting the field "of equipping cars with appliances intended for the protection of employees." *See Southern Ry. Co.* v. *R.R. Comm'n of Ind.,* 236 U.S. 439, 446, 35 S.Ct. 304, 305 (1915).

In sum, FRA has analyzed this final rule in accordance with the principles

and criteria contained in Executive Order 13132. As explained above, FRA has determined that this rule has no federalism implications, other than the possible preemption of State laws under the former FRSA and the former SAA. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this rule is not required.

D. International Trade Impact Assessment

The Trade Agreement Act of 1979, Public Law 96–39 (July 26, 1979), prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

E. Paperwork Reduction Act

The information collection requirements in this final rule are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements, and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
231.33—Special Approval Petitions of an Existing Industry Safety Appliance Standard for New Car Construction.	AAR	5 petitions	160 hours	800
—Statement Affirming Copy of Special Approval Petition Has Been Served on RR Employee Representatives.	AAR	5 statements	30 minutes	3
—Special Approval Petition Copies to RR Employee Representative/Other Parties.	AAR	565 copies	2 hours	1,130
—Statements of Interest to FRA	5 Labor Groups/Public.	15 statements	7 hours	105
—Comments on Special Approval Petitions	728 Railroads/5 Labor Groups/Public.	25 comments	6 hours	150
—Disposition of Petitions: Hearings	AAR/5 Labor Groups/ Public.	1 hearing	8 hours	8
—Disposition of Petitions: Further Information Needed	AAR	1 document	3 hours	3
231.35—Petitions for Modification of an Approved Existing Industry Safety Appliance Standard for New Car Construction.	AAR	5 petitions	160 hours	800
—Statement Affirming Copy of Modification Petition Has Been Served on RR Employee Representatives.	AAR	5 statements	30 minutes	3
—Modification Petition Copies to RR Employee Representative/Other Parties.	AAR	565 copies	2 hours	1,130
—Statements of Interest to FRA	5 Labor Groups/Public.	15 statements	7 hours	105
—Comments on Modification Approval Petitions	728 Railroads/5 Labor Groups/Public.	25 comments	6 hours	150
—Disposition of Petitions: Further Information Needed	AAR	1 document	3 hours	3

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, FRA Office of Safety, Information Clearance Officer, at 202–493–6292, or Ms. Kimberly Toone, FRA Office of Administration, Information Clearance Officer, at 202–493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via e-mail to the Office of Management and Budget at the following address: *oira-submissions@omb.eop.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this final rule 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.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

F. Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (March 22, 1995), 2 U.S.C. 1531, each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and Tribal governments on a "significant

intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and Tribal governments in the aggregate of $100 million (adjusted annually for inflation) (currently $140.8 million) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals. The final rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

G. Environmental Assessment

FRA has evaluated this rule in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures), 64 FR 28545 (May 26, 1999), as required by the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.,* other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this final rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547 (May 26, 1999). Section 4(c)(20) reads as follows:

> (c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * *
>
> The following classes of FRA actions are categorically excluded: * * *
>
> (20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this final rule is not a major Federal action significantly affecting the quality of the human environment.

H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this final rule is not a "significant energy action" within the meaning of Executive Order 13211.

I. Privacy Act

Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (Volume 65, Number 70, Pages 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

List of Subjects in 49 CFR Part 231

Penalties, Railroad safety, Railroad safety appliances, Special approval process.

For the reasons discussed in the preamble, FRA amends part 231 of subtitle B, chapter II of title 49 of the Code of Federal Regulations as follows:

PART 231—[AMENDED]

■ 1. The authority citation for part 231 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20131, 20301–20303, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. Add §§ 231.33 and 231.35 to read as follows:

§ 231.33 Procedure for special approval of existing industry safety appliance standards.

(a) *General.* The following procedures govern the submission, consideration and handling of any petition for special approval of an existing industry safety appliance standard for new construction of railroad cars, locomotives, tenders, or other rail vehicles.

(b) *Submission.* An industry representative may submit a petition for special approval of an existing industry safety appliance standard for new construction. A petition for special approval of an industry standard for safety appliances shall include the following:

(1) The name, title, address, and telephone number of the primary individual to be contacted with regard to review of the petition.

(2) An existing industry-wide standard that, at a minimum:

(i) Identifies the type(s) of equipment to which the standard would be applicable and the section or sections within the safety appliance regulations that the existing industry standard would operate as an alternative to for new car construction;

(ii) Ensures, as nearly as possible, based upon the design of the equipment, that the standard provides for the same complement of handholds, sill steps, ladders, hand or parking brakes, running boards, and other safety appliances as are required for a piece of equipment of the nearest approximate type(s) already identified in this part;

(iii) Complies with all statutory requirements relating to safety appliances contained at 49 U.S.C. 20301 and 20302; and

(iv) Addresses the specific number, dimension, location, and manner of application of each safety appliance contained in the industry standard;

(3) Appropriate data or analysis, or both, for FRA to consider in determining whether the existing industry standard will provide at least an equivalent level of safety;

(4) Drawings, sketches, or other visual aids that provide detailed information relating to the design, location, placement, and attachment of the safety appliances;

(5) A demonstration of the ergonomic suitability of the proposed arrangements in normal use; and

(6) A statement affirming that the petitioner has served a copy of the petition on designated representatives of the employees responsible for the equipment's operation, inspection, testing, and maintenance under this part, together with a list of the names and addresses of the persons served.

(c) *Service.* (1) Each petition for special approval under paragraph (b) of this section shall be submitted to the FRA Docket Clerk, West Building Third Floor, Office of Chief Counsel, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(2) Service of each petition for special approval of an existing industry safety appliance standard under paragraph (b) of this section shall be made on the following:

(i) Designated representatives of the employees responsible for the equipment's operation, inspection, testing, and maintenance under this part;

(ii) Any organizations or bodies that either issued the standard to which the special approval pertains or issued the industry standard that is proposed in the petition; and

(iii) Any other person who has filed with FRA a current statement of interest in reviewing special approvals under the particular requirement of this part at least 30 days but not more than 5 years prior to the filing of the petition. If filed, a statement of interest shall be filed with the FRA Docket Clerk, West Building Third Floor, Office of Chief Counsel, 1200 New Jersey Avenue, SE., Washington, DC 20590, and shall reference the specific section(s) of this part in which the person has an interest. A statement of interest that properly references the specific section(s) in which the person has an interest will be posted in the docket to ensure that each statement is accessible to the public.

(d) **Federal Register** document. FRA will publish a document in the **Federal Register** announcing the receipt of each petition received under paragraph (b) of this section. The document will identify the public docket number in the Federal eRulemaking Portal (FeP) where the contents of each petition can be accessed and reviewed. The FeP can be accessed 24 hours a day, seven days a week, via the Internet at the docket's Web site at *http://www.regulations.gov.* All documents in the FeP are available for inspection and copying on the Web site or are available for examination at the DOT Docket Management Facility, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, during regular business hours (9 a.m.–5 p.m.).

(e) *Comment.* Not later than 60 days from the date of publication in the **Federal Register** concerning a petition received pursuant to paragraph (b) of this section, any person may comment on the petition. Any such comment shall:

(1) Set forth specifically the basis upon which it is made and contain a concise statement of the interest of the commenter in the proceeding; and

(2) Be submitted by mail or hand-delivery to the Docket Clerk, DOT Docket Management Facility, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or electronically via the Internet at *http://www.regulations.gov.* Any comments or information sent directly to FRA will be immediately provided to the DOT FeP for inclusion in the public docket related to the petition. All comments should identify the appropriate docket number for the petition to which they are commenting.

(f) *Disposition of petitions.* (1) FRA will conduct a hearing on a petition in accordance with the procedures provided in § 211.25 of this chapter, if necessary.

(2) FRA will normally act on a petition within 90 days of the close of the comment period related to the petition. If the petition is neither granted nor denied within that timeframe, the petition will remain pending unless withdrawn by the petitioner.

(3) A petition may be:

(i) Granted where it is determined that the petition complies with all applicable Federal statutes, that the petition complies with the requirements of this section, and the existing industry safety appliance standard provides at least an equivalent level of safety as the existing FRA standards;

(ii) Denied where it is determined that the petition does not comply with an applicable Federal statute, the petition does not comply with the requirements of this section, or the existing industry safety appliance standard does not provide at least an equivalent level of safety as the existing FRA standards; or

(iii) Returned to the petitioner for additional consideration where it is determined that further information is required or that the petition may be amended in a reasonable manner to comply with all applicable Federal statutes, that petition may be amended to comply with the requirements of this section, or to ensure that the existing industry standard provides at least an equivalent level of safety as the existing FRA standards. Where the petition is returned to the petitioner, FRA will provide written notice to the petitioner of the item(s) identified by FRA as requiring additional consideration. Petitioner shall reply within 60 days from the date of FRA's written notice of return for additional consideration or the petition will be deemed withdrawn, unless good cause is shown. Petitioner's reply shall:

(A) Address the item(s) raised by FRA in the written notice of the return of the petition for additional consideration;

(B) Comply with the submission requirements of paragraph (b) of this section; and

(C) Comply with the service requirements in paragraph (c) of this section.

(4) When FRA grants or denies a petition, or returns a petition for additional consideration, written notice will be sent to the petitioner and other interested parties.

(5) If a petition is granted, it shall go into effect on the date specified in FRA's written notice granting the petition. If no date is specified in FRA's written notice granting the petition, the effective date shall begin on January 1st, not less than one (1) year and not more than two (2) years from the date of FRA's written notice granting the petition. FRA will place a copy of the approved industry safety appliance standard in the related public docket where it can be accessed by all interested parties.

(6) A petition, once approved, may be re-opened upon good cause shown. Good cause exists where subsequent evidence demonstrates that an approved petition does not comply with an applicable Federal statute; that the approved petition does not comply with the requirements of this section; that the existing industry safety appliance standard does not provide at least an equivalent level of safety as the corresponding FRA regulation for the nearest railcar type(s); or that further information is required to make such a determination. When a petition is re-opened for good cause shown, it shall return to pending status and shall not be considered approved or denied.

(g) *Enforcement.* Any industry standard approved pursuant to this section will be enforced against any person, as defined at 49 CFR 209.3, who violates any provision of the approved standard or causes the violation of any such provision. Civil penalties will be assessed under this part by using the applicable defect code contained in appendix A to this part.

§ 231.35 Procedure for modification of an approved industry safety appliance standard for new railcar construction.

(a) *Petitions for modification of an approved industry safety appliance standard.* An industry representative may seek modification of an existing industry safety appliance standard for new construction of railroad cars, locomotives, tenders, or other rail vehicles after the petition for special approval has been approved pursuant to

§ 231.33. The petition for modification shall include each of the elements identified in § 231.33(b).

(b) *Service.* (1) Each petition for modification of an approved industry standard under paragraph (a) of this section shall be submitted to the FRA Docket Clerk, West Building Third Floor, Office of Chief Counsel, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(2) Service of each petition for modification of an existing industry safety appliance standard under paragraph (a) of this section shall be made on the following:

(i) Designated representatives of the employees responsible for the equipment's operation, inspection, testing, and maintenance under this part;

(ii) Any organizations or bodies that either issued the standard incorporated in the section(s) of the rule to which the modification pertains or issued the industry standard that is proposed in the petition for modification; and

(iii) Any other person who has filed with FRA a current statement of interest in reviewing special approvals under the particular requirement of this part at least 30 days but not more than 5 years prior to the filing of the petition. If filed, a statement of interest shall be filed with FRA's Associate Administrator for Safety and shall reference the specific section(s) of this part in which the person has an interest.

(c) **Federal Register** document. Upon receipt of a petition for modification, FRA will publish a document in the **Federal Register** announcing the receipt of each petition received under paragraph (a) of this section. The document will identify the public docket number in the Federal eRulemaking Portal (FeP) where the contents of each petition can be accessed and reviewed. The FeP can be accessed 24 hours a day, seven days a week, via the Internet at the docket's Web site at *http://www.regulations.gov.* All documents in the FeP are available for inspection and copying on the Web site or are available for examination at the DOT Docket Management Facility, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, during regular business hours (9 a.m.–5 p.m.).

(d) *Comment.* Not later than 60 days from the date of publication in the **Federal Register** concerning a petition for modification under paragraph (a) of this section, any person may comment on the petition. Any such comment shall:

(1) Set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding; and

(2) Be submitted by mail or hand-delivery to the Docket Clerk, DOT Docket Management Facility, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or electronically via the Internet at *http://www.regulations.gov.* Any comments or information sent directly to FRA will be immediately provided to the DOT FeP for inclusion in the public docket related to the petition. All comments should identify the appropriate docket number for the petition to which they are commenting.

(e) *FRA Review.* During the 60 days provided for public comment, FRA will review the petition. If FRA objects to the requested modification, written notification will be provided within this 60-day period to the party requesting the modification detailing FRA's objection.

(f) *Disposition of petitions for modification.* (1) If no comment objecting to the requested modification is received during the 60-day comment period, provided by paragraph (d) of this section, or if FRA does not issue a written objection to the requested modification, the modification will become effective fifteen (15) days after the close of the 60-day comment period.

(2) If an objection is raised by an interested party, during the 60-day comment period, or if FRA issues a written objection to the requested modification, the requested modification will be treated as a petition for special approval of an existing industry safety appliance standard and handled in accordance with the procedures provided in § 231.33(f).

(3) A petition for modification, once approved, may be re-opened upon good cause shown. Good cause exists where subsequent evidence demonstrates that an approved petition does not comply with the an applicable Federal statute, that an approved petition does not comply with the requirements of this section; that the existing industry safety appliance standard does not provide at least an equivalent level of safety as the corresponding FRA regulation for the nearest railcar type(s); or that further information is required to make such a determination. When a petition is re-opened for good cause shown, it shall return to pending status and shall not be considered approved or denied.

(g) *Enforcement.* Any modification of an industry standard approved pursuant to this section will be enforced against any person, as defined at 49 CFR 209.3, who violates any provision of the approved standard or causes the violation of any such provision. Civil penalties will be assessed under this part by using the applicable defect code contained in appendix A to this part.

Issued in Washington, DC, on April 20, 2011.

Joseph C. Szabo,

Administrator, Federal Railroad Administration.

[FR Doc. 2011–10015 Filed 4–27–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 101124579–1236–02]

RIN 0648–BA51

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Red Snapper Management Measures

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement a regulatory amendment (Regulatory Amendment 10) to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared by the South Atlantic Fishery Management Council (Council). This final rule removes the snapper-grouper area closure implemented through Amendment 17A to the FMP. The intended effect of this final rule is to minimize socio-economic impacts to snapper-grouper fishermen, without subjecting the red snapper resource to overfishing.

DATES: This final rule is effective May 31, 2011.

ADDRESSES: Copies of the regulatory amendment, which includes an environmental assessment and a regulatory impact review, may be obtained from the South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone 843–571–4366; fax 843–769–4520; e-mail *safmc@safmc.net;* or may be downloaded from the Council's Web site at *http://www.safmc.net/.*

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, 727–824–5305.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On February 18, 2011, NMFS published a proposed rule in the **Federal Register** for Regulatory Amendment 10 and requested public comment (76 FR 9530). The proposed rule and Regulatory Amendment 10 explained the rationale for the action contained in this final rule. A summary of the rationale and the action implemented by this final rule is provided below.

In the South Atlantic, the red snapper stock is currently overfished and undergoing overfishing. The stock status was determined through a Southeast Data Assessment and Review (SEDAR) benchmark stock assessment for red snapper, SEDAR 15, which was completed in February 2008. Based on this stock assessment, Amendment 17A to the FMP was developed to end the overfishing of red snapper and rebuild the stock. The final rule to implement Amendment 17A was published in the **Federal Register** on December 9, 2010 (75 FR 76874). The final rule to implement Amendment 17A included an area closure for South Atlantic snapper-grouper of 4,827 square miles (7,768 square km), consisting of the area encompassed by commercial logbook grids (cells) 2880, 2980, and 3080 for depths from 98 ft (30 m) to 240 ft (73 m), in order to minimize the bycatch of red snapper. Harvest and possession of snapper-grouper species would be prohibited in this area which is off the coasts of southern Georgia and northeast Florida, except when fishing with black sea bass pot gear or spearfishing gear for species other than red snapper.

Through the SEDAR 24 benchmark stock assessment, updated information on the status of the red snapper stock became available in late October 2010. The SEDAR 24 assessment determined, similar to the SEDAR 15 benchmark, that the red snapper stock is overfished and undergoing overfishing. However, the rate of overfishing found in SEDAR 24 is less than the rate of overfishing found in the previous SEDAR 15 stock assessment.

Given the information in the new stock assessment, an emergency rule to delay the effective date of the snapper-grouper area closure was published on December 9, 2010 (75 FR 76890). The emergency rule delayed the effective date of the area closure from January 3, 2011, until June 1, 2011, with a possible 186-day extension, unless superseded by subsequent rulemaking. The delayed effective date provided the Council time to respond to the new scientific information from the SEDAR 24 benchmark stock assessment.

When recent reductions in fishing effort are considered, the red snapper moratorium, implemented through Amendment 17A to the FMP, is projected to end overfishing and rebuild the stock without the additional implementation of the snapper-grouper area closure. Therefore, the proposed action in Regulatory Amendment 10 to remove the snapper-grouper area closure approved in Amendment 17A to the FMP seeks to prevent significant direct economic loss to snapper-grouper fishermen without subjecting the red snapper resource to overfishing.

Comments and Responses

During the comment period on the proposed rule and Regulatory Amendment 10, NMFS received 21 submissions from individuals and fishing associations on the proposed rule. NMFS received 17 comments that expressed general support of the action in Regulatory Amendment 10. The additional four comments are not addressed in this final rule because they addressed issues outside the scope of the action contained in the proposed rule and Regulatory Amendment 10. Specifically, they asserted that red snapper release mortality estimates, overall abundance, data sources, and recreational bag limits should be considered by the Council.

Classification

The NMFS Regional Administrator, Southeast Region, has determined that Regulatory Amendment 10 is necessary for the management of South Atlantic snapper-grouper and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The FRFA follows.

No public comments specific to the IRFA or concerning the economic impacts of the rule more generally were received and therefore no comments are addressed in this FRFA. No changes in the final rule were made in response to public comments.

NMFS agrees that the Council's choice of preferred alternative would best achieve the Council's objectives while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities. The preamble to the final rule provides a statement and need for and objectives of this rule, and it is not repeated here.

The Magnuson-Stevens Act provides the statutory basis for the final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. The final rule would not establish any new reporting, record-keeping, or other compliance requirements.

This final rule is expected to directly affect commercial harvesting and for-hire fishing operations. The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the annual receipts threshold is $7.0 million (NAICS code 713990, recreational industries).

From 2007–2009, an average of 895 vessels-per-year had valid permits to operate in the commercial snapper-grouper fishery. Of these vessels, 751 held transferable permits and 144 held non-transferable permits. On average, 797 vessels landed snapper-grouper species, generating dockside revenues of approximately $14.514 million (2008 dollars). Each vessel, therefore, generated an average of approximately $18,000 annually in gross revenues from snapper-grouper. Gross dockside revenues by state are distributed as follows: $4.054 million in North Carolina, $2.563 million in South Carolina, $1.738 million in Georgia/Northeast Florida, $3.461 million in central and southeast Florida, and $2.695 million in the Florida Keys. Vessels that operate in the snapper-grouper fishery may also operate in other fisheries; the revenues of which cannot be determined with available data and are not reflected in these totals.

Based on revenue information, all commercial vessels affected by the final rule can be considered small entities.

From 2007–2009, an average of 1,797 vessels had valid permits to operate in

the snapper-grouper for-hire sector, of which 82 are estimated to have operated as headboats. The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The charterboat annual average gross revenue is estimated to range from approximately $62,000–$84,000 for Florida vessels, $73,000–$89,000 for North Carolina vessels, $68,000–$83,000 for Georgia vessels, and $32,000–$39,000 for South Carolina vessels. For headboats, the corresponding estimates are $170,000–$362,000 for Florida vessels, and $149,000–$317,000 for vessels in the other states.

Based on these average revenue figures, all for-hire operations that would be affected by the final rule can be considered small entities.

Some fleet activity, i.e., multiple vessels owned by a single entity, may exist in both the commercial and for-hire snapper-grouper sectors but its extent is unknown, and all vessels are treated as independent entities in this analysis.

The final rule is expected to directly affect all Federally permitted commercial vessels that operate in the South Atlantic snapper-grouper fishery as well as for-hire vessels operating out of northeast Florida and Georgia. All directly affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore, it is determined that the final rule will affect a substantial number of small entities.

Because all entities that are expected to be affected by the final rule are considered small entities, the issue of disproportional effects on small versus large entities does not arise in the present case.

The economic analysis for the final rule estimated the changes in net operating revenues to commercial and for-hire vessels. These changes were estimated assuming the area closure provision of Amendment 17A commenced on June 1, 2011, which differs from the proposed rule which assumed a January 1, 2011, implementation of the area closure. For the current analysis, net operating revenue is equated to profit.

The final rule to eliminate the area closure that was implemented in Amendment 17A is estimated to have a non-uniform change in the short-term profits of commercial vessels operating in the South Atlantic snapper-grouper fishery. Annual profits would increase approximately by $261,000 for vessels in northeast Florida and Georgia and by $84,000 for vessels in southeast Florida. Conversely, annual profits would decrease by approximately $187,000 for vessels in North Carolina, by $99,000 in South Carolina, and by $2,000 for vessels in the Florida Keys. The net effect of the action on commercial vessels as a whole would be an average increase in annual profits of approximately $57,000. Vessels fishing with vertical-line gear are most affected by the action.

The differential effects of the final rule on commercial vessels in various geographic areas in the South Atlantic are mainly determined by the manner in which quotas for certain snapper-grouper species, such as gag, red grouper, black grouper, and vermilion snapper, would be met. Although the rule would open up very specific areas off the coasts of Georgia and northeast Florida, commercial vessels operating in other areas would also be affected by possible quota closures of some snapper-grouper species as their quotas are reached. Eliminating the area closure from Amendment 17A would allow commercial vessels from southeast Florida, northeast Florida, and Georgia to harvest more snapper-grouper species, such as vermilion snapper, gag, and red grouper, and this would tend to increase their profits. Such a harvest increase, however, would lead to reaching certain snapper-grouper quotas earlier in the fishing year, resulting in lower harvest by vessels in North Carolina, South Carolina, and the Florida Keys. These vessels would then experience reductions in their profits. The more restrictive quotas are those in place for vermilion snapper and gag. The quota for gag is especially critical, because it also serves as a trigger mechanism for closing the harvest of all shallow-water grouper when its quota is reached.

For-hire vessels operating in northeast Florida and Georgia are expected to be the only for-hire vessels affected by the final rule. This is based on the extent of for-hire vessel fishing activities in the subject three statistical areas implemented for closure under Amendment 17A. As a result of the action, annual profits are expected to increase by $227,000 for charterboats and $815,000 for headboats.

Eleven alternatives, including the preferred alternative implemented through this final rule, were considered for alternatives to the area closure of Amendment 17A. The first alternative is the no action alternative. The no action alternative would retain the area closure of Amendment 17A. Among the alternatives, this would result in the largest negative economic effects on small entities.

The second alternative is a May-October closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m). This alternative would result in lower profit increases for both the commercial and for-hire vessels than the action in this final rule.

The third alternative is a May-August closure of cells 2880, 2980, and 3080 in depths from 98 ft (30 m) to 240 ft (73 m). This alternative would result in a lower profit increase to the for-hire vessels and a slightly higher profit increase to commercial vessels. The overall net effect of this alternative would be a lower profit increase than that implemented through this action.

The fourth alternative is a July-December closure of cells 2880, 2980, and 3080 in depths from 98 ft (30 m) to 240 ft (73 m). This alternative would result in lower profit increases to the for-hire and commercial vessels.

The fifth alternative for Regulatory Amendment 10 is a May-December closure of cells 2880, 2980, and 3080 in depths from 98 ft (30 m) to 240 ft (73 m). This alternative would result in lower profit increases to the for-hire and commercial vessels.

The sixth alternative is a May-December closure of cells 2880, 2980, and 3080 in depths from 66 ft (20 m) to 240 ft (73 m) for the first year and a May-October closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the second and consecutive years. This alternative would result in lower profit increases to the for-hire and commercial vessels.

The seventh alternative is a May-October closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the first year and a June-July closure of cell 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the second and consecutive years. This alternative would result in lower profit increases to the for-hire and commercial vessels.

The eighth alternative is a May-October closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the first year and a July closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the second and consecutive years. This alternative would result in lower profit increases to the for-hire and commercial vessels.

The ninth alternative is a July-December closure of cells 2880, 2980, and 3080 in depths from 98 ft (30 m) to 240 ft (73 m) for the first year and a January-April closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the second and consecutive years. This alternative would result in lower profit increases to the for-hire and commercial vessels.

The tenth alternative is a May-December closure of cells 2880, 2980, and 3080 in depths from 98 ft (30 m) to 240 ft (73 m) for the first year and a January-April closure of cells 2880 and 2980 in depths from 98 ft (30 m) to 240 ft (73 m) for the second and consecutive years. This alternative would result in lower profit increases to the for-hire and commercial vessels.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all vessel permit holders for the South Atlantic snapper-grouper fishery as well as other interested parties.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: April 25, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

§ 622.35 [Amended]

■ 2. In § 622.35, the suspension on paragraph (l) is lifted and paragraph (l) is removed and reserved.

[FR Doc. 2011–10326 Filed 4–27–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 82
Thursday, April 28, 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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038—AC97

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing regulations to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The proposed regulations would implement the new statutory framework of Section 4s(e) of the Commodity Exchange Act ("CEA"), added by Section 731 of the Dodd-Frank Act, which requires the Commission to adopt capital and initial and variation margin requirements for certain swap dealers ("SDs") and major swap participants ("MSPs"). The proposed rules address initial and variation margin requirements for SDs and MSPs. The proposed rules will not impose margin requirements on non-financial end users. The Commission will propose rules regarding capital requirements for SDs and MSPs at a later date. The Commission will align the comment periods of these two proposals so that commenters will have an opportunity to review each before commenting on either.

DATES: Comments must be received on or before June 27, 2011.

ADDRESSES: You may submit comments, identified by RIN 3038–AC97, and Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants by any of the following methods:

- Agency Web site, via its Comments Online process at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Send to David A. Stawick, Secretary, 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 your comments using 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, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in § 145.9 of the Commission's regulation, 17 CFR 145.9.

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 the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Deputy Director, Thomas Smith, Deputy Director, or Thelma Diaz, Associate Director, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. *Telephone number:* 202–418–5480 and electronic mail: *jlawton@cftc.gov; tsmith@cftc.gov; or tdiaz@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislation Requiring Rulemaking for Margin Requirements of SDs and MSPs

On July 21, 2010, President Obama signed the Dodd-Frank Act.[1] Title VII of the Dodd-Frank Act amended the CEA [2] to establish a comprehensive regulatory framework to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of SDs and MSPs; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight.

The legislative mandate to establish registration and regulatory requirements for SDs and MSPs appears in Section 731 of the Dodd-Frank Act, which adds a new Section 4s to the CEA. Section 4s(e) explicitly requires the adoption of rules establishing margin requirements for SDs and MSPs, and applies a bifurcated approach that requires each SD and MSP for which there is a prudential regulator to meet margin requirements established by the applicable prudential regulator, and each SD and MSP for which there is no prudential regulator to comply with Commission's regulations governing margin.

The term "prudential regulator" is defined in a new paragraph 39 of the definitions set forth in Section 1a of the CEA, as amended by Section 721 of the Dodd-Frank Act. This definition includes the Federal Reserve Board; the Office of the Comptroller of the Currency ("OCC"); the Federal Deposit Insurance Corporation ("FDIC"); the Farm Credit Administration; and the Federal Housing Finance Agency. The definition also specifies the entities for which these agencies act as prudential regulators, and these consist generally of Federally insured deposit institutions, farm credit banks, Federal home loan banks, the Federal Home Loan Mortgage

[1] *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.*

[2] 7 U.S.C. 1 *et seq.*

Corporation, and the Federal National Mortgage Association. In the case of the Federal Reserve Board, it is the prudential regulator not only for certain banks, but also for bank holding companies and any foreign banks treated as bank holding companies. The Federal Reserve Board also is the prudential regulator for subsidiaries of these bank holding companies and foreign banks, but excluding their nonbank subsidiaries that are required to be registered with the Commission as a SD or MSP.

In general, therefore, the Commission is required to establish margin requirements for all registered SDs and MSPs that are not banks, including nonbank subsidiaries of bank holding companies regulated by the Federal Reserve Board. In addition, certain swap activities currently engaged in by banks may be conducted in such nonbank subsidiaries and affiliates as a result of the prohibition on Federal assistance to swap entities under Section 716 of the Dodd-Frank Act. Generally, insured depository institutions ("IDIs") that are required to register as SDs may be required to comply with Section 716 by "pushing-out" to an affiliate all swap trading activities with the exception of: (1) The IDI's hedging or other similar risk mitigating activities directly related to the IDI's activities; and (2) the IDI acting as a SD for swaps involving rates or reference assets that are permissible for investment under banking law.

B. Considerations for SD and MSP Rulemaking Specified in Section 4(s)

Section 4s(e)(3)(A) states the need to offset the greater risk that swaps that are not cleared pose to SDs, MSPs, and the financial system, and directs the Commission, United States Securities and Exchange Commission ("SEC"), and prudential regulators to adopt capital and margin requirements that: (1) Help ensure the safety and soundness of the registrant; and (2) are appropriate for the risk associated with the uncleared swaps they hold. Section 4s(e)(3)(C) permits the use of noncash collateral, as the Commission and the prudential regulators each determines to be consistent with: (1) Preserving the financial integrity of markets trading swaps; and (2) preserving the stability of the United States financial system.

C. Consultation With SEC and Prudential Regulators

The Commission has worked closely with the prudential regulators and the SEC in designing these rules. Every effort has been made to be as consistent as possible with the rules being considered by the prudential authorities. Section 4s(e)(3)(D) of the CEA requires that the Commission, SEC, and prudential regulators (together, referred to as "Agencies") establish and maintain, to the maximum extent practicable, comparable minimum initial and variation margin requirements for SDs, MSPs, security-based swap dealers ("SSDs") and major security-based swap participants ("MSSPs") (together, referred to as "swap registrants"). Section 4s(e)(3)(D) also requires the Agencies to periodically, but not less frequently than annually, consult on minimum margin requirements for swap registrants. As directed by Dodd-Frank, and consistent with precedent for harmonizing where practicable the minimum margin requirements of dual registrants, staff from each of the Agencies has had the opportunity to provide oral and written comments on the proposal and the proposed regulations incorporate elements of the comments provided.

D. Structure and Approach

Consistent with the objectives set forth above, this release summarizes regulations that the Commission proposes in order to establish minimum initial and variation margin requirements for SDs and MSPs that are not banks. As noted in previous proposed rulemaking issued by the Commission, the Commission intends, where practicable, to consolidate regulations implementing Section 4s of CEA in a new Part 23.[3] By this **Federal Register** release, the Commission is proposing to adopt Subpart E of Part 23, pertaining to the capital and margin requirements and related financial condition reporting requirements of SDs and MSPs.[4]

II. Proposed Margin Regulations

A. Introduction

Section 4s(e)(2)(B) of the CEA provides that:

The Commission shall adopt rules for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is not a prudential regulator imposing—

(i) Capital requirements; and

(ii) Both initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization.

Section 4s(e)(3)(A) of the CEA provides that:

To offset the greater risk to the swap dealer or major swap participant and the financial system arising from the use of swaps that are not cleared, the requirements imposed under paragraph (2) shall

(i) Help ensure the safety and soundness of the swap dealer or major swap participant; and

(ii) Be appropriate for the risk associated with the non-cleared swaps.

During the recent financial crisis, derivatives clearing organizations ("DCOs") met all their obligations without any financial infusions from the government. By contrast, significant sums were expended as the result of losses incurred in connection with uncleared swaps, most notably at AIG. A key reason for this difference is that DCOs all use variation margin and initial margin as the centerpiece of their risk management programs while these tools were often not used in connection with uncleared swaps. Consequently, in designing the proposed margin rules for uncleared swaps, the Commission has built upon the sound practices for risk management employed by central counterparties for decades.

Variation margin entails marking open positions to their current market value each day and transferring funds between the parties to reflect any change in value since the previous time the positions were marked. This process prevents losses from accumulating over time and thereby reduces both the chance of default and the size of any default should one occur.

Initial margin serves as a performance bond against potential future losses. If a party fails to meet its obligation to pay variation margin, resulting in a default, the other party may use initial margin to cover most or all of any loss based on the need to replace the open position.

Well-designed margin systems protect both parties to a trade as well as the overall financial system. They serve both as a check on risk-taking that might exceed a party's financial capacity and as a resource that can limit losses when there is a failure.

The statutory provisions cited above reflect Congressional recognition that (i) margin is an essential risk-management tool and (ii) uncleared swaps pose greater risks than cleared swaps. In particular, it is noteworthy that Section 4s(e)(2)(B)(ii) requires both variation margin and initial margin for SDs and MSPs on *all* uncleared swaps and that Section 4s(e)(3)(A) explicitly refers to the *greater risk* of uncleared swaps. In addition to the disciplines of regular collection of initial and variation margin previously mentioned, central clearing

[3] *See* 75 FR 71379 (Nov. 23, 2010).

[4] As noted above, the Commission will propose rules related to capital and financial condition reporting in a separate release.

provides additional means of risk mitigation.

First, unlike an SD or MSP, a DCO is not in the business of taking positions in the market. By definition, a DCO runs a perfectly matched book. Second, a DCO only deals with members who must meet certain financial, risk management, and operational standards. Third, a DCO may turn to those members to help liquidate or transfer open positions in the event of a member default. Fourth, DCOs typically, by rule, have the ability to mutualize a portion of the tail risk associated with a clearing member default through the use of guarantee funds and similar mechanisms.

Concern has been expressed that the imposition of margin requirements on uncleared swaps will be very costly for SDs and MSPs. However, margin has been, and will continue to be, required for all cleared products. Given the Congressional reference to the "greater risk" of uncleared swaps and the requirement that margin for such swaps "be appropriate for the risk," the Commission believes that establishing margin requirements for uncleared swaps that are at least as stringent as those for cleared swaps is necessary to fulfill the statutory mandate. Within these statutory bounds the Commission has endeavored to limit costs appropriately. For example, as discussed below, the proposal would permit margin reductions for positions with offsetting risk characteristics.

The proposals set forth below were developed in consultation with the prudential regulators. They are consistent in almost all material respects with provisions that the Commission understands are being proposed by the prudential regulators.[5] Salient differences will be noted below.

The discussion below addresses: (i) The products covered by the proposed rules; (ii) the market participants covered by the proposed rules; (iii) permissible methods of calculating initial margin; (iv) permissible methods of calculating variation margin; (v) permissible margin assets; and (vi) permissible custodial arrangements.

B. Products

The proposal would cover only swaps executed after the effective date of the regulation that are not cleared by a DCO. The proposal would not apply to swaps executed before the effective date of the final regulation. The Commission believes that the pricing of existing swaps reflects the credit arrangements under which they were executed and that it would be unfair to the parties and disruptive to the markets to require that the new margin rules apply to those positions. However, the Commission requests comment on whether SDs and MSPs should be permitted voluntarily to include pre-effective date swaps in portfolios margined pursuant to the proposed rules. The Commission also anticipates that existing positions would be taken into account under the capital rule to be proposed at a later date.

The Commission also wishes to emphasize that the proposal does not apply to forward contracts. Under the CEA, the CFTC does not regulate forward contracts. Accordingly, the Commission believes that the requirements of Section 4s(e) do not apply to forward contracts.

C. Market Participants

1. Overview

The proposed regulations would impose requirements on SDs and MSPs for which there is no prudential regulator ("covered swap entities" or "CSEs"). Because different types of counterparties may pose different levels of risk, the requirements would vary in some respects depending on the category of counterparty. The proposed regulations would not impose margin requirements on non-financial end users.

Proposed § 23.151 would require each CSE to execute documentation regarding credit support arrangements that is consistent with the requirements of these rules with each counterparty. The documentation would specify in advance material terms such as how margin would be calculated, what types of assets would be permitted to be posted, what margin thresholds, if any, would apply, and where margin would be held. This provision is consistent with the documentation requirement recently proposed by the Commission as § 23.504.[6] Having comprehensive documentation in advance concerning these matters would allow each party to a swap to manage its risks more effectively throughout the life of the swap and to avoid disputes regarding issues such as valuation. The Commission solicits comment regarding whether it should require SDs and MSPs to document the procedures by which any disputes concerning the valuation of a swap or the valuation of assets collected or posted as initial or variation margin may be resolved.

Under rules being proposed by the prudential regulators for SDs and MSPs that are banks, the parties are allowed to make particular variation margin calculations pursuant to a qualifying master netting agreement. The Commission understands that this term will be defined under rules proposed by the prudential regulators to mean a legally enforceable agreement to offset positive and negative mark-to-market values of one or more swaps or security-based swaps that meet a number of specific criteria designed to ensure that these offset rights are fully enforceable, documented, and monitored by the covered swap entity.

As noted, the Commission has previously proposed § 23.504, which requires SDs and MSPs to have swap trading relationship documentation with each counterparty. Under proposed § 23.504(b)(1), this documentation "shall be in writing and shall include all terms governing the trading relationship between the swap dealer or major swap participant and its counterparty, including, without limitation, terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, governing law, valuation, and dispute resolution procedures."[7]

Under proposed § 23.600(c)(4)(v)(A), SDs and MSPs would be required to have risk management policies and procedures addressing legal risks associated with their business as swap dealers or major swap participants, including risks associated with "determinations that transactions and netting arrangements entered into have a sound legal basis."[8] Taken together, it is the Commission's belief that all SDs and MSPs entering into trading relationship documentation with their counterparties would be required to have a sound legal basis to determine that such agreements will be enforceable in accordance with their terms.

The Commission solicits comment regarding whether proposed §§ 23.501 and 23.600 are sufficient to ensure that SDs and MSPs have a sound legal basis for their swap documentation or whether the Commission should adopt the concept of "qualifying master netting agreements" from existing banking regulations.

[5] The Commission anticipates that the prudential regulators will publicly post their proposed rules on their Web sites, *see, e.g., http://www.fdic.gov/.*

[6] Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 76 FR 6715 (Feb. 8, 2011).

[7] *Id.*

[8] *See* Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants, 75 FR 71397, 71405 (Nov. 23, 2010).

2. Positions Between CSEs and Other SDs or MSPs

Proposed § 23.152 addresses initial margin and variation margin requirements for positions of CSEs with other SDs or MSPs. (The latter would include both SD/MSPs that are CSEs and SD/MSPs for which there is a prudential regulator.) The regulation would require CSEs to collect initial margin for every uncleared swap with another SD or MSP on or before the date of execution of the swap.[9] The proposed rule would require the CSEs to maintain initial margin from its counterparty equal to or greater than an amount calculated pursuant to proposed § 23.155, discussed below, until the swap is liquidated.[10] The credit support arrangements between a CSE and its counterparty would be prohibited from containing a threshold below which the CSE was not required to post initial margin, *i.e.,* zero thresholds would be required.

(In order to reduce transaction costs, proposed § 23.150 would establish a "minimum transfer amount" of $100,000. Initial and variation margin payments would not be required to be made if below that amount. This amount was selected in consultation with the prudential regulators. It represents an amount sufficiently small that the level of risk reduction might not be worth the transaction costs of moving the money. It only affects the timing of collection; it does not change the amount of margin that must be collected once the $100,000 level is exceeded.)

CSEs also would be required to collect variation margin for all trades with another SD or MSP. Again, zero thresholds would be required, and the obligation would continue on each business day until the swap is liquidated. The proposal contains a provision stating that a CSE would not be deemed to have violated its obligation to collect variation margin if it took certain steps. Specifically, if a counterparty failed to pay the required variation margin to the CSE, the CSE would be required to make the necessary efforts to attempt to collect the variation margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, or otherwise demonstrate upon request to the satisfaction of the Commission that it has made appropriate efforts to collect the required variation margin or commenced termination of the swap.

It is the nature of the dealer business that dealers are at the center of the markets in which they participate. Similarly, a major swap participant, by its terms, is a significant trader. Collectively, SDs and MSPs pose greater risk to the markets and the financial system than other swap market participants. Accordingly, under the mandate of Section 4s(e), the Commission believes that they should be required to collect margin from one another.

3. Positions Between CSEs and Financial Entities

Proposed § 23.153 addresses initial margin and variation margin requirements for positions between CSEs and financial entities. Proposed § 23.150 would define a financial entity as a counterparty that is not an SD or MSP and that is either: (i) A commodity pool as defined in Section 1a(5) of the Act; (ii) a private fund as defined in Section 202(a) of the Investment Advisors Act of 1940; (iii) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974; (iv) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in Section 4(k) of the Bank Holding Company Act of 1956; (v) a person that would be a financial entity described in (i) or (ii) if it were organized under the laws of the United States or any State thereof; (vi) the government of any foreign country or a political subdivision, agency, or instrumentality thereof; or (vii) any other person the Commission may designate. With three modifications discussed below, this definition tracks the definition in Section 2(h)(7)(C) of the Act that is used in connection with an exception from any applicable clearing mandate.

Item (v) of the proposed definition adds entities that would be a commodity pool or private fund if organized in the United States. The Commission believes that such entities would pose similar risks to those of similar entities located within the United States.

Item (vi) of the proposed definition adds any government of any foreign country or any political subdivision, agency, or instrumentality thereof. The Commission notes that these types of sovereign counterparties do not fit easily into the proposed rule's categories of financial and nonfinancial entities. In comparing the characteristics of sovereign counterparties with those of financial and nonfinancial entities, the Commission preliminarily believes that the financial condition of a sovereign will tend to be closely linked with the financial condition of its domestic banking system, through common effects of the business cycle on both government finances and bank losses, as well as through the safety net that many sovereigns provide to banks. Such a tight link with the health of its domestic banking system, and by extension with the broader global financial system, makes a sovereign counterparty similar to a financial entity both in the nature of the systemic risk and the risk to the safety and soundness of the covered swap entity. As a result, the Commission preliminarily believes that sovereign counterparties should be treated as financial entities for purposes of the proposed rule's margin requirements.

Item (vii) in the proposed definition permits the Commission to designate additional entities as financial entities. The Commission understands that the prudential regulators are proposing the same provision. This would enable regulators to accomplish the purposes of Section 4s in circumstances where they identify additional entities whose activities and risk profile warrant inclusion. The Commission solicits comment on whether these entities are appropriate, whether additional entities should be designated as financial entities, and what criteria should be applicable.

The Commission believes that financial entities, which generally are not using swaps to hedge or mitigate commercial risk, potentially pose greater risk to CSEs than non-financial entities. Accordingly, if a CSE chooses to expose itself to such risk, it should take steps to mitigate such risks.

Initial margin would be required to be collected by CSEs for every trade with a financial entity on or before the date of execution of the swap. The proposed rule would require the CSEs to maintain initial margin from its counterparty equal to or greater than an amount calculated pursuant to proposed § 23.155, discussed below, until the swap is liquidated.

[9] In previously proposed rules, execution has been defined to mean, "with respect to a swap transaction, an agreement by the counterparties (whether orally, in writing, electronically, or otherwise) to the terms of the swap transaction that legally binds the counterparties to such terms under applicable law." Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, 75 FR 81519, 81530 (Dec. 28, 2010). Additionally, swap transaction has been defined to mean "any event that results in a new swap or in a change to the terms of a swap, including execution, termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap." *Id.* at 81531.

[10] The use of the term "liquidated" in this context should be construed to include all ownership events related to that swap, including expiration or maturation.

Zero thresholds would be required except for certain financial entities [11] that: (i) Are subject to capital requirements established by a prudential regulator or a State insurance regulator; (ii) predominantly use swaps to hedge; and (iii) do not have significant swaps exposure.[12] The proposal set forth ranges within which the threshold would fall. These eligibility standards and ranges were established in consultation with the prudential regulators.

The Commission solicits comment on whether thresholds should be permitted at all, and if so, what entities should be eligible, and at what level they should be set. If the Commission determines to permit thresholds, it anticipates that the final rule would establish a single level rather than a range.

Similarly, variation margin would also be required to be collected by CSEs on all transactions with a financial entity. Zero thresholds would be required with the same exception discussed above for initial margin. Any applicable thresholds for initial and variation margin would be separate and therefore could be cumulative. The obligation would continue on each business day until the swap is liquidated.

The Commission notes that under the proposed rule each CSE would be required to collect variation margin from financial entities but would not be required to pay variation margin to them. This approach is consistent with what the prudential regulators are proposing in their margin rules. The rationale is that when an SD pays variation margin to an financial entity that is not subject to capital requirements, money is flowing from a regulated entity to an unregulated one. By following this approach in its proposed rules, the Commission is endeavoring to follow Section 4s(e)(D)(ii)'s requirement that Commission regulations on margin be comparable to those of the prudential regulators "to the maximum extent practicable."

The Commission wishes to highlight and solicits comment regarding the risk management effects of this approach and its appropriateness under Section 4s(e)(E)(3)(A) of the CEA. As noted above, two-way variation margin has been a keystone of the ability of DCOs to manage risk. Each day current exposure is removed from the market through the payment and collection of variation margin for all products and all participants regardless of their identity or financial resources.

If two-way variation margin were not required for uncleared swaps between CSEs and financial entities, the CSE's exposures may be allowed to accumulate. In contrast to initial margin, which is designed to cover potential future exposures, variation margin addresses actual current exposures, that is, losses that have already occurred. Unchecked accumulation of such exposures was one of the characteristics of the financial crisis which, in turn, led to the enactment of the Dodd-Frank Act.

Moreover, both payment and collection of variation margin help ensure the safety and soundness of the swap dealer or major swap participant. Daily collection helps the safety and soundness of the CSE by removing current exposure from each counterparty. But daily payment also helps safety and soundness by preventing the CSE from building up exposures that it cannot fulfill.

Finally, two-way variation would address the risk associated with the non-cleared swaps held as a swap dealer or major swap participant. Uncleared swaps are likely to be more customized and consequently trade in a less liquid market than cleared swaps. As a result, uncleared swaps might take a longer time and require a greater price premium to be liquidated than cleared swaps, particularly in a distressed market conditions. Failure to remove current exposures in advance of such a situation through daily, two-way variation margin could exacerbate any losses in the event of a SD or MSP default.

Accordingly, in addition to requesting comment on the proposed requirement for collection of variation margin set forth below as 23.153(b)(1), the Commission also requests comment on whether it should adopt an additional provision as follows:

For each uncleared swap between a covered swap entity and a financial entity, each covered swap entity shall pay variation margin as calculated pursuant to § 23.156 of this part directly to the financial entity or to a custodian selected pursuant to § 23.158 of this part. Such payments shall start on the business day after the swap is executed and continue each business day until the swap is liquidated.

Many of the considerations discussed above also might apply to two-way initial margin. The Commission solicits comments on whether two-way initial margin is appropriate for transactions between CSEs and financial entities.

4. Positions Between CSEs and Non-financial Entities

The proposal would not impose margin requirements on non-financial entities. Proposed § 23.150 would define a non-financial entity as a counterparty that is not a swap dealer, a major swap participant, or a financial entity. The Commission believes that such entities, which are using swaps to hedge commercial risk, pose less risk to CSEs than financial entities. Consistent with Congressional intent,[13] the proposal would not impose margin requirements on such positions.

The proposal would require that CSEs have credit support arrangements in place consistent with proposed § 23.504.[14] This would "help ensure the safety and soundness of the swap dealer or major swap participant" by providing clarity as its rights and obligations. The proposal would not dictate the terms of any margin arrangements other than stating that each covered swap entity may accept as margin from non-financial entities only assets for which the value is reasonably ascertainable on a periodic basis in a manner agreed to by the parties in the credit support arrangements.

The parties would be free to set initial margin and variation margin requirements in their discretion and any thresholds agreed upon by the parties would be permitted. The proposal would require that CSEs pay and collect initial margin and variation margin as set forth in their agreements with their counterparties. The Commission understands that the proposal differs

[11] The prudential regulators proposed rulemaking refers to these financial entities as "low-risk" financial entities based on the relative risk posed by the type of counterparty.

[12] Significant swap exposure is defined by reference to rules previously proposed by the Commission. *See* Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant" 75 FR 80174 (Dec. 21, 2010).

[13] Letter from Chairman Debbie Stabenow, Committee on Agriculture, Nutrition and Forestry, U.S. Senate, Chairman Frank D. Lucas, Committee on Agriculture, United States House of Representatives, Chairman Tim Johnson, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, and Chairman Spencer Bachus, Committee on Financial Services, United States House of Representatives to Secretary Timothy Geithner, Department of Treasury, Chairman Gary Gensler, U.S. Commodity Futures Trading Commission, Chairman Ben Bernanke, Federal Reserve Board, and Chairman Mary Shapiro, U.S. Securities and Exchange Commission (April 6, 2011); Letter from Chairman Christopher Dodd, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, and Chairman Blanche Lincoln, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, to Chairman Barney Frank, Financial Services Committee, United States House of Representatives, and Chairman Collin Peterson, Committee on Agriculture, United States House of Representatives (June 30, 2010); *see also* 156 Cong. Rec. S5904 (daily ed. July 15, 2010) (statement of Sen. Lincoln)

[14] Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 76 FR 6715 (Feb. 8, 2011).

from the proposal of the prudential regulators which would require that CSEs collect variation margin from non-financial entities at least once per week, if applicable thresholds were exceeded.

The proposal would require each CSE to calculate hypothetical initial and variation margin amounts each day for positions held by non-financial entities. That is, the CSE must calculate what the margin amounts would be if the counterparty were another SD or MSP.[15] These calculations would serve as risk management tools that would assist the CSE in measuring its exposure. Moreover, they would likely be necessary for CSEs in computing any capital requirements that might be applicable.

D. Calculation of Initial Margin

Proposed § 23.155 addresses how initial margin should be calculated. Models meeting specified standards would be permissible. If no model meeting the standards of the rule is available, the CSE would set margin in accordance with an alternative approach described below.

1. Models

Proposed § 23.155(b) sets forth requirements for models. Under proposed § 23.155(b)(1), the following would be eligible: (i) A model currently in use for margining cleared swaps by a DCO, (ii) a model currently in use for margining uncleared swaps by an entity subject to regular assessment by a prudential regulator, or (iii) a model available for licensing to any market participant by a vendor. Unlike the banking institutions that will be overseen by the prudential regulators, the CSEs subject to the Commissions regulations may not have proprietary models. Moreover, given current budget constraints, the Commission does not have the resources to review numerous models individually. Accordingly, at this time, the Commission is proposing to permit the use of certain non-proprietary models. The proposal, however, also contains a provision which would permit the Commission to issue an order that would allow the use of proprietary models in the future should the Commission obtain sufficient resources.

This is an aspect of the proposal that differs from the prudential regulators' approach. Because many banks already have proprietary models, and because the prudential regulators have the resources to review individual proprietary models, the prudential regulators would not permit the use of DCO models or the use of models licensed to market participants. The Commission solicits comment on the feasibility of the use of DCO models or third party models by CSEs for margining uncleared swaps.

Proposed § 23.155(b)(2) further requires that a model meet specified standards. The following are some of the elements that would be required in a model:

- The valuation of a swap must take into account all significant, identifiable risk factors, including any non-linear risk characteristics;
- The valuation of a swap must be based on pricing sources that are accurate and reliable;
- The model must set margin to cover at least 99% of price changes by product and by portfolio over at least a 10-day liquidation horizon;
- The model must be validated by an independent third party before being used and annually thereafter;
- The swap dealer or major swap participant must conduct back testing and stress testing of the model on a regular basis; and
- If the swap product is also offered for non-mandatory clearing by a registered DCO, the initial margin collected may not be less than the initial margin required by the DCO.

Parties could add individualized credit surcharges to the margin amount produced by the model.

These standards are consistent with the standards that the Commission understands that the prudential regulators are proposing. They are also similar to the standards the Commission has used in evaluating DCO margin models, and that prudential regulators have used in assessing bank margin models.

Proposed § 23.155(b)(3) would require that models be filed with the Commission. The filing would include a complete explanation of:

- The manner in which the model meets the requirements of this section;
- The mechanics of the model;
- The theoretical basis of the model;
- The empirical support for the model; and
- Any independent third party validation of the model.

Under proposed § 23.155(b)(4), the Commission could approve or deny the application by an SD or MSP to use an initial margin model, or approve an amendment to the application, in whole or in part, subject to any conditions or limitations the Commission may require, if the Commission finds the approval to be necessary or appropriate in the public interest after determining, among other things, whether the applicant had met the requirements of the section and was in compliance with other applicable rules promulgated under the Act and by self-regulatory organizations.

Under proposed § 23.155(b)(4), the Commission also could at any time require a CSE to provide further data or analysis concerning the amount of initial margin required or on deposit. In addition, the Commission could at any time require a CSE to modify the model to address potential vulnerabilities. These measures are designed to be prudent safeguards to be used to address weaknesses that may only become apparent over time.

2. *Alternative Method*

Proposed § 23.155(c) provides that if a model meeting the standards of the rule is not used, margin must be calculated in accordance with a specified alternative method. The Commission determined that a potentially effective way to measure the risk of uncleared swaps in cases where models were unavailable would be to base the margin requirements on the margin requirements for related cleared products.

Proposed § 23.155(c)(1) provides that the CSE identify in the credit support arrangements the swap cleared by a DCO in the same asset class as the uncleared swap for which the terms and conditions most closely approximate the terms and conditions of the uncleared swap. If there is no cleared swap whose terms and conditions closely approximate the uncleared swap, the swap dealer or major swap participant must identify in the credit support arrangements the futures contract cleared by a DCO in the same asset class as the uncleared swap which most closely approximates the uncleared swap and would be most likely to be used to hedge the uncleared swap.

The CSE would ascertain the margin the DCO would require for the position. The CSE would then multiply the amount for a cleared swap by 2.0 in order to determine the margin required for the uncleared swap or multiply the amount for a cleared futures contract by 4.4 in order to determine the margin required for the uncleared swap.

The multiplier is calculated by comparing the anticipated liquidation time horizon for the cleared product to the anticipated liquidation time horizon for the uncleared swap and then applying several add-ons for additional risk factors. To illustrate, typically, a cleared futures contract is margined

[15] This is consistent with the requirement set forth in Section 4s(h)(3)(B)(iii)(II) that SDs and MSPs must disclose to counterparties who are not SDs or MSPs a daily mark for uncleared swaps.

using a one-day liquidation time period, while under the proposal, an uncleared swap would be margined using a 10-day period. A standard way to measure the increase in risk over the longer period is to multiply the margin for the shorter period by the square root of the longer period. The square root of 10 is 3.162.

The proposal would increase this number to address several additional risks. A 10% cushion would be added to reflect that a 10-day period may be insufficient for some customized products. An additional 10% cushion would be added to reflect that the square root method assumes a normal distribution of prices which might not be true for customized products. An additional 20% cushion would be added to reflect the basis risk between the cleared and uncleared products. Taking into account these add-ons yields a total multiplier of 4.4.

A similar calculation for cleared swaps yields a multiplier of 2.0. The margin for cleared swaps generally would be higher than the margin for cleared futures because cleared swaps generally would be subject to a 5-day liquidation time.[16] The greater similarity in the anticipated liquidation time results in a smaller multiplier when comparing uncleared swaps to cleared swaps than when comparing uncleared swaps to cleared futures.

This alternative model is another aspect of the proposal that differs from the prudential regulators' approach. Their alternative uses percentages of notional value. The Commission considered using a similar approach but recognized that the use of notional percentages is an imprecise measure that does not capture the nuances of risk and it appeared to be more appropriate to base initial margins for uncleared swaps on those required by DCOs for similar cleared swaps. The Commission invites comment on the relative merits of the two alternative approaches. In this regard, the Commission requests comment on the appropriateness of the levels of initial margin set forth in the prudential regulators' alternative approach.

Proposed § 23.155(c)(2) addresses portfolio offsets for swaps with correlated risk profiles under the alternative method. Again, the proposal is conservative. Reductions in margin based on offsetting risk characteristics of products would not be permitted across asset classes except between currencies and interest rates. Any reductions in margin based on offsetting risk characteristics of products within an asset class must have a sound theoretical basis and significant empirical support. No reduction may exceed 50% of the amount that would be required for the swap in the absence of a reduction.

Proposed § 23.155(c)(3) provides for modifications for particular products or positions. Each CSE would be required to monitor the coverage provided by margin established pursuant to this paragraph (c) and collect additional margin if appropriate to address the risk posed by particular products or positions.

Under proposed § 23.155(c)(4), the Commission could at any time require the CSE to post or collect additional margin because of additional risk posed by a particular product. Furthermore, the Commission could at any time require a CSE to post or collect additional margin because of additional risk posed by a particular party to the swap. For example, if the Commission were to learn that a particular counterparty was experiencing financial difficulty, it might need to take steps to ensure that the CSE held margin appropriate for the risk associated with the position. These measures are designed to be prudent safeguards similar to those discussed above.

E. Calculation of Variation Margin

Proposed § 23.156 addresses how variation margin should be calculated. Proposed § 23.156(b) sets forth several requirements. The valuation of each swap must be determined pursuant to a method agreed upon by the parties in the credit support arrangements. It must be consistent with the requirements set forth in proposed Section 23.504(b) of this part.[17] It must be set forth with sufficient specificity to allow the counterparty, the Commission, and any applicable prudential regulator to calculate the requirement independently.

Under proposed § 23.155(c), the Commission could at any time require the CSE to provide further data or analysis concerning the methodology. Furthermore, the Commission could at any time require a CSE to modify the methodology to address potential vulnerabilities. These measures are designed to be prudent safeguards to be used to address weaknesses that may only become apparent over time.

As noted above, the Commission previously proposed § 23.504(b)(4), which would require that the swap trading documentation include written documentation in which the parties agree on the methods, procedures, rules and inputs for determining the value of each swap at any time from execution to the termination, maturity, or expiration of the swap. The agreed methods, procedures, rules and inputs would be required to constitute a complete and independently verifiable methodology for valuing each swap entered into between the parties. Proposed § 23.504(b)(4)(iii) would require that the methodology include complete alternative methods for determining the value of the swap in the event that one or more inputs to the methodology become unavailable or fail, such as during times of market stress or illiquidity. The provisions proposed in this release are intended together with those previously proposed rules to ensure that all swap positions are accurately and reliably marked to market and all valuation disputes are resolved in a timely manner, thereby reducing risk.

F. Forms of Margin

Proposed § 23.157 addresses the types of assets that would be acceptable as margin in transactions involving CSEs. There are differences between initial margin and variation margin and within each category depending on counterparties.

1. *Initial Margin*

Proposed § 23.157(a)(2) provides that CSEs may only accept as initial margin from SDs, MSPs, or financial entities, the following assets:

- Immediately available cash funds denominated in U.S. dollars or the currency in which payment obligations under the swap are required to be settled;
- Any obligation which is a direct obligation of, or fully guaranteed as to principal and interest by, the United States or an agency of the United States; or
- Any senior debt obligation of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or any obligation that is an "insured obligation," as that term is defined in 12 U.S.C. 2277a(3), of a Farm Credit System bank.

[16] In rules the Commission previously proposed for DCOs, cleared swaps traded on a swap execution facility or executed bilaterally would be subject to a minimum five-day liquidation period for purposes of calculating initial margin, whereas swaps traded on a designated contract market may be subject to a minimum one-day requirement. Risk Management Requirements for Derivatives Clearing Organizations, 76 FR 3698, 3704–05 (Jan. 20, 2011). To the extent that a cleared swap was subject to the one-day requirement, the appropriate multiplier would be the same as the futures multiplier.

[17] Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 76 FR 6715 (Feb. 8, 2011).

These are assets for which there are deep and liquid markets and, therefore, assets that can be readily valued and easily liquidated. The Commission requests comment on whether additional types of assets should be acceptable.

To the extent a non-financial entity and a CSE have agreed that the non-financial entity will post initial margin, proposed § 23.157(a)(3) provides flexibility for initial margin posted by non-financial entities with CSEs as to what assets are permissible. The standard is simply that the value of the asset is reasonably ascertainable on a periodic basis. This is in accordance with the statement in Section 4s(e)(3)(C) that the Commission permit the use of non-cash collateral as it determines consistent with preserving the financial integrity of the markets and preserving the stability of the United States financial system. The Commission understands that current market practice would support a periodic valuation of the assets used as noncash collateral, but solicits comment from market participants regarding how practical the requirement is. In particular, the Commission requests comment on how frequently such collateral could and should be valued.

The Commission understands that this differs from the proposal of the prudential regulators. The prudential regulators would require CSEs to collect as initial margin for non-financial entities only the assets listed previously to cover any exposure above the credit exposure limit.

2. Variation Margin

Proposed § 23.157(b) would require that variation payments by CSEs, or financial entities be in cash or United States Treasury securities. This is consistent with the general purpose of variation margin of eliminating current exposure through the use of liquid, easily valued assets.

To the extent a non-financial entity and a CSE have agreed that the non-financial entity will post variation margin, proposed § 23.157(b)(3) provides flexibility for variation margin posted by non-financial entities with CSEs as to what assets are permissible. The standard is simply that the value of the asset is reasonably ascertainable on a periodic basis. As was the case for initial margin, this is in accordance with the statement in Section 4s(e)(3)(C) that the Commission permit the use of non-cash collateral.

Proposed § 23.157(c) establishes haircuts for assets received by a CSE from an SD, MSP, or financial entity as follows:

MARGIN VALUE RANGES FOR NON-CASH COLLATERAL

[% of market value]

	Duration (years)		
	0–5	5–10	> 10
U.S. Treasuries and Fully Guaranteed Agencies:			
Bills/Notes/Bonds/Inflation Indexed	[98–100]	[95–99]	[94–98]
Zero Coupon, STRIPs	[97–99]	[94–98]	[90–94]
FHFA–Regulated Institutions Obligations and Insured Obligations of FCS Banks:			
Bills/Notes/Bonds	[96–100]	[94–98]	[93–97]
Zero Coupon	[95–99]	[93–97]	[89–93]

These haircuts were based on a consultation with prudential regulators who use them in other contexts.

Proposed § 23.157(d) would authorize certain actions by the Commission regarding margin assets. The Commission could:

- Require a CSE to provide further data or analysis concerning any margin asset posted or received;
- Require a CSE to replace a margin asset posted to a counterparty with a different margin asset to address potential risks posed by the asset;
- Require a CSE to require a counterparty that is an SD, MSP, or a financial entity to replace a margin asset posted with the CSE with a different margin asset to address potential risks posed by the asset;
- Require a CSE to provide further data or analysis concerning margin haircuts; or
- Require a CSE to modify a margin haircut applied to an asset received from an SD or MSP, or a financial entity to address potential risks posed by the asset.

All these actions are intended to be methods for ensuring the safety and soundness of the CSE and protecting the financial system.

G. Custodial Arrangements

Proposed § 23.158 addresses custodial arrangements. The proposal is intended to safeguard margin assets.

Under proposed § 23.158(a) each CSE must offer each counterparty the opportunity to select a custodian that is not affiliated with the CSE. Further, each CSE must hold initial margin received from a counterparty that is an SD or MSP at a custodian that is independent of the CSE and the counterparty. Similarly, a CSE that posts initial margin with a counterparty that is an SD or MSP must require the counterparty to hold the initial margin at a custodian that is independent of the SD or MSP and the counterparty.

Further, the proposal would require that the custodian be subject to the same insolvency regime as the CSE. This would facilitate quicker recovery of margin assets.

Under proposed § 23.158(b)(1) each CSE must specify in each custodial agreement that the custodian may not rehypothecate margin assets or reinvest them in assets that are not permitted forms of margin. Further, upon certification to the custodian in accordance with the provisions of 23.602(b)(1) by a party that it is entitled to receipt of margin, the custodian must release margin to the certifying party.[18]

Under proposed § 23.158(b)(2), upon receipt of initial margin from a counterparty, no CSE may post such assets as margin for a swap, a security-based swap, a commodity for future delivery, a security, a security futures product, or any other product subject to margin. These provisions are designed to prevent the same asset from being passed around as margin for multiple positions.

Under proposed § 23.158(c), the Commission may at any time require a CSE to provide further data or analysis concerning any custodian. Further, the Commission may at any time require a CSE participant to move assets held on behalf of a counterparty to another custodian to address risks posed by the

[18] Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy, 75 FR 75432 (Dec. 3, 2010).

original custodian. These provisions are designed to protect the assets of the parties to the contract.

H. Request for Comment

The Commission requests comment on all aspects of the proposed rules regarding margin. In particular, the Commission requests comment on the following:

- Are proposed §§ 23.501 and 23.600 sufficient to ensure that SDs and MSPs have a sound legal basis for their swap documentation, or should the Commission adopt the concept of "qualifying master netting agreements" from existing banking regulations?
- It is the Commission's understanding that the prudential regulators would require SDs and MSPs that are banks to appropriately take into account and address the credit risk posed by the counterparty and the risks of uncleared swaps, and further the prudential authorities would require SDs and MSPs that are banks to enforce those credit limit policies, or credit thresholds, with regard to the banks' counterparties. The Commission previously proposed § 23.600(c)(1),[19] which would require SDs and MSPs to set risk tolerance limits for themselves. One of the critical risk limits in any risk management program would relate to credit risk. The Commission solicits comment regarding whether it should adopt a requirement, similar to the one proposed by the prudential authorities, requiring non-bank SDs and MSPs to enforce their credit risk limits as a matter of policy.
- What effects will the proposed rules have on the overall liquidity of the financial markets?
- Would the proposed rules have differing effects on liquidity by asset class?
- Would the proposed rules have differing effects on liquidity by class of participant?
- Should the Commission permit thresholds for either initial margin or variation margin?
- If so, what standards should apply?
- Is the proposed definition of financial entity appropriate?
- Should the Commission instead define financial entity as a person that is not eligible to claim an exception from mandatory clearing under section 2(h)(7) of the Act?
- Should the Commission exercise authority to designate additional persons as financial entities?
- If so, what standards should apply?
- Do the definitions adequately identify financial entities that have different levels of risk?
- Should nonfinancial entities also be separated according to levels of risk?
- If so, on what basis (*e.g.,* in a manner similar to the classification of financial entities)?
- If so, how should the requirement apply differently to such nonfinancial entities?
- Is the classification of sovereign counterparties as financial entities appropriate in light of the risks posed by these counterparties?
- If not, what other classification would be appropriate, and why?
- Should sovereign counterparties receive their own distinct counterparty classification that is different from those classifications in the proposed rule?
- If so, why?
- How should the permitted uncollateralized exposures to a sovereign counterparty differ from those that are allowed for financial or non-financial entities?
- Is it appropriate to distinguish between financial and non-financial counterparties for the purpose of this risk-based approach?
- Does the proposed rule require greater clarity with respect to the treatment of U.S. Federal, State, or municipal government counterparties? If so, how should such counterparties be treated?
- Should a counterparty that is a bank holding company or nonbank financial firm subject to enhanced prudential standards under Section 165 of the Dodd-Frank Act be treated similarly to swap entity counterparties?
- Should counterparties that are small financial institutions using derivatives to hedge their risks be treated in the same manner as non-financial entities for purposes of the margin requirements?
- Would requiring a CSE to post initial margin to non-SD/MSP counterparties reduce systemic risk (*e.g.,* by reducing leverage in the financial system or reducing systemic vulnerability to the failure of a covered swap entity)?
- Are there alternatives that address those risks more efficiently or with greater transparency?
- Would requiring a CSE to post initial margin to non-SD/MSP counterparties raise any concerns with respect to the safety and soundness of the CSE, taking into consideration the requirement that initial margin be segregated and held with a third party custodian?
- Would requiring a CSE to post initial margin to non-SD/MSP counterparties remove one or more incentives for that CSE to choose, where possible, to structure a transaction so that it need not be cleared through a DCO in order to avoid pledging initial margin?
- Would this approach be consistent with the statutory factors the Commission is directed to take into account under sections 4s of the Act?
- Is one-way initial margin in trades between CSEs and financial entities consistent with the requirement under Section 4s(e) that margin requirements offset the greater risk arising from the use of swaps that are not cleared?
- Is one-way variation margin in trades between CSEs and financial entities consistent with the requirement under Section 4s(e) that margin requirements offset the greater risk arising from the use of swaps that are not cleared?
- Is one-way initial margin in trades between CSEs and financial entities consistent with the requirement under Section 4s(e) that margin requirements help ensure the safety and soundness of SDs and MSPs?
- Is one-way variation margin in trades between CSEs and financial entities consistent with the requirement under Section 4s(e) that margin requirements help ensure the safety and soundness of SDs and MSPs?
- Is one-way initial margin in trades between CSEs and financial entities consistent with the requirement under Section 4s(e) that margin requirements be appropriate for the risks associated with uncleared swaps?
- Is one-way variation margin in trades between CSEs and financial entities consistent with the requirement under Section 4s(e) that margin requirements be appropriate for the risks associated with uncleared swaps?
- Is one-way initial margin in trades between CSEs and financial entities consistent with the requirement under section 15(b) that the Commission endeavor to take the least anticompetitive means of achieving the objectives of the Act?
- Is one-way variation margin in trades between CSEs and financial entities consistent with the requirement under section 15(b) that the Commission endeavor to take the least anticompetitive means of achieving the objectives of the Act?

[19] *See* Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants, 75 FR 71397, 71404 (Nov. 23, 2010) (requiring that SDs and MSPs "take into account market, credit, liquidity, foreign currency, legal, operational, settlement, and any other applicable risks together with a description of the risk tolerance limits set by the swap dealer or major swap participant and the underlying methodology"). Additionally, the risk tolerance limits would have to be reviewed and approved quarterly by senior management and annually by the governing body, and exceptions to risk tolerance limits would require prior approval of a supervisor in the risk management unit.

- If initial and variation margin are not required to be paid by CSEs to non-SDs/MSPs, does it create an expectation that a swap dealer subject to oversight by a prudential regulator is more creditworthy than other swap dealers because it might receive a financial backstop?
- What are the bankruptcy implications for counterparties of SDs or MSPs if initial and variation margin are not required to be paid by CSEs to non-SDs/MSPs?
- Is the minimum transfer amount appropriate?
- Are there widely-available initial margin models that could be used?
- Is the adaptation of DCO models for use for uncleared swaps feasible?
- Should models approved by foreign regulators be permitted?
- Should models be limited to models based on value-at-risk concepts, or are other models appropriate to measure initial margin?
- If so, how should those models apply and be incorporated into the various aspects of the proposed rule?
- To the extent that the parties' swap trading relationship documentation would permit portfolio margining of swaps, should SDs and MSPs be permitted to include swaps executed prior to the effective date of these margin rules in their calculation of initial margin, provided that the parties would include all swaps covered by that documentation (*i.e.,* they would not be permitted to selectively include certain swaps in the portfolio)?
- Should offsetting exposures, diversification, and other hedging benefits be recognized more broadly across substantially dissimilar asset classes?
- If so, what limits, if any, would be placed on the recognition of offsetting exposures, diversification, and other hedging benefits, and how could these be measured, monitored and validated on an ongoing and consistent basis across substantially dissimilar asset classes?
- Should the minimum time horizon vary across swaps? For example, should it vary based on asset class?
- If so, how should the horizons differ and what would be the basis for the different horizons?
- Can initial margin models be calibrated to a stress period in a transparent and consistent manner?
- Are there any other systemic risk implications of requiring that initial margin be calibrated to a period of financial stress rather than to a recent or normal historical period?
- Is the proposed prudential standard for initial margin of a 99th percentile price move over a 10-day horizon, calibrated using historical data incorporating a period of significant financial stress, appropriate?
- Is a 10-day horizon sufficient to cover the likely liquidation period on uncleared swaps?
- Will the requirement to calibrate to a period of significant financial stress reduce the potential procyclicality of the margin requirement sufficiently? For example, would a minimum margin requirement as a backstop to the modeled initial margin amounts be a prudent approach to addressing procyclicality concerns?
- Is "period of significant financial stress" a well-understood concept? How might it be clarified?
- What would be the benefits and costs of replacing the requirement to calibrate the initial margin model using a period of significant financial stress with a requirement to calibrate the initial margin model using a longer historical data sample (such as 10 years), as an alternative way to reduce the potential procyclicality of the margin requirement?
- Should market participants be able to comply with the requirement to calibrate the initial margin requirement to a historical period of significant financial stress for newer products with little, if any, market history?
- If so, how?
- Should CSEs be required to disclose their models to their counterparties who are not SDs or MSPs?
- How closely does the alternative methodology approximate risk?
- Would a percentage of notional value approach be appropriate under any circumstances?
- With respect to either alternative for calculating initial margin requirements, should swap positions that pose no counterparty risk to the covered swap entity, such as a sold call option with the full premium paid at inception of the trade, be excluded from the initial margin calculation?
- Is the list of acceptable forms of margin appropriate?
- Should the types of eligible collateral listed be broadened to other types of assets (*e.g.* securities backed by high-quality mortgages or issues with a third-party guarantee)?
- If so, how might the systemic risk issue be effectively mitigated?
- Should the types of eligible collateral listed be broadened to include immediately-available cash funds denominated in foreign currency, even where such currency is not the currency in which payment obligations under the swap are required to be settled?
- If so, which currencies (*e.g.,* those accepted by a derivatives clearing organization as initial margin for a cleared swap)?
- If so, what haircut, if any, should apply to such foreign currency?
- What criteria and factors could be used to determine the set of acceptable non-cash collateral?
- How could appropriate haircuts be determined for valuing these assets for margin purposes?
- Should the types of eligible collateral listed be broadened to include foreign sovereign debt securities?
- If so, which foreign sovereign debt securities (*e.g.,* those accepted by a derivatives clearing organization as initial margin for a cleared swap)?
- If so, what haircut, if any, should apply?
- Should fixed income securities issued by a well-known seasoned issuer that has a high credit standing, are unsubordinated, historically display low volatility, are traded in highly liquid markets, and have valuations that are readily calculated be added to the list of eligible collateral for initial margin?
- If so, how should the concept of a "high credit standing" be defined in a way that does not reference credit ratings?
- Should there be any limits on the types of collateral accepted by CSEs from non-financial entities?
- The proposal states that each covered swap entity shall accept as margin from non-financial entities only assets for which the value is reasonably ascertainable on a periodic basis in a manner agreed to by the parties in the credit support arrangements. Should the Commission be more specific with regard to how non-traditional collateral should be valued?
- Should the Commission be more specific with regard to how frequently margin assets should be valued?
- Is the table of haircuts appropriate?
- Are the proposed custodial arrangements appropriate?
- Is it necessary to require segregation of initial margin in order to address the systemic risk issues discussed above?
- What alternatives to segregation would effectively address these systemic risk issues?
- What are the potential operational, liquidity and credit costs of requiring segregation of initial margin by swap entities?
- What would be the expected liquidity impact and cost of the proposed segregation requirement on market participants?
- How can the impact of the proposed rule on the liquidity and costs of swaps market participants be mitigated?

- Are the limitations placed on rehypothecation and reinvestment under the proposed rule appropriate or necessary?
- Would additional or alternative limitations be appropriate?
- Should certain forms of rehypothecation (*e.g.,* the lending of securities pledged as collateral) or additional types of reinvestment be permitted?
- Is the proposed rule's requirement that the custodian must be located in a jurisdiction that applies the same insolvency regime to the custodian as would apply to the covered swap entity necessary or appropriate?
- Would additional or alternative requirements regarding the location of the custodian be appropriate?
- Are there circumstances where rehypothecation should be permitted?
- What role could self-regulatory organizations play in overseeing compliance with the proposed regulations?
- In designing these rules, the Commission has taken care to minimize the burden on those parties that will not be registered with the Commission as SDs and MSPs. To the extent that market participants believe that additional measures should be taken to reduce the burden or increase the benefits of documenting swap transactions, the Commission welcomes all comments.
- Pursuant to Section 716, certain "push-out" entities might initially be subject to the margin rules of the prudential regulators, but by July of 2013 would come under the margin rules of the Commission. The Commission requests comment on what steps would be appropriate to facilitate a smooth transition for such entities and their counterparties.
- The Commission recognizes that there will be differences in the size and scope of the business of particular SDs and MSPs. Therefore, comments are solicited on whether certain provisions of the proposed regulations should be modified or adjusted to reflect the differences among SDs and MSPs or differences among asset classes.
- How long would SDs and MSPs require to come into compliance with the proposed rules? Will compliance take less time for swaps between such registrants and longer for swaps between registrants and non-registrants?

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities.[20] The Commission previously has established certain definitions of "small entities" to be used in evaluating the impact of its regulations on small entities in accordance with the RFA.[21] The proposed regulations would affect SDs and MSPs.

SDs and MSPs are new categories of registrants. Accordingly, the Commission has not previously addressed the question of whether such persons are, in fact, small entities for purposes of the RFA. The Commission previously has determined, however, that futures commission merchants ("FCMs") should not be considered to be small entities for purposes of the RFA.[22] The Commission's determination was based, in part, upon the obligation of FCMs to meet the minimum financial requirements established by the Commission to enhance the protection of customers' segregated funds and protect the financial condition of FCMs generally.[23] Like FCMs, SDs will be subject to minimum capital and margin requirements and are expected to comprise the largest global financial firms. The Commission is required to exempt from SD registration any entities that engage in a de minimis level of swaps dealing in connection with transactions with or on behalf of customers. The Commission believes that this exemption would exclude small entities from registration. Accordingly, for purposes of the RFA for this rulemaking, the Commission is hereby determining that SDs are not "small entities" for essentially the same reasons that FCMs have previously been determined not to be small entities and in light of the exemption from the definition of SD for those engaging in a de minimis level of swap dealing.

The Commission also has previously determined that large traders are not "small entities" for RFA purposes.[24] In that determination, the Commission considered that a large trading position was indicative of the size of the business. MSPs, by statutory definition, maintain substantial positions in swaps or maintain outstanding swap positions that create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets. Accordingly, for purposes of the RFA for this rulemaking, the Commission is hereby determining that MSPs are not "small entities" for essentially the same reasons that large traders have previously been determined not to be small entities.

The Commission also previously has determined that ECPs are not small entities for RFA purposes. Because ECPs are not small entities, and persons not meeting the definition of ECP may not conduct transactions in uncleared swaps, the Commission need not conduct a regulatory flexibility analysis respecting the effect of these proposed rules on ECPs.

Accordingly, this proposed rule will not have a significant economic effect on any small entity. Therefore, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)[25] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. This proposed rulemaking would result in the collection of information requirements within the meaning of the PRA, as discussed below. The collections of information that are proposed by this rulemaking are found in proposed § 23.151 and § 23.155 and are necessary to implement new Section 4s(e) of the CEA, which expressly requires the Commission to adopt rules governing margin requirements for SDs and MSPs. For the sake of operational efficiency, the Commission will be submitting a consolidated PRA proposal for both the capital and margin rules to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

Collection of Information. (Regulations and Forms Pertaining to the Financial Integrity of the Marketplace, OMB Control Number 3038–0024.)

C. Cost-Benefit Analysis

Section 15(a) of the CEA[26] requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the CEA. Section 15(a) specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and

[20] 5 U.S.C. 601 *et seq.*

[21] 47 FR 18618 (Apr. 30, 1982).

[22] *Id.* at 18619.

[23] *Id.*

[24] *Id.* at 18620.

[25] 44 U.S.C. 3501 *et seq.*

[26] 7 U.S.C. 19(a).

financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular regulation is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

Summary of proposed requirements. The proposed regulations would implement certain provisions of section 731 of the Dodd-Frank Act, which adds new sections 4s(e) of the CEA. Under the proposal, each CSE would be required to execute swap trading relationship documentation regarding credit support arrangements with each swap counterparty, including other SDs or MSPs. The proposed regulations also would require each CSE to calculate and to collect from its counterparties, that are SDs, MSPs, or financial entities, initial margin for each bilateral swap transaction that was not cleared by or through a derivatives clearing organization. The proposal also would requires each CSE to calculate each business day, and collect from its counterparties, that are SDs, MSPs, or financial entities, variation margin for each bilateral swap transaction that is not cleared by or through a derivatives clearing organization. CSEs, however, are not required to collect initial margin or exchange variation margin with a counterparty that qualifies as a non-financial entity.

Costs. The Commission recognizes that to the extent SDs and MSPs currently do not post initial margin with one another, and have thresholds for variation margin, the proposal will impose costs upon them. The Commission further recognizes that to the extent that financial entities currently do not post initial margin or have high variation margin thresholds, the proposal will impose costs upon them.

The Commission notes that while the amounts of initial margin that would be required to be posted would be substantial, initial margin is a performance bond. Thus, the cost is not equal to the total initial margin posted, but rather the opportunity cost of immobilizing those assets. That is, SDs, MSPs, and financial entities would likely receive a lower return on the resources posted as margin than they would receive if they were free to apply those resources to other uses.

With respect to variation margin, sound risk management dictates that counterparties mark open positions to the market. Therefore, the costs here would also be opportunity costs. That is, to the extent SDs, MSPs, and financial entities currently have variation margin thresholds, they might be required to pay variation margin more frequently or earlier than would occur in the absence of the rule.

The Commission does not believe that the requirement that the parties document their credit support arrangements will impose significant costs. The Commission understands that such documentation is widespread if not universal.

Benefits. The Commission believes that the benefits of the proposal are very significant. The economy recently experienced a severe recession. A key contributing factor was the problems suffered by large institutions in the financial services sector. Those problems were, in part, attributable to positions those firms held in swaps.

Many of those firms are likely to be SDs, MSPs, or financial entities. As discussed more fully above, the Commission believes that the proposed margin requirements will significantly decrease the risk that SDs, MSPs, and financial entities will incur such extreme losses on their swap positions as to imperil the financial system of the United States. In addition to this systemic benefit, the proposal would benefit each of the individual participants in the swaps market by increasing the security of their positions as well as the financial integrity of their counterparties. In this regard, the Commission notes that the requirements proposed here are substantially the same as the requirements that the prudential regulators are proposing.

In sum, the Commission believes that the benefits to the overall financial system, and to the individual participants in the swaps market, outweigh the costs to those participants.

Public Comment. The Commission invites public comment on its cost-benefit considerations. Commentators are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the Proposal with their comment letters.

List of Subjects in 17 CFR Part 23

Swaps, Swap dealers, Major swap participants, Capital and margin requirements.

For the reasons stated in this release, the Commission proposes to amend 17 CFR part 23, as proposed to be added at 75 FR 71379, published November 23, 2010, as follows:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

1. The authority citation for part 23 to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

2. Subpart E is added to read as follows:

Subpart E—Capital and Margin Requirements for Swap Dealers and Major Swap Participants

Sec.

Subpart E—Capital and Margin Requirements for Swap Dealers and Major Swap Participants

§§ 23.100 through 23.149 [Reserved]

§ 23.150 Definitions applicable to margin requirements.

For the purposes of §§ 23.150 through 23.158 of this part:

Asset class means a group of products that are based on similar types of underlying assets. Swaps shall be grouped within the following asset classes: agricultural, credit, currency, energy, equity, interest rate, metals, and other.

Back test means a test that compares initial margin requirements with historical price changes to determine the extent of actual margin coverage.

Counterparty means the person opposite whom a covered swap entity executes a swap.

Covered swap entity means a swap dealer or major swap participant for which there is no prudential regulator.

Custodian means a person selected by the parties to a swap to hold margin on their behalf.

Financial entity means a counterparty that is not a swap dealer or a major swap participant and that is one of the following:

(1) A commodity pool as defined in Section 1a(5) of the Act,

(2) A private fund as defined in Section 202(a) of the Investment Advisors Act of 1940,

(3) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974,

(4) A person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in Section 4(k) of the Bank Holding Company Act of 1956,

(5) A person that would be a financial entity described in paragraph (1) or (2) if it were organized under the laws of the United States or any State thereof;

(6) The government of any foreign country or a political subdivision, agency, or instrumentality thereof; or

(7) Any other person the Commission may designate.

Initial margin means money, securities, or property posted by a party to a swap as performance bond to cover potential future exposures arising from changes in the market value of the position.

Liquidation time horizon means the time period needed to replace a swap.

Minimum transfer amount means an initial margin or variation margin amount that is less than $100,000.

Non-financial entity means a counterparty that is not a swap dealer, a major swap participant, or a financial entity.

Regulatory capital means the amount of capital required under § 23.101 of this part.

Significant swaps exposure means

(1) Swap positions that equal or exceed either of the following thresholds:

(i) $2.5 billion in daily average aggregate uncollateralized outward exposure; or

(ii) $4 billion in daily average aggregate uncollateralized outward exposure plus daily average aggregate potential outward exposure.

(2) For purposes of this definition the terms daily average aggregate uncollateralized outward exposure and daily average aggregate potential outward exposure each has the meaning specified for that term in § 1.3(uuu) of this part for purposes of calculating substantial counterparty exposure under that regulation.

State insurance regulator means an insurance authority of a State that is engaged in the supervision of insurance companies under State insurance law.

Stress test means a test that compares the impact of a potential extreme price move, change in option volatility, or change in other inputs that affect the value of a position, to the initial margin held for that position to measure the adequacy of such initial margin.

Swap trading relationship documentation means the documentation described in § 23.504 of this part.

Threshold means an amount below which initial margin or variation margin that otherwise would be due is not required to be paid.

Uncleared swap means a swap executed after the effective date of this rule that is not submitted for clearing to a derivatives clearing organization.

Variation margin means a payment made by a party to a swap to cover the current exposure arising from changes in the market value of the position since the trade was executed or the previous time the position was marked to market.

§ 23.151 Documentation of credit support arrangements.

(a) Each covered swap entity shall execute with each counterparty swap trading relationship documentation regarding credit support arrangements that complies with the requirements of § 23.504 of this part and this subpart E.

(b) The credit support arrangements shall specify the following:

(1) The methodology to be used to calculate initial margin for uncleared swaps entered into between the covered swap entity and the counterparty;

(2) The methodology to be used to calculate variation margin for uncleared swaps entered into between the covered swap entity and the counterparty;

(3) To the extent that the alternative method is used pursuant to § 23.155(c), the parties shall specify the reference contracts to be used;

(4) Any thresholds below which initial margin need not be posted by the counterparty; and

(5) Any thresholds below which variation margin need not be paid by the counterparty.

§ 23.152 Margin treatment for uncleared swaps between covered swap entities and swap dealers or major swap participants.

(a) *Initial margin.* (1) On or before the date of execution of an uncleared swap between a covered swap entity and a swap dealer or major swap participant, each covered swap entity shall require the counterparty to post initial margin equal to or greater than an amount calculated pursuant to § 23.155 of this part with a custodian selected pursuant to § 23.158 of this part.

(2) Until such an uncleared swap is liquidated, each covered swap entity shall require the counterparty to maintain initial margin equal to or greater than an amount calculated pursuant to § 23.155 of this part with a custodian selected pursuant to § 23.158 of this part.

(3) If the credit support arrangements with a counterparty require the counterparty to post and/or maintain an amount greater than the amount calculated pursuant to § 23.155 of this part, the covered swap entity shall require the counterparty to post and/or maintain such greater amount.

(4) Each covered swap entity shall require the counterparty to post and maintain the entire initial margin amount required under this paragraph (a) unless the amount is less than the minimum transfer amount. There shall be no other exceptions for amounts below a threshold.

(b) *Variation margin.* (1) For each uncleared swap between a covered swap entity and a swap dealer or major swap participant, each covered swap entity shall require the counterparty to pay variation margin as calculated pursuant to § 23.156 of this part directly to the covered swap entity or to a custodian selected pursuant to § 23.158 of this part. Such payments shall start on the business day after the swap is executed and continue each business day until the swap is liquidated.

(2) For each uncleared swap between a covered swap entity and a swap dealer or major swap participant, each covered swap entity shall require the counterparty to pay the entire variation margin amount as calculated pursuant to § 23.156 of this part when due unless the amount is less than the minimum transfer amount. There shall be no other exceptions for amounts below a threshold.

(3) To the extent that more than one uncleared swap is executed pursuant to swap trading relationship documentation between a covered swap entity and its counterparty, a covered swap entity may calculate and comply with the variation margin requirements of this paragraph on an aggregate basis with respect to all uncleared swaps governed by such agreement, so long as the covered swap entity complies with these variation margin requirements with respect to all uncleared swaps governed by such agreement regardless of whether the uncleared swaps were entered into on or after the effective date.

(4) A covered swap entity shall not be deemed to have violated its obligation to collect variation margin from a counterparty if:

(i) The counterparty has refused or otherwise failed to provide the required variation margin to the covered swap entity; and

(ii) The covered swap entity has:

(A) Made the necessary efforts to attempt to collect the required variation margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, or has otherwise demonstrated upon request to the satisfaction of the Commission that it has made appropriate efforts to collect the required variation margin; or

(B) Commenced termination of the swap or security-based swap with the counterparty.

§ 23.153 Margin treatment for uncleared swaps between covered swap entities and financial entities.

(a) *Initial margin.* (1) On or before the date of execution of an uncleared swap between a covered swap entity and a financial entity, the covered swap entity shall require the financial entity to post initial margin equal to or greater than an amount calculated pursuant to § 23.155 of this part. Upon request of the financial entity, the initial margin shall be held at a custodian selected pursuant to § 23.158 of this part.

(2) Until such an uncleared swap is liquidated, the covered swap entity shall require the financial entity to maintain initial margin equal to or greater than an amount calculated pursuant to § 23.155 of this part.

(3) If the credit support arrangements with a financial entity require the financial entity to post and/or maintain an amount greater than the amount calculated pursuant to § 23.158 of this part, the covered swap entity shall require the financial entity to post and/or maintain such greater amount.

(4) Except as provided in paragraph (c) of this section each covered swap entity shall require each financial entity to post and maintain the entire initial margin amount required under this paragraph (a) unless the amount is less than the minimum transfer amount.

(5) On or before the date of execution of an uncleared swap between a covered swap entity and a financial entity, the covered swap entity shall post any initial margin that may be required pursuant to the credit support arrangement between them.

(6) Until such an uncleared swap is liquidated, the covered swap entity shall maintain any initial margin that may be required pursuant to the credit support arrangement between them.

(7) The credit support arrangements between a covered swap entity and a financial entity may provide for a threshold below which the covered swap entity is not required to post initial margin.

(b) *Variation margin.* (1) For each uncleared swap between a covered swap entity and a financial entity, each covered swap entity shall require the financial entity to pay variation margin as calculated pursuant to § 23.156 of this part directly to the covered swap entity or to a custodian selected pursuant to § 23.158 of this part. Such payments shall start on the business day after the swap is executed and continue each business day until the swap is liquidated.

(2) Except as provided in paragraph (c) of this section, for each uncleared swap between a covered swap entity and a financial entity, each covered swap entity shall require the financial entity to pay the entire variation margin amount as calculated pursuant to § 23.156 of this part when due unless the amount is less than the minimum transfer amount.

(3) For each uncleared swap between a covered swap entity and a financial entity, each covered swap entity shall pay any variation margin that may be required pursuant to the credit support arrangements between them.

(4) The credit support arrangements between a covered swap entity and a financial entity may provide for a threshold below which the covered swap entity is not required to pay variation margin.

(5) To the extent that more than one uncleared swap is executed pursuant to swap trading relationship documentation between a covered swap entity and its counterparty that permits netting, a covered swap entity may calculate and comply with the variation margin requirements of this paragraph on an aggregate basis with respect to all uncleared swaps governed by such agreement, provided that the covered swap entity complies with these variation margin requirements for all uncleared swaps governed by such agreement regardless of whether the uncleared swaps were entered into on or after the effective date.

(6) A covered swap entity shall not be deemed to have violated its obligation to collect variation margin from a counterparty if:

(i) The counterparty has refused or otherwise failed to provide the required variation margin to the covered swap entity; and

(ii) The covered swap entity has:

(A) Made the necessary efforts to attempt to collect the required variation margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, or has otherwise demonstrated upon request to the satisfaction of the Commission that it has made appropriate efforts to collect the required variation margin; or

(B) Commenced termination of the swap or security-based based swap with the counterparty.

(7) For risk management purposes, each covered swap entity shall calculate each day a hypothetical variation margin requirement for each such uncleared swap as if the counterparty were a swap dealer and compare that amount to any variation margin required pursuant to the credit support arrangements.

(c) *Thresholds.* (1) A covered swap entity may apply a threshold to the initial margin and variation margin requirements of a counterparty that is a financial entity if the counterparty makes the following representations to the covered swap entity in connection with entering into an uncleared swap with the covered swap entity:

(i) The counterparty is subject to capital requirements established by a prudential regulator or State insurance regulator;

(ii) The counterparty does not have a significant uncleared swaps exposure; and

(iii) The counterparty predominantly uses uncleared swaps to hedge or mitigate the risks of its business activities, including interest rate, or other risk arising from the business of the counterparty.

(2) The initial margin threshold shall be the lesser of [$15 to 45] million or [0.1 to 0.3]% of the covered swap entity's regulatory capital.

(3) The variation margin threshold shall be the lesser [$15 to 45] million or [0.1 to 0.3]% of the covered swap entity's regulatory capital.

§ 23.154 Margin treatment for uncleared swaps between covered swap entities and non-financial entities.

(a) *Initial margin.* (1) On or before the date of execution of an uncleared swap between a covered swap entity and a non-financial entity, the covered swap entity shall require such non-financial entity to post any initial margin that may be required pursuant to the credit support arrangement between them.

(2) Until such an uncleared swap is liquidated, the covered swap entity shall require the counterparty to maintain any initial margin that may be required pursuant to the credit support arrangement between them.

(3) The credit support arrangements between a covered swap entity and a non-financial entity may provide for a threshold below which the non-financial entity is not required to post initial margin.

(4) On or before the date of execution of an uncleared swap between a covered swap entity and a non-financial entity,

the covered swap entity shall post any initial margin that may be required pursuant to the credit support arrangement between them.

(5) Until such an uncleared swap is liquidated, the covered swap entity shall maintain any initial margin that may be required pursuant to the credit support arrangement between them.

(6) The credit support arrangements between a covered swap entity and a non-financial entity may provide for a threshold below which the covered swap entity is not required to post initial margin.

(7) For risk management and capital purposes, each covered swap entity shall calculate each day a hypothetical initial margin requirement for each such uncleared swap as if the counterparty were a swap dealer and compare that amount to any initial margin required pursuant to the credit support arrangements.

(b) *Variation margin.* (1) For each uncleared swap between a covered swap entity and a non-financial entity, each covered swap entity shall require the non-financial entity to pay any variation margin that may be required pursuant to the credit support arrangements between them.

(2) The credit support arrangements between a covered swap entity and a non-financial entity may provide for a threshold below which the non-financial entity is not required to pay variation margin.

(3) For each uncleared swap between a covered swap entity and a non-financial entity, each covered swap entity shall pay any variation margin that may be required pursuant to the credit support arrangements between them.

(4) The credit support arrangements between a covered swap entity and a non-financial entity may provide for a threshold below which the covered swap entity is not required to pay variation margin.

(5) To the extent that more than one uncleared swap is executed pursuant to swap trading relationship documentation between a covered swap entity and its counterparty that permits netting, a covered swap entity may calculate and comply with the variation margin requirements of this paragraph on an aggregate basis with respect to all uncleared swaps governed by such agreement, provided that the covered swap entity complies with these variation margin requirements for all uncleared swaps governed by such agreement regardless of whether the uncleared swaps were entered into on or after the effective date.

(6) For risk management purposes, each covered swap entity shall calculate each day a hypothetical variation margin requirement for each such uncleared swap as if the counterparty were a swap dealer and compare that amount to any variation margin required pursuant to the credit support arrangements.

§ 23.155 Calculation of initial margin.

(a) *Means of calculation.* (1) Each covered swap entity shall calculate initial margin using the methodology specified in the credit support arrangements with the counterparty provided that the methodology shall be consistent with the requirements of this section.

(2) Each covered swap entity shall calculate initial margin for itself and for each counterparty that is a swap dealer, major swap participant, or financial entity, using either:

(i) A risk-based model that meets the requirements of paragraph (b) of this section; or

(ii) The alternative method set forth in paragraph (c) of this section.

(b) *Models.* (1) *Eligibility.* To be eligible for use by a covered swap entity, a model shall meet the standards set forth in paragraph (b)(2) of this section, be filed with the Commission by a covered swap entity pursuant to paragraph (b)(3), be approved by the Commission pursuant to paragraph (b)(4) of this section and either be:

(i) Currently used by a derivatives clearing organization for margining cleared swaps;

(ii) Currently used by an entity subject to regular assessment by a prudential regulator for margining uncleared swaps; or

(iii) Made available for licensing to any market participant by a vendor.

(2) *Standards.* Each model shall conform to the following standards:

(i) The valuation of each uncleared swap shall be determined consistent with the requirements of § 23.504(b) of this part;

(ii) The model shall have a sound theoretical basis and significant empirical support;

(iii) The model shall use factors sufficient to measure all material risks;

(iv) To the extent available, the model shall use at least one year of historic price data and must incorporate a period of significant financial stress appropriate to the uncleared swaps to which the model is applied;

(v) Any portfolio offsets or reductions shall have a sound theoretical basis and significant empirical support;

(vi) The model shall set margin to cover at least 99% of price changes by product and by portfolio over at least a 10-day liquidation time horizon;

(vii) The model must be validated by an independent third party before being used and annually thereafter;

(viii) The methodology shall be stated with sufficient specificity to allow the counterparty, the Commission, and any applicable prudential regulator to calculate the margin requirement independently;

(ix) The covered swap entity shall monitor margin coverage each day;

(x) The covered swap entity shall conduct back tests at least monthly;

(xi) The covered swap entity shall conduct stress tests at least monthly;

(xii) The covered swap entity shall document all material aspects of its valuation procedures and initial margin model; and

(xiii) If an uncleared swap or portfolio is available for clearing by a derivatives clearing organization but is not subject to mandatory clearing, the model shall include a factor requiring that the initial margin shall be equal to or greater than an amount that would be required by the derivatives clearing organization.

(3) *Filing with the Commission.* (i) Each covered swap entity shall file each model that it uses with the Commission.

(ii) The filing shall include a complete explanation of:

(A) The manner in which the model meets the requirements of this section;

(B) The mechanics of the model;

(C) The theoretical basis of the model;

(D) The empirical support for the model; and

(E) Any independent third party validation of the model.

(4) *Commission action.* (i) The Commission may approve or deny the application, or approve an amendment to the application, in whole or in part, subject to any conditions or limitations the Commission may require, if the Commission finds the approval to be necessary or appropriate in the public interest after determining, among other things, whether the applicant has met the requirements of this section and is in compliance with other applicable rules promulgated under the Act and by self-regulatory organizations.

(ii) The Commission may at any time require a covered swap entity to provide further data or analysis concerning a model.

(iii) The Commission may at any time require a covered swap entity to modify a model to address potential vulnerabilities.

(iv) At any time after the effective date of this rule, the Commission may in its sole discretion determine by written order that covered swap entities may apply for approval under this section to

calculate initial margin using proprietary models.

(c) *Alternative Method.* If a model meeting the standards set forth in paragraph (b) of this section is not used, initial margin shall be calculated in accordance with this paragraph.

(1) *General rule.* Initial margin shall be calculated as follows:

(i) The covered swap entity shall identify in the credit support arrangements the swap cleared by a derivatives clearing organization in the same asset class as the uncleared swap for which the terms and conditions most closely approximate the terms and conditions of the uncleared swap. If there is no cleared swap whose terms and conditions closely approximate the uncleared swap, the covered swap entity shall identify in the credit support arrangements the futures contract cleared by a derivatives clearing organization in the same asset class as the uncleared swap which most closely approximates the uncleared swap and would be most likely to be used to hedge the uncleared swap.

(ii) The covered swap entity shall calculate the number of units of the cleared swap or cleared futures contract necessary to equal the size of the uncleared swap.

(iii) The covered swap entity shall ascertain the margin the derivatives clearing organization would require for a position of the size indentified in paragraph (c)(1)(ii) of this section.

(iv) The covered swap entity shall multiply the amount ascertained in paragraph (c)(1)(iii) of this section for a cleared swap by 2.0 in order to determine the margin required for the uncleared swap or multiply the amount ascertained in paragraph (c)(1)(iii) of this section for a cleared futures contract by 4.4 in order to determine the margin required for the uncleared swap.

(2) *Portfolio-based reductions.* (i) Reductions in margin based on offsetting risk characteristics of products shall not be applied across asset classes except that reductions may be applied between the currency asset class and the interest rate asset class.

(ii) Any reductions in margin based on offsetting risk characteristics of products within an asset class shall have a sound theoretical basis and significant empirical support.

(iii) No reduction shall exceed 50% of the amount that would be required for the uncleared swap in the absence of a reduction.

(3) *Modifications for particular products or positions.* Each covered swap entity shall monitor the coverage provided by margin established pursuant to this paragraph (c) and collect additional margin if appropriate to address the risk posed by particular products or positions.

(4) *Commission action.* (i) The Commission may at any time require a covered swap entity to post or collect additional margin because of additional risk posed by a particular product.

(ii) The Commission may at any time require a covered swap entity to post or collect additional margin because of additional risk posed by a particular party to the uncleared swap.

§ 23.156 Calculation of variation margin.

(a) *Means of calculation.* (1) Each covered swap entity shall calculate variation margin using a methodology specified in the credit support arrangements with the counterparty.

(2) Each covered swap entity shall calculate variation margin for itself and for each counterparty that is a swap dealer, major swap participant, or financial entity using a methodology that meets the requirements of paragraph (b) of this section.

(b) *Methodology.* Each methodology shall conform to the following standards:

(1) The valuation of each swap shall be determined consistent with the requirements of § 23.504(b) of this part;

(2) The variation methodology must be stated with sufficient specificity to allow the counterparty, the Commission, and any applicable prudential regulator to calculate the margin requirement independently.

(c) *Commission action.* (1) The Commission may at any time require covered swap entity to provide further data or analysis concerning the methodology, including:

(i) An explanation of the manner in which the methodology meets the requirements of this section;

(ii) A description of the mechanics of the methodology;

(iii) The theoretical basis of the methodology; and

(iv) The empirical support for the methodology.

(2) The Commission may at any time require a covered swap entity to modify the methodology to address potential vulnerabilities.

§ 23.157 Forms of margin.

(a) *Initial margin.* (1) Each covered swap entity shall post and accept as initial margin only assets specified in the credit support arrangements with the counterparty.

(2) Each covered swap entity shall post and accept as initial margin only the following assets if the counterparty is a swap dealer, a major swap participant, or a financial entity:

(i) Immediately available cash funds denominated in U.S. dollars or the currency in which payment obligations under the swap are required to be settled;

(ii) Any obligation which is a direct obligation of, or fully guaranteed as to principal and interest by, the United States or an agency of the United States; or

(iii) Any senior debt obligation of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or any obligation that is an "insured obligation," as that term is defined in 12 U.S.C. 2277a(3), of a Farm Credit System bank.

(3) Each covered swap entity shall accept as initial margin from non-financial entities only assets for which the value is reasonably ascertainable on a periodic basis in a manner agreed to by the parties in the credit support arrangements.

(4) A covered swap entity may not collect, as initial margin or variation margin required by the part, any asset that is an obligation of the counterparty providing such asset.

(b) *Variation margin.* (1) Each covered swap entity shall pay and collect as variation margin only assets specified in the credit support arrangements with the counterparty.

(2) Each covered swap entity shall pay and collect as variation margin only cash or United States Treasury securities if the counterparty is a swap dealer, a major swap participant, or a financial entity.

(3) Each covered swap entity shall accept as variation margin from non-financial entities only assets for which the value is reasonably ascertainable on a periodic basis in a manner agreed to by the parties in the credit support arrangements.

(c) *Haircuts.* (1) Each covered swap entity shall apply haircuts to any asset posted or received as margin as specified in the credit support arrangements with the counterparty.

(2) Each covered swap entity shall apply haircuts to any asset received as margin that reflect the credit and liquidity characteristics of the asset.

(3) Each covered swap entity shall apply haircuts, at a minimum, to assets received as margin if the counterparty is a swap dealer, a major swap participant, or a financial entity in accordance with the following table:

MARGIN VALUE RANGES FOR NON-CASH COLLATERAL

[% of market value]

	Duration (years)		
	0–5	5–10	> 10
(i) U.S. Treasuries and Fully Guaranteed Agencies:			
(A) Bills/Notes/Bonds/Inflation Indexed	[98–100]	[95–99]	[94–98]
(B) Zero Coupon, STRIPs	[97–99]	[94–98]	[90–94]
(ii) FHFA–Regulated Institutions Obligations and Insured Obligations of FCS Banks:			
(A) Bills/Notes/Bonds	[96–100]	[94–98]	[93–97]
(B) Zero Coupon	[95–99]	[93–97]	[89–93]

(d) *Commission action.* (1) The Commission may at any time require a covered swap entity to provide further data or analysis concerning any margin asset posted or received.

(2) The Commission may at any time require a covered swap entity to replace a margin asset posted to a counterparty with a different margin asset to address potential risks posed by the asset.

(3) The Commission may at any time require a covered swap entity to require a counterparty that is a swap dealer, a major swap participant, or a financial entity to replace a margin asset posted with the covered swap entity with a different margin asset to address potential risks posed by the asset.

(4) The Commission may at any time require a covered swap entity to provide further data or analysis concerning margin haircuts.

(5) The Commission may at any time require a covered swap entity to modify a margin haircut applied to an asset received from a swap dealer, a major swap participant, or a financial entity to address potential risks posed by the asset.

§ 23.158 Custodial arrangements.

(a) *Location of assets.* (1) Each covered swap entity shall specify in the credit support arrangements with each counterparty where margin assets will be held.

(2) Each covered swap entity shall offer each counterparty the opportunity to select a custodian that is not affiliated with the swap dealer or major swap participant.

(3) Each covered swap entity shall hold initial margin received from a counterparty that is a swap dealer or major swap participant at a custodian that is independent of the covered swap entity and of the counterparty.

(4) Each covered swap entity that posts initial margin with a counterparty that is a swap dealer or major swap participant shall require that the counterparty hold initial margin received at a custodian that is independent of the covered swap entity and of the counterparty.

(5) The independent custodian shall be located in a jurisdiction that applies the same insolvency regime to the custodian as would apply to the covered swap entity.

(b) *Use of assets.* (1) For each uncleared swap between a covered swap entity and a swap dealer, major swap participant, or a financial entity, the covered swap entity shall enter into a tri-party custodial agreement with the counterparty and the custodian that provides that:

(i) Neither the covered swap entity nor the counterparty may rehypothecate margin assets;

(ii) The custodian may not rehypothecate margin assets;

(iii) The custodian may not reinvest any margin held by the custodian in any asset that would not qualify as eligible collateral under § 23.157(a) of this part;

(iv) Upon certification in accordance with 23.602(b)(1) by one of the parties that it is entitled to control of the margin under the agreement, the custodian shall release the margin to the certifying party; and

(v) The certifying party shall indemnify the custodian against any claim that the margin assets should not have been released.

(2) Upon receipt of initial margin from a counterparty, no covered swap entity shall post such assets as margin for a swap, a security-based swap, a commodity for future delivery, a security, a security futures product, or any other product subject to margin.

(c) *Commission action.* (1) The Commission may at any time require a covered swap entity to provide further data or analysis concerning any custodian.

(2) The Commission may at any time require a covered swap entity to move assets held on behalf of a counterparty to another custodian to address risks posed by the original custodian.

Issued in Washington, DC, on April 12, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

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

Appendices To Swap Dealer and Major Swap Participant Margin Requirements for Uncleared Swaps—Commission Voting Summary and Statements of Commissioners

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers and Chilton voted in the affirmative; Commissioner O'Malia voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed rulemaking. Margin requirements for swaps that are not cleared between financial entities help ensure the safety and soundness of swap dealers and major swap participants.

The proposed rules would address margin requirements for uncleared swaps entered into by nonbank swap dealers or major swap participants. The prudential regulators today are proposing margin rules for the dealers that they regulate. For trades between swap dealers (or major swap participants), the rules would require paying and collecting initial and variation margin for each trade. For trades between swap dealers (or major swap participants) and financial entities, the rules would require the dealer (or major swap participant) to collect, but not pay, initial and variation margin for each trade, subject in certain circumstances to permissible thresholds. The proposed rule allows thresholds for margin for financial entities where they are subject to capital requirements established by a prudential regulator or a State insurance regulator and they are using their uncleared swaps to hedge or mitigate risk of their business activities.

The proposed rule would not require margin to be paid or collected on transactions involving non-financial end-users hedging or mitigating commercial risk. Congress recognized the different levels of risk posed by transactions between financial entities and those that involve non-financial entities, as reflected in the non-financial end-user exception to clearing. Transactions involving

non-financial entities do not present the same risk to the financial system as those solely between financial entities. The risk of a crisis spreading throughout the financial system is greater the more interconnected financial companies are to each other. Interconnectedness among financial entities allows one entity's failure to cause uncertainty and possible runs on the funding of other financial entities, which can spread risk and economic harm throughout the economy.

CFTC staff worked very closely with prudential regulators to establish initial and variation margin requirements that are comparable to the maximum extent practicable.

[FR Doc. 2011–9598 Filed 4–27–11; 8:45 am]

BILLING CODE 6351–01–P

POSTAL SERVICE

39 CFR Part 111

Intelligent Mail Package Barcode (IMpb) Implementation for Commercial Parcels

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®) to require the use of a unique tracking barcode on all commercial parcels, except Standard Mail® parcels, claiming presort and destination entry pricing by January 2012; and to encourage use of unique tracking barcodes by providing free Delivery Confirmation® service on all commercial parcels except Standard Mail parcels.

DATES: Submit comments on or before May 31, 2011.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 4446, Washington, DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, 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 "IMpb." Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Juliaann Hess at 202–268–7663 or Kevin Gunther at 202–268–7208.

SUPPLEMENTARY INFORMATION: The Postal Service is currently enhancing its operational capability to allow for the scanning of Intelligent Mail® package barcodes (IMpb) and other extra services barcodes via automated processing equipment and Intelligent Mail scanning devices. Once fully implemented, tracking data, including acceptance, enroute, and delivery status data, will be available for use by commercial mailers who use extra services on their packages.

IMpb can offer a number of additional benefits by allowing the potential for mailers to access piece-level visibility throughout USPS processing and delivery operations. The IMpb will include:

- A routing code to facilitate the processing of packages on automated sorting equipment.
- A channel-specific Application Identifier (AI) that associates the barcode to the payment method, supporting revenue assurance.
- A 3-digit service type code, which will identify the exact mail class and service combination, eliminating the need for multiple barcodes on a package.
- An option to use a 6-digit or 9-digit numeric Mailer ID (MID), to accommodate all mailers.

These enhancements will add data-stream efficiency within mail processing, delivery, payment, and reporting. Intelligent Mail package barcodes also include specific "mail class only" service type codes that may be used for packages without extra services.

To increase IMpb use within the mailing community, the Postal Service proposes to encourage use of unique tracking barcodes by including Delivery Confirmation at no additional charge on all commercial parcels except Standard Mail parcels; and to require the use of a unique tracking barcode on all commercial parcels (except Standard Mail parcels) claiming presort and destination entry pricing.

The provision that allows Delivery Confirmation to be offered without charge requires prior action by the Postal Service Board of Governors and the Postal Regulatory Commission. Assuming such action is completed as intended, the Postal Service proposes to make these new standards effective concurrent with the effective date of the first market dominant price change in 2012 (or January 2012, if no market dominant price change is scheduled for early 2012). The Postal Service plans to provide an optional-use transitional period, until June 4, 2012, to allow mailers sufficient time to effect the necessary changes to their software and systems. Merchandise Return Service (MRS) mailpieces and Business Reply Mail®(BRM) parcels would also qualify for free Delivery Confirmation service at no charge.

Except for users of PC Postage®, the Postal Service proposes to require an Intelligent Mail package barcode (IMpb) for all parcels that include tracking or extra services and all parcels claiming presort and destination entry pricing, effective June 3, 2013. In addition, the Postal Service proposes to require use of version 1.6 Shipping Services Electronic Manifest Files by June 3, 2013; and to require that these files include each destination ZIP + 4® code, or each destination delivery address by that date. This new file format will also require a new version of the customer extract file. The Postal Service proposes to require all parcels shipped using PC Postage systems to bear a IMpb, and to use version 1.6 Shipping Services Electronic Manifest, by June 4, 2012.

To support future sorting efficiencies, the USPS strongly encourages mailers to place a ZIP + 4 code or destination address in the electronic files for each mailpiece as soon as possible. Mailers using the IMpb are also encouraged to include the additional two-digit delivery point code in the electronic file. The Postal Service proposes to require mailers to include the destination ZIP + 4 code (or destination address) in the electronic file for all records by June 3, 2013.

These proposed standards will also require a postal routing code on all parcels and Priority Mail pieces, preferably as a concatenated IMpb or extra services barcode. When a concatenated IMpb or extra services barcode is not used, a separate postal routing barcode must be included in addition to the IMpb. Flat or letter-shaped Priority Mail® or Critical Mail™ pieces may use the Intelligent Mail barcode (IMb) or POSTNET for the postal routing barcode.

Under these proposed standards, (except for Standard Mail) mailers of presorted parcels, parcels claiming destination entry prices, or parcels bearing PC Postage, and who do not purchase a trackable extra service, or make use of the Delivery Confirmation service provided at no charge, must use (at a minimum) a "mail-class only" IMpb service type code that represents the class or subclass of the mailpiece that is being shipped.

The Postal Service also proposes to modify the current requirement for mailers to use an extra service-specific, human-readable, service banner text format when printing an IMpb. Current standards require a different human-readable service banner text for each extra service selected by the mailer. The Postal Service proposes to provide only

two generic text options for service banners, when used with an IMpb, for most of the extra services selected. Mailers must use a "USPS TRACKING #" human-readable service banner text above the barcode on packages not requiring a signature at delivery, and a "USPS SIGNATURE TRACKING #" service banner text above the barcode on packages where a signature is required at delivery. These new service banner texts must not be used with Certified Mail®, Registered Mail™, Parcel Return Service or Express Mail® and Priority Mail Open and Distribute products. These new texts will help to simplify IMpb use for mailers and will more accurately describe future processing and tracking capabilities inherent to the IMpb.

The Postal Service recognizes that some small parcels mailers lack a sufficient amount of label space to apply an IMpb or extra services barcode that meets the ¾ inch height requirement. In recognition of this, the Postal Service plans to provide an exception process for mailers to submit barcodes of at least ½ inch in height (for USPS testing and approval), for use on First-Class Mail® and Standard Mail parcels lacking sufficient label space to meet the ¾ inch height requirement.

Background

In January 1999, the Postal Service first provided standards for the use of mailer-generated parcel barcodes. To improve machine readability in processing and scanning at delivery, the USPS revised these standards to limit the use of barcodes on parcels in January 2004 to include only those using GS1–128 symbology (formally known as UCC/EAN–128).

On September 17, 2010, the Postal Service published an advanced notice of proposed rulemaking **Federal Register** (75 FR 56922–56923), announcing its plans to provide interim IMpb optional-use standards and to require IMpb use for all commercial mailers at a later date. The Postal Service received several comments in response to its advanced notice of proposed rulemaking, which are summarized later in this notice.

The IMpb optional-use standards were incorporated into the DMM, and were available for mailer use beginning November 1, 2010. These optional standards were announced via *Postal Bulletin* 22297, dated November 4, 2010.

Descriptions of Intelligent Mail Package Barcode and Electronic Documentation

For the purposes of this notice, the term "commercially shipped package" is used to describe any domestic mailpiece meeting the parcel characteristics in DMM section 401.1 and all Express Mail and Priority Mail (except Critical Mail and some Priority Mail flat-size pieces prepared by high-volume mailers) mailpieces, regardless of shape, including commercially shipped flat-rate items.

Piece-level package information is required in the shipping market to expand product lines, increase competitiveness, provide greater visibility to mailers and the Postal Service, and create a more comprehensive service performance measurement tool. Today, without the purchase of an extra service such as Delivery Confirmation, Signature Confirmation™, or insurance, package tracking and delivery information is limited. Barcodes are not currently required on commercially shipped packages, except those entered under an Electronic Verification System (eVS®); and the barcodes now being used are unable to incorporate the data necessary to meet the needs of the USPS Intelligent Mail strategy. Currently, commercially shipped packages can bear barcodes that are designed to provide delivery status information only, and do not always include a routing code (a barcode that represents the destination ZIP Code™). The barcodes currently being used have limited revenue protection capabilities, due to the absence of information associating the piece with its specific payment method; and allow limited integration of multiple extra services.

The IMpb will provide unique piece-level data to enable the Postal Service to increase efficiency, add value to its package product line, enhance package visibility and tracking capabilities, and provide a means by which to measure service performance. The IMpb is a width modulated barcode, which can be up to 34 digits, that generally follows the specifications of the GS1–128 symbology. GS1–128 barcodes are a special type of Code 128 barcodes, which make use of Application Identifiers (AI) to define the encoded data and how it is used. The IMpb leverages features of the GS1–128 symbology to allow for the unique identification and tracking of domestic packages from induction to delivery. The GS1–128 barcode symbology is already a requirement for users of electronic Confirmation Services and eVS. Customers currently participating in these programs will not need to change the symbology of the barcode; however the elements within the barcode and layout will change.

There are several IMpb barcode variations for commercial and retail use that will provide the flexibility to accommodate the diverse shipping needs of postal customers. To improve routing, tracking, and service capabilities, the Postal Service proposes to require mailers to include the correct 5-digit routing code in the barcode on each commercially shipped package, either incorporated into a single concatenated barcode or as a separate postal routing barcode; and to require mailers to transmit the ZIP + 4 code information to the USPS via an electronic file. As an alternative, the Postal Service is proposing to provide an option for mailers to include the destination address in the electronic file, instead of the ZIP + 4 code.

For mailers who generate their own barcoded labels, enhancements to the current requirements for electronic files are necessary to support the additional features incorporated into IMpb. Electronic files now used for packages do not provide adequate space for supplemental fields, limiting their ability to support the additional piece-level information received from customers. The new version 1.6 electronic file format includes expanded package identification code fields to accommodate up to a 34-digit barcode string, and requires fewer file types to support various combinations of products and services. Under these proposed standards, mailers will be required to include the destination ZIP + 4 Code (or destination address) in the electronic file for all records. This additional ZIP Code information will assist in the routing and tracking of our package products. An optional field for the delivery point code of the destination address has also been added to the electronic file to provide additional information to improve service. A listing of electronic file formats is located in the addendum to Publication 91, *Addendum for Intelligent Mail Package Barcode (IMpb) and 3-digit Service Type Code,* available on the RIBBS® Web site at *ribbs.usps.gov.*

The data construct of the IMpb barcode differs from that of the current Confirmation Services barcode. Detailed specifications for IMpb barcodes are available in the "Barcode Data" section of the specification document, *Barcode, Package, Intelligent Mail (USPS2000508)* on RIBBS. The most significant change in the barcode data pertains to the use of service type codes. Currently, parcel barcodes use a 2-digit service type code, which may represent multiple mail classes or products, limiting the number of extra services that may be integrated into a single barcode. When two or more extra

services are used, a barcode representing each extra service is usually required on the mailpiece, resulting in the need to scan multiple barcodes at delivery.

The IMpb uses unique 3-digit service type codes to identify the exact product and extra service combinations, eliminating the need for separate barcodes and enabling more efficient package handling and delivery. A list of the 3-digit service type codes is available in the addendum to Publication 91.

Mailers will also be able to increase package visibility by associating each package with the appropriate sack, or an approved equivalent container, which bears an accurately encoded Intelligent Mail tray label. Each sack or approved alternate container may then be electronically associated to a pallet (or equivalent container) that bears an accurately encoded Intelligent Mail container placard.

Under these proposed standards, Intelligent Mail barcodes will not be permitted on packages (except for flat or letter shaped Priority Mail or Critical Mail pieces) in lieu of the IMpb.

Comments

The Postal Service received a total of five comments in response to the September 17, 2010 advanced notice of proposed rulemaking, with some comments addressing more than a single issue. Although one comment was received well after the published deadline, the Postal Service will also address that comment as well. These comments are summarized as follows:

In general, commenters expressed concern about requirements and the mandatory-use IMpb implementation date. As a general response, the Postal Service has elected to encourage, but not require, mailers to apply a unique tracking barcode on all parcels. As an encouragement, the Postal Service proposes to include Delivery Confirmation service at no additional charge on all commercial parcels, except Standard Mail parcels, bearing a unique tracking barcode. Mailers may meet this requirement using the current format for extra service barcodes or through use of the IMpb, for which optional-use standards have been available since November 1, 2010. Under these proposed standards, mailers who are not using an IMpb, or do not apply a unique extra service barcode on their commercially shipped mailpieces, by the date of the first market dominant price change in 2012 (or January 2012, if no market dominant price change is scheduled for early 2012) will not qualify for presort or destination entry pricing. Each IMpb or unique extra service barcode must include a postal routing code, preferably using a concatenated barcode format. In response to customer concerns, the Postal Service proposes to extend its IMpb mandatory-use date to June 2013 (except for users of PC Postage). Mailers are encouraged to use the IMpb and corresponding electronic files as soon as possible. For certain mailers such as those mailing high-volume Priority Mail flat-size pieces prepared in high-speed production environments, the Postal Service proposes to allow use of Intelligent Mail barcodes (IMb) on these pieces instead of the IMpb. The IMb is more compatible with the high speed production environment for Priority Mail flats. However, visibility within USPS tracking systems will be limited and pieces bearing an IMb, without an extra service included, will not receive "delivered" scan events.

Two commenters inquired regarding the location of detailed IMpb specifications and whether the RIBBS Web site would provide a guide similar to that available for users of Intelligent Mail barcodes. IMpb barcode specifications are located in the specification document, *Barcode, Package, Intelligent Mail (USPS2000508).* In addition, the addendum to Publication 91, *Addendum for Intelligent Mail Package Barcode (IMpb) and 3-digit Service Type Code,* contains electronic manifest file specifications, service type codes, and other information needed to support conversion to the IMpb. Both documents were posted on RIBBS September 17, 2010, and can be viewed at *http://ribbs.usps.gov/index.cfm?page=intellmailpackage.* With the issuance of this proposed rule, additional specifications for electronic data interchange (EDI) messages and use of the *Product Tracking System Test Environment for Mailers* are included in the addendum to the revised Publication 91. Publication 205, *Electronic Verification System Business and Technical Guide,* for eVS users has been updated to reflect IMpb use and is also available on RIBBS at *http://ribbs.usps.gov/evs/documents/tech_guides/Pub205.PDF.*

One commenter expressed concern with the replacement of current fixed-length barcodes with IMpb variable-length barcodes. To provide flexibility, the IMpb provides several constructs or layouts that have a specific length and data element requirements, each having a fixed length serial number. Thus the serial number field is no longer of variable length (*i.e.,* 2–8 digits) as in the current barcode format. The IMpb serial number is fixed length and must remain unique for 180 days. The number of digits in the serial number is determined by the barcode construct or layout used.

One commenter requested that the USPS not expand the existing requirements for population of the ZIP + 4 code field in the current Confirmation Services barcode to the IMpb. The USPS agrees with this recommendation and proposes to require the destination ZIP + 4 code in the electronic file only for all commercially shipped packages that request tracking or extra services. In addition, the implementation date for this requirement is proposed to be extended to June 3, 2013 to allow customers more time for programming and transition. In the interim, mailers who are able to include a ZIP + 4 code sooner are encouraged to do so. In addition, the Postal Service is proposing to allow mailers to include the destination address (instead of the ZIP + 4 code) in the electronic documentation as another alternative.

A commenter inquired if there will be new service type codes required for IMpb use. The IMpb provides hundreds of numeric 3-digit service type codes which uniquely represent the mail class and any combination of services used. The use of 3-digit service type codes adds intelligence and efficiency to barcodes used for packages and extra services. The 3-digit service type codes used for the IMpb are different from those used with the IMb.

One commenter asked if IMpb will be supported by the *PostalOne!*® and the Seamless Acceptance Service Performance (SASP) systems. IMpb is supported by the Electronic Verification System (eVS) component of the *PostalOne!* system. However, the Product Tracking System (PTS) is the primary USPS system that maintains tracking and other information, including expected delivery dates, for the IMpb and the existing Confirmation Services barcodes used for packages and other extra services (*i.e.,* Certified Mail, Registered Mail, *etc*). There is currently no interface or interaction with the Seamless Acceptance and Service Performance (SASP) system at this time. The SASP system is used primarily for letters and flats.

Another commenter requested clarification of USPS intentions regarding changes to its current cost models. The Postal Service expects IMpb use, within a fully barcoded package stream, to improve processing and cycle time measurement and to simplify tracking. This will increase efficiencies in package processing and

positively influence USPS costs overall. In addition, the IMpb technology will enrich the breadth of data and information available for business analytics.

Several commenters asked if the USPS will require an IMpb on all packages, including those currently sorted and dropshipped without a barcode, and how this will affect pricing and the entry process. These commenters also asked what the price will be for packages not bearing an IMpb, and if the USPS intends to implement a varying price structure, similar to that available to basic and full-service IMb mailers. The Postal Service proposes to require an IMpb or extra services barcode on all commercially shipped packages (except Standard Mail) claiming presort or destination entry pricing. The Postal Service intends to follow industry best practices by leveraging technology along with the intelligence and improved processing capabilities afforded by a fully barcoded package mailstream to increase efficiencies and the value of our package products in the market place.

A commenter expressed concern that requiring use of the IMpb by January 2012 would negatively impact current Priority Mail and Express Mail volumes, particularly those sent by small and medium sized businesses, many of whom are postage meter customers. The commenter requested that the USPS convene a workgroup, including meter manufacturers, to develop an approach to encourage Express Mail and Priority Mail customers to use the IMpb. To support mailer transition to the IMpb, the Postal Service proposes to delay the mandatory-use date to June 3, 2013, and allow optional use, with the benefit of free Delivery Confirmation in 2012. In consideration of the small and medium-size mailers primarily using postage meters, the Postal Service will consult with the meter and PC Postage industry to collaboratively agree on a date for these mailers to be required to use the IMpb.

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 comments 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.

List of Subjects in 39 CFR Part 111

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; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 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)**

* * * * *

400 Commercial Parcels

401 Physical Standards

* * * * *

2.0 Additional Physical Standards by Class of Mail

* * * * *

2.6 Bound Printed Matter Parcels

2.6.1 General Standards

The following standards apply to Bound Printed Matter parcels:

* * * * *

[Revise 2.6.1b as follows:]

b. Nonpresorted Bound Printed Matter parcels may be eligible for a barcode discount under 463 if the parcels bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0.

* * * * *

410 Express Mail

413 Prices and Eligibility

1.0 Prices and Fees

* * * * *

1.3 Commercial Base Prices

* * * These prices apply to:

* * * * *

[Revise item 1.3c as follows:]

c. Registered end-users of USPS-approved PC Postage providers when using a qualifying shipping label (that includes an Intelligent Mail package barcode) managed by the PC Postage system used.

* * * * *

1.4 Commercial Plus Prices

* * * * *

1.4.1 Eligibility

Commercial plus pricing is available to existing customers whose cumulative account volume exceeds 5,000 pieces in the previous four quarters or who have a customer commitment agreement with the USPS (see 1.4.2) and who are:

* * * * *

[Revise item 1.4.1b as follows:]

b. Registered end-users of USPS-approved PC Postage products when using a qualifying shipping label (that includes an Intelligent Mail package barcode) managed by the PC Postage system used.

* * * * *

420 Priority Mail

423 Prices and Eligibility

1.0 Prices and Fees

* * * * *

1.2 Commercial Base Prices

1.2.1 Commercial Base Prices Eligibility

Commercial base prices are available for:

* * * * *

[Revise 1.2.1b as follows:]

b. Registered end-users of USPS-approved PC Postage providers when using a qualifying shipping label (that includes an Intelligent Mail package barcode) managed by the PC Postage system used.

* * * * *

1.3 Commercial Plus Prices

1.3.1 Existing Priority Mail Customers

Commercial plus prices are available to Priority Mail (including Critical Mail) customers who qualify for commercial base prices and whose cumulative account volume exceeds a combined total of 5,000 letter-size and flat-size pieces (including Flat Rate Envelopes, but not the Padded Flat Rate Envelope) or 75,000 total pieces in the previous calendar year (except Priority Mail Open and Distribute) or who have a customer commitment agreement with USPS, and are:

[Revise item 1.3.1a as follows:]

a. Registered end-users of USPS-approved PC Postage providers when using a qualifying shipping label (that includes an Intelligent Mail package barcode) managed by the PC Postage system used.

* * * * *

1.4 Commercial Plus Cubic

1.4.1 Commercial Plus Cubic Eligibility

* * * The commercial plus cubic prices are available for:

[Revise item 1.4.1a as follows:]

a. Registered end-users of USPS-approved PC Postage providers when using a qualifying shipping label (that includes an Intelligent Mail package barcode) managed by the PC Postage system used.

* * * * *

430 First-Class Mail

433 Price and Eligibility

1.0 Prices and Fees for First-Class Mail

* * * * *

1.3 Commercial Base Parcel Prices

[Revise the introductory paragraph of 1.3 as follows:]

For prices, see Notice 123—Price List. Commercial base parcels may be presorted or nonpresorted. Postage for presorted parcels must be paid in accordance with standards in 434. Each presorted parcel must Include a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code under 708.5.0. Nonpresorted First-Class Mail parcels mailed under the following conditions are eligible for single-piece commercial base parcel prices:

* * * * *

[Add a new item 1.3c as follows:]

c. Each parcel with PC Postage must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0. See 1.5 for when a surcharge applies to nonpresorted parcels.

* * * * *

1.4 Commercial Plus Prices

[Revise the last sentence of 1.4 as follows:]

* * * Commercial plus prices are available for customers presenting mailings of 500 or more parcels who:

* * * * *

[Add a new 1.4e as follows:]

e. For presorted parcels, include a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0 on each parcel. For single-piece parcels, see 1.5 for when a surcharge applies.

1.5 Surcharge

[Revise 1.5 as follows:]

A surcharge applies to parcels with the following characteristics:

a. Unless prepared in 5-digit/scheme containers, presorted parcels weighing less than 2 ounces or that are irregularly shaped, such as rolls, tubes, and triangles.

b. Nonpresorted commercial base parcels and single-piece commercial plus parcels that do not bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0.

* * * * *

3.0 Basic Standards for First-Class Mail Parcels

* * * * *

3.3 Additional Basic Standards for First-Class Mail

All pieces of presorted First-Class Mail must:

* * * * *

[Add a new 3.3f as follows:]

f. Bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0.

* * * * *

450 Parcel Select

453 Prices and Eligibility

* * * * *

3.0 Price Eligibility for Parcel Select and Parcel Select Regional Ground

3.1 Destination Entry Price Eligibility

* * * * *

3.1.2 Basic Standards

For Parcel Select destination entry, pieces must meet the applicable standards in 455.4.0 and the following criteria:

* * * * *

[Add a new 3.1.2f as follows:]

f. Pieces must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0.

* * * * *

3.2 Parcel Select NDC and ONDC Presort Price Eligibility

[Revise 3.2 by adding a new last sentence as follows:]

* * * Parcel Select NDC and ONDC Presort pieces must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0.

3.3 Parcel Select Barcoded Nonpresort Price Eligibility

[Revise 3.3 as follows:]

Pieces mailed at Parcel Select Barcoded Nonpresort prices must be machinable parcels. Each parcel must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0. There is a minimum volume of 50 pieces per mailing for parcels mailed at the Parcel Select Barcoded Nonpresort price, except for parcels with USPS-approved PC Postage for which there is no minimum volume per mailing.

[Delete 3.3a through c in their entirety.]

* * * * *

460 Bound Printed Matter

463 Prices and Eligibility

1.0 Prices and Fees for Bound Printed Matter

1.1 Nonpresorted Bound Printed Matter

* * * * *

1.1.3 Barcode Discount—Machinable Parcels

[Revise 1.1.3 as follows:]

The barcoded discount applies only to nonpresorted BPM machinable parcels (401.1.5.1) that bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0. The pieces must be part of a nonpresorted mailing of 50 or more BPM parcels.

* * * * *

4.0 Price Eligibility for Bound Printed Matter Parcels

4.1 Price Eligibility

* * * Price categories are as follows:

* * * * *

[Add a new last sentence to 4.1b as follows:]

b. Presorted Price. * * * Each parcel must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0.

[Add a new last sentence to 4.1c as follows:]

c. Carrier Route Price. * * * Each parcel must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0.

[Revise 4.1d as follows:]

d. Barcoded Discount—Machinable Parcels. The barcoded discount applies only to nonpresorted BPM machinable parcels (see 401.1.5) that bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0.

* * * * *

465 Mail Preparation

* * * * *

[Delete 7.0, Standards for Barcode Discounts, in its entirety.]

* * * * *

470 Media Mail

473 Prices and Eligibility

* * * * *

3.0 Price Eligibility for Media Mail Parcels

* * * * *

3.2 Price Eligibility Standards

[Revise 3.2 by adding a new second sentence as follows:]

* * * Each piece must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0. * * *

* * * * *

3.4 Price Categories for Media Mail

* * * The price categories and discounts are as follows:

* * * * *

[Delete 3.4c in its entirety to remove reference to barcode discounts.]

* * * * *

475 Mail Preparation

* * * * *

5.0 Preparing Media Mail Parcels

* * * * *

5.2 Preparing Machinable Parcels

* * * * *

[Delete 5.2.3, Standards for Barcode Discount, in its entirety.]

* * * * *

480 Library Mail

483 Prices and Eligibility

* * * * *

3.0 Price Eligibility for Library Mail Parcels

* * * * *

3.2 Price Eligibility Standards

[Revise 3.2 by adding a new second sentence as follows:]

* * * Each piece must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0. * * *

* * * * *

3.4 Price Categories for Library Mail

Library Mail prices are based on the weight of the piece without regard to zone. The price categories and discounts are as follows:

* * * * *

[Delete 3.4c in its entirety to remove reference to barcode discounts]

* * * * *

485 Mail Preparation

* * * * *

5.0 Preparing Library Mail Parcels

* * * * *

[Delete 5.4, Standards for Barcode Discounts, in its entirety.]

* * * * *

500 Additional Mailing Services

503 Extra Services

* * * * *

4.0 Insured Mail

* * * * *

4.3 Mailing

* * * * *

4.3.5 Integrated Barcodes

The following options are available for mailers who print their own labels:

* * * * *

[Add a new last sentence to the introductory paragraph of 4.3.5c as follows:]

c. * * * The following standards also apply:

[Revise 4.3.5c1 through c3 as follows:]

1. Mailers may purchase insurance online for indemnity coverage of $200.00 or less with electronic option Delivery Confirmation service. Prepare barcodes under 4.3.5d.

2. Mailers may purchase insurance online for indemnity coverage of more than $200, up to $500 (up to $5,000 via Click-n-Ship), with electronic option Delivery Confirmation service. Mailers may also purchase insurance online for up to $500 (up to $5,000 via Click-n-Ship) with Signature Confirmation service. In both cases, prepare barcodes under 4.3.5e.

[Add a new 4.3.5d and 5e as follows:]

d. Intelligent Mail package barcodes placed on insured packages with indemnity coverage of $200.00 or less must bear a human-readable service banner with the text "USPS TRACKING #" printed in accordance with Exhibit 708.5.1.4. Other approved extra services barcodes must bear a human-readable service banner with the text "USPS DELIVERY CONFIRMATION" prepared under 708.5.0.

e. Intelligent Mail package barcodes placed on insured packages with indemnity coverage greater than $200.00 and with electronic Signature Confirmation service must bear a human-readable service banner with the text "USPS SIGNATURE TRACKING #" printed in accordance with Exhibit 708.5.1.4. Other approved extra services barcodes must bear a human-readable service banner with the text "USPS INSURED," or "USPS SIGNATURE CONFIRMATION" prepared under 708.5.0.

* * * * *

8.0 Return Receipt for Merchandise

* * * * *

8.3 Mailing

* * * * *

[Renumber current 8.3.6 through 8.3.7 as the new 8.3.7 through 8.3.8 and add a new 8.3.6 as follows:]

8.3.6 Barcodes

Barcodes printed by mailers must meet the following standards:

a. Intelligent Mail package barcodes and other approved extra services barcodes applied by mailers must be prepared in accordance with 708.5.0.

b. Intelligent Mail package barcodes must include the human-readable service banner with the text "USPS SIGNATURE TRACKING #" printed in accordance with Exhibit 708.5.1.4.

c. Other approved extra services barcodes must bear a human-readable service banner with the text "RETURN RECEIPT FOR MERCHANDISE" prepared in accordance with 708.5.0.

* * * * *

9.0 Delivery Confirmation

* * * * *

9.4 Barcodes

* * * * *

9.4.3 Printing

* * * Labels used for Delivery Confirmation must meet these additional specifications:

[Revise 9.4.3a as follows:]

Intelligent Mail package barcodes must bear a human-readable service banner with the text "USPS TRACKING #" printed in accordance with Exhibit 708.5.1.4. Other approved extra services barcodes must bear a human-readable service banner with the text "USPS DELIVERY CONFIRMATION" prepared in accordance with 708.5.0.

* * * * *

10.0 Signature Confirmation

* * * * *

10.4 Barcodes

* * * * *

10.4.3 Printing

* * * Labels used for Signature Confirmation must meet these additional specifications:

[Revise 10.4.3a as follows:]

a. Intelligent Mail package barcodes must bear a human-readable service banner with the text "USPS SIGNATURE TRACKING #" printed in accordance with Exhibit 708.5.1.4. Other approved extra services barcodes must bear a human-readable service banner with the text "USPS SIGNATURE CONFIRMATION" prepared in accordance with 708.5.0.

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

7.0 Combining Package Services and Parcel Select Parcels for Destination Entry

7.1 Combining Parcels—DSCF and DDU Entry

7.1.1 Qualification

[Revise the last sentence of 7.1.1 as follows:]

* * * Parcels claiming destination entry pricing must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0.

* * * * *

708 Technical Specifications

* * * * *

5.0 Standards for Package and Extra Service Barcodes

5.1 Intelligent Mail Package Barcode

* * * * *

5.1.4 Physical Barcode Requirements

* * * Physical barcode requirements are as follows:

* * * * *

[Revise 5.1.4d as follows:]

d. Barcode Height: unless allowed by exception, the minimum height must be at least 0.75 inch.

* * * * *

g. Human-Readable Representation of Barcode Data and Service Banner: text must be printed in accordance with Exhibit 5.1.4 and as follows:

* * * * *

[Revise 5.1.4g2 as follows:]

2. Service Banners must include the human-readable text "USPS SIGNATURE TRACKING #" for mailpieces requiring a signature at delivery and "USPS TRACKING #" for all other mailpieces (service banner text shown in Exhibit 5.1.4 is an example). See Publication 91 (addendum appendix H) at *http://ribbs.usps.gov* for additional information.

* * * * *

Exhibit 5.1.4 Barcode Specifications

[Replace Exhibit 5.1.4 with a revised label illustrating the proposed generic human-readable service banner text.]

* * * * *

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes if our proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2011–10244 Filed 4–27–11; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 58

[EPA–HQ–OAR–2008–0699; FRL–9300–4]

RIN 2060–AP38

Release of Draft Risk and Exposure Assessments and Final Integrated Review Plan for the National Ambient Air Quality Standards for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: On or about April 22, 2011, the EPA is making available for public review the documents titled, "Ozone National Ambient Air Quality Standards: Scope and Methods Plan for Health Risk and Exposure Assessment," (REA Plan for the primary ozone NAAQS) and "Ozone National Ambient Air Quality Standards: Scope and Methods Plan for Welfare Risk and Exposure Assessment" (REA Plan for the secondary ozone NAAQS). These documents contain the plans for the risk and exposure analyses that EPA is preparing to conduct in support of the reviews of ozone NAAQS. EPA is also making available to the public the final document "Integrated Review Plan for the Ozone National Ambient Air Quality Standards" (IRP). This document contains the plans for the review of the air quality criteria and national ambient air quality standards (NAAQS) for ozone. The Ozone NAAQS provide for the protection of public health and the environment from ozone in ambient air.

DATES: Comments should be submitted by June 27, 2011.

ADDRESSES: These documents will be available via the Internet at the following Web site: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html.* Submit your comments on the REAs, identified by Docket ID No. EPA–HQ–OAR–2008–0699 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* EPA–HQ–OAR–2008–0669, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* Environmental Protection Agency, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0699. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* (or e-mail). The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you

provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: REA Plan for the primary ozone standard: John Langstaff, Office of Air Quality Planning and Standards (Mail code C539–07), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: 919–541–1449; fax number: 919–541–5315; e-mail address: *langstaff.john@epa.gov.* REA Plan for the secondary ozone standard: Travis Smith, Office of Air Quality Planning and Standards (Mail code C539–07), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: 919–541–2035; fax number: 919–541–5315; e-mail address: *smith.jtravis@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Information Specific to This Document

Two sections of the Clean Air Act (CAA) govern the establishment and revision of the NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify and list certain air pollutants and then to issue air quality criteria for those pollutants. The Administrator is to list those air pollutants that in her "judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;" "the presence of which in the ambient air results from numerous or diverse mobile or stationary sources;" and "for which * * * [the Administrator] plans to issue air quality criteria * * *" Air quality criteria are intended to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *" (42 U.S.C. 7408(b)). Under section 109 (42 U.S.C. 7409), EPA establishes primary (health-based) and secondary (welfare-based) NAAQS for pollutants for which air quality criteria are issued. Section 109(d) requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria. Section 109(d)(2) requires that an independent scientific review committee "shall complete a review of the criteria * * * and the national primary and secondary ambient air quality standards * * * and shall recommend to the Administrator any new * * * standards and revisions of existing criteria and standards as may be appropriate * * *." Since the early 1980s, this independent review function has been performed by the Clean Air Scientific Advisory Committee (CASAC).

Presently, EPA is reviewing the NAAQS for ozone. Key components of this review include a quantitative population exposure analysis and health risk assessment and a quantitative ecosystem exposure and welfare risk analysis. OAQPS has developed Risk and Assessment Plans (REA Plans) for Ozone Health Risk and Exposure and Ozone Welfare Risk and Exposure which include a discussion of the scope, approaches, and methods that staff is planning to use in conducting the exposure analysis and health and welfare risk assessment. The draft REA Plans and final IRP document announced today have been developed as part of the planning phase for the review. These documents will be available on the EPA's Technology Transfer Network (TTN) Web site at *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html* in the "Documents for Review Initiated in 2008" section under "Planning Documents."

The REA Plans are being made available for consultation with CASAC and for public comment. Comments

should be submitted to the docket, as described above, by June 27, 2011. The CASAC consultation on these planning documents is scheduled for May 19–20, 2011. A separate **Federal Register** notice will provide details about this meeting and the process for participation.

Dated: April 25, 2011.

Mary Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2011–10340 Filed 4–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–1179; FRL–9299–8]

Approval and Promulgation of Air Quality Implementation Plans; Infrastructure SIP Requirements for 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve some elements and conditionally approve other elements of certifications submitted by Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin regarding the infrastructure requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the 1997 eight-hour ground level ozone national ambient air quality standards (1997 ozone NAAQS) and 1997 fine particle national ambient air quality standards (1997 $PM_{2.5}$ NAAQS). The requirements are designed to ensure that the components of each State's air quality management program are adequate to meet the State's responsibilities under the CAA.

DATES: Comments must be received on or before May 31, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–1179, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: mooney.john@epa.gov.*

3. *Fax:* (312) 692–2551.

4. *Mail:* John M. Mooney, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* John M. Mooney, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID EPA–R05–OAR–2007–1179. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andy Chang, Environmental Engineer, at (312) 886–0258 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andy Chang, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0258, *chang.andy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background of these submittals?

A. What State submittals does this rulemaking address?

This rulemaking addresses State submittals from each State (and appropriate State agency) in EPA Region 5: Illinois Environmental Protection Agency (Illinois EPA); Indiana Department of Environmental Management (IDEM); Michigan Department of Environmental Quality (MDEQ); Minnesota Pollution Control Agency (MPCA); Ohio Environmental Protection Agency (Ohio EPA); and Wisconsin Department of Natural Resources Bureau of Air Management (WDNR). Each State made submittals on the following dates: Illinois—December 12, 2007; Indiana—December 7, 2007, and supplemented on September 19, 2008, March 23, 2011, and April 7, 2011; Michigan—December 6, 2007, and supplemented on September 19, 2008 and April 6, 2011; Minnesota—November 29, 2007; Ohio—December 5, 2007, and supplemented on April 7, 2011; and, Wisconsin—December 12, 2007, and supplemented on January 24, 2011 and March 28, 2011.

B. Why did the States make these submittals?

Under sections 110(a)(1) and (2) of the CAA, and implementing EPA policy, the States were required to submit either revisions to their State Implementation Plans (SIPs) that provide for implementation, maintenance, and enforcement of the 1997 standards, or certifications that their existing SIPs for ozone and particulate matter already met those requirements. In accordance with an October 2, 2007 "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" (1997 Infrastructure Memo), the submittals meeting the requirements were to be submitted to EPA within three years after promulgation of the revised standards. As the guidance acknowledged, July 16, 2000 was the initial due date; however, intervening litigation over the 1997 ozone and 1997 $PM_{2.5}$ NAAQS created uncertainty about how States were to proceed.[1] In subsequent consent decrees with Earth Justice, EPA agreed to make official findings on whether the States had made SIP submissions to satisfy the CAA requirements by specified dates. SIPs intended to satisfy the infrastructure elements for the 1997 ozone NAAQS were due on December 15, 2007; SIPs intended to satisfy the infrastructure elements for the 1997 $PM_{2.5}$ NAAQS were due on October 15, 2008. The certifications referenced in this rulemaking pertain to the requirements of sections 110(a)(1) and (2) of the CAA. The six State submittals being evaluated here address both ozone and $PM_{2.5}$, and the proposed rulemaking addresses both pollutants as well.

III. What criteria is EPA using to judge these submittals?

EPA discussed the applicable review criteria in the 1997 Infrastructure Memo. Specifically, Attachment A of this memorandum (Required Section 110 SIP Elements) identified criteria for the States to meet in order to satisfy these sections of the CAA. On September 25, 2009, EPA issued an updated guidance document pertaining to the 2006 $PM_{2.5}$ NAAQS entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)" (2006 Infrastructure Memo), which clarifies expectations for certain elements to meet the requirements of sections 110(a)(1) and (2) of the CAA under the new NAAQS. Where possible and appropriate, EPA will reference the guidance contained in the 2006 Infrastructure Memo as it pertains to the States' submittals.

In this proposed rulemaking, EPA is not acting on portions of section 110(a)(2)(C)—Program for enforcement of control measures; section 110(a)(2)(D)—Interstate transport; and section 110(a)(2)(J)—Consultation with government officials, public notifications, prevention of significant deterioration, and visibility protection. In addition, EPA is not acting on section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D, in its entirety. The rationale for not acting on elements of these requirements is discussed below.

IV. What did EPA find from its review of these submittals?

The six States in Region 5 have certified that they meet the applicable requirements of sections 110(a)(1) and 110(a)(2) without further revisions to their respective SIPs. Therefore, consistent with the 2006 Infrastructure Memo, no public hearing process was necessary at the State level. Nevertheless, EPA believes that the public will have the opportunity to review each certification through our notice-and-comment rulemaking process. Illinois EPA, IDEM, MDEQ, MPCA, Ohio EPA, and WDNR provided detailed synopses of how various components of their respective air quality management programs meet each of the requirements in section 110(a)(2). The following review evaluates the six States' submittals.

A. Section 110(a)(2)(A)—Emission limits and Other Control Measures

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. The specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Section 110(a)(2)(A) does not require that States submit regulations or emissions limits specifically for attaining either the 1997 ozone or $PM_{2.5}$ NAAQS. Those regulations are due as part of each State's attainment demonstration, and will be addressed separately from the requirements of section 110(a)(2)(A).

The Illinois Environmental Protection Act is contained in chapter 415, section 5, of the Illinois Compiled Statutes (415 ILCS 5). 415 ILCS 5/4 provides the Director of Illinois EPA with the authority to develop rules and regulations necessary to meet ambient air quality standards. Additionally, the Illinois Pollution Control Board (IPCB) was created under 415 ILCS 5, and has the authority to develop rules and regulations necessary to promote the purposes of the Illinois Environmental Protection Act. Furthermore, the IPCB ensures compliance with required laws and other elements of the State's attainment plan that are necessary to attain the NAAQS, and to comply with the requirements of the CAA. (415 ILCS 5/10) EPA concludes that Illinois has met the requirements of section 110(a)(2)(A) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

[1] See, *e.g., Whitman* v. *American Trucking Associations, Inc.,* 531 U.S. 457 (2001).

IDEM's authority to adopt emissions standards and compliance schedules is found at Indiana Code (IC) 13–14–8, IC 13–17–3–4, IC 13–17–3–11, and IC 13–17–3–14. EPA concludes that Indiana has met the requirements of section 110(a)(2)(A) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

The Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451), sections 324.5503 and 324.5512, provide the Director of MDEQ the authority to regulate the discharge of air pollutants, and to promulgate rules to establish standards for emissions for ambient air quality and for emissions. EPA concludes that Michigan has met the requirements of section 110(a)(2)(A) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Minnesota Statute chapter 116.07 gives MPCA the authority to "[a]dopt, amend, and rescind rules and standards having the force of law relating to any purpose * * * for the prevention, abatement, or control of air pollution." EPA concludes that Minnesota has met the requirements of section 110(a)(2)(A) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Ohio Revised Code (ORC) 3704.03 provides the Director of Ohio EPA with the authority to develop rules and regulations necessary to meet State and Federal ambient air quality standards. EPA concludes that Ohio has met the requirements of section 110(a)(2)(A) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Wisconsin Statutes (WS) chapter 285.11 through WS chapter 285.19 establishes general authority for monitoring, updating, and implementing necessary revisions to the Wisconsin SIP. EPA concludes that Wisconsin has met the requirements of section 110(a)(2)(A) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

A number of States have provisions regarding excess emissions during startup, shutdown, or malfunction (SSM) which are contrary to the CAA and existing EPA guidance, including a September 20, 1999 memorandum entitled, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunction, Startup, and Shutdown." As a result, in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities. EPA plans to address such State regulations in the future. In the meantime, EPA encourages any State having a deficient SSM provision to take steps to correct it as soon as possible.

In the same manner, EPA is not proposing to approve or disapprove any existing State rules with regard to so-called "Director's discretion" or variance provisions. EPA believes that a number of States have such provisions which are contrary to the CAA existing EPA guidance (52 FR 45109) issued on November 24, 1987. EPA plans to take action in the future to address such State regulations. In the meantime, EPA encourages any State having a Director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. EPA has determined that in order to meet the requirements of section 110(a)(2)(B), each State should: Submit an annual monitoring plan for the relevant NAAQS, and have this plan approved by EPA; monitor air quality for the relevant pollutant at appropriate locations throughout the State using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; submit data to EPA's Air Quality System (AQS) in a timely manner; and, provide EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

Illinois EPA continues to operate an extensive monitoring network incorporating more than 300 monitors throughout the State. Illinois EPA also publishes an annual report that summarizes air quality trends. Furthermore, Illinois EPA submits yearly monitoring network plans to EPA, and the 2011 Annual Air Monitoring Network Plan was approved by EPA on October 29, 2010. Monitoring data from Illinois EPA is entered into AQS in a timely manner, and the State provides EPA with prior notification when changes to its monitoring network or plan are being considered. EPA concludes that Illinois has met the requirements of section 110(a)(2)(B) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

IDEM continues to operate an air monitoring network; the State's 2011 Annual Air Monitoring Network Plan was approved by EPA on October 29, 2010. Monitoring data from IDEM are entered into AQS in a timely manner, and the State provides EPA with prior notification when changes to its monitoring network or plan are being considered. EPA concludes that Indiana has met the requirements of section 110(a)(2)(B) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

MDEQ maintains a comprehensive network of air quality monitors throughout Michigan. MDEQ's 2011 Annual Air Monitoring Network Plan was approved by EPA on October 29, 2010. MDEQ enters air monitoring data into AQS, and the State provides EPA with prior notification when changes to its monitoring network or plan are being considered. EPA concludes that Michigan has met the requirements of section 110(a)(2)(B) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

MPCA continues to operate an ambient pollutant monitoring network, and compiles and reports air quality data to EPA. MPCA's 2011 Annual Air Monitoring Network Plan was approved by EPA on October 29, 2010. MPCA also provides prior notification to EPA when changes to its monitoring network or plan are being considered. EPA concludes that Minnesota has met the requirements of section 110(a)(2)(B) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Ohio EPA continues to operate a monitoring network; the State's 2011 Annual Air Monitoring Network Plan was approved by EPA on December 2, 2010. Furthermore, Ohio EPA populates AQS with air quality monitoring data in a timely manner, and provides EPA with prior notification when considering a change to its monitoring network or plan. EPA concludes that Ohio has met the requirements of section 110(a)(2)(B) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

WDNR continues to operate an extensive monitoring network; the State's 2011 Annual Air Monitoring Network Plan was approved by EPA on December 21, 2010. WDNR enters air quality data into AQS in a timely manner, and gives EPA prior notification when considering a change to its monitoring network or plan. EPA concludes that Wisconsin has met the requirements of section 110(a)(2)(B) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet new source review (NSR) requirements under the prevention of significant deterioration (PSD) and nonattainment new source review (NNSR) programs. Part C of the

CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of the Region 5 States' certifications addressing the requirements of section 110(a)(2)(C) covers: Enforcement of SIP measures; oxides of nitrogen (NO_X) as a precursor to ozone in the PSD program; PM_{10} [2] as a surrogate for $PM_{2.5}$ in the PSD program; NSR Reform; Greenhouse gas (GHG) permitting and the "tailoring rule"; and, minor NSR regulations.

Sub-Element 1: Enforcement of SIP Measures

Illinois continues to staff and implement an enforcement program comprised, and operated by, the Compliance Section and Division of Legal Counsel. 415 ILCS 5/4 provides the Director of Illinois EPA with the authority to implement and administer this enforcement program. Furthermore, Illinois EPA has confirmed that all enforcement actions are brought by the Office of the Illinois Attorney General or local State's Attorney offices, with whom Illinois EPA consults. EPA concludes that Illinois has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

IDEM maintains an enforcement program to ensure compliance with SIP requirements. IC 13–14–1–12 provides the Commissioner with the authority to enforce rules "consistent with the purpose of the air pollution control laws." Additionally, IC 13–14–2–7 and IC 13–17–3–3 provide the Commissioner with the authority to assess civil penalties and obtain compliance with any applicable rule a board has adopted in order to enforce air pollution control laws. Lastly, IC 13–14–10–2 allows for an emergency restraining order that prevents any person from causing, or introducing contaminants, that cause or contribute to air pollution. EPA concludes that Indiana has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

MDEQ continues to staff and implement an enforcement program to assure compliance with all requirements under State law, consistent with the provisions of Act 451. Additionally, this air quality enforcement unit provides support and technical assistance to Michigan's Attorney General on all air pollution enforcement issues referred by MDEQ's Air Quality Division for escalated enforcement action. Lastly, the air quality enforcement unit at MDEQ coordinates formal administrative actions such as contested case hearings, administrative complaints, and revocation of permits to install. Therefore, EPA concludes that Michigan has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Minnesota Statute chapter 116.07 gives the MPCA the authority to enforce any provisions of the chapter relating to air contamination. These provisions include: entering into orders; schedules of compliance; stipulation agreements; requiring owners or operators of emissions facilities to install and operate monitoring equipment; and conducting investigations. EPA concludes that Minnesota has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Ohio EPA continues to staff and implement an enforcement program. ORC 3704.03 provides the Director of Ohio EPA with the authority to continue to implement the enforcement program as well as the updated NSR provisions within Ohio Administrative Code (OAC) 3745–31. Ohio EPA compiles all air pollution control enforcement settlements in the State, and makes them available for public review on its Web site. EPA concludes that Ohio has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

WDNR maintains an enforcement program to ensure compliance with SIP requirements. The Bureau of Air Management houses an active Statewide Compliance and Enforcement Team that works in all geographic regions of the State. WDNR refers most actions to the Wisconsin Department of Justice with the strong involvement of WDNR. Under WS chapter 285.13, the agency has the authority to impose fees and penalties to ensure that required measures are ultimately implemented. EPA concludes that Wisconsin has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Sub-Element 2: NO_X as a Precursor to Ozone in the PSD Program

Each State's PSD program must include NO_X as a precursor to ozone in order for this sub-element to be approvable. This requirement was contained in the November 29, 2005 final rule to implement the 1997 8-hour ozone NAAQS (see 70 FR 71699), and codified at 40 CFR 52.21. Furthermore, EPA has determined that the analyses of each State's PSD program must be holistic; if a State lacks provisions needed to address NO_X as a precursor to ozone, the provisions of section 110(a) requiring a suitable permitting program must be considered not to be met irrespective of the pollutant being addressed.

Illinois and Minnesota have not adopted or submitted regulations for PSD, although Federally promulgated rules for this purpose are in effect in these two States, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These Federally promulgated rules include provisions establishing NO_X as a precursor to ozone. While EPA acknowledges that the States have not satisfied the requirement for a SIP submittal, they have no further obligations because EPA believes that the plans for Illinois and Minnesota, specifically including the Federally promulgated PSD regulations, meet this set of requirements of section 110(a)(2)(C) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Indiana's PSD regulations were conditionally approved by EPA on March 3, 2003 (68 FR 9892), and fully approved on May 20, 2004 (69 FR 29071). These regulations contain provisions establishing NO_X as a precursor to ozone. Therefore, EPA concludes that Indiana has met this set of requirements of section 110(a)(2)(C) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Michigan's PSD regulations were conditionally approved by EPA on September 16, 2008 (73 FR 53366), and fully approved by EPA on March 25, 2010 (75 FR 14352). These regulations contain provisions establishing NO_X as a precursor to ozone. Therefore, EPA concludes that Michigan has met this set of requirements of section 110(a)(2)(C) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

EPA conditionally approved Ohio EPA's PSD regulations on October 10, 2001 (66 FR 51570), and fully approved by EPA on January 22, 2003 (68 FR 2909). These regulations contain provisions establishing NO_X as a precursor to ozone. Therefore, EPA concludes that Ohio has met this set of requirements of section 110(a)(2)(C) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

EPA approved Wisconsin's PSD rules on May 27, 1999 (64 FR 28745). These

[2] PM_{10} refers to particles with diameters between 2.5 and 10 microns, oftentimes referred to as "coarse" particles. Coarse particles are frequently the result from crushing or grinding operations, and can come from dust on paved or unpaved roads as well.

regulations contain provisions establishing NO_X as a precursor to ozone. Therefore, EPA finds that Wisconsin has met this set of requirements of section 110(a)(2)(C) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Sub-Element 3: PM_{10} as a Surrogate for $PM_{2.5}$ in the PSD Program

On October 23, 1997, EPA issued a policy allowing PM_{10} emissions to be used as a surrogate for $PM_{2.5}$ emissions in the PSD program. This policy was issued by the Director of the Office of Air Quality Planning and Standards, and entitled, "Interim Implementation of New Source Review for $PM_{2.5}$." At that time, EPA's justification for using PM_{10} as a surrogate for $PM_{2.5}$ was that permitting authorities were not able to accurately calculate emissions of $PM_{2.5}$ and related precursors or to predict $PM_{2.5}$ ambient air quality impacts from projects. On May 16, 2008 (73 FR 28321), EPA issued the Final Rule on the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)," which ended the PM_{10} surrogate policy, and confirmed that States wanting to submit PSD program regulations for EPA approval would need to evaluate $PM_{2.5}$ emissions rather than PM_{10}. The deadline for States to submit revised PSD regulations addressing $PM_{2.5}$ emissions is May 16, 2011; in the interim, States may still use the PM_{10} surrogate policy. Furthermore, EPA has determined that the evaluation of the PSD program must be holistic; if States do not submit amendments that evaluate direct $PM_{2.5}$ emissions by May 16, 2011, EPA would consider the PSD requirements under section 110(a) unmet, irrespective of the pollutant for which EPA is evaluating the satisfaction of section 110(a).

Illinois and Minnesota have not adopted or submitted regulations for PSD, although Federally promulgated rules for this purpose are in effect in these two States, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These Federally promulgated rules require that States evaluate $PM_{2.5}$ emissions in the PSD program. While EPA acknowledges that the States have not satisfied the requirement for a SIP submittal, they have no further obligations because EPA believes that the plans for Illinois and Minnesota, specifically including the Federally promulgated PSD regulations, meet this set of requirements of section 110(a)(2)(C) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Indiana, Ohio, and Michigan do not currently have the evaluation of $PM_{2.5}$ emissions adopted into their respective State regulations. The May 16, 2011 deadline for submitting revisions to their respective SIPs addressing the direct evaluation of $PM_{2.5}$ and its precursors may pass prior to final action of these infrastructure SIPs. As a result, EPA has determined that so long as States provide a formal commitment to submit the requisite $PM_{2.5}$ revisions for SIP approval not later than one year after final action of these infrastructure SIPs, we can propose a conditional approval for Indiana, Ohio, Michigan, and Wisconsin with respect to this set of requirements of section 110(a)(2)(C).

EPA received formal commitments from IDEM (March 23, 2011), Ohio EPA (April 7, 2011), and MDEQ (April 6, 2011) affirming that each State will submit revisions to the SIP incorporating the direct evaluation of $PM_{2.5}$ and its precursors within one year of our final action of these infrastructure SIPs. Therefore, EPA proposes to conditionally approve the plans for Indiana, Ohio, and Michigan addressing this set of requirements of section 110(a)(2)(C) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

If, however, Indiana, Ohio and Michigan do not submit revisions to their respective SIPs incorporating the direct evaluation of $PM_{2.5}$ and its precursors within one year of final action on these infrastructure SIPs, the conditional approval will automatically revert to disapproval with respect to this set of requirements of section 110(a)(2)(C) for the 1997 ozone and $PM_{2.5}$ NAAQS.

In a March 28, 2011 letter from Wisconsin's Director of the Bureau of Air Management, WDNR informed EPA that current State rules provide for NSR permitting for $PM_{2.5}$ without the use of the PM_{10} surrogate policy. EPA therefore concludes that Wisconsin has met this set of requirements of section 110(a)(2)(C) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Sub-Element 4: NSR Reform

In this action, EPA is not proposing to approve or disapprove any State rules with regard to NSR reform requirements (see 67 FR 80186). EPA has acted on NSR reform submittals from Region 5 States through earlier separate rulemakings.[3] For the purpose of this action, "NSR reform" applies to major NSR only.

[3] *http://www.epa.gov/reg5oair/permits/const/frn-nsr.html.*

Sub-Element 5: GHG Permitting and the "Tailoring Rule"

On June 3, 2010, EPA issued a final rule establishing a "common sense" approach to addressing GHG emissions from stationary sources under the CAA permitting programs. The "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule," or "tailoring rule," set thresholds for GHG emissions that define when permits under the NSR PSD and title V operating permit programs are required for new and existing industrial facilities (75 FR 31514). The tailoring rule set the GHG PSD applicability threshold at 75,000 tons per year (tpy) as expressed in carbon dioxide equivalent; if States have not adopted this threshold, sources with GHG emissions above 100 tpy or 250 tpy (depending on source category) would be subject to PSD, effective January 2, 2011. The lower thresholds could potentially result in apartment complexes, strip malls, small farms, restaurants, *etc.* triggering GHG PSD requirements.

On December 23, 2010, EPA issued a subsequent series of rules that put the necessary framework in place to ensure that industrial facilities can get CAA permits covering their GHG emissions when needed, and that facilities emitting GHGs at levels below those established in the tailoring rule do not need to obtain CAA permits.[4] Included in this series of rules was EPA's issuance of the "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans," referred to as the PSD SIP "narrowing rule" on December 30, 2010 (75 FR 82536). The narrowing rule limits, or "narrows," EPA's previous approval of PSD programs that were previously approved into SIPs; the programs in question are those that apply PSD to sources that emit GHG. Specifically, the effect of the narrowing rule is that provisions that are no longer approved—*e.g.,* portions of already approved SIPs that apply PSD to GHG emissions increases from sources emitting GHG below the tailoring rule thresholds—now have the status of having been submitted by the State but not yet acted upon by EPA. In other words, the narrowing rule focuses on eliminating the PSD obligations under Federal law for sources below the tailoring rule thresholds.

EPA has found that the six Region 5 States and their respective PSD programs fall into three distinct categories: States that have not adopted

[4] *http://www.epa.gov/NSR/actions.html#2010.*

or submitted any regulations for PSD; States that have a previously approved PSD program that predates both the tailoring rule and the narrowing rule; and, a State that has submitted certifications of PSD program with GHG permitting applicability consistent with the tailoring rule thresholds. Each Region 5 State's status with respect to its GHG PSD program, as well as EPA's proposed actions, is discussed below.

Illinois and Minnesota have not adopted or submitted regulations for PSD, although Federally promulgated rules for this purpose are in effect in these two States, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These Federally promulgated rules contain the threshold as outlined in the tailoring rule. While EPA acknowledges that the States have not satisfied the requirement for a SIP submittal, they have no further obligations because EPA believes that the plans for Illinois and Minnesota, specifically including the Federally promulgated PSD regulations, meet this set of requirements of section 110(a)(2)(C) and (E) [5] with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

The States of Indiana, Ohio, and Wisconsin have the legal authority under their approved PSD SIPs to regulate GHGs as part of their PSD permitting programs. In the PSD SIP narrowing rule, EPA narrowed its previous approval of these States' PSD programs to ensure that the Federally approved PSD programs in these three States only require PSD permitting of sources emitting GHG at or above the thresholds established in the tailoring rule.

As noted above, EPA received the infrastructure SIP submittals from these three States in December 2007, before EPA identified GHG as a regulated pollutant and before EPA promulgated the Tailoring Rule. On April 7, 2011, Indiana and Ohio transmitted letters clarifying to EPA that their respective submissions, currently before EPA for our review, include only those parts of their PSD SIPs that remain approved after the PSD SIP Narrowing Rule. Wisconsin transmitted a similar letter on March 28, 2011. Thus, the GHG PSD permitting requirements included in these three States' infrastructure SIP submittals consist of only those portions of their PSD SIP programs that apply PSD permitting requirements to GHG emissions at or above tailoring rule thresholds. Therefore, EPA concludes that the GHG PSD permitting program in Indiana, Ohio, and Wisconsin have met this set of requirements of sections 110(a)(2)(C) and (E) for both the 1997 ozone and $PM_{2.5}$ NAAQS.

On July 27, 2010, Michigan informed EPA that the State has both the legal and regulatory authority, as well as the resources, to permit GHG under its SIP-approved PSD permitting program, consistent with the thresholds laid out in the tailoring rule.[6] Therefore, EPA concludes that Michigan's GHG PSD permitting program has met this set of requirements requirements of sections 110(a)(2)(C) and (E) for both the 1997 ozone and $PM_{2.5}$ NAAQS.

Sub-Element 6: Minor NSR Regulations

EPA has provided States with a broad degree of discretion in implementing their programs for review of minor new sources (minor NSR), as reflected in the less detailed regulations for minor NSR outlined in 40 CFR 51.160 to 40 CFR 51.164.

EPA previously approved each Region 5 State's minor NSR program into the SIP, including provisions that adequately address the emissions of $PM_{2.5}$. EPA approvals for each State's minor NSR program occurred on: Illinois—May 31, 1972 (37 FR 10862); Indiana—October 7, 1994 (59 FR 51108); Michigan—May 6, 1980 (45 FR 29790); Minnesota—May 24, 1995 (60 FR 27411); Ohio—January 22, 2003 (68 FR 2909); and, Wisconsin—February 17, 1995 (60 FR 3543). Since the date of each approval, each Region 5 State and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 1997 ozone and $PM_{2.5}$ NAAQS. In this action, EPA concludes that Illinois, Indiana, Michigan, Ohio, Minnesota, and Wisconsin have met this set of requirements of section 110(a)(2)(C) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Various sub-elements in this section overlap with elements of section 110(a)(2)(E) and section 110(a)(2)(J). These links will be discussed in the appropriate areas below.

D. Section 110(a)(2)(D)—Interstate Transport

Section 110(a)(2)(D)(i) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one State from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another State. Furthermore, this section requires SIPs to include provisions prohibiting any source or other type of emissions activity in one State from interfering with measures required to prevent significant deterioration of air quality or to address regional haze.

EPA is not acting on any of the requirements of section 110(a)(2)(D)(i). The requirements that States have provisions prohibiting any source or other type of emissions activity in that State from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another State are being addressed by a new rule pertaining to interstate transport which EPA proposed on August 2, 2010, entitled the "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone" (Transport Rule).[7] PSD requirements have been addressed in the analysis of section 110(a)(2)(C), and visibility requirements will be addressed in the analysis of section 110(a)(2)(J). Again, in the context of section 110(a)(2)(D)(i), EPA is not taking action on the requirements for PSD and visibility protection.

Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 and 115 (relating to interstate and international pollution abatement, respectively).

Section 126(a) requires new or modified sources to notify neighboring States of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in State rules would be grounds for disapproval of this element.

While Illinois and Minnesota have not adopted or submitted regulations for PSD, Federally promulgated rules for this purpose are in effect in each of the States, promulgated at 40 CFR 52.21. EPA has currently delegated the authority to implement these regulations to Illinois and Minnesota. These Federally promulgated rules contain provisions requiring new or

[5] Section 110(a)(2)(E) requires that States have the resources to administer an air quality management program. Some States that are not covered by the narrowing rule may not be able to adequately demonstrate that they have adequate personnel to issue GHG permits to all sources that emit GHG under the tailoring rule thresholds.

[6] Letter from the Director of MDEQ to EPA Region 5 Regional Administrator dated July 27, 2010.

[7] See "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Proposed Rule," 75 FR 45210 (August 2, 2010).

modified sources to notify neighboring States of potential negative air quality impacts. While EPA acknowledges that the States have not satisfied the requirements of a SIP submittal, they have no further obligations because EPA believes that the plans from Illinois and Minnesota, specifically including the Federally promulgated PSD regulations, meet this set of requirements of section 110(a)(2)(D) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Indiana, Michigan, Ohio, and Wisconsin have provisions in their respective EPA-approved PSD programs requiring new or modified sources to notify neighboring States of potential negative air quality impacts. EPA concludes that Indiana, Michigan, Ohio, and Wisconsin have met the requirements of section 126(a) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

None of the Region 5 States have pending obligations under any other section of section 126, nor do any of the Region 5 States have any obligations under section 115. Therefore, EPA finds that all States in Region 5 have met the requirements of section 110(a)(2)(D)(ii) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

E. Section 110(a)(2)(E)—Adequate Resources

This section requires each State to provide for adequate personnel, funding, and legal authority under State law to carry out its SIP, and related issues.

Illinois Public Act 95–0348, Article 215 provides appropriations for the Illinois EPA Bureau of Air Programs and associated personnel. As discussed in previous sections, Illinois EPA has affirmed that 415 ILCS 5/4 and 415 ILCS 5/10 provide the Director, in conjunction with IPCB, with the authority to develop rules and regulations necessary to meet ambient air quality standards and respond to any EPA findings of inadequacy with the Illinois SIP program. Lastly, IPCB ensures compliance with required laws or elements of the State's attainment plan that are necessary to attain the NAAQS, or that are necessary to comply with the requirements of the CAA. EPA concludes that Illinois has met the requirements of section 110(a)(2)(E) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Indiana's biennial budget sets funding and personnel levels for IDEM every two years. As discussed in earlier sections, IC 13–14–1–12 provides the Commissioner of IDEM with the authority to enforce air pollution control laws. Furthermore, IC 13–14–8, IC 13–17–3–11, and IC 13–17–3–14 contain the authority for IDEM to adopt air emissions standards and compliance schedules. EPA concludes that Indiana has met the requirements of section 110(a)(2)(E) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Michigan's budget ensures that EPA grant funds as well as State funding appropriations are sufficient to administer its air quality management program, and MDEQ has routinely demonstrated that it retains adequate personnel to carry out the duties of this program. Furthermore, Act 451 provides the legal authority under State law to carry out the Michigan SIP. EPA concludes that Michigan has met the requirements of section 110(a)(2)(E) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Although MPCA did not expressly address this section, EPA recognizes that the State's budget has been, and is, adequate for administering its air quality management program. MPCA has routinely demonstrated that it retains adequate personnel to carry out the duties of this program. EPA also notes that Minnesota Statue chapter 116.07 provides the legal authority under State law to carry out the SIP. EPA concludes that Minnesota has met the requirements of section 110(a)(2)(E) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Ohio EPA has included its biennial budget with its submittal, which details the funding sources and program priorities addressing the required SIP programs. Ohio EPA has routinely demonstrated that it retains adequate personnel to administer its air quality management program. As discussed in previous sections, ORC 3704.03 provides the legal authority under State law to carry out the SIP. EPA concludes that Ohio has met the requirements of section 110(a)(2)(E) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Wisconsin's biennial budget ensures that EPA grant funds as well as State funding appropriations are sufficient to administer its air quality management program, and WDNR has routinely demonstrated that it retains adequate personnel to administer its air quality management program. As discussed in previous sections, basic duties and authorities in the State are outlined in WS chapter 285.11. EPA concludes that Wisconsin has met the requirements of section 110(a)(2)(E) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

As noted above in the discussion addressing section 110(a)(2)(C), the resources needed to permit all sources emitting more than 100 tpy or 250 tpy (as applicable) of GHG would require more resources than any Region 5 State appears to have. This is not a concern in Illinois and Minnesota, because PSD permitting for GHGs is based on Federally promulgated PSD rules that "tailor" the applicability to 75,000 tons per year (expressed as carbon dioxide equivalent).

Given the effect of EPA's narrowing rule to provide that approved SIPs for Indiana, Ohio, and Wisconsin do not involve permitting GHG sources smaller than the tailoring rule thresholds, EPA concludes that these States also have the resources necessary to implement the requirements of their respective SIPs.

As previously discussed, Michigan's PSD regulations provide the State with adequate resources to permit GHG consistent with the tailoring rule thresholds; therefore, EPA concludes that Michigan retains all the resources necessary to implement the requirements of its SIP.

F. Section 110(a)(2)(F)—Stationary Source Monitoring System

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The State plan shall also require period reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each State agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

Illinois EPA requires regulated sources to submit various reports, dependent on applicable requirements and the type of permit issued to the source. These reports are submitted to the Bureau of Air's Compliance Unit for review, and all reasonable efforts are made by Illinois EPA to maximize the effectiveness of available resources to review the required reports. EPA concludes that Illinois has satisfied the requirements of section 110(a)(2)(F) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

The Indiana State rules for monitoring requirements are contained in 326 Indiana Administrative Code (IAC) 3. Additional emissions reporting requirements are found in 326 IAC 2–6. EPA concludes that Indiana has satisfied the requirements of section 110(a)(2)(F) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Michigan Administrative Code (MAC) R336.2001 to R336.2004 provide requirements for performance testing and sampling. MAC R336.2101 to R336.2199 provide requirements for continuous emission monitoring, and MAC R336.201 and R336.202 require annual reporting of emissions. EPA concludes that Michigan has met the requirements of section 110(a)(2)(F) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Under Minnesota State air quality rules, any NAAQS is an applicable requirement for stationary sources. Minnesota's monitoring rules have been previously approved by EPA and are contained in Chapter 7011 of Minnesota's SIP. EPA concludes that Minnesota has met the requirements of section 110(a)(2)(F) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Ohio EPA district offices and local air agencies are currently required to witness 50% of all source testing and review 100% of all tests. EPA recognizes that Ohio has routinely submitted quality assured analyses and data for publication. Furthermore, requirements for continuous emissions monitoring under 40 CFR part 51, Appendix P are contained in OAC 3745–17–03(c). EPA concludes that Ohio has met the requirements of section 110(a)(2)(F) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Wisconsin DNR requires regulated sources to submit various reports, dependent on applicable requirements and the type of permit issued, to the Bureau of Air Management Compliance Team. The frequency and requirements for report review are incorporated as part of Wisconsin Administrative Code NR 438 and Wisconsin Administrative Code NR 439. Additionally, WDNR routinely submits quality assured analyses and data obtained from its stationary source monitoring system for review and publication. EPA concludes Wisconsin has met the requirements of section 110(a)(2)(F) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

G. Section 110(a)(2)(G)—Emergency Power

EPA is currently in the process of promulgating new guidance providing values that we would recommend for defining emergency episodes for $PM_{2.5}$. Subsequent to the December 2007 submittals, EPA has provided guidance regarding $PM_{2.5}$ emergency episode planning. This guidance was provided in Attachment B of a memorandum dated September 25, 2009, from the Director of the Air Quality Policy Division to the Regional Air Division Directors. In accordance with this guidance, EPA believes that where a State can demonstrate that $PM_{2.5}$ levels have consistently remained below 140.4 micrograms per cubic meter ($\mu g/m^3$), provided the State has appropriate general emergency powers to address $PM_{2.5}$ related episodes, the State may satisfy section 110(a)(2)(G) without necessarily providing for specific emergency episode plans or contingency measures for $PM_{2.5}$.

On January 11, 2011, Illinois EPA confirmed that all monitored values of $PM_{2.5}$ have been well below 140.4 $\mu g/m^3$ at all sites in Illinois, and therefore Illinois is not specifically required to submit an emergency episode plan and contingency measures for $PM_{2.5}$ at this time. Illinois also has the necessary general authority to address emergency episodes. EPA concludes that Illinois has met the requirements of section 110(a)(2)(G) with respect to the 1997 $PM_{2.5}$ NAAQS.

On January 11, 2011, IDEM confirmed that all monitored values of $PM_{2.5}$ have been well below 140.4 $\mu g/m^3$ at all sites in Indiana since 1999, and therefore Indiana is not specifically required to submit an emergency episode plan and contingency measures for $PM_{2.5}$ at this time. Several statutory provisions in the Indiana Code and the Indiana Administrative Code provide the proper mechanisms to address air pollution emergency episodes. EPA concludes that Indiana has met the requirements of section 110(a)(2)(G) with respect to the 1997 $PM_{2.5}$ NAAQS.

On January 11, 2011, MPCA observed that all monitored values of $PM_{2.5}$ have been well below 140.4 $\mu g/m^3$ at all sites in Minnesota since 2006, with the highest recorded value since then being 57.5 $\mu g/m^3$. Therefore, Minnesota is not specifically required to submit an emergency episode plan and contingency measures for $PM_{2.5}$ at this time. Chapter 7009 of the Minnesota SIP contains the provisions necessary for determining air quality emergency episodes. EPA concludes that Minnesota has met the requirements of section 110(a)(2)(G) with respect to the 1997 $PM_{2.5}$ NAAQS.

On January 24, 2011, MDEQ confirmed that all reliable monitored $PM_{2.5}$ values in Michigan have been well below 140.4 $\mu g/m^3$. MDEQ did cite elevated readings in 2007 at a site operated by the Intertribal Council (ITC). Although the data has not been removed by ITC, EPA staff completed an analysis on March 30, 2011, attesting that the data from the ITC site was reported to AQS without supporting quality assurance measures. Therefore, EPA believes that the data collected at this site is of unknown quality, and should be considered invalid and unusable, especially for regulatory purposes. Since no reliable observations in Michigan exceed 140.4 $\mu g/m^3$, EPA has determined that Michigan is not specifically required to submit an emergency episode plan and contingency measures for $PM_{2.5}$ at this time. Additionally, EPA is working with ITC to either invalidate or delete the invalid data from AQS. Michigan R 324.5518 of Act 451 provides MDEQ with the authority to require the immediate discontinuation of air contaminant discharges that constitute an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment. Furthermore, R 324.5530 of Act 451 provides for civil action by the Michigan Attorney General for violations described in R 324.5518. EPA concludes that Michigan has met the requirements of section 110(a)(2)(G) with respect to the 1997 $PM_{2.5}$ NAAQS.

On January 11, 2011, Ohio EPA confirmed that all monitored values of $PM_{2.5}$ have been well below 140.4 $\mu g/m^3$ at all sites in Ohio, and therefore Ohio is not specifically required to submit an emergency episode plan and contingency measures for $PM_{2.5}$ at this time. OAC 3745–25 provides the requirement to implement emergency action plans in the event of an Air Quality Alert or higher. EPA concludes that Ohio has met the requirements of section 110(a)(2)(G) with respect to the 1997 $PM_{2.5}$ NAAQS.

On January 24, 2011, WDNR confirmed that that all monitored values of $PM_{2.5}$ have been well below 140.4 $\mu g/m^3$ at all sites in Wisconsin, and therefore Wisconsin is not specifically required to submit an emergency episode plan and contingency measures for $PM_{2.5}$ at this time. WS chapter 285.85 provides the requirement for WDNR to act upon a finding that episode or emergency conditions exist. EPA concludes that Wisconsin has met the requirements of section 110(a)(2)(G) with respect to the 1997 $PM_{2.5}$ NAAQS.

H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires States to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or to an EPA finding that the SIP is substantially inadequate.

As previously mentioned, 415 ILCS 5/4 and 415 ILCS 5/10 provide the Director of Illinois EPA, in conjunction with IPCB, with the authority to develop rules and regulations necessary to meet ambient air quality standards.

Furthermore, they have the authority to respond to any EPA findings of inadequacy with the Illinois SIP program. EPA concludes that Illinois has met the requirements of section 110(a)(2)(H) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

IDEM continues to update and implement needed revisions to Indiana's SIP as necessary to meet ambient air quality standards. As discussed in previous sections, authority to adopt emissions standards and compliance schedules is found at IC 13–4–8, IC 13–17–3–4, IC 13–17–3–11, and IC 13–17–3–14. EPA concludes that Indiana has met the requirements of section 110(a)(2)(H) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Michigan Act 451 provides the authority to: promulgate rules to establish standards for ambient air quality and emissions; issue, deny, revoke, or reissue permits; make findings of fact and determinations; make, modify, or cancel orders that require the control of air pollution and/or permits rules and regulations necessary to meet NAAQS; and prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for control or prevention of any new air pollution. EPA concludes that Michigan has met the requirements of section 110(a)(2)(H) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Minnesota Statute chapter 116.07 grants the agency the authority to "[a]dopt, amend, and rescind rules and standards having the force of law relating to any purpose * * * for the prevention, abatement, or control of air pollution." EPA concludes that Minnesota has met the requirements of section 110(a)(2)(H) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

ORC 3704.03 provides the Director of Ohio EPA with the authority to develop rules and regulations necessary to meet ambient air quality standards. EPA concludes that Ohio has met the requirements of section 110(a)(2)(H) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

WS chapter 285.11(6) provides WDNR with the authority to develop all rules, limits, and regulations necessary to meet the NAAQS as they evolve, and to respond to any EPA findings of inadequacy with the overall Wisconsin SIP and air management programs. EPA concludes that Wisconsin has met the requirements of section 110(a)(2)(H) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas.

EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; Prevention of Significant Deterioration; Visibility Protection

The evaluation of the Region 5 States' certifications addressing the requirements of section 110(a)(2)(J) are described below.

Sub-Element 1: Consultation With Government Officials

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements. All States in EPA Region 5 consult with appropriate governments, stakeholders, and FLM in their planning efforts.

Illinois EPA is required to give notice to the Office of the Attorney General and the Illinois Department of Natural Resources during the rulemaking process. Furthermore, Illinois provides notice to reasonably anticipated stakeholders and interested parties, as well as to any FLM if the rulemaking applies to Federal land which the FLM has authority over. Additionally, Illinois EPA participates in the Lake Michigan Air Director's Consortium (LADCO), which consists of collaboration with the States of Indiana, Wisconsin, Michigan, and Ohio. Lastly, Illinois EPA participates in the Regional Haze Planning Process through its membership in the Midwest Regional Planning Organization. EPA concludes that Illinois has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

IDEM actively participates in the regional planning efforts that include State rule developers, representatives from the FLMs, and other affected stakeholders. Additionally, Indiana is an active member of LADCO. EPA concludes that Indiana has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

MDEQ actively participates in planning efforts that include stakeholders from local governments, the business community, and community activist groups. MDEQ also routinely involves FLMs and Tribal groups in Michigan SIP development. Michigan is also an active member of LADCO. Therefore, EPA concludes that Michigan has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

MPCA actively participates in the Central Regional Air Planning Association as well as the Central States Air Resource Agencies. MPCA has also demonstrated that it frequently consults and discusses issues with pertinent Tribes. Therefore, EPA concludes that Minnesota has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Ohio EPA actively participates in the regional planning efforts that include both the State rule developers as well as representatives from the FLMs and other affected stakeholders. The FLMs are also included in Ohio EPA's interested party lists which provide announcements of draft and proposed rule packages. Additionally, Ohio is an active member of LADCO. Therefore, EPA concludes that Ohio has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

WS chapter 285.13(5) contains the provisions for WDNR to advise, consult, contract, and cooperate with other agencies of the State and local governments, industries, other States, interstate or inter-local agencies, the Federal government, and interested persons or groups during the entire process of SIP revision development and implementation and for other elements regarding air management for which the agency is the officially charged agency. WDNR's Bureau of Air Management has effectively used formal stakeholder structures in the development and refinement of all SIP revisions. Additionally, Wisconsin is an active member of LADCO. EPA concludes that Wisconsin has satisfied the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Sub-Element 2: Public Notification

Section 110(a)(2)(J) also requires States to notify the public if NAAQS are exceeded in an area and must enhance public awareness of measures that can be taken to prevent exceedances.

Illinois EPA continues to collaborate with the Cook County Department of Environmental Control. This consists of: continued and routine monitoring of air

quality throughout the State, and notifying the public when unhealthy air quality is measured or forecasted. Illinois EPA provides air quality data to EPA's AIRNOW program, and also provides the daily air quality index (AQI) to the media. Additionally, Illinois EPA provides the AQI to local stakeholder groups including Partners for Clean Air in Chicago and the Clean Air Partnership in St. Louis. Lastly, air quality data, as well as measures that can be taken to prevent exceedances, are made available on Illinois EPA's Web site. EPA concludes that Illinois has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

IDEM monitors air quality data daily, and reports the AQI to the interested public and media if necessary. IDEM also participates and submits information to EPA's AIRNOW program, and maintains SmogWatch, which is an informational tool created by IDEM to share air quality forecasts for each day. SmogWatch provides daily information about ground-level ozone, particulate matter concentration levels, health information, and monitoring data for seven regions in Indiana. EPA concludes that Indiana has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

MDEQ actively participates in programs such as Ozone Action, AIRNOW, and EnviroFlash. Additionally, MDEQ posts current air quality concentrations on the its Web pages, and prepares an annual air quality report. EPA concludes that Michigan has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Minnesota consistently notifies the public when exceedances occur, participates in the AIRNOW program, and dedicates portions of the MPCA Web site to enhancing public awareness of measures that can be taken to prevent exceedances. EPA concludes that Minnesota has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Ohio EPA's district offices and local air agencies monitor air quality daily, and where required, report the daily AQI to the interested media. In addition, Ohio EPA's remote access of data system provides online reports of real time air quality data on the Internet and feeds raw information to EPA's AIRNOW program. Furthermore, Ohio EPA actively involves local stakeholder groups in the AIRNOW forecast program. EPA concludes that Ohio has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

In addition to maintaining an active monitoring network for multiple criteria pollutants (with NAAQS), WDNR also routinely forecasts air quality when elevated pollutant concentrations are noted. Public notice is provided at levels associated with the extent of the monitored problems ranging from a simple advisory to alert levels. Wisconsin also participates in the AIRNOW program, and dedicates portions of the WDNR Web site to enhancing public awareness of measures that can be taken to prevent exceedances. EPA concludes that Wisconsin has met the requirements of this portion of section 110(a)(2)(J) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Sub-Element 3: Prevention of Significant Deterioration

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. All six States in Region 5 have stated their commitment to addressing both long-term requirements to meet natural visibility levels by 2064 as well as concurrent review of new major sources and major modifications under each State's approved PSD new source review program. Each State's PSD program has already been discussed in the paragraphs addressing section 110(a)(2)(C), and will not be addressed in this section.

Sub-Element 4: Visibility Protection

With regard to the applicable requirements for visibility protection, States are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. This would be the case even in the event a secondary $PM_{2.5}$ NAAQS for visibility is established, because this NAAQS would not affect visibility requirements under part C.

Michigan, Minnesota, Indiana, and Ohio have submitted such plans to EPA on November 5, 2010, December 30, 2009, January 14, 2011, and March 11, 2011, respectively. EPA expects the other Region 5 States to submit their plans in the coming months. EPA will conduct separate rulemakings on regional haze plans as the States submit them; these rulemakings will address each State's satisfaction of the visibility portion of section 110(a)(2)(J). EPA is neither proposing to approve, nor disapprove, the regional haze requirements of section 110(a)(2)(J) for any of the Region 5 States in today's action.

K. Section 110(a)(2)(K)—Air Quality Modeling/Data

SIPs must provide for performing air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and submission of such data to EPA upon request.

Illinois EPA maintains the capability to perform modeling of the air quality impacts of emissions of all criteria pollutants, including the capability to use complex photochemical grid models. This modeling is used in support of the SIP for all nonattainment areas in the State. Illinois EPA also requires air quality modeling in support of permitting the construction of major and some minor new sources under the PSD program. These modeling data are available to EPA as well as the public upon request. Lastly, Illinois EPA participates in LADCO, which conducts regional modeling that is used for statewide planning purposes. EPA concludes that Illinois EPA has met the requirements of section 110(a)(2)(K) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

IDEM continues to review the potential impact of major and some minor new sources using computer models. Indiana's rules regarding air quality modeling are contained in 326 IAC 2–2–4, 326 IAC 2–2–5, 326 IAC 2–2–6, and 326 IAC 2–2–7. These modeling data are available to EPA or other interested parties upon request. EPA concludes that Indiana has met the requirements of section 110(a)(2)(K) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

MDEQ reviews the potential impact of major and some minor new sources, consistent with 40 CFR part 51, Appendix W, "Guidelines on Air Quality Models." These modeling data are available to EPA upon request. EPA concludes that Michigan has met the requirements of section 110(a)(2)(K) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

MPCA reviews the potential impact of major and some minor new sources. Applicable major sources in Minnesota are required to perform modeling to show that emissions do not cause or contribute to a violation of any NAAQS. Furthermore, MPCA maintains the capability to perform its own modeling. EPA concludes that Minnesota has met the requirements of section 110(a)(2)(K)

with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Ohio EPA reviews the potential impact of major and some minor new sources, consistent with 40 CFR part 51, Appendix W, "Guidelines on Air Quality Models," as well as Ohio EPA Engineering Guide 69. These modeling data are available to EPA upon request. EPA concludes that Ohio has met the requirements of section 110(a)(2)(K) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

WDNR maintains the capability to perform computer modeling of the air quality impacts of emissions of all criteria pollutants, including both source-oriented and more regionally directed complex photochemical grid models. WDNR collaborates with LADCO, EPA, and other Lake Michigan States in order to perform modeling. EPA concludes that Wisconsin has met the requirements of section 110(a)(2)(K) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

L. Section 110(a)(2)(L)—Permitting Fees

This section requires SIPs to mandate each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

Illinois EPA implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62946); therefore, EPA concludes that Illinois has met the requirements of section 110(a)(2)(L).

IDEM implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62969); revisions to program were approved on August 13, 2002 (67 FR 52615). EPA concludes that Indiana has met the requirements of section 110(a)(2)(L).

MDEQ implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62949); revisions to the program were approved on November 10, 2003 (68 FR 63735). EPA concludes that Michigan has met the requirements of section 110(a)(2)(L).

MPCA implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62967); therefore, EPA concludes that Minnesota has met the requirements of section 110(a)(2)(L).

Ohio EPA implements and operates the title V permit program, which EPA approved on August 15, 1995 (60 FR 42045); revisions to the program were approved on November 20, 2003 (68 FR 65401). EPA concludes that Ohio has met the requirements of section 110(a)(2)(L).

Wisconsin DNR implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62951); revisions to the program were approved on February 28, 2006 (71 FR 9934). EPA concludes that Wisconsin has met the requirements of section 110(a)(2)(L).

EPA concludes that all Region 5 States have met the requirements of section 110(a)(2)(L) with respect to the 1997 ozone and 1997 $PM_{2.5}$ NAAQS.

M. Section 110(a)(2)(M)—Consultation/ Participation by Affected Local Entities

States must consult with and allow participation from local political subdivisions affected by the SIP.

All public participation procedures pertaining to Illinois EPA are consistent with 35 Illinois Administrative Code Part 164 and Part 252. Part 252 is an approved portion of Illinois' SIP. EPA concludes that Illinois has met the requirements of section 110(a)(2)(M) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Any IDEM rulemaking procedure contained in IC 13–14–9 requires public participation in the SIP development process. In addition, IDEM ensures that the requirements of 40 CFR 51.102 are satisfied during the SIP development process. EPA concludes that Indiana has met the requirements of section 110(a)(2)(M) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

In Michigan, memoranda of understanding regarding consultation or participation in the SIP development process have been entered between MDEQ and local political subdivisions. MDEQ also provides opportunity for stakeholder workgroup participation in rule development processes. EPA concludes that Michigan has met the requirements of section 110(a)(2)(M) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Minnesota regularly consults with local political subdivisions affected by the SIP, where applicable. EPA observes that Minnesota Statute chapter 116.05 authorizes cooperation and agreement between MPCA and other State and local governments. Additionally, the Minnesota Administrative Procedures Act (Minnesota Statute chapter 14) provides general notice and comment procedures that are followed during SIP development. Lastly, MPCA regularly issues public notices on proposed actions. EPA concludes that Minnesota has met the requirements of section 110(a)(2)(M) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

Ohio EPA follows approved procedures for allowing public participation, consistent with OAC 3745–47, which is part of the approved SIP. EPA concludes that Ohio has met the requirements of section 110(a)(2)(M) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

In addition to the measures outlined in the paragraph addressing WDNR's submittal regarding consultation requirements of section 110(a)(2)(J), as contained in WS chapter 285.13(5), the State follows a formal public hearing process in the development and adoption of all SIP revisions that entail new or revised control programs or strategies and targets. EPA concludes that Wisconsin has met the requirements of section 110(a)(2)(M) with respect to the 1997 ozone and $PM_{2.5}$ NAAQS.

V. What action is EPA taking?

EPA is proposing to approve some elements and conditionally approve other elements of submissions from the EPA Region 5 States certifying that the current SIPs are sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 1997 8-hour ground-level ozone NAAQS and $PM_{2.5}$ NAAQS.

Specifically, these are EPA's proposed actions, by element of section 110(a)(2):

Element	IL	IN	OH	MI	MN	WI
A: Emission limits and other control measures	A	A	A	A	A	A
B: Ambient air quality monitoring and data system	A	A	A	A	A	A
C1: Enforcement of SIP measures	A	A	A	A	A	A
C2: NO_X as a precursor to ozone in PSD regulations	*	A	A	A	*	A
C3: PM_{10} surrogate policy in PSD regulations	*	CA	CA	CA	*	A
C4: NSR reform	NA	NA	NA	NA	NA	NA
C5: GHG permitting in PSD regulations	*	A	A	A	*	A
C6: Minor NSR regulations	A	A	A	A	A	A
D(i): Interstate transport	NA	NA	NA	NA	NA	NA
D(ii): Interstate and international pollution abatement	A	A	A	A	A	A

Element	IL	IN	OH	MI	MN	WI
E: Adequate resources	A	A	A	A	A	A
F: Stationary source monitoring system	A	A	A	A	A	A
G: Emergency power	A	A	A	A	A	A
H: Future SIP revisions	A	A	A	A	A	A
I: Nonattainment area plan or plan revisions under part D	NA	NA	NA	NA	NA	NA
J1: Consultation with government officials	A	A	A	A	A	A
J2: Public notification	A	A	A	A	A	A
J3: PSD	**	**	**	**	**	**
J4: Visibility protection (Regional Haze)	NA	NA	NA	NA	NA	NA
K: Air quality modeling and data	A	A	A	A	A	A
L: Permitting fees	A	A	A	A	A	A
M: Consultation and participation by affected local entities	A	A	A	A	A	A

In the above table, the key is as follows:

A	Approve.
CA	Conditionally Approve.
NA	No Action/Separate Rulemaking.
*	Federally promulgated rules in place.
**	Previously discussed in element (C).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 19, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–10331 Filed 4–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2009–0234; EPA–HQ–OAR–2011–0044, FRL–9300–1]

RIN 2060–AP52

National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Notice of public hearings.

SUMMARY: EPA published in the **Federal Register** on May 3, 2011, the proposed rule "National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units." EPA is announcing three public hearings to be held for the proposed rule.

DATES: The public hearings will be held on May 24, 2011, and May 26, 2011.

ADDRESSES: Public hearings will be held on May 24, 2011, in Chicago, IL, and Philadelphia, PA. The Chicago, IL, hearing will be held at the Crowne Plaza Chicago Metro in Ballroom D located at 733 West Madison Street, Chicago, IL 60611; *Telephone:* (312) 829–5000. The Philadelphia, PA, hearing will be held at the Westin Philadelphia in the Georgian Room located at 99 South 17th Street at Liberty Place, Philadelphia, PA 19103; *Telephone:* (888) 627–8153. The May 26, 2011, hearing will be held in the EPA Region IV offices at the Sam Nunn Atlanta Federal Center (AFC)

Conference Rooms C and D, 61 Forsyth Street SW., Atlanta, GA 30303–8960; telephone (800) 241–1754. For the Atlanta, GA, hearing, visitors must go through the metal detector, sign in with the security desk, be accompanied by an employee, and will need to show photo identification to enter the building.

The three public hearings will convene at 9 a.m. and continue until 8 p.m. (local time). EPA will make every effort to accommodate all speakers that arrive and register before 8 p.m. A lunch break is scheduled from 12:30 p.m. until 2 p.m. and a dinner break is scheduled from 5 p.m. until 6:30 p.m. during the hearings. The EPA Web Site for the rulemaking, which includes the proposal and information about the public hearings, can be found at: *http://www.epa.gov/airquality/powerplanttoxics/actions.html.*

FOR FURTHER INFORMATION CONTACT: If you would like to present oral testimony at the public hearing, please contact Ms. Pamela Garrett, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Planning Division, (D243–01), Research Triangle Park, NC 27711, telephone (919) 541–7966, fax number (919) 541–5450, *e-mail address: garrett.pamela@epa.gov* (preferred method for registering), no later than 2 business days prior to each public hearing. The last day to register will be close-of-business Thursday, May 19, 2011, for the Chicago, IL, and Philadelphia, PA, hearings, and Monday, May 23, 2011, for the Atlanta, GA, hearing. If using e-mail, please provide the following information: Time you wish to speak (morning, afternoon, evening), name, affiliation, address, e-mail address, and telephone and fax numbers.

Questions concerning the May 3, 2011, proposed rule should be addressed to Mr. William Maxwell, U.S. EPA, Office of Air Quality Planning and Standards, Energy Strategies Group, (D243–01), Research Triangle Park, N.C. 27711, telephone number (919) 541–5430, e-mail at *maxwell.bill@epa.gov* for the NESHAP and Mr. Christian Fellner, U.S. EPA, Office of Air Quality Planning and Standards, Energy Strategies Group, (D243–01), Research Triangle Park, N.C. 27711, telephone number (919) 541–4003, e-mail at *fellner.christian@epa.gov* for the NSPS.

Public hearing: The proposal for which EPA is holding the public hearings was published in the **Federal Register** on May 3, 2011 and is available at: *http://www.epa.gov/airquality/powerplanttoxics/actions.html* or *http://www.epa.gov/ttn/atw/utility/utilitypg.html* and also in the docket identified below. The public hearings will provide interested parties the opportunity to present oral comments regarding EPA's proposed NESHAP standards, including data, views, or arguments concerning the proposal. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing.

Commenters should notify Ms. Garrett if they will need specific equipment, or if there are other special needs related to providing comments at the hearings. EPA will provide equipment for commenters to show overhead slides or make computerized slide presentations if we receive special requests in advance. Oral testimony will be limited to 5 minutes for each commenter. EPA encourages commenters to provide EPA with a copy of their oral testimony electronically (via e-mail or CD) or in hard copy form.

The hearing schedules, including lists of speakers, will be posted on EPA's Web Sites *http://www.epa.gov/airquality/powerplanttoxics/actions.html* or *http://www.epa.gov/ttn/atw/utility/utilitypg.html.* Verbatim transcripts of the hearings and written statements will be included in the docket for the rulemaking.

EPA will make every effort to follow the schedule as closely as possible on the day of the hearings; however, please plan for the hearing to run either ahead of schedule or behind schedule.

How can I get copies of this document and other related information?

The EPA has established a docket for the proposed rule "National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units" under No. EPA–HQ–OAR–2011–0044 (NSPS action) or Docket ID No. EPA–HQ–OAR–2009–0234 (NESHAP action) (available at *http://www.regulations.gov*).

List of Subjects in 40 CFR Parts 60 and 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 25, 2011.

Mary Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2011–10283 Filed 4–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2008–0321; FRL–9300–3]

RIN 2060–AP92

Protection of Stratospheric Ozone: The 2011 Critical Use Exemption From the Phaseout of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing uses that qualify for the 2011 critical use exemption and the amount of methyl bromide that may be produced, imported, or supplied from existing pre-phaseout inventory for those uses in 2011. EPA is taking action under the authority of the Clean Air Act to reflect a recent consensus decision taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Twenty-First Meeting of the Parties. EPA is seeking comment on the list of critical uses and on EPA's determination of the amounts of methyl bromide needed to satisfy those uses.

DATES: Comments must be submitted by May 31, 2011. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on May 3, 2011. If a hearing is requested it will be held on May 13, 2011 and comments will be due to the Agency June 13, 2011. EPA will post information regarding a hearing, if one is requested, on the Ozone Protection Web site *http://www.epa.gov/ozone/strathome.html.* Persons interested in attending a public hearing should consult with the contact person below regarding the location and time of the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0321, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* Docket EPA–HQ–OAR–2008–0321, Air and Radiation Docket and

Information Center, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

• *Hand Delivery:* Docket EPA–HQ–OAR–2008–0321, Air and Radiation Docket at EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0321. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Jeremy Arling by telephone at (202) 343–9055, or by e-mail at *arling.jeremy@epa.gov* or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also visit the methyl bromide section of the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *http://www.epa.gov/ozone/mbr* for further information about the methyl bromide critical use exemption, other Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

SUPPLEMENTARY INFORMATION: This proposed rule concerns Clean Air Act (CAA) restrictions on the consumption, production, and use of methyl bromide (a Class I, Group VI controlled substance) for critical uses during calendar year 2011. Under the Clean Air Act, methyl bromide consumption (consumption is defined under the CAA as production plus imports minus exports) and production was phased out on January 1, 2005, apart from allowable exemptions, such as the critical use exemption and the quarantine and preshipment (QPS) exemption. With this action, EPA is proposing and seeking comment on the uses that will qualify for the 2011 critical use exemption as well as specific amounts of methyl bromide that may be produced, imported, or sold from pre-phaseout inventory for proposed critical uses in 2011.

Table of Contents

I. General Information

A. Regulated Entities

Entities potentially regulated by this proposed action are those associated with the production, import, export, sale, application, and use of methyl bromide covered by an approved critical use exemption. Potentially regulated categories and entities include producers, importers, and exporters of methyl bromide; applicators and distributors of methyl bromide; users of methyl bromide, *e.g.,* farmers of vegetable crops, fruits and nursery stock; and owners of stored food commodities and structures such as grain mills and processors.

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this proposed action. To determine whether your facility, company, business, or organization could be regulated by this proposed action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

B. What should I consider when preparing my comments?

1. *Confidential Business Information.* Do not submit confidential business information (CBI) to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

• Identify the rulemaking by docket number and other identifying

information (subject heading, **Federal Register** date, and page number).

- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. What is methyl bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a Class I ozone-depleting substance (ODS). Methyl bromide was once widely used as a fumigant to control a variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Information on methyl bromide can be found at *http://www.epa.gov/ozone/mbr.*

Methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority, as well as by States under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Restricted use pesticides are subject to Federal and State requirements governing their sale, distribution, and use. Nothing in this proposed rule implementing the Clean Air Act is intended to derogate from provisions in any other Federal, State, or local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. Entities affected by provisions of this proposal must continue to comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide for critical uses. The regulations in this proposed action are intended only to implement the CAA restrictions on the production, consumption, and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

III. What is the background to the phaseout regulations for ozone-depleting substances?

The regulatory requirements of the stratospheric ozone protection program that limit production and consumption of ozone-depleting substances are in 40 CFR part 82, subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol). The Montreal Protocol is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone-depleting substances. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued regulations to implement this legislation and has since amended the regulations as needed.

Methyl bromide was added to the Protocol as an ozone-depleting substance in 1992 through the Copenhagen Amendment to the Protocol. The Parties to the Montreal Protocol (Parties) agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze in the level of methyl bromide production and consumption for industrialized countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a Class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 baseline level of 25,528,270 kilograms, and setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until 2001, when the complete phaseout would occur. This phaseout date was established in response to a petition filed in 1991 under Sections 602(c)(3) and 606(b) of the CAAA of 1990, requesting that EPA list methyl bromide as a Class I substance and phase out its production and consumption. This date was consistent with Section 602(d) of the CAAA of 1990, which for newly listed Class I ozone-depleting substances provides that "no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances."

At the Seventh Meeting of the Parties (MOP) in 1995, the Parties made adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for industrialized countries with exemptions permitted for critical uses. At that time, the U.S. continued to have a 2001 phaseout date in accordance with Section 602(d) of the CAAA of 1990. At the Ninth MOP in 1997, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in industrialized countries, with reduction steps leading to a 2005 phaseout.

IV. What is the legal authority for exempting the production and import of methyl bromide for critical uses authorized by the parties to the Montreal Protocol?

In October 1998, the U.S. Congress amended the CAA to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to bring the U.S. phaseout of methyl bromide in line with the schedule specified under the Protocol, and to authorize EPA to provide certain exemptions. These amendments were contained in Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998) and were codified in section 604 of the CAA, 42 U.S.C. 7671c. The amendment that specifically addresses the critical use exemption appears at section 604(d)(6), 42 U.S.C. 7671c(d)(6). EPA revised the phaseout schedule for methyl bromide production and consumption in a direct final rulemaking on November 28, 2000 (65 FR 70795), which allowed for the phased reduction in methyl bromide consumption specified under the Protocol and extended the phaseout to 2005. EPA again amended the regulations to allow for an exemption for quarantine and preshipment (QPS) purposes on July 19, 2001 (66 FR 37751), with an interim final rule and with a final rule on January 2, 2003 (68 FR 238).

On December 23, 2004 (69 FR 76982), EPA published a final rule (the "Framework Rule") that established the

framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet the needs of approved critical uses. EPA subsequently published rules applying the critical use exemption framework for each of the control periods from 2006 to 2010. Under authority of section 604(d)(6) of the CAA, this action proposes the uses that will qualify as approved critical uses in 2011 and the amount of methyl bromide that may be produced, imported, or supplied from inventory to satisfy those uses.

This proposed action on critical uses for 2011 reflects Decision XXI/11, taken at the Twenty-First Meeting of the Parties in November 2009. In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. These include Decisions IX/6 and Ex. I/4, which set forth criteria for review of proposed critical uses. The status of Decisions is addressed in *NRDC* v. *EPA,* (464 F.3d 1, DC Cir. 2006) and in EPA's "Supplemental Brief for the Respondent," filed in *NRDC* v. *EPA* and available in the docket for this action. In this proposed rule on critical uses for 2011, EPA is honoring commitments made by the United States in the Montreal Protocol context.

V. What is the critical use exemption process?

A. Background of the Process

The critical use exemption is designed to permit the production and import of methyl bromide for uses that do not have technically and economically feasible alternatives and for which the lack of methyl bromide would result in significant market disruption (40 CFR 82.3). The criteria for the exemption initially appeared in Decision IX/6. In that Decision, the Parties agreed that "a use of methyl bromide should qualify as 'critical' only if the nominating Party determines that: (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (ii) there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and public health and are suitable to the crops and circumstances of the nomination." These criteria are reflected in EPA's definition of "critical use" at 40 CFR 82.3.

In response to EPA's request for critical use exemption applications published in the **Federal Register** on May 2, 2008 (73 FR 24282), applicants provided data on the technical and economic feasibility of using alternatives to methyl bromide. Applicants also submitted data on their use of methyl bromide, research programs into the use of alternatives to methyl bromide, and efforts to minimize use and emissions of methyl bromide.

EPA's Office of Pesticide Programs reviews the data submitted by applicants, as well as data from governmental and academic sources, to establish whether there are technically and economically feasible alternatives available for a particular use of methyl bromide, and whether there would be a significant market disruption if no exemption were available. In addition, EPA reviews other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants' research or transition plans. This assessment process culminates in the development of a document referred to as the critical use nomination (CUN). The U.S. Department of State has submitted a CUN annually to the United Nations Environment Programme (UNEP) Ozone Secretariat. The Methyl Bromide Technical Options Committee (MBTOC) and the Technology and Economic Assessment Panel (TEAP), which are independent advisory bodies to Parties to the Montreal Protocol, review the CUNs of the Parties and make recommendations to the Parties on the nominations. The Parties then take Decisions to authorize critical use exemptions for particular Parties, including how much methyl bromide may be supplied for the exempted critical uses. As required in section 604(d)(6) of the CAA, for each exemption period, EPA consults with the United States Department of Agriculture (USDA) and other departments and institutions of the Federal government that have regulatory authority related to methyl bromide, and provides an opportunity for public comment on the amounts of methyl bromide that the Agency is proposing to exempt for critical uses and the uses that the Agency is proposing as approved critical uses.

More on the domestic review process and methodology employed by the Office of Pesticide Programs is available in a detailed memorandum titled "Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America," contained in the docket for this rulemaking. While the particulars of the data continue to evolve and administrative matters are further streamlined, the technical review itself remains rigorous with careful consideration of new technical and economic conditions.

On January 23, 2009, the U.S. Government (USG) submitted the seventh *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America* to the Ozone Secretariat of the UNEP. This nomination contained the request for 2011 critical uses. In February 2009, MBTOC sent two sets of questions to the USG concerning technical and economic issues in the 2011 nomination, one for post-harvest uses and one for pre-plant uses. The USG transmitted responses to MBTOC on April 10, 2009. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The proposed critical uses and amounts reflect the analysis contained in those documents.

B. How does this proposed rule relate to previous critical use exemption rules?

The December 23, 2004, Framework Rule (69 FR 76982) established the framework for the critical use exemption program in the U.S., including definitions, prohibitions, trading provisions, and recordkeeping and reporting obligations. The preamble to the Framework Rule included EPA's determinations on key issues for the critical use exemption program.

Since publishing the Framework Rule, EPA has annually promulgated regulations to exempt from the phaseout of methyl bromide specific quantities of production and import for each control period (each calendar year), to determine the amounts that may be supplied from pre-phaseout inventory, and to indicate which uses meet the criteria for the exemption program for that year. See 71 FR 5985 (calendar year 2006), 71 FR 75386 (calendar year 2007), 72 FR 74118 (calendar year 2008), 74 FR 19878 (calendar year 2009), and 75 FR 23167 (calendar year 2010).

Today's action proposes to utilize the existing regulatory framework to determine critical uses for 2011 and the amounts of Critical Use Allowances (CUAs) and Critical Stock Allowances (CSAs) to be allocated for those uses. A CUA is the privilege granted through 40 CFR part 82 to produce or import 1 kg of methyl bromide for an approved critical use during the specified control period. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. A CSA is the right granted through 40

CFR part 82 to sell 1 kg of methyl bromide from inventory produced or imported prior to the January 1, 2005, phaseout date for an approved critical use during the specified control period.

The critical uses that EPA is proposing to approve as 2011 critical uses are the uses included in the USG's seventh CUN and authorized by the Parties in Decision XXI/11. EPA is utilizing the existing regulatory framework for critical uses. This framework is discussed in Section V.D.1 of the preamble.

C. Proposed Critical Uses

In Decision XXI/11, taken in November 2009, the Parties to the Protocol agreed "to permit, for the agreed critical use categories for 2011 set forth in table C of the annex to the present decision for each Party, subject to the conditions set forth in the present decision and decision Ex.I/4 to the extent that those conditions are applicable, the levels of production and consumption for 2011 set forth in table D of the annex to the present decision which are necessary to satisfy critical uses * * *"

The following uses are those set forth in table C of the annex to Decision XXI/11 for the United States:

- Commodities
- NPMA food processing structures (cocoa beans removed) [1]
- Mills and processors
- Dried cured pork
- Cucurbits
- Eggplant—field
- Forest nursery seedlings
- Nursery stock—fruit, nut, flower
- Orchard replant
- Ornamentals
- Peppers—field
- Strawberries—field
- Strawberry runners
- Tomatoes—field
- Sweet potato slips

The Decision XXI/11 critical use levels for 2011 total 2,055,200 kilograms (kg), which is equivalent to 8.1% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg. The maximum amount of allowable new production and import for U.S. critical uses in Table D of Decision XXI/11 is 1,855,200 kg (7.3% of baseline), minus available stocks.

EPA is proposing a total critical use exemption in 2011 of 1,982,333 kg (7.8% of baseline) with new production or import of methyl bromide for critical uses up to 1,500,000 kg (5.9% of baseline), and with up to 482,333 kg (1.9% of baseline) coming from pre-phaseout inventory (*i.e.,* stocks).

EPA is seeking comment on the technical analysis contained in the U.S. nomination (available for public review in the docket to this rulemaking), and seeks information regarding changes to the registration or use of alternatives that have transpired after the 2011 U.S. nomination was written. Specifically, California has recently registered Iodomethane and EPA has recently registered DMDS. EPA is unable to estimate uptake of Iodomethane in California due to uncertainties created by the California label, specifically impacts of larger buffer zones and the lack of efficacy studies at the California label's lower use rates. Second, each state must register DMDS before that alternative may be used in that state. None of the states where critical use methyl bromide is used have registered DMDS, though EPA anticipates that states will likely do so. While EPA is not proposing a specific amount of reduction to account for the uptake of these alternatives, EPA will consider new data received during the comment period. EPA recognizes that as the market for alternatives evolves, the thresholds for what constitutes "significant market disruption" or "technical and economic feasibility" change. Comments on the technical data contained in the nomination or new information could potentially alter the Agency's analysis on the uses and amounts of methyl bromide qualifying for the critical use exemption. The Agency may, in response to new information, reduce the proposed quantities of critical use methyl bromide, or decide not to approve uses authorized by the Parties. However, the Agency will not increase the quantities or add new uses in the final rule beyond those authorized by the Parties.

EPA is also proposing to modify the table in 40 CFR part 82, subpart A, appendix L to reflect the agreed critical use categories identified in Decision XXI/11. The Agency is amending the table of critical uses based in part on the technical analysis contained in the 2011 U.S. nomination that assesses data submitted by applicants to the CUE program. EPA is proposing to remove ornamental growers in New York. MBTOC did not recommend this use for 2011, concluding that alternatives are available for replacing methyl bromide use in *Anemone coronaria.* The Parties did not authorize this use. EPA agrees with the Parties' conclusion, and proposes not to list this use as critical for 2011. Second, EPA is proposing to remove Michigan cucurbit growers, Michigan eggplant growers, Michigan ornamental growers (specifically, herbaceous perennial growers), Michigan tomato growers, Michigan pepper growers, and members of the Western Raspberry Nursery Consortium operating in Washington State. These users did not submit applications and were not part of the CUN. The Parties have not authorized them as critical uses for 2011, and EPA proposes not to list this use as critical for this control period. EPA seeks comment on these proposed changes to Appendix L.

EPA is not proposing other changes to the table but is repeating the following clarifications made in previous years for ease of reference. The "local township limits prohibiting 1,3-dichloropropene" are prohibitions on the use of 1,3-dichloropropene products in cases where local township limits on use of this alternative have been reached. In addition, "pet food" under subsection B of Food Processing refers to food for domesticated dogs and cats. Finally, "rapid fumigation" for commodities is when a buyer provides short (two working days or fewer) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

D. Proposed Critical Use Amounts

Table C of the annex to Decision XXI/11 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol. When added together, the total authorized critical use for 2010 is 2,055,200 kg, which is equivalent to 8.1% of the U.S. 1991 methyl bromide consumption baseline. The maximum amount of authorized new production or import authorized by the Parties is 1,855,200 kg (7.3% of baseline) as set forth in Table D of the annex to Decision XXI/11. The difference between the total authorized amount and the authorized amount of new production is the minimum that the Parties expect the U.S. to use from pre-phaseout inventory. This difference is 200,000 kg (0.8% of baseline). EPA is proposing to allocate 482,333 kg (1.9% of baseline) of existing pre-phaseout inventory for critical uses in 2011. EPA is also proposing to exempt limited amounts of new production and import of methyl bromide for critical uses for 2011 in the amount of 1,500,000 kg (5.9% of baseline).

EPA has calculated the proposed allocation amounts differently than in past CUE allocation rulemakings. Initially, EPA used the "available stocks" methodology to calculate the allocation amounts for new production/import and stocks. As described in previous CUE allocation rules, one of

[1] NPMA, National Pest Management Association, includes both food processing structures and processed foods.

the inputs to this methodology is the previous year's inventory drawdown. Consistent with past practice, EPA prepared an estimate of the pre-phaseout inventory on December 31, 2010.

Due to the timing of the 2011 CUE rulemaking, EPA issued a No Action Assurance letter December 22, 2010, to allow Critical Use Allowance holders to continue producing and importing methyl bromide beyond December 31, 2010, in the absence of allowances, subject to certain conditions. The amounts authorized in the December 22, 2010, letter, and a subsequent clarification letter dated January 13, 2011, were based on the estimates of the 2010 inventory drawdown. Specifically, EPA clarified that producers and importers "may assume that the allocations for production and import will equal at least 1,500 MT." Following the development of the No Action Assurance letter, companies submitted end of year reports to EPA detailing how much pre-phaseout inventory they held on December 31, 2010. These data show that the amount of pre-phaseout inventory is larger than the estimated amounts that formed the basis of the No Action Assurance letter. If EPA were to use these data in the existing methodology for calculating "available stocks," this would result in more "available stocks" and fewer allowances for new production or import as compared to the December 2010–January 2011 estimates. However, because regulated entities have been acting on the estimate developed for the No Action Assurance letter in good faith, EPA believes it would be inappropriate to propose less than the amount provided for in the No Action Assurance letter, as clarified by the January 2011 letter. Therefore, EPA is proposing to allocate 1,500,000 kg for new production and import. EPA is also proposing a critical stock allowance allocation of 482,333 kg. Together the total allocation equals 1,982,333 kg. EPA is seeking comment on the proposed total levels of exempted new production and import for critical uses and the amount of material that may be sold from pre-phaseout inventory for critical uses. In addition, EPA is taking comment on how to account for the fact that the proposed critical-use allowance allocation of 1,500,000 kg is greater than what would be allocated if it were based on the "available stocks" calculation using end of year inventory data. One possibility is that EPA could reduce critical-use allowances for new production and import in the 2012 allocation rule. More information on the available stocks calculation and the estimate that preceded it is available in the docket for this rulemaking.

E. The Criteria in Decisions IX/6 and Ex. I/4

Paragraphs 2 and 6 of Decision XXI/11 request Parties to ensure that the conditions or criteria listed in Decisions Ex. I/4 and IX/6, paragraph 1, are applied to exempted critical uses for the 2011 control period. A discussion of the Agency's application of the criteria in paragraph 1 of Decision IX/6 appears in sections V.A., V.C., V.D., and V.H. of this preamble. In section V.C. the Agency solicits comments on the technical and economic basis for determining that the uses listed in this proposed rule meet the criteria of the critical use exemption. The CUNs detail how each proposed critical use meets the criteria listed in paragraph 1 of Decision IX/6, apart from the criterion located at (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

The criterion in Decision IX/6(1)(b)(ii), which refers to the use of available stocks of methyl bromide, is addressed in sections V.D., V.G., and V.H. of this preamble. The Agency has previously provided its interpretation of the criterion in Decision IX/6(1)(a)(i) regarding the presence of significant market disruption in the absence of an exemption, and EPA refers readers to the 2006 CUE final rule (71 FR 5989) as well as to the memo on the docket titled "Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America" for further elaboration.

The remaining considerations, including the lack of available technically and economically feasible alternatives under the circumstance of the nomination; efforts to minimize use and emissions of methyl bromide where technically and economically feasible; the development of research and transition plans; and the requests in Decision Ex. I/4(5) and (6) that Parties consider and implement MBTOC recommendations, where feasible, on reductions in the critical use of methyl bromide and include information on the methodology they use to determine economic feasibility, are addressed in the nomination documents.

Some of these criteria are evaluated in other documents as well. For example, the U.S. has further considered matters regarding the adoption of alternatives and research into methyl bromide alternatives, criterion (1)(b)(iii) in Decision IX/6, in the development of the National Management Strategy submitted to the Ozone Secretariat in December 2005 and in ongoing consultations with industry. The National Management Strategy addresses all of the aims specified in Decision Ex. I/4(3) to the extent feasible and is available in the docket for this rulemaking.

As discussed in the 2010 CUE Rule, EPA is no longer making an additional reduction to new production to account for approved research amounts. In the 2011 CUN, as in the 2010 CUN, the USG did not nominate a separate, additional amount specifically for research purposes; thus, EPA is not proposing to adjust the production level to subtract this amount. The nomination was again broad enough to cover both research and non-research uses. As discussed in the 2010 CUE rule, research is a key element of the critical use process. EPA therefore is retaining research on the critical use crops shown in the table in Appendix L to subpart A as a critical use of methyl bromide. Therefore, researchers may continue to use newly produced methyl bromide, as well as pre-phaseout inventory purchased through the expenditure of CSAs, for field studies requiring the use of methyl bromide.

F. Emissions Minimization

Previous decisions have stated that Parties shall request critical users to employ emission minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible. Through the recent Reregistration Eligibility Decision (RED) for methyl bromide, the Agency requires that methyl bromide applications be tarped except for California orchard replant where EPA instead requires deep (18 inches or greater) shank applications. The RED also encourages the use of high-barrier tarps, such as virtually impermeable film (VIF), by providing credits that applicators can use to minimize their buffer zones. In addition to minimizing emissions, use of high-barrier tarps has the benefit of providing pest control at lower application rates. The amount of methyl bromide nominated by the USG reflects the lower application rates necessary when using high-barrier tarps, where such tarps are allowed. Emissions minimization efforts should not be limited to pre-plant fumigations. While the RED addresses emissions minimization only in the context of pre-plant fumigation, EPA also urges users to reduce emissions from structures and port facilities

through the use of recapture technologies.

Users of methyl bromide should continue to make every effort to minimize overall emissions of methyl bromide to the extent consistent with State and local laws and regulations. The Agency encourages researchers and users who are successfully utilizing such techniques to inform EPA of their experiences as part of their comments on this proposed rule and to provide such information with their critical use applications. In addition, the Agency welcomes comments on the implementation of emission minimization techniques and whether and how emissions could be reduced further.

G. Critical Use Allowance Allocations

EPA is proposing to allocate 2011 critical use allowances for new production or import of methyl bromide up to the amount of 1,500,000 kg (5.9% of baseline) as shown in the proposed changes to the table in 40 CFR 82.8(c)(1). EPA is seeking comment on the total levels and allocations of exempted new production or import for pre-plant and post-harvest critical uses in 2011. Each critical use allowance (CUA) is equivalent to 1 kg of critical use methyl bromide. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. The proposed CUA allocation is subject to the trading provisions at 40 CFR 82.12, which are discussed in section V.G. of the preamble to the Framework Rule (69 FR 76982).

Paragraph three of Decision XXI/11 states "that Parties shall endeavor to license, permit, authorize or allocate quantities of critical-use methyl bromide as listed in tables A and C of the annex to the present decision." This is similar to language in Decisions authorizing prior critical uses. The language from these Decisions calls on Parties to endeavor to allocate critical use methyl bromide on a sector basis.

The Framework Rule proposed several options for allocating critical use allowances, including a sector-by-sector approach. The Agency evaluated the various options based on their economic, environmental, and practical effects. After receiving comments, EPA determined that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that a sector-by-sector approach would pose significant administrative and practical difficulties. For the reasons discussed in the preamble to the 2009 CUE rule (74 FR 19894), the Agency believes that under the approach adopted in the Framework Rule, the actual critical use will closely follow the sector breakout listed in the Parties' decisions, but continues to welcome comments on this issue.

H. Critical Stock Allowance Allocations

The 2004 Framework Rule established the provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of Critical Stock Allowances (CSAs) and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. In addition, EPA noted that pre-phaseout inventories were further taken into account through the trading provisions that allow CUAs to be converted into CSAs. EPA is not proposing changes to these basic CSA provisions.

Previous decisions further addressed pre-phaseout inventory of methyl bromide. For example, Decision XX/5 states "that a Party with a critical use exemption level in excess of permitted levels of production and consumption for critical uses is to make up any such differences between those levels by using quantities of methyl bromide from stocks that the Party has recognized to be available." In the Framework Rule (69 FR 52366), EPA issued CSAs in an amount equal to the difference between the total authorized CUE amount and the amount of new production or import authorized by the Parties. In each of the subsequent CUE Rules, EPA allocated CSAs in amounts that represented not only the difference between the total authorized CUE amount and the amount of authorized new production and import but also an additional amount to reflect available stocks. After determining the CSA amount, EPA reduced the portion of CUE methyl bromide to come from new production and import in each of the 2006–2010 control periods such that the total amount of methyl bromide exempted for critical uses did not exceed the total amount authorized by the Parties for that year.

As established in the earlier rulemakings, EPA views the inclusion of these additional amounts in the calculation of the year's overall CSA level as an appropriate exercise of discretion. The Agency is not required to allocate the full amount of authorized new production and consumption. The Parties only agree to "permit" a particular level of production and consumption; they do not—and cannot—mandate that the U.S. authorize this level, or any level, of production and consumption domestically. Nor does the CAA require EPA to allow the full amount permitted by the Parties. Section 604(d)(6) of the CAA does not require EPA to exempt any amount of production and consumption from the phaseout, but instead specifies that the Agency "may" create an exemption for critical uses, providing EPA with substantial discretion.

When determining the CSA amount for a year, EPA considers what portion of existing stocks is "available" for critical uses. As discussed in prior CUE rulemakings, the Parties to the Protocol recognized in their Decisions that the level of existing stocks may differ from the level of available stocks. For example, Decision IX/6 states that "production and consumption, if any, of methyl bromide for critical uses should be permitted only if * * * methyl bromide is not available in sufficient quantity and quality from existing stocks." Previous decisions refer to use of "quantities of methyl bromide from stocks that the Party has recognized to be available." Thus, it is clear that individual Parties have the ability to determine their level of available stocks. Decision XXI/11 further reinforces this concept by including the phrase "minus available stocks" as a footnote to the United States' authorized level of production and consumption in Table D. Section 604(d)(6) of the CAA does not require EPA to adjust the amount of new production and import to reflect the availability of stocks; however, as explained in previous rulemakings, making such an adjustment is a reasonable exercise of EPA's discretion under this provision.

EPA is proposing to allocate CSAs to the entities shown in the proposed table for the 2011 control period in the amount of 482,333 kg (1.9% of baseline). EPA proposes to update the table by incorporating information from recent mergers. Therefore, EPA proposes to list a single entry for Royster Clark, UAP Southeast (NC), and UAP Southeast (SC) called Crop Production Services. The CSA allocation for Crop Production Services would be the sum of the three allocations that would have gone to Royster Clark and the two UAP Southeast entities.

EPA's proposed allocation of CSAs is based on each company's proportionate share of the aggregate inventory. In 2006, the United States District Court for the District of Columbia upheld EPA's treatment of company-specific methyl bromide inventory information as confidential. *NRDC* v. *Leavitt,* 2006 WL 667327 (D.D.C. March 14, 2006). Therefore, the documentation regarding

company-specific allocation of CSAs is in the confidential portion of the rulemaking docket and the individual CSA allocations are not listed in the table in 40 CFR 82.8(c)(2). EPA will inform the listed companies of their CSA allocations in a letter following publication of the final rule.

I. Stocks of Methyl Bromide

An approved critical user may purchase methyl bromide produced or imported with CUAs as well as limited inventories of pre-phaseout methyl bromide, the combination of which constitute the supply of "critical use methyl bromide" intended to meet the needs of agreed critical uses. The Framework Rule established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. It also established trading provisions that allow CUAs to be converted into CSAs. EPA is not proposing to change these provisions.

The aggregate amount of pre-phaseout methyl bromide reported as being in inventory at the beginning of 2010 was 3,062,674 kg. The Agency continues to closely monitor CUA and CSA data. End of year reporting shows that the inventory at the beginning of 2011 was 1,802,705 kg. Given this amount, EPA believes there is sufficient inventory to allocate 482,333 kg as critical stock allowances. As stated in the final 2006 CUE Rule, if an inventory shortage occurs, EPA may consider various options including authorizing the conversion of a limited number of CSAs to CUAs through a rulemaking, bearing in mind the upper limit on U.S. production/import for critical uses. In sections V.D. and V.G. of this preamble, EPA seeks comment on the amount of critical use methyl bromide to come from stocks compared to new production and import.

As explained in the 2008 CUE Rule, the Agency intends to continue releasing the aggregate of methyl bromide stockpile information reported to the Agency under the reporting requirements at 40 CFR 82.13 for the end of each control period. EPA notes that if the number of competitors in the industry were to decline appreciably, EPA would revisit the question of whether the aggregate is entitled to treatment as confidential information and whether to release the aggregate without notice. EPA is not proposing to change the treatment of submitted information but welcomes information concerning the composition of the industry in this regard. The aggregate information for 2003 through 2009 is available in the docket for this rulemaking.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this proposal is a "significant regulatory action." This action is likely to result in a rule that may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The application, recordkeeping, and reporting requirements have already been established under previous Critical Use Exemption rulemakings and this action does not propose to change any of those existing requirements. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0482. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS code	SIC code	NAICS Small business size standard (in number of employees or millions of dollars)
Agricultural production	1112—Vegetable and Melon Farming 1113—Fruit and Nut Tree Farming 1114—Greenhouse, Nursery, and Floriculture Production.	0171—Berry Crops 0172—Grapes. 0173—Tree Nuts. 0175—Deciduous Tree Fruits (except apple orchards and farms). 0179—Fruit and Tree Nuts, NEC. 0181—Ornamental Floriculture and Nursery Products. 0831—Forest Nurseries and Gathering of Forest Products.	$0.75 million.
Storage Uses	115114—Postharvest Crop activities (except Cotton Ginning).		$7 million.
	311211—Flour Milling	2041—Flour and Other Grain Mill Products.	500 employees.

Category	NAICS code	SIC code	NAICS Small business size standard (in number of employees or millions of dollars)
	311212—Rice Milling	2044—Rice Milling	500 employees.
	493110—General Warehousing and Storage.	4225—General Warehousing and Storage.	$25.5 million.
	493130—Farm Product Warehousing and Storage.	4221—Farm Product Warehousing and Storage.	$25.5 million.
Distributors and Applicators	115112—Soil Preparation, Planting and Cultivating.	0721—Crop Planting, Cultivation, and Protection.	$7 million.
Producers and Importers	325320—Pesticide and Other Agricultural Chemical Manufacturing.	2879—Pesticides and Agricultural Chemicals, NEC.	500 employees.

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This proposed rule would only affect entities that applied to EPA for an exemption to the phaseout of methyl bromide. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. EPA estimated that 3,218 entities petitioned EPA for an exemption for the 2005 control period. EPA revised this estimate in 2008 down to 2,000 end users of critical use methyl bromide. EPA believes that the number continues to decline as growers cease applying for critical uses. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of this proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." (5 U.S.C. 603–604). Thus, an Agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule would exempt methyl bromide for approved critical uses after the phaseout date of January 1, 2005, this action would confer a benefit to users of methyl bromide. We have therefore concluded that this proposed rule would relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector. Instead, this action would provide an exemption for the manufacture and use of a phased out compound and would not impose any new requirements on any entities. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule is expected to primarily affect producers, suppliers, importers, and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule does not significantly or uniquely affect the communities of Indian Tribal governments nor does it impose any enforceable duties on communities of Indian Tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order No. 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, we have concluded that this proposed rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Any ozone depletion that results from this proposed rule will impact all affected populations equally because ozone depletion is a global environmental problem with environmental and human effects that are, in general, equally distributed across geographical regions.

List of Subjects in 40 CFR Part 82

Environmental protection, Ozone depletion, Chemicals, Exports, Imports.

Dated: April 22, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.8 is amended as follows:

a. By revising the table in paragraph (c)(1);

b. By revising paragraph (c)(2) including the table.

§ 82.8 Grant of essential use allowances and critical use allowances.

* * * * *

(c) * * *

(1) * * *

Company	2011 Critical use allowances for pre-plant uses (kilograms)	2011 Critical use allowances for post-harvest uses * (kilograms)
Great Lakes Chemical Corp. A Chemtura Company	839,966	71,584
Albemarle Corp	345,413	29,437
ICL–IP America	190,883	12,267
TriCal, Inc	5,943	507
Total **	1,382,206	117,794

* For production or import of Class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to this subpart.

** Due to rounding, numbers do not add exactly.

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2011 on a pro-rata basis in relation to the inventory held by each.

Company
Albemarle.
Bill Clark Pest Control, Inc.
Burnside Services, Inc.
Cardinal Professional Products.
Chemtura Corp.
Crop Production Services.
Degesch America, Inc.
Helena Chemical Co.
Hendrix & Dail.
Hy Yield Products.
ICL-IP America.
Industrial Fumigant Company.
Pacific Ag Supplies Inc.
Pest Fog Sales Corp.
Prosource One.
Reddick Fumigants.
Trical Inc.
Trident Agricultural Products.
Univar.
Western Fumigation.
Total—482,333 kilograms.

3. Appendix L to Subpart A is revised to read as follows:

Appendix L to Subpart A of Part 82—Approved Critical Uses and Limiting Critical Conditions for Those Uses for the 2011 Control Period

Column A	Column B	Column C
Approved Critical Uses	Approved Critical User and Location of Use	Limiting Critical Conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
	PRE–PLANT USES	
Cucurbits	(a) Growers in Delaware and Maryland	Moderate to severe soilborne disease infestation.
	(b) Growers in Georgia and Southeastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe root knot nematode infestation.
Eggplant	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(b) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium collar, crown and root rot. Moderate to severe southern blight infestation. Restrictions on alternatives due to karst topographical features.
Forest Nursery Seedlings	(a) Growers in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation.
	(b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation.
	(c) Government-owned seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin.	Moderate to severe weed infestation including purple and yellow nutsedge infestation. Moderate to severe Canada thistle infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation.
	(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode or worm infestation.
	(e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington.	Moderate to severe yellow nutsedge infestation. Moderate to severe soilborne disease infestation.
	(f) Michigan growers	Moderate to severe soilborne disease infestation. Moderate to severe Canada thistle infestation. Moderate to severe nutsedge infestation. Moderate to severe nematode infestation.
Nursery Stock (Fruit, Nut, Flower).	(a) Members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers.	Moderate to severe nematode infestation. Medium to heavy clay soils. Local township limits prohibiting 1,3-dichloropropene.
	(b) California rose nurseries	Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene.
Orchard Replant	California stone fruit, table and raisin grape, wine grape, walnut, and almond growers.	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted orchard soils to prevent orchard replant disease. Medium to heavy soils. Local township limits prohibiting 1,3-dichloropropene.
Ornamentals	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene.
	(b) Florida growers	Moderate to severe weed infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
Peppers	(a) Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium root, collar, crown and root rots.

Column A	Column B	Column C
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots. Moderate to severe southern blight infestation, crown or root rot. Restrictions on alternatives due to karst topographical features.
Strawberry Fruit	(a) California growers	Moderate to severe black root rot or crown rot, Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. Time to transition to an alternative.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Carolina geranium or cut-leaf evening primrose infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe black root and crown rot.
Strawberry Nurseries	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation.
	(b) North Carolina and Tennessee growers	Moderate to severe black root rot. Moderate to severe root-knot nematode infestation. Moderate to severe yellow and purple nutsedge infestation.
Sweet Potato Slips	California growers	Local township limits prohibiting 1,3-dichloropropene.
Tomatoes	(a) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and, in Florida, soils not supporting seepage irrigation.
	(b) Maryland growers	Moderate to severe fungal pathogen infestation.
POST-HARVEST USES		
Food Processing	(a) Rice millers in the U.S. who are members of the USA Rice Millers Association.	Moderate to severe beetle, weevil, or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute.	Moderate to severe beetle, moth, or cockroach infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(c) Members of the North American Millers' Association in the U.S.	Moderate to severe beetle infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(d) Members of the National Pest Management Association treating processed food, cheese, herbs and spices, and spaces and equipment in associated processing and storage facilities.	Moderate to severe beetle or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
Commodities	California entities storing walnuts, beans, dried plums, figs, raisins, and dates (in Riverside county only) in California.	Rapid fumigation required to meet a critical market window, such as during the holiday season.

Column A	Column B	Column C
Dry Cured Pork Products	Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc.	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.

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BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0062; 92210–1117–0000–B4]

RIN 1018–AW85

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Buena Vista Lake Shrew

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the October 21, 2009, proposed designation of revised critical habitat for the Buena Vista Lake shrew (*Sorex ornatus relictus*) (shrew) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed designation of revised critical habitat for the shrew and an amended required determinations section of the proposed rule. We are reopening the comment period for an additional 60 days to allow all interested parties an opportunity to comment simultaneously on the proposed revised critical habitat designation, the associated DEA, and the amended required determinations section. We also announce a public hearing; the public is invited to review and comment on the proposed revised critical habitat designation at the public hearing or in writing. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: *Written Comments:* We will consider comments received on or before June 27, 2011. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

Public Hearing: We will hold the public hearing on June 8, 2011. The first hearing session will start at 1 p.m. Pacific Time with doors opening at 12:30, and the second session at 6 p.m. with doors opening at 5:30.

ADDRESSES: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R8–ES–2009–0062, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2009–0062; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

Public Hearing: We will hold the public hearing at the Doubletree Hotel, 3100 Camino Del Rio Court, Bakersfield, California.

We will post all comments and the public hearing transcript on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Susan Moore, Field Supervisor, or Karen Leyse, Listing Coordinator, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825; by telephone (916) 414–6600; or by facsimile (916) 414–6713. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed designation of revised critical habitat for the Buena Vista Lake shrew that we published in the **Federal Register** on October 21, 2009 (74 FR 53999), our DEA of the proposed revised designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The distribution of the Buena Vista Lake shrew, including the locations of any additional populations of this species that would help us further refine boundaries of critical habitat;

(b) The amount and distribution of Buena Vista Lake shrew habitat, including areas that provide habitat for the shrew that we did not discuss in the proposed revised critical habitat rule;

(c) What areas occupied by the species at the time of listing that contain features essential for the conservation of the species we should include in the designation, and why; and

(d) What areas not occupied at the time of listing are essential to the conservation of the species, and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed revised critical habitat.

(4) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(6) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(7) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the

conservation and regulatory benefits of the proposed revised critical habitat designation.

(8) Whether any specific areas being proposed as critical habitat should be excluded under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any particular area outweigh the benefits of including that area under section 4(b)(2) of the Act. See Areas Previously Considered for Exclusion Under Section 4(b)(2) of the Act section below for further discussion.

If you submitted comments or information on the proposed rule (74 FR 53999) during the initial comment period from October 21, 2009, to December 21, 2009, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning revised critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and the DEA, will be available for public inspection at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0062, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0062, or by mail from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

We have scheduled a public hearing on the proposed rule. It will be held on the date listed in the **DATES** section at the address listed in the **ADDRESSES** section. We are holding a public hearing to provide interested parties an opportunity to provide verbal testimony (formal, oral comments) or written comments regarding the proposed revised critical habitat designation, the associated DEA, and the amended required determinations section. Anyone wishing to make an oral statement at the public hearing for the record is encouraged to provide a written copy of their statement to us at that hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Speakers can sign up only at the hearing. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us. If you have any questions concerning the public hearing or need reasonable accommodations to attend and participate in the public hearing, please contact one of the people listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible, but no later than one week before the hearing date, to allow sufficient time to process requests.

Background

It is our intent to discuss only those topics directly relevant to the designation of revised critical habitat for the Buena Vista Lake shrew in this document. For more information on previous Federal actions concerning the Buena Vista Lake shrew, refer to the proposed designation of critical habitat published in the **Federal Register** on October 21, 2009 (74 FR 53999). Additional relevant information may be found in the final rule to designate critical habitat for the Buena Vista Lake shrew published on January 24, 2005 (70 FR 3437). For more information on the Buena Vista Lake shrew or its habitat, refer to the final listing rule published in the **Federal Register** on March 6, 2002 (67 FR 10101), which is available online at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0062, or by mail from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On August 19, 2004, we proposed critical habitat for the shrew on approximately 4,649 acres (ac) (1,881 hectares (ha)) in Kern County, California (69 FR 51417). On January 24, 2005, we published a final rule (70 FR 3437) designating 84 ac (34 ha) of critical habitat for the shrew in Kern County, California. The decrease in acreage between the proposed rule and final rule resulted from exclusions under section 4(b)(2) of the Act and, to a small degree, refinements in our mapping of critical habitat boundaries.

On October 2, 2008, the Center for Biological Diversity filed a complaint in the U.S. District Court for the Eastern District of California challenging the Service's designation of critical habitat for the shrew (*Center for Biological Diversity* v. *United States Fish and Wildlife, et al.,* Case No. 08–CV–01490–AWI–GSA). On July 9, 2009, the Court approved a stipulated settlement agreement in which the Service agreed to submit a revised proposed rule to the **Federal Register** within 90 days of the signed agreement. The revised proposed rule was to encompass the same geographic area as the August 19, 2004 (69 FR 51417), proposed critical habitat designation.

On October 21, 2009, we published a proposed rule to revise critical habitat for the Buena Vista Lake shrew (74 FR 53999). We proposed to designate approximately 4,649 ac (1,881 ha) in five units located in Kern County, California, as critical habitat. That proposal had a 60-day comment period, ending December 21, 2009. Additionally, the Service agreed to submit to the **Federal Register** for publication, on or before March 22, 2012, a final determination on revised critical habitat for the shrew. The proposed rule (74 FR 53999) that published in the **Federal Register** on October 21, 2009, complies with the July 9, 2009, stipulated agreement.

The current designation of critical habitat for the Buena Vista Lake shrew (70 FR 3437, January 24, 2005) remains in full force and effect until we publish a new final rule revising critical habitat for the shrew.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and

specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the October 21, 2009, proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of the Buena Vista Lake shrew, the benefits of critical habitat include public awareness of the presence of the shrew and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the shrew due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

Areas Previously Considered for Exclusion Under Section 4(b)(2) of the Act

In the January 24, 2005, final rule (70 FR 3437), we determined what lands had essential features under the definition of critical habitat in section 3(5)(A) of the Act, and evaluated those lands in order to ascertain if any specific areas were appropriate for exemption or exclusion from critical habitat under sections 4(a)(3) or 4(b)(2) of the Act. We did not include the proposed Kern National Wildlife Refuge (Refuge) Unit in the final designation as critical habitat because we determined that the unit had management plans already in place to provide for the conservation of the shrew, and no further special management or protection was required. For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain physical and biological features which are essential to the conservation of the species and which may require special management considerations or protection. The presence of a management plan does not mean that special management considerations or protection are not required, and as a result, we have included the Refuge in this proposed revised designation. In addition, we excluded three proposed critical habitat units (the Goose Lake Unit, the Kern Fan Recharge Area Unit, and the Coles Levee Unit) in the January 24, 2005, final rule because we determined that the benefits of excluding lands under appropriate management for the Buena Vista Lake shrew outweighed the benefits of their inclusion within critical habitat. We determined that ongoing management of these areas would provide conservation benefits that would negate the need for critical habitat designation. We also determined that critical habitat designation might hinder conservation of habitat for the shrew by discouraging the involvement of local jurisdictions and private landowners without providing any counterbalancing, proactive conservation benefit.

In the current rulemaking process, we do not intend to use the approach that we used in the 2005 final rule to evaluate the Kern National Wildlife Refuge Unit. For our upcoming final determination, we will re-evaluate management planning and implementation for this unit as well as for the rest of the proposed revised critical habitat units and will weigh the benefits of excluding these areas against the benefits of including them in critical habitat under section 4(b)(2) of the Act.

In the October 21, 2009, proposed rule (74 FR 53999), we have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed revised critical habitat designation, which is available for review and comment (see **ADDRESSES**).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed revised critical habitat designation for the Buena Vista Lake shrew that we published in the **Federal Register** on October 21, 2009 (74 FR 53999). The DEA separates conservation measures into two distinct categories according to "without critical habitat" and "with critical habitat" scenarios. The "without critical habitat" scenario represents the baseline for the analysis, considering protections otherwise afforded to the Buena Vista Lake shrew (*e.g.,* under the Federal listing and other Federal, State, and local regulations). The "with critical habitat" scenario describes the incremental impacts specifically due to designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (*i.e.,* incremental impacts).

The 2011 DEA provides estimated costs of the foreseeable potential economic impacts of the proposed revised critical habitat designation for the Buena Vista Lake shrew over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. It identifies potential incremental costs as a result of the proposed revised critical habitat designation; these are those costs attributed to critical habitat over and

above those baseline costs attributed to listing. The DEA quantifies economic impacts of the Buena Vista Lake shrew conservation efforts associated with the following categories of activities: (1) Water availability and delivery, (2) agricultural production, and (3) energy development. In addition, the DEA identifies potential economic impacts due to additional administrative costs as part of future section 7 consultations on pipeline removal or construction, habitat restoration and water channel maintenance work, and invasive species management (IEC 2011, p. 4–2). To provide an understanding of the potential economic impacts, the DEA determines the scope and scale of economic activities within the proposed revised critical habitat; identifies threats to Buena Vista Lake shrew habitat associated with these economic activities; identifies conservation measures that may be implemented to avoid or minimize these threats; and to the extent feasible, quantifies the economic costs of these measures. The DEA considers and estimates the impacts of the rule as currently proposed and as if the existing 2005 critical habitat designation does not exist (IEC 2011, p. 2–2). As a result, costs incurred as a result of the 2005 designation are not separately documented in the DEA.

The DEA considers both economic efficiency and distributional effects that may result from efforts to protect the shrew and its habitat. Economic efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources required to accomplish species and habitat conservation. The DEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. Decision-makers can use this information to assess whether the effects of the critical habitat designation might unduly burden a particular group or economic sector.

The DEA concludes that incremental impacts resulting from the critical habitat designation are limited to additional administrative costs of section 7 consultation. There are two primary sources of uncertainty associated with the incremental effects analysis: (1) The actual rate of future consultation is unknown, and (2) future land use on private lands is uncertain. The analysis does not identify any future projects on private lands beyond those covered by existing baseline projections. Section 7 consultation on the shrew has not occurred on private lands that are not covered by conservation plans (Units 2 and 5). As a result, the analysis does not forecast incremental impacts due to such measures. However, if zoning of these lands changes in the future and new projects are identified, shrew conservation may change.

The DEA estimates total potential incremental economic impacts in areas proposed as revised critical habitat over the next 20 years (2011 to 2030) to be approximately $133,000 ($11,700 annualized) in present value terms applying a 7 percent discount rate (IEC 2011, p. 4–2). Administrative costs associated with section 7 consultations on a variety of activities (including pipeline construction and removal, delivery of water supplies under the Central Valley Project, pesticide applications for invasive species, and restoration activities) in proposed critical habitat Units 2, 3, and 4 are expected to total approximately $53,900 over the next 20 years and make up the largest portion of post-designation incremental impacts, accounting for approximately 39 percent of the forecast incremental impacts (IEC 2011, pp. 4–11–4–12). Pacific Gas and Electric (PG&E) has facilities in three of the proposed critical habitat units. Impacts associated with section 7 consultations on PG&E operations and maintenance activities represent approximately 31 percent of the total incremental costs and are expected to total $40,700 over the next 20 years. Incremental impacts due to costs of internal consultations at the Kern National Wildlife Refuge are expected to total $16,000 over the next 20 years, which represents approximately 12 percent of total incremental impacts. Incremental costs of section 7 consultations with the U.S. Army Corps of Engineers due to Clean Water Act (33 U.S.C. 1251 *et seq.*) permitting are estimated to total $12,600, and represent approximately 10 percent of total incremental costs. Finally, the present value incremental impact of reviewing an update to the City of Bakersfield's management plan and an estimated two formal section 7 consultations over the next 20 years for the shrew at Unit 3 is estimated at $9,660, and represents approximately 7.2 percent of the overall incremental impacts. No incremental impacts are estimated to be incurred by Aera Energy LLC for their activities at the Coles Levee Ecosystem Preserve (IEC 2011, pp. 4–5–4–13).

The incremental costs described above are further broken down by location of expected incremental costs within the five proposed critical habitat units. The greatest incremental impacts are due to cost of section 7 consultations forecast to occur for activities within the Kern Fan Recharge area (proposed Unit 3) ($84,000), and make up 66 percent of the overall incremental impacts. The second largest incremental impacts are predicted to occur within the Kern National Wildlife Refuge (proposed Unit 1) with present value impacts at $20,800, comprising just over 16 percent of the overall incremental impacts. Incremental impacts associated with section 7 consultations for activities occurring on the Goose Lake Unit (proposed Unit 2), are forecast at $16,500 of present value impacts, and makes up 13 percent of the overall incremental impacts. Incremental impacts due to section 7 consultations occurring on the Coles Levee Unit (proposed Unit 4) are estimated to be $6,340 in present value impacts, comprising 5 percent of total incremental impacts. No projected incremental impacts are forecast to occur on the Kern Lake Unit (proposed Unit 5). The consultations forecast for proposed critical habitat Units 2 and 5 are limited to those associated with occasional permitted pipeline, restoration, or water projects.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Required Determinations—Amended

In our proposed rule published in the **Federal Register** on October 21, 2009 (74 FR 53999), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44

U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However, based on the DEA's data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and E.O. 13211 (Energy Supply, Distribution, and Use).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed revised designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of revised critical habitat for the Buena Vista Lake shrew would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as water availability and delivery, agricultural production, and energy development. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the shrew is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed revised critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of revised critical habitat for the shrew. Incremental impacts of the proposed revised critical habitat for the Buena Vista Lake shrew are expected to consist largely of incremental administrative costs. Small entities may participate in section 7 consultation as a third party (the primary consulting parties being the Service and the Federal action agency). This analysis, therefore, considered that small entities may spend additional time considering critical habitat during section 7 consultation for the shrew. The incremental impacts to third parties are also included in this analysis. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually.

The DEA states that incremental effects are expected to consist entirely of administrative costs and that such costs are likely to be borne by city and county jurisdictions, as well as by several energy utilities. The specific entities expected to bear incremental impacts are the City of Bakersfield, Kern County, PG&E, and Southern California Gas Company, none of which are considered to be small under the RFA (IEC 2011, p. A–3). Potentially, some incremental impacts borne by the energy utilities may be passed on to individual customers in the form of increased energy prices; however, the small size of the impacts is expected to make such an outcome unlikely (IEC 2011, p. A–2). Please refer to the DEA for a more detailed discussion of potential economic impacts.

In summary, we have considered whether the proposed revised designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the SBA, stakeholders, and the Service. None of the third-party entities identified in the DEA meet SBA's definition of a small government or business. As a result, no small businesses or governments will be affected. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed revised critical habitat designation for the Buena Vista Lake shrew would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Executive Order 13211—Energy Supply, Distribution, or Use

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The Office of Management and Budget's guidance for implementing this Executive Order outlines nine outcomes that may constitute "a significant adverse effect" when compared to not taking the regulatory action under consideration. As discussed in Appendix A.2, the DEA finds that although PG&E and Southern California Gas Company operate facilities within the proposed revised critical habitat designation, no incremental changes in facility operation are forecast. Therefore, no changes in energy use, production, or distribution are anticipated (IEC 2011, p. A–6). Furthermore, incremental costs are $1,020 on an annualized basis, representing less than 0.01 percent of the annual revenues of these corporations. Thus, designation of revised critical habitat is not expected to

lead to any adverse outcomes (such as a reduction in electricity production or an increase in the cost of energy production or distribution), and energy-related impacts associated with Buena Vista Lake shrew conservation activities within revised critical habitat are not expected. As such, the designation of revised critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and a Statement of Energy Effects is not required.

References Cited

A complete list of all references we cited in the proposed rule and in this document is available on the Internet at *http://www.regulations.gov* or by contacting the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff members of the Sacramento Fish and Wildlife Office, Region 8, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 19, 2011.

Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–10288 Filed 4–27–11; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 76, No. 82
Thursday, April 28, 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

Forest Service

Ashley Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ashley Resource Advisory Committee will meet in Vernal, Utah. 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 conduct introductions, approve meeting minutes, rank recommended projects and develop final list for submission, set the next meeting date, time and location and receive public comment on the meeting subjects and proceedings.

DATES: The meetings will be held June 2, 2011, from 6 p.m. to 9 p.m..

ADDRESSES: The meeting will be held in the Interagency Fire Dispatch Center conference room at the Ashley National Forest Supervisor's Office, 355 North Vernal Avenue in Vernal, Utah. Written comments should be sent to Ashley National Forest, 355 North Vernal Avenue, Vernal, UT 84078. Comments may also be sent via e-mail to *ljhaynes@frfed.us,* or via facsimile to 435–781–5142.

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 Ashley National Forest, 355 North Vernal Avenue, Vernal, UT.

FOR FURTHER INFORMATION CONTACT: Louis Haynes, RAC Coordinator, Ashley National Forest, (435) 781–5105; e-mail: *ljhaynes@fs.fedms.*

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) Welcome and roll call; (2) Approval of meeting minutes; (3) Rank order recommended projects and develop final list for submission; (4) review of next meeting purpose, location, and date; (5) Receive 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 May 25, 2011 will have the opportunity to address the committee at these meetings.

Dated: April 21, 2011.

Kevin B. Elliott,

Forest Supervisor.

[FR Doc. 2011–10206 Filed 4–27–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1753]

Voluntary Termination of Foreign-Trade Subzone 18B; New United Motor Manufacturing, Inc., Fremont, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) hereby adopts the following order:

Whereas, on October 5, 1984, the Board issued a grant of authority to the City of San Jose (grantee of FTZ 18) authorizing the establishment of Foreign-Trade Subzone 18B at the New United Motor Manufacturing, Inc., facility in Fremont, California (Board Order 276, 49 FR 40626, 10/17/1984);

Whereas, the City of San Jose has advised that zone procedures are no longer needed at the facility and requested voluntary termination of Subzone 18B (FTZ Docket 11–2011); and,

Whereas, the request has been reviewed by the FTZ Staff and U.S. Customs and Border Protection officials, and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the subzone status of Subzone 18B, effective this date.

Signed at Washington, DC, this 18th day of April 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–10322 Filed 4–27–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1752]

Voluntary Termination of Foreign-Trade Subzone 75D, STMicroelectronics, Inc., Phoenix, AZ

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) hereby adopts the following order:

Whereas, on December 12, 1995, the Board issued a grant of authority to the City of Phoenix (grantee of FTZ 75) authorizing the establishment of Foreign-Trade Subzone 75D at the STMicroelectronics, Inc., facility in Phoenix, Arizona (Board Order 795, 61 FR 1322, 01/19/1996);

Whereas, the City of Phoenix has advised that zone procedures are no longer needed at the facility and requested voluntary termination of Subzone 75D (FTZ Docket 24–2011); and,

Whereas, the request has been reviewed by the FTZ Staff and U.S. Customs and Border Protection officials, and approval has been recommended;

Now, therefore, the Board terminates the subzone status of Subzone 75D, effective this date.

Signed at Washington, DC, this 18th day of April 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–10320 Filed 4–27–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 88–13A16]

Export Trade Certificate of Review

ACTION: Notice of application (88–13A16) to amend the Export Trade Certificate of Review issued to Wood Machinery Manufacturers of America, Application no. 88–00016.

SUMMARY: The Office of Competition and Economic Analysis ("OCEA") of the International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or e-mail at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–X, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 88–13A16."

The Wood Machinery Manufacturers of America's ("WMMA") original Certificate was issued on February 3, 1989 (54 FR 6312, February 9, 1989), and last amended on August 16, 2010 (75 FR 51439–51440, August 20, 2010). A summary of the current application for an amendment follows.

Summary of the Application

Applicant: Wood Machinery Manufacturers of America ("WMMA"), 100 North 20th Street, 4th Floor, Philadelphia, PA 19103–1443.

Contact: Harold Zassenhaus, Chief Staff Executive, Telephone: (301) 652–0693.

Application No.: 88–13A16.

Date Deemed Submitted: April 19, 2011.

Proposed Amendment: WMMA seeks to amend its Certificate to:

1. Add the following company as a new "Member" of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): TigerStop LLC, Vancouver, WA; and

2. Delete the following company as a Member of WMMA's Certificate: Saw Trax Mfg., Kennesaw, GA.

Dated: April 22, 2011.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2011–10249 Filed 4–27–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the Peoples' Republic of China: Notice of Extension of Time Limits and Partial Rescission of the Second Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

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

FOR FURTHER INFORMATION CONTACT: Alexis Polovina, Timothy Lord, or Ricardo Martinez Rivera, Office 9, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3927, (202) 482–7425, and (202) 482–4532, respectively.

Background

On August 2, 2010, the Department published a notice of opportunity to request an administrative review on the antidumping order on certain steel nails from the People's Republic of China ("PRC") for the period of review ("POR") August 1, 2009, through July 31, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 45094 (August 2, 2010). Based upon requests for review from various parties, on September 29, 2010, the Department initiated the first antidumping duty administrative review on certain steel nails from the PRC, covering 222 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 60076 (September 29, 2010) ("*Initiation Notice*").

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("Act"), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit because the Department requires additional time to analyze the supplemental questionnaire responses. Further, the Department has provided parties additional time to submit surrogate value data and thus will require additional time to analyze these data. Therefore, the Department is extending the time limit for completion of the preliminary results by 90 days. The preliminary results will now be due no later than August 1, 2011. The final results continue to be due 120 days after the publication of the preliminary results.

Partial Rescission of Review

19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review.

On December 23, 2010, Jisco Corporation and Qingdao Jisco Co., Ltd. withdrew their requests for an administrative review. On December 28, 2010, Petitioner [1] partially withdrew its August 31, 2010, request for an administrative review for 160 companies. These companies include: 1) Beijing Hongsheng Metal Products Co., Ltd.; 2) Beijing Yonghongsheng Metal Products Co., Ltd.; 3) Cana (Tianjin) Hardware Ind., Co., Ltd.; 4) Chongqing Hybest Nailery Co., Ltd.; 5) Cintee Steel Products Co., Ltd.; 6) Cyber Express Corporation; 7) Dagang Zhitong Metal Products Co., Ltd.; 8) Dingzhou Ruili Nail Production Co., Ltd.; 9) Dong'e Fuqiang Metal Products Co., Ltd.; 10) Fujiansmartness Imp. & Exp. Co., Ltd.; 11) Fuzhou Builddirect Ltd.; 12) Guangdong Foreign Trade Import & Export Corporation; 13) Guangzhou Qiwei Imports and Exports Co., Ltd.; 14) GWP Industries (Tianjin) Co., Ltd.; 15) Haixing Hongda Hardware Production Co., Ltd.; 16) Haixing Linhai Hardware Products Factory; 17) Hangzhou Kelong Electrical Appliance & Tools Co., Ltd.; 18) Hangzhou New Line Co., Ltd.; 19) Hebei Cangzhou New Century Foreign Trade Co., Ltd.; 20) Hebei Super Star Pneumatic Nails Co., Ltd.; 21) Heretops (Hong Kong) International Ltd.; 22) Hilti (China) Limited; 23) Huadu Jin Chuan Manufactory Co Ltd.; 24) Huanghua Jinhai Metal Products Co., Ltd.; 25) Huanghua Shenghua Hardware Manufactory Factory; 26) Huanghua Xinda Nail Production Co., Ltd.; 27) Huanghua Yufutai Hardware Products Co., Ltd.; 28) Jisco Corporation; 29) Joto Enterprise Co., Ltd.; 30) Le Group Industries Corp. Ltd.; 31) Liang's Industrial Corp.; 32) Lijiang Liantai Trading Co., Ltd.; 33) Maanshan Cintee Steel Products Co., Ltd.; 34) Maanshan Leader Metal Products Co., Ltd.; 35) Maanshan Longer Nail Product Co., Ltd.; 36) Marsh Trading Ltd.; 37) Mingguang Abundant Hardware Products Co., Ltd.; 38) Ningbo Dollar King Industrial Co., Ltd.; 39) Ningbo KCN Electric Co., Ltd.; 40) Ningbo Ordam Import & Export Co., Ltd.; 41) OEC Logistics (Qingdao) Co. Ltd.; 42) Pacole International Ltd.; 43) Panagene Inc.; 44) Qingdao Bestworld Industry Trading; 45) Qingdao Denarius Manufacture Co. Limited; 46) Qingdao International Fastening Systems Inc.; 47) Qingdao Jisco Co., Ltd.; 48) Qingdao Koram Steel Co., Ltd.; 49) Qingdao Meijia Metal Products Co.; 50) Qingdao Rohuida International Trading Co., Ltd.; 51) Qingdao Sino-Sun International Trading Company Limited; 52) Qingdao Tiger Hardware Co., Ltd.; 53) Qingyuan County Hongyi Hardware Products Factory; 54) Qingyun Hognyi Hardware Factory; 55) Q-Yield Outdoor Great Ltd.; 56) Rizhao Changxing Nail-Making Co., Ltd.; 57) Rizhao Qingdong Electric Appliance Co., Ltd.; 58) SDC International Australia Pty., Ltd.; 59) Shandex Industrial Inc.; 60) Shandong Oriental Cherry Hardware Group Co., Ltd.; 61) Shandong Oriental Cherry Hardware Import and Export Co., Ltd.; 62) Shanghai Ding Ying Printing & Dyeing CLO; 63) Shanghai Holiday Import & Export Co., Ltd.; 64) Shanghai March Import & Export Company Ltd.; 65) Shanghai Nanhui Jinjun Hardware Factory; 66) Shanghai Pioneer Speakers Co., Ltd.; 67) Shanghai Yuet Commercial Consulting Co., Ltd.; 68) Shanxi Hairui Trade Co., Ltd.; 69) Shanxi Pioneer Hardware Industrial Co.. Ltd.; 70) Shanxi Tianli Enterprise Co.; 71) Shanxi Tianli Enterprise Co., Ltd.; 72) Shanxi Yuci Wire Material Factory; 73) Shaoguang International Trade Co.; 74) Shaoxing Chengye Metal Producting Co., Ltd.; 75) Shijizhuang Anao Imp & Export Co., Ltd.; 76) Shijizhuang Fangyu Import & Export Corp.; 77) Shijizhuang Glory Way Trading Co.; 78) S-Mart (Tianjin) Technology Development Co., Ltd.; 79) Suntec Industries Co., Ltd.; 80) Sunworld International Logistics; 81) Suzhou Yaotian Metal Products Co., Ltd.; 82) Tian Jin Sundy Co., Ltd., a.k.a Tianjin Sunny Co., Ltd.; 83) Tianjin Baisheng Metal Product Co., Ltd.; 84) Tianjin Bosai Hardware Tools Co., Ltd.; 85) Tianjin Certified Products Inc.; 86) Tianjin Chentai International Trading Co., Ltd.; 87) Tianjin City Dangang Area Jinding Metal Products Factory; 88) Tianjin City Daman Port Area Jinding Metal Products Factory; 89) Tianjin City Jinhchi Metal Products Co., Ltd.; 90) Tianjin Dagang Dongfu Metallic Products Co., Ltd.; 91) Tianjin Dagang Hewang Nail Factory; 92) Tianjin Dagang Hewang Nails Manufacture Plant; 93) Tianjin Dagang Huasheng Nailery Co., Ltd.; 94) Tianjin Dagang Jingang Nail Factory; 95) Tianjin Dagang Jingang Nails Manufacture Plant; 96) Tianjin Dagang Linda Metallic Products Co., Ltd.; 97) Tianjin Dagang Longhua Metal Products Plant; 98) Tianjin Dagang Shenda Metal Products Co., Ltd.; 99) Tianjin Dagang Yate Nail Co., Ltd.; 100) Tianjin Dery Import and Export Co., Ltd.; 101) Tianjin Foreign Trade (Group) Textile & Garment Co., Ltd.; 102) Tianjin Hewang Nail Making Factory; 103) Tianjin Huachang Metal Products Co., Ltd.; 104) Tianjin Huapeng Metal Company; 105) Tianjin Huasheng Nails Production Co., Ltd.; 106) Tianjin Jieli Hengyuan Metallic Products Co., Ltd.; 107) Tianjin Jietong Hardware Products Co., Ltd.; 108) Tianjin Jietong Metal Products Co., Ltd.; 109) Tianjin Jin Gang Metal Products Co., Ltd.; 110) Tianjin Jinin Pharmaceutical Factory Co., Ltd.; 111) Tianjin Jishili Hardware Co., Ltd.; 112) Tianjin JLHY Metal Products Co., Ltd.; 113) Tianjin Kunxin Hardware Co., Ltd.; 114) Tianjin Kunxin Metal Products Co., Ltd.; 115) Tianjin Linda Metal Company; 116) Tianjin Longxing (Group) Huanyu Imp. & Exp. Co., Ltd.; 117) Tianjin Master Fastener Co., Ltd.; 118) Tianjin Metals and Minerals; 119) Tianjin Port Free Trade Zone Xiangtong Intl. Industry & Trade Corp.; 120) Tianjin Qichuan Metal Products Co., Ltd.; 121) Tianjin Ruiji Metal Products Co., Ltd.; 122) Tianjin Shenyuan Steel Producting Group Co., Ltd.; 123) Tianjin Shishun Metal Product Co., Ltd.; 124) Tianjin Shishun Metallic Products Co., Ltd.; 125) Tianjin Xiantong Fucheng Gun Nail Manufacture Co., Ltd.; 126) Tianjin Xiantong Juxiang Metal MFG Co., Ltd.; 127) Tianjin Xiantong Material & Trade Co., Ltd.; 128) Tianjin Xinyuansheng Metal Products Co., Ltd.; 129) Tianjin Yihao Metallic Products Co., Ltd.; 130) Tianjin Yongchang Metal Product Co., Ltd.; 131) Tianjin Yongxu Metal Products Co., Ltd.; 132) Tianjin Yongye Furniture; 133) Tianjin Yongyi Standard Parts Production Co., Ltd.; 134) Tianjin Zhong Jian Wanli Stone Co., Ltd.; 135) Tianjin Zhongsheng Garment Co., Ltd.; 136) Unicatch Industrial Co., Ltd.; 137) Union Enterprise (Kushan) Co., Ltd.; 138)

[1] Mid Continent Nail Corporation ("Petitioner").

Wenzhou Yuwei Foreign Trade Co., Ltd.; 139) Wuhan Xinxin Native Produce & Animal By-Products Mfg. Co. Ltd.; 140) Wuhu Shijie Hardware Co., Ltd.; 141) Wuhu Xin Lan De Industrial Co., Ltd.; 142) Wuqiao County Huifeng Hardware Products Factory; 143) Wuqiao County Xinchuang Hardware Products Factory; 144) Wuqiao Huifeng Hardware Production Co., Ltd.; 145) Wuxi Baolin Nail-Making Machinery Co., Ltd.; 146) Wuxi Chengye Metal Products Co., Ltd.; 147) Wuxi Jinde Assets Management Co., Ltd.; 148) Xi'an Metals & Minerals Import and Export Co., Ltd.; 149) Xiamen New Kunlun Trade Co., Ltd.; 150) Yeswin Corporation; 151) Yiwu Excellent Import & Export Co., Ltd.; 152) Yiwu Richway Imp & Exp Co., Ltd.; 153) Yongcheng Foreign Trade Corp.; 154) Yu Chi Hardware Co., Ltd.; 155) Zhangjiagang Lianfeng Metals Products Co., Ltd.; 156) Zhangjiagang Longxiang Packing Materials Co., Ltd.; 157) Zhaoqing Harvest Nails Co., Ltd.; 158) Zhejiang Minmetals Sanhe Imp & Exp Co.; 159) Zhejian Taizhou Eagle Machinery Co.; and 160) ZJG Lianfeng Metals Product Ltd.

In accordance with 19 CFR 351.213(d)(1), the Department accordingly rescinds its review for those companies listed above and for which the request for review was withdrawn.

Assessment Rates

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. For those companies for which this review has been rescinded and which have a separate rate from a prior segment of this proceeding, 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, in accordance with 19 CFR 351.212(c)(2). Accordingly, the Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice for the following companies: 1) Beijing Hongsheng Metal Products Co., Ltd.; 2) Cana (Tianjin) Hardware Ind., Co., Ltd.; 3) Guangdong Foreign Trade Import & Export Corporation; 4) Hebei Cangzhou New Century Foreign Trade Co., Ltd.; 5) Huanghua Jinhai Metal Products Co., Ltd.; 6) Jisco Corporation; 7) Mingguang Abundant Hardware Products Co., Ltd.; 8) Qingdao Jisco Co., Ltd.; 9) SDC International Australia Pty., Ltd.; 10) Shandong Oriental Cherry Hardware Group Co., Ltd.; 11) Shandong Oriental Cherry Hardware Import and Export Co., Ltd.; 12) Shanxi Hairui Trade Co., Ltd.; 13) Shanxi Pioneer Hardware Industrial Co., Ltd.; 14) S-Mart (Tianjin) Technology Development Co., Ltd.; 15) Suntec Industries Co., Ltd.; 16) Tianjin Xiantong Material & Trade Co., Ltd; 17) Union Enterprise (Kushan) Co., Ltd.; 18) Wuhu Shijie Hardware Co., Ltd.; 19) Wuhu Xin Lan De Industrial Co., Ltd.; 20) Xi'an Metals & Minerals Import and Export Co., Ltd.; and 21) Zhaoqing Harvest Nails Co., Ltd.

For those companies list above which have not previously been assigned a separate rate from a prior segment of the proceeding, this administrative review will continue. The Department cannot order liquidation for companies which, although they are no longer under review as a separate entity, may still be under review as part of the PRC-wide entity. In this case, the Department cannot order liquidation for certain companies that do not currently have a separate rate, as an exporter, from either the investigation or previous administrative or new shipper reviews. Therefore, the Department cannot, at this time, order liquidation of entries for the following companies: 1) Beijing Yonghongsheng Metal Products Co., Ltd.; 2) Chongqing Hybest Nailery Co., Ltd.; 3) Cintee Steel Products Co., Ltd.; 4) Cyber Express Corporation; 5) Dagang Zhitong Metal Products Co., Ltd.; 6) Dingzhou Ruili Nail Production Co., Ltd.; 7) Dong'e Fuqiang Metal Products Co., Ltd.; 8) Fujiansmartness Imp. & Exp. Co., Ltd.; 9) Fuzhou Builddirect Ltd.; 10) Guangzhou Qiwei Imports and Exports Co., Ltd.; 11) GWP Industries (Tianjin) Co., Ltd.; 12) Haixing Hongda Hardware Production Co., Ltd.; 13) Haixing Linhai Hardware Products Factory; 14) Hangzhou Kelong Electrical Appliance & Tools Co., Ltd.; 15) Hangzhou New Line Co., Ltd.; 16) Hebei Super Star Pneumatic Nails Co., Ltd.; 17) Heretops (Hong Kong) International Ltd.; 18) Hilti (China) Limited; 19) Huadu Jin Chuan Manufactory Co Ltd.; 20) Huanghua Shenghua Hardware Manufactory Factory; 21) Huanghua Xinda Nail Production Co., Ltd.; 22) Huanghua Yufutai Hardware Products Co., Ltd.; 23) Joto Enterprise Co., Ltd.; 24) Le Group Industries Corp. Ltd.; 25) Liang's Industrial Corp.; 26) Lijiang Liantai Trading Co., Ltd.; 27) Maanshan Cintee Steel Products Co., Ltd.; 28) Maanshan Leader Metal Products Co., Ltd.; 29) Maanshan Longer Nail Product Co., Ltd.; 30) Marsh Trading Ltd.; 31) Ningbo Dollar King Industrial Co., Ltd.; 32) Ningbo KCN Electric Co., Ltd.; 33) Ningbo Ordam Import & Export Co., Ltd.; 34) OEC Logistics (Qingdao) Co. Ltd.; 35) Pacole International Ltd.; 36) Panagene Inc.; 37) Qingdao Bestworld Industry Trading; 38) Qingdao Denarius Manufacture Co. Limited; 39) Qingdao International Fastening Systems Inc.; 40) Qingdao Koram Steel Co., Ltd.; 41) Qingdao Meijia Metal Products Co.; 42) Qingdao Rohuida International Trading Co., Ltd.; 43) Qingdao Sino-Sun International Trading Company Limited; 44) Qingdao Tiger Hardware Co., Ltd.; 45) Qingyuan County Hongyi Hardware Products Factory; 46) Qingyun Hognyi Hardware Factory; 47) Q–Yield Outdoor Great Ltd. 48) Rizhao Changxing Nail-Making Co., Ltd.; 49) Rizhao Qingdong Electric Appliance Co., Ltd.; 50) Shandex Industrial Inc.; 51) Shanghai Ding Ying Printing & Dyeing CLO; 52) Shanghai Holiday Import & Export Co., Ltd.; 53) Shanghai March Import & Export Company Ltd.; 54) Shanghai Nanhui Jinjun Hardware Factory; 55) Shanghai Pioneer Speakers Co., Ltd.; 56) Shanghai Yuet Commercial Consulting Co., Ltd.; 57) Shanxi Tianli Enterprise Co.; 58) Shanxi Tianli Enterprise Co., Ltd.; 59) Shanxi Yuci Wire Material Factory; 60) Shaoguang International Trade Co.; 61) Shaoxing Chengye Metal Producting Co., Ltd.; 62) Shijizhuang Anao Imp & Export Co., Ltd.; 63) Shijizhuang Fangyu Import & Export Corp.; 64) Shijizhuang Glory Way Trading Co.; 65) Sunworld International Logistics; 66) Suzhou Yaotian Metal Products Co., Ltd.; 67) Tian Jin Sundy Co., Ltd., a.k.a Tianjin Sunny Co., Ltd.; 68) Tianjin Baisheng Metal Product Co., Ltd.; 69) Tianjin Bosai Hardware Tools Co., Ltd.; 70) Tianjin Certified Products Inc.; 71) Tianjin Chentai International Trading Co., Ltd.; 72) Tianjin City Dangang Area Jinding Metal Products Factory; 73) Tianjin City Daman Port Area Jinding Metal Products Factory; 74) Tianjin City Jinhchi Metal Products Co., Ltd.; 75) Tianjin Dagang Dongfu Metallic Products Co., Ltd.; 76) Tianjin Dagang Hewang Nail Factory; 77) Tianjin Dagang Hewang Nails Manufacture Plant; 78) Tianjin Dagang Huasheng Nailery Co., Ltd.; 79) Tianjin Dagang Jingang Nail Factory; 80) Tianjin Dagang Jingang Nails Manufacture Plant; 81) Tianjin Dagang Linda Metallic Products Co., Ltd.; 82) Tianjin Dagang Longhua Metal Products Plant; 83) Tianjin Dagang Shenda Metal Products Co., Ltd.; 84) Tianjin Dagang Yate Nail Co., Ltd.; 85) Tianjin Dery Import and Export Co., Ltd.; 86) Tianjin Foreign Trade (Group) Textile & Garment Co., Ltd.; 87) Tianjin Hewang Nail Making Factory; 88) Tianjin Huachang Metal Products Co., Ltd.; 89) Tianjin Huapeng Metal Company; 90) Tianjin Huasheng Nails Production Co., Ltd.; 91) Tianjin Jieli Hengyuan Metallic Products Co., Ltd.; 92) Tianjin Jietong Hardware

Products Co., Ltd.; 93) Tianjin Jietong Metal Products Co., Ltd.; 94) Tianjin Jin Gang Metal Products Co., Ltd.; 95) Tianjin Jinin Pharmaceutical Factory Co., Ltd.; 96) Tianjin Jishili Hardware Co., Ltd.; 97) Tianjin JLHY Metal Products Co., Ltd.; 98) Tianjin Kunxin Hardware Co., Ltd.; 99) Tianjin Kunxin Metal Products Co., Ltd.; 100) Tianjin Linda Metal Company; 101) Tianjin Longxing (Group) Huanyu Imp. & Exp. Co., Ltd.; 102) Tianjin Master Fastener Co., Ltd.; 103) Tianjin Metals and Minerals; 104) Tianjin Port Free Trade Zone Xiangtong Intl. Industry & Trade Corp.; 105) Tianjin Qichuan Metal Products Co., Ltd,; 106) Tianjin Ruiji Metal Products Co., Ltd.; 107) Tianjin Shenyuan Steel Producting Group Co., Ltd.; 108) Tianjin Shishun Metal Product Co., Ltd.; 109) Tianjin Shishun Metallic Products Co., Ltd.; 110) Tianjin Xiantong Fucheng Gun Nail Manufacture Co., Ltd.; 111) Tianjin Xiantong Juxiang Metal MFG Co., Ltd.; 112) Tianjin Xinyuansheng Metal Products Co., Ltd.; 113) Tianjin Yihao Metallic Products Co., Ltd.; 114) Tianjin Yongchang Metal Product Co., Ltd.; 115) Tianjin Yongxu Metal Products Co., Ltd.; 116) Tianjin Yongye Furniture; 117) Tianjin Yongyi Standard Parts Production Co., Ltd.; 118) Tianjin Zhong Jian Wanli Stone Co., Ltd.; 119) Tianjin Zhongsheng Garment Co., Ltd.; 120) Unicatch Industrial Co., Ltd.; 121) Wenzhou Yuwei Foreign Trade Co., Ltd.; 122) Wuhan Xinxin Native Produce & Animal By-Products Mfg. Co. Ltd.; 123) Wuqiao County Huifeng Hardware Products Factory; 124) Wuqiao County Xinchuang Hardware Products Factory; 125) Wuqiao Huifeng Hardware Production Co., Ltd.; 126) Wuxi Baolin Nail-Making Machinery Co., Ltd.; 127) Wuxi Chengye Metal Products Co., Ltd.; 128) Wuxi Jinde Assets Management Co., Ltd.; 129) Xiamen New Kunlun Trade Co., Ltd.; 130) Yeswin Corporation; 131) Yiwu Excellent Import & Export Co., Ltd.; 132) Yiwu Richway Imp & Exp Co., Ltd.; 133) Yongcheng Foreign Trade Corp.; 134) Yu Chi Hardware Co., Ltd.; 135) Zhangjiagang Lianfeng Metals Products Co., Ltd.; 136) Zhangjiagang Longxiang Packing Materials Co., Ltd.; 137) Zhejiang Minmetals Sanhe Imp & Exp Co.; 138) Zhejian Taizhou Eagle Machinery Co.; and 139) ZJG Lianfeng Metals Product Ltd. The Department intends to issue liquidation instructions for the PRC-wide entity 15 days after publication of the final results of this review.

Notification to Importers

This notice serves as a final reminder to importers for whom this review is being rescinded, as of the publication date of this notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is issued and published in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: April 22, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–10315 Filed 4–27–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–916; C–570–917]

Laminated Woven Sacks From the People's Republic of China: Initiation of Anti-Circumvention Inquiry

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from the Laminated Woven Sacks Committee and its individual members, Coating Excellence International, LLC and Polytex Fibers Corporation (collectively "Petitioners"), the Department of Commerce ("Department") is initiating an anti-circumvention inquiry to determine whether certain imports are circumventing the antidumping and countervailing duty orders on laminated woven sacks from the People's Republic of China ("PRC").

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

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, telephone: (202) 482–3207, or Jamie Blair-Walker, telephone: (202) 482–2615; AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On January 26, 2011, pursuant to sections 781(c) and 781(d) of the Tariff Act of 1930, as amended ("Act"), and 19 CFR 351.225(i) and (j), Petitioners submitted requests for the Department to initiate and conduct a minor alterations and a later-developed merchandise anti-circumvention inquiry to determine whether laminated woven sacks printed with two colors in register and with the use of a screening process are circumventing the antidumping and countervailing duty orders on laminated woven sacks from the PRC. *See Notice of Antidumping Duty Order: Laminated Woven Sacks From the People's Republic of China,* 73 FR 45941 (August 7, 2008) and *Laminated Woven Sacks From the People's Republic of China: Countervailing Duty Order,* 73 FR 45955 (August 7, 2008) (collectively, "*Orders*"). On March 25, 2011, Petitioners withdrew their request for the Department to initiate a minor alterations anti-circumvention inquiry pursuant to 781(c) of the Act and 19 CFR 351.225(i). The later-developed merchandise anti-circumvention request filed pursuant to 781(d) of the Act and 19 CFR 351.225(j) remains active.

In their request, Petitioners allege that PRC manufacturers of subject merchandise have been circumventing the *Orders* by using two ink colors printed in register and a screening process [1] which allows for one of the original inks to print on the sacks in a different shade than the original ink color. Specifically, Petitioners allege that the sacks produced using a screening process are a later-developed product of the subject merchandise because there was no knowledge of such a product being commercially available in the U.S. market at the time of the investigation. No other parties submitted comments regarding Petitioners' allegations in the circumvention of the *Orders.*

On February 24, 2011, the Department extended the deadline to initiate the anti-circumvention inquiry by 45 days, pursuant to 19 CFR 351.302(b).[2] On April 8, 2011, Commercial Packaging, a U.S. supplier of packaging and packaging materials, provided comments.

Scope of the Orders

The merchandise covered by the orders is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the

[1] In essence, Petitioners allege that the screening process, which they contend is a later-developed process, in effect permits manufacturers to replace a print stand in register with the screen, thereby circumventing the *Orders.*

[2] *See* Letter to Petitioners dated February 24, 2011.

width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene ("BOPP") or to an exterior ply of paper that is suitable for high quality print graphics; [3] printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Merchandise Subject to the Anti-Circumvention Request

The merchandise subject to the anti-circumvention request is laminated woven sacks produced with two ink colors printed in register and a screening process. The screening process described only uses two colored inks printed in register at two different print stations. However, one of the colors is printed using a screen, allowing for different shades of that one color to appear on the bag. Thus, when two shades of one color are printed along with a second colored ink from the second print station, three distinct colors are visible on the bag.

Later-Developed Merchandise Anti-Circumvention Request

Section 781(d)(1) of the Act provides that the Department may find circumvention of an antidumping or countervailing duty order when merchandise is developed after an investigation is initiated ("later-developed merchandise"). In conducting later-developed merchandise anti-circumvention inquiries, under section 781(d)(1) of the Act, the Department will also evaluate whether the general physical characteristics of the merchandise under consideration are the same as subject merchandise covered by the order,[4] whether the expectations of the ultimate purchasers of the merchandise under consideration are no different than the expectations of the ultimate purchasers of subject merchandise,[5] whether the ultimate use of the subject merchandise and the merchandise under consideration are the same,[6] whether the channels of trade of both products are the same,[7] whether there are any differences in the advertisement and display of both products,[8] and if the merchandise under consideration was commercially available at the time of the investigation.[9]

A. General Physical Characteristics

Petitioners contend that there are no differences in the physical characteristics of subject merchandise and sacks produced using two ink colors printed in register and a screening process.[10] At issue is only the printing process used to create graphics on the sack, not the physical construction of the sack itself. Petitioners supported this allegation with an affidavit from the President of one of the petitioners.[11]

B. Expectations of the Ultimate Purchasers

Petitioners allege that the expectations of ultimate purchasers of both types of laminated woven sacks are the same. Petitioners state that when choosing to purchase laminated woven sacks in general, ultimate purchasers are concerned with the construction and durability of the laminated woven sacks in comparison to paper sacks.[12] Petitioners supported this allegation with affidavits from the Presidents of two of the petitioners.[13]

C. Ultimate Use of Merchandise, Channels of Trade, and Advertisement and Display of Product

Petitioners maintain that the ultimate uses, channels of trade, and methods of advertisement and display of laminated woven sacks produced using two ink colors printed in register and a screening process are the same as those for subject merchandise, because the only difference between subject merchandise and the merchandise under consideration is the printing process used to produce graphics.[14] Petitioners supported this allegation with affidavits from the Presidents of two of the petitioners.[15]

D. Commercial Availability

Petitioners state that, at the time of the investigation, laminated woven sacks produced using two ink colors printed in register and a screening process were unknown in the U.S. industry. Petitioners cite the International Trade Commission ("ITC") final determination in the laminated woven sacks investigation, in which the ITC deemed the domestic industry to be present, but found that the industry was young and hindered by the significant level of imports from the PRC.[16] Petitioners contend that no domestic producer was using or was aware of the printing process involving a screen to produce different shades of one ink color at the time of the investigation. In addition, Petitioners note that at no point during the investigation was there any discussion by the Department, the ITC, the respondents, or other interested parties of sacks being printed with an alternative screening printing process.

Thus, Petitioners allege that laminated woven sacks produced using two ink colors printed in register and a

[3] "Paper suitable for high quality print graphics," as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.

[4] *See* section 781(d)(1)(A) of the Act.

[5] *See* section 781(d)(1)(B) of the Act.

[6] *See* section 781(d)(1)(C) of the Act.

[7] *See* section 781(d)(1)(D) of the Act.

[8] *See* section 781(d)(1)(E) of the Act.

[9] *See Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order,* 71 FR 32033, 32035 (June 2, 2006).

[10] *See* Petitioners' Request for Determination of Circumvention, dated January 26, 2011, at 16.

[11] *See id.* at Exhibit 11.

[12] *See id.* at 19.

[13] *See id.* at Exhibits 11 and 12.

[14] *See id.* at 19 and footnote 76.

[15] *See id.* at Exhibits 11 and 12.

[16] *See Laminated Woven Sacks from China,* Investigation Nos. 701–TA–450 and 731–TA–1122 (Final), ITC Publication 4025 (July, 2008) at 30.

screening process were not commercially available at the time of the investigation. Petitioners supported this allegation with affidavits from the Presidents of two of the petitioners.[17]

Comments From Commercial Packaging

On April 8, 2011, Commercial Packaging submitted comments to the Department stating there is no basis for initiation of the anti-circumvention inquiry because sacks printed with two colors in register are not later-developed products of the subject sacks. Specifically, Commercial Packaging contends that an anti-circumvention inquiry is not warranted because the anti-circumvention provisions of the statute do not apply to merchandise that is originally unambiguously outside the scope of the *Orders* and, here, sacks printed with less than three colors in register are excluded from the *Orders.*[18] Commercial Packaging also argues that the sacks at issue are not later-developed merchandise because sacks printed with two colors in register were available during the investigation and the screening process is decades old.[19]

Analysis of Commercial Packaging Comments

We disagree with Commercial Packaging's contention that an anti-circumvention inquiry is not warranted in this case for the reason that sacks printed with two colors in register are expressly excluded from the *Orders.* The language of the *Orders* does not discuss laminated woven sacks printed with two colors in register using a screening process. Therefore, unlike in *Wheatland Tube*,[20] as cited by Commercial Packaging, we conclude that the *Orders* do not expressly exclude the merchandise under consideration. Although the Department previously concluded in a scope ruling that found sacks printed with two colors in register to be outside the scope of the *Orders,* we are not precluded from now conducting an anti-circumvention inquiry because the factors to be considered in 19 CFR 351.225(k)(1) are not the same factors as those required under section 781(d)(1) of the Act.[21] Furthermore, by its very nature, a later-developed merchandise anti-circumvention inquiry examines merchandise that is either excluded from, or has been designed to elude, an order.[22] Thus, later-developed merchandise cannot pose a threat of injury to the domestic industry at the time of the order, because it either does not exist or is not commercially available.

We also disagree with Commercial Packaging's argument that information supporting the existence of sacks printed with two-colors in register prior to the investigation demonstrates that the sacks at issue here are not later-developed merchandise. We find the fact that sacks printed with two colors in register alone existed prior to the investigation is not relevant to our inquiry because the issue presented by this inquiry is whether sacks that are printed with two colors in register and with the use of a screen process constitute later-developed merchandise within the meaning of 781(d) of the Act. Commercial Packaging does not provide evidence that the screening process used in the production of laminated woven sacks was commercially available during or before the investigation.

Initiation of Later-Developed Merchandise Antidumping and Countervailing Duty Anti-Circumvention Inquiry

Based on the information provided by Petitioners, the Department finds that there is sufficient basis to initiate an antidumping and countervailing duty anti-circumvention inquiry pursuant to section 781(d) of the Act to determine whether laminated woven sacks produced using two ink colors printed in register and a screening process are later-developed products that can be considered subject to the *Orders* under the later-developed merchandise provision. As a result, we are initiating this inquiry under section 781(d) of the Act.

The Department will not order the suspension of liquidation of entries of any additional merchandise at this time. However, in accordance with 19 CFR 351.225(l)(2), if the Department issues an affirmative preliminary determination, we will instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry.

We intend to notify the International Trade Commission in the event of an affirmative preliminary determination of circumvention, in accordance with 781(e)(1) of the Act and 19 CFR 351.225(f)(7)(i)(C), if applicable. The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation notice.

This notice is published in accordance with section 781(d) of the Act and 19 CFR 351.225(i) and (j).

Dated: April 22, 2011.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–10325 Filed 4–27–11; 8:45 am]

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[17] *See id.* at Exhibits 11 and 12.

[18] *See* Notice of Scope Rulings, 75 FR 14138 (March 24, 2010) (Shapiro Packaging's three imported sacks are outside the scope of the orders (July 29, 2009)).

[19] *See* Commercial Packaging's submission, dated April 8, 2011.

[20] *See Wheatland Tube Co.* v. *United States,* 161 F.3d 1365, 1371 (Fed. Cir. 1998) ("*Wheatland Tube*").

[21] *See Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 71 FR 59075 (October 6, 2006) and accompanying Issues and Decision Memorandum at Comment 2, *remanded on other grounds,* 578 F. Supp. 2d 1369 (CIT 2008), *aff'd,* 626 F. Supp. 2d 1285 (CIT June 17, 2009), *aff'd* 609 F.3d 1352 (June 21, 2010).

[22] *See Erasable Programmable Read Only Memories From Japan; Final Scope Ruling,* 57 FR 11599 (April 6, 1992) at Comment 6; *see also Electrolytic Manganese Dioxide From Japan; Preliminary Scope Ruling,* 56 FR 56977 (November 7, 1991).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Extension of Application Period for Seats for the Stellwagen Bank National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice of extension for application period and request for applications.

SUMMARY: The ONMS is extending the deadline and seeking applications for the following vacant seats on the Stellwagen Bank National Marine Sanctuary Advisory Council: (1) Research Member seat and (2) Conservation Alternate seats. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary.

Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the Council's Charter. The Council consists also of three state and three Federal non-voting ex-officio seats.

DATES: Applications are due by 10 June 2011.

ADDRESSES: Application kits may be obtained from *Elizabeth.Stokes@noaa.gov,* Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066. Telephone 781–545–8026, ext. 201. Completed applications should be sent to the same address or e-mail, or faxed to 781–545–8036.

FOR FURTHER INFORMATION CONTACT: Contact *Nathalie.Ward@noaa.gov,* External Affairs Coordinator, telephone: 781–545–8026, ext. 206.

SUPPLEMENTARY INFORMATION: The Council was established in March 2001 to assure continued public participation in the management of the Sanctuary. The Council's 23 members represent a variety of local user groups, as well as the general public, plus seven local, state and Federal government agencies. Since its establishment, the Council has played a vital role in advising NOAA on critical issues and is currently focused on the sanctuary's final five-year Management Plan. The Stellwagen Bank National Marine Sanctuary encompasses 842 square miles of ocean, stretching between Cape Ann and Cape Cod. Renowned for its scenic beauty and remarkable productivity, the sanctuary supports a rich diversity of marine life including 22 species of marine mammals, more than 30 species of seabirds, over 60 species of fishes, and hundreds of marine invertebrates and plants.

Authority: 16 U.S.C. Sections 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: April 19, 2011.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–10243 Filed 4–27–11; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA399

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting (conference call).

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a conference call of its Coastal Pelagic Species Advisory Subpanel (CPSAS) that is open to the public.

DATES: The conference call will be held Wednesday, May 11, from 2 p.m. until 4 p.m. Pacific Time.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to develop a report to provide advice to the Pacific Council's Ecosystem Plan Development Team, in advance of the June Council meeting. Other topics may be discussed as time allows, at the discretion of the CPSAS Chair. These topics may include the mackerel Stock Assessment Review (STAR) panel meeting, consideration of the Pacific sardine management, and future meeting planning.

Although non-emergency issues not contained in the meeting agenda may come before the CPSAS for discussion, those issues may not be the subject of formal action during this meeting. CPSAS action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSAS's intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: April 25, 2011.

William D. Chappell,

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

[FR Doc. 2011–10327 Filed 4–27–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XA196]

Stock Status Determination for Atlantic Highly Migratory Scalloped Hammerhead Shark

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

ACTION: Notice.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has determined that overfishing is occurring on an Atlantic highly migratory species (HMS) scalloped hammerhead shark, and the stock is overfished.

NMFS notifies the public whenever it determines that: overfishing is occurring, a stock is overfished, or a stock is approaching an overfished condition.

FOR FURTHER INFORMATION CONTACT: Peter Cooper at 301–713–2347 or Jackie Wilson at 240–338–3936.

SUPPLEMENTARY INFORMATION: For an Atlantic HMS that has been determined to be overfished or approaching an overfished condition, NMFS, on behalf of the Secretary, must take action to end or prevent overfishing in the fishery and to implement conservation and management measures to rebuild overfished stocks within 2 years of making this determination. This action must include implementing a rebuilding plan, through an FMP amendment or regulations, which ends overfishing immediately and provides for rebuilding the fishery in accordance with 16 U.S.C. 1854(e)(3)–(4) as implemented by 50 CFR 600.310(j)(2)(ii). When developing rebuilding plans, in addition to rebuilding the fishery within the shortest time possible in accordance with 16 U.S.C. 1854(e)(4) and 50 CFR 600.310(j)(3), NMFS must ensure that such actions address the requirements to amend the FMP for each affected stock or stock complex to establish a mechanism for specifying and actually specify Annual Catch Limits (ACLs) and Accountability Measures (AMs) to prevent overfishing in accordance with

16 U.S.C. 1853(a)(15) and 50 CFR 600.310(j)(2)(i).

In October 2009, Hayes *et al.* (2009) published in the North American Journal of Fisheries Management a stock assessment of the Atlantic population of scalloped hammerhead sharks in U.S. waters. Based on this paper, in 2005, the population was estimated to be at 45 percent of the biomass that would produce the maximum sustainable yield (MSY), and fishing mortality was estimated to be 129 percent of fishing mortality associated with MSY. The stock is estimated to be depleted by approximately 83 percent of virgin stock size (*i.e.,* the current population is only 17 percent of the virgin stock size). In addition, it was estimated that a total allowable catch (TAC) of 2,853 scalloped hammerhead sharks per year (or 69 percent of 2005 catch) would allow a 70 percent probability of rebuilding within 10 years. NMFS has reviewed this paper and concluded that: the assessment is complete; the assessment is an improvement over a 2008 aggregated species assessment for hammerhead sharks; and the assessment is appropriate for U.S. management decisions.

Based on the results of this paper, NMFS is making the determination that scalloped hammerhead sharks are overfished and experiencing overfishing. Pending the results of the ongoing sandbar, dusky, and blacknose shark stock assessments, NMFS will publish a Notice of Intent regarding the development of a fishery management plan amendment and implementing regulations to end overfishing and rebuild the scalloped hammerhead shark stock within two years as mandated under the Magnuson-Stevens Fishery Conservation and Management Act. In addition, for fisheries experiencing overfishing, NMFS must propose and adopt effective ACLs and AMs to end overfishing.

Dated: April 25, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–10328 Filed 4–27–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 110418247–1247–01]

Low-Power Television and Translator Upgrade Program: Notice of Final Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce.

ACTION: Notice of final closing date for receipt of applications and change in census database.

SUMMARY: The National Telecommunications and Information Administration (NTIA) announces that the final Closing Date for receipt of applications for the Low-Power Television and Translator Upgrade Program (Upgrade Program) will be Monday, July 2, 2012. NTIA also announces that it will use population data from the newly available 2010 U.S. Census for applications received after July 1, 2011 in determining whether a facility meets the rurality eligibility requirement of the Upgrade Program. Applications submitted up to and including July 1, 2011, can continue to use the population reported in the 2000 Census. All other requirements for the Upgrade Program remain unchanged as set forth in the Notice of Availability of Funds and Program Guidelines (Upgrade Program NOFA), 74 FR 22402 (May 12, 2009), available at *http://www.ntia.doc.gov/lptv/LP-Upgrade-NOFA-FRMay-1209.pdf.*

DATES: NTIA will continue to process applications received by the first business day of each month as long as funds are available (Closing Dates), but the last Closing Date will be July 2, 2012. Applicants must ensure that the carrier they use guarantees delivery of the application by 5 p.m., Eastern Time on the Closing Dates. Applications received after any of the monthly Closing Dates will be held until the next grant round. Applicants should note that all material sent via the U.S. Postal Service (including "Overnight" or "Express Mail") is subject to delivery delays of up to two weeks due to mail security procedures at the Department of Commerce. If an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date and Time, or (2) significant weather delays or natural disasters, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline.

ADDRESSES: To submit completed applications or send any other correspondence, write to the Upgrade Program at the following address: NTIA/Upgrade Program, Room H–4812, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. Application materials may be obtained electronically via the Internet at *http://www.ntia.doc.gov/lptv.* Applications submitted by facsimile will not be accepted. The Upgrade Program application is not available for submission through the Grants.gov Web site.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Upgrade Program Director, Public Broadcasting Division, NTIA Office of Telecommunications and Information Applications, telephone: (202) 482–5802; fax: (202) 482–2156; e-mail: *wcooperman@ntia.doc.gov.* Information about the Upgrade Program can also be obtained electronically via the Internet at *http://www.ntia.doc.gov/lptv.*

SUPPLEMENTARY INFORMATION: On May 12, 2009, NTIA published the Upgrade Program NOFA, which established a procedure through which NTIA would process applications received by the first business day of each month as long as funds were available.

Although the Federal Communications Commission has not established a deadline for the conversion of analog low-power television facilities to digital broadcasting,[1] pursuant to Section 3009 of the Digital Television Transition and Public Safety Act of 2005 (the Act), NTIA's authority to make payments for the Upgrade Program expires on September 30, 2012.[2] Since NTIA must complete payments to Upgrade Program grant recipients by the end of September 2012, NTIA is providing potential applicants with approximately fourteen months advance notice of the final Closing Date.

As of April 2011, NTIA has approximately $32 million available for award as reimbursement grants in the

[1] *See* Further Notice of Proposed Rulemaking and Memorandum Opinion and Order In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, MB Docket 103–185, FCC 10–172, 25 F.C.C. Rcd. 13833 (rel. Sept. 17, 2010).

[2] The Digital Television Transition and Public Safety Act of 2005 is Title III of the Deficit Reduction Act of 2005, Public Law 109–171, 120 Stat. 4, 21 (Feb. 8, 2006). Section 2(b) of the DTV Transition Assistance Act, Pub L. 110–295, 122 Stat. 2872 (July 30, 2008), amended section 3009 to clarify the period during which NTIA could make awards for the Upgrade Program.

Upgrade Program account. NTIA will process applications received by the first business day of each month and will provide information monthly on the Upgrade Program Internet site regarding the amount of remaining funds available. In order to ensure that NTIA and the Grants Office complete processing of applications and issuing awards by September 30, 2012, NTIA must receive final Upgrade Program applications no later than 5 p.m., Eastern Time, July 2, 2012.

If NTIA or the Grants Office determines that an application submitted for the July 2, 2012, last Closing Date requires additional information, the applicant must provide the requested information within ten business days or NTIA will discontinue processing the application.

NTIA also announces that it will use population data from the newly available 2010 U.S. Census for applications received after July 1, 2011, in determining whether an application meets the statutory requirement to "upgrade low-power television stations from analog to digital *in eligible rural communities*."[3] Applications submitted up to and including July 1, 2011, can continue to use the population reported in the 2000 Census to determine station eligibility.

After July 1, 2011, population figures from the 2000 Census will continue to be available on the Upgrade Program Web site, *http://www.ntia.doc.gov/lptv/Application/,* and may be used as a *preliminary* guide to determine eligibility. Almost all stations showing an NTIA-calculated population of significantly less than 20,000 using 2000 Census data should continue to be eligible for the Upgrade Program. NTIA will provide 2010 Census population figures for any facility that requests such information. Potential applicants may e-mail a request, which must include the FCC Facility ID number, to: *ldyer@ntia.doc.gov.* For applications submitted after July 1, 2011, applicants may also use the other methods of determining eligibility discussed in the Upgrade Program NOFA so long as those methods rely on 2010 Census data.

Upgrade Program staff remain available to assist potential applicants in complying with program requirements. All Upgrade Program instructions and forms remain available on the NTIA Internet site at *http://www.ntia.doc.gov/lptv.*

[3] The Act at § 3009 (emphasis added). NTIA's interpretation and implementation of this requirement is discussed at length in the Upgrade Program NOFA.

Dated: April 25, 2011.

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 2011–10332 Filed 4–27–11; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on spectrum management policy matters.

DATES: The meeting will be held on May 25, 2011, from 9 a.m. to 12 p.m., Eastern Daylight Standard Time.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 6029, Washington, DC 20230. Public comments may be mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue, NW., Room 4725, Washington, DC 20230, or e-mailed to *spectrumadvisory@ntia.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Bruce M. Washington, Designated Federal Officer, at (202) 482–6415, or *BWashington@ntia.doc.gov;* and/or visit NTIA's Web site at *http://www.ntia.doc.gov/advisory/spectrum.*

SUPPLEMENTARY INFORMATION:

Background: The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to: License radio frequencies in a way that maximizes their public benefits; keep wireless networks open to innovation as possible; and make wireless services available to all Americans (see charter at *http://www.ntia.doc.gov/advisory/spectrum/csmac_charter.html*). This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit: *http://www.ntia.doc.gov/advisory/spectrum.*

Matters To Be Considered: The Committee will discuss its work plan for the next two-year period including advice regarding accomplishment of the President's ten-year goal to identify 500 megahertz for wireless broadband. NTIA will post a detailed agenda on its Web site, *http://www.ntia.doc.gov,* prior to the meeting. There also will be an opportunity for public comment at the meeting.

Time and Date: The meeting will be held on May 25, 2011 from 9 a.m. to 12 p.m., Eastern Daylight Time. The times and the agenda topics are subject to change. The meeting may be webcast or made available via audio link. Please refer to NTIA's Web site, *http://www.ntia.doc.gov,* for the most up-to-date meeting agenda and access information.

Place: The meeting will be held at the U.S. Department of Commerce, National Telecommunications and Information Administration, 1401 Constitution Avenue, NW., Room 6029, Washington, DC 20230. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Washington, at (202) 482–6415 or *BWashington@ntia.doc.gov,* at least five (5) business days before the meeting.

Status: Interested parties are invited to attend and to submit written comments to the Committee at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting must send them to NTIA's Washington, DC office at the above-listed address and must be received by close of business on May 18, 2011, to provide sufficient time for review. Comments received after May 18, 2011, will be distributed to the Committee, but may not be reviewed prior to the meeting. It would be helpful if paper submissions also include a compact disc (CD) in HTML, ASCII, Word or WordPerfect format (please specify version). CDs should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Alternatively, comments may be submitted electronically to

spectrumadvisory@ntia.doc.gov. Comments provided via electronic mail also may be submitted in one or more of the formats specified above.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC office at the address above. Documents including the Committee's charter, membership list, agendas, minutes, and any reports are available on NTIA's Committee Web page at *http://www.ntia.doc.gov/advisory/spectrum.*

Dated: April 25, 2011.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2011–10330 Filed 4–27–11; 8:45 am]

BILLING CODE 3510–60–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, May 4, 2011; 10 a.m.–11 a.m.

PLACE: Room 410, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter To Be Considered

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: April 26, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–10456 Filed 4–26–11; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education (ED).

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 31, 2011. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before June 27, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: April 25, 2011.

James Hyler,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of the Secretary

Type of Review: New.

Title of Collection: Race to the Top Annual Performance Report.

OMB Control Number(s): 1894–NEW.

Frequency of Responses: Annually.

Affected Public: State, Local, or Tribal Government, State Educational Agencies or Local Educational.

Total Estimated Number of Annual Responses: 12.

Total Estimated Number of Annual Burden Hours: 1,452.

Abstract: In order to fulfill our responsibilities for programmatic oversight and public reporting, the Department has developed a Race to the Top Annual Performance Report that is tied directly to the Race to the Top selection programmatic requirements previously established and published in the **Federal Register**. The report is grounded in the key performance targets included in grantees' approved Race to the Top plans. Grantees will be required to report on their progress in the four core education reform areas: Science, Technology, Engineering, and Mathematics. This reporting includes narrative sections on progress and key performance indicators. As was the case in the completion of the Race to the Top applications, grantees will coordinate with Local Educational Agencies (LEAs) to collect and report on school and district-level data elements.

In order to robustly fulfill our programmatic and fiscal oversight responsibilities, it is essential that we gather this data from Race to the Top grantees and subgrantees as soon as possible to inform decision-making for the second year of the grant. The Race to the Top Annual Performance Report data will be used as a component of the comprehensive program review process (for which the comment period just closed). In particular, the data informs both a stocktake (meeting) with Race to the Top leadership that will be focused on assessing grantee progress and pinpointing areas requiring technical

assistance as well as State-specific and comprehensive reports that will update the public and Congress about Race to the Top. It is in the public interest to present the data in a timely manner.

Additional Information: Pursuant to 5 CFR 1320.13(a)(2)(iii), the Department is requesting emergency approval as the use of the normal clearance procedures will disrupt the timely collection of the information critical for managing the performance of Race to the Top grants and effectiveness. This is the first year of implementation of a $4 billion dollar program, the largest discretionary grant program ever administered by the Department. As a result, the program continues to generate high public interest.

If the routine paperwork processing timeline is followed, the Race to the Top Annual Performance Report data collection tool will not be released until August. Given that many LEAs begin the school year in August; this timing would create an undue burden on the LEAs and on the State. During the process of developing the Race to the Top Annual Performance Report, we elicited feedback from grantees regarding the timing of collection. Based on that feedback, we believe that a June timeframe would best meet the needs of the grantees and the Department.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4576. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* 202–260–8916. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–10301 Filed 4–27–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Nuclear Energy Advisory Committee; Meeting

AGENCY: Office of Nuclear Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Nuclear Energy Advisory Committee (NEAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, June 15, 2011, 8:30 a.m.–4:30 p.m.

ADDRESSES: L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Kenneth Chuck Wade, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (301) 903–6509; e-mail *Kenneth.wade@nuclear.energy.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Nuclear Energy Advisory Committee (NEAC), formerly the Nuclear Energy Research Advisory Committee (NERAC), was established in 1998 by the U.S. Department of Energy (DOE) to provide advice on complex scientific, technical, and policy issues that arise in the planning, managing, and implementation of DOE's civilian nuclear energy research programs. The committee is composed of 16 individuals of diverse backgrounds selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to nuclear energy.

Purpose of the Meeting: To inform the committee of recent developments and current status of research programs and projects pursued by the Department of Energy's Office of Nuclear Energy and receive advice and comments in return from the committee.

Tentative Agenda: The meeting is expected to include presentations that cover such topics as the Office of Nuclear Energy's 2011 Budget and the status of Nuclear Energy's New Start Programs. The Nuclear Reactor Technology subcommittee will present its final report on the Next Generation Nuclear Power Reactor and the Fuel Cycle subcommittee will update the Committee on its efforts. Finally, the Committee will be given a presentation on the status of Japan's Fukushima Daiichi nuclear power facility. The agenda may change to accommodate committee business. For updates, one is directed to the NEAC Web site: *http://www.ne.doe.gov/neac/neNeacMeetings.html.*

Public Participation: Individuals and representatives of organizations who would like to offer comments and suggestions may do so on the day of the meeting, Wednesday June 15, 2011. Approximately thirty minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed 5 minutes. Anyone who is not able to make the meeting or has had insufficient time to address the committee is invited to send a written statement to Kenneth Chuck Wade, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, or e-mail: *kenneth.wade@nuclear.energy.gov.*

Minutes: The minutes of the meeting will be available by contacting Mr. Wade at the address above or on the Department of Energy, Office of Nuclear Energy's Web site at: *http://www.ne.doe.gov/neac/neNeacMeetings.html.*

Issued at Washington, DC, on April 22, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–10274 Filed 4–27–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Blue Ribbon Commission on America's Nuclear Future

AGENCY: Office of Nuclear Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Blue Ribbon Commission on America's Nuclear Future (the Commission). The Commission was organized pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) (the Act). This notice is provided in accordance with the Act.

DATES: Friday, May 13, 2011, 9 a.m.–4 p.m.

ADDRESSES: Renaissance Washington, DC Dupont Circle Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037, Telephone: (202) 775–0800.

FOR FURTHER INFORMATION CONTACT: Timothy A. Frazier, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202) 586–4243 or facsimile (202) 586–0544; e-mail

CommissionDFO@nuclear.energy.gov. Additional information will be available at *http://www.brc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The President directed that the Commission be established to conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle. The Commission will provide advice and make recommendations on issues including alternatives for the storage, processing, and disposal of civilian and defense spent nuclear fuel and nuclear waste. The Commission is scheduled to submit a draft report to the Secretary of Energy in July 2011 and a final report in January 2012.

This is the seventh open full Commission meeting. Previous meetings were held in March, May, July, September, and November 2010 and February 2011. Webcasts of the previous meetings along with meeting transcripts and presentations are available at *http://www.brc.gov.*

Purpose of the Meeting: There are two purposes for this meeting. The first is to understand what steps are being taken by the Nuclear Regulatory Commission and the Department of Energy to review the safety of nuclear facilities—particularly facilities for the storage of spent nuclear fuel and high-level wastes—in light of the events in Japan. The second purpose is to allow the Co-chairs of the three Subcommittees—Reactor and Fuel Cycle Technology, Transportation and Disposal, and Disposal—to review draft recommendations with the full Commission.

Tentative Agenda: The meeting is expected to begin at 9 a.m. on Friday, May 13, 2011. The agenda will include presentations by the Nuclear Regulatory Commission and the Department of Energy. The subcommittee presentations are expected to begin at 11 a.m. with a break for lunch at noon and resuming at 1 p.m. Public statements will begin at approximately 3:15 p.m. and conclude at 4:30 p.m.

Public Participation: Individuals and representatives of organizations who would like to offer comments and suggestions may do so at the end of the public session on Friday, May 13, 2011. Approximately 1 hour and 15 minutes will be reserved for public comments from 3:15 p.m. to 4:30 p.m. Time allotted per speaker will depend on the number who wish to speak but will not exceed 5 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so beginning at 8:30 a.m. on May 13, 2011, at the Renaissance Washington, DC Dupont Circle Hotel. Registration to speak will close at 2 p.m., May 13, 2011.

Those not able to attend the meeting or having insufficient time to address the committee are invited to send a written statement to Timothy A. Frazier, U.S. Department of Energy 1000 Independence Avenue, SW., Washington DC 20585; e-mail to *CommissionDFO@nuclear.energy.gov,* or post comments on the Commission Web site at *http://www.brc.gov.*

Additionally, the meeting will be available via live video webcast. The link will be available at *http://www.brc.gov.*

Minutes: The minutes of the meeting will be available at *http://www.brc.gov* or by contacting Mr. Frazier. He may be reached at the postal address or e-mail address above.

Issued at Washington, DC, on April 25, 2010.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–10275 Filed 4–27–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–2713–082]

Erie Boulevard Hydropower, L.P.; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2713–082.

c. *Date filed:* December 30, 2010.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Oswegatchie River Hydroelectric Project.

f. *Location:* The existing multi-development project is located on the Oswegatchie River in St. Lawrence County, New York. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Daniel Daoust, Compliance Specialist, Brookfield Renewable Power, 33 West 1st Street South, Fulton, NY 13069; Telephone (315) 598–6131.

i. *FERC Contact:* John Baummer, Telephone (202) 502–6837, and e-mail *john.baummer@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

Motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The existing Oswegatchie River Hydroelectric Project consists of six developments with an installed capacity of 28.56 megawatts (MW) and an average annual generation of 123,769 megawatt-hours. The six developments, listed from upstream to downstream, include:

Browns Falls

The existing Browns Falls Development is located at river mile 96.9 of the Oswegatchie River and

consists of: (1) A 941-foot-long dam with a 192-foot-long, 69-foot-high concrete gravity spillway with a crest elevation of 1,347.0 feet above mean sea level (msl) and equipped with 2-foot-high seasonal flash boards; (2) a 168-acre reservoir with a gross storage capacity of 3,234 acre-feet and a normal maximum pool elevation of 1349.0 feet msl; (3) a 62-foot-long gated intake structure equipped with a trashrack with 2.5-inch clear bar spacing; (4) a 12-foot-diameter, 6,000-foot-long steel pipeline; (5) a 70-foot-high surge tank; (6) two 8-foot-diameter, 142-foot-long steel penstocks; (7) a powerhouse containing two turbines directly connected to two generating units for a total installed capacity of 15.0 MW; (8) a 123-foot-long, 6.6-kilovolt (kV) transmission line; and (9) appurtenant facilities.

The steel pipeline, penstocks, and powerhouse bypass about 7,500 feet of the Oswegatchie River.

Flat Rock

The existing Flat Rock Development is located at river mile 95.5 of the Oswegatchie River and consists of: (1) A 568-foot-long dam and a 120-foot-long earthen embankment with a concrete core wall, and a 229-foot-long, 70-foot-high concrete gravity spillway with a crest elevation of 1,080.0 feet msl; (2) a 159-acre reservoir with a gross storage capacity of 2,646 acre-feet and a normal maximum pool elevation of 1,080.0 feet msl; (3) a 66-foot-long gated intake structure equipped with a trashrack with 2.5-inch clear bar spacing; (4) a powerhouse containing two turbines directly connected to two generating units for a total installed capacity of 5.07 MW; (5) a 30-foot-long, 2.4–kV transmission line; and (6) appurtenant facilities.

South Edwards

The existing South Edwards Development is located at river mile 87.1 of the Oswegatchie River and consists of: (1) A 200-foot-long dam with a 88-foot-long, 48-foot-high concrete gravity spillway with a crest elevation of 843.2 feet msl and equipped with 2-foot-high seasonal flash boards; (2) 510-foot-long and 240-foot-long earthen dikes located along the south bank of the reservoir, with concrete core walls and partially equipped with 10-inch-high flashboards; (3) a 79.2-acre reservoir with a gross storage capacity of 1,003 acre-feet and a normal maximum pool elevation of 845.2 feet msl; (4) a 46-foot-long gated intake structure equipped with a trashrack with 2.5-inch clear bar spacing; (5) a 10-foot-diameter, 1,106-foot-long fiberglass pipeline; (6) a 51-foot-high surge tank; (7) a submersible minimum-flow turbine-generator unit connected to the fiberglass pipeline, and a powerhouse containing three turbines directly connected to three generating units for a total installed capacity of 2.92 MW; (8) 75-foot-long, 480-volt and 3,917-foot-long, 2.4–kV transmission lines; and (9) appurtenant facilities.

The pipeline and powerhouse bypass about 1,500 feet of the Oswegatchie River.

Oswegatchie

The existing Oswegatchie Development is located at river mile 86.6 of the Oswegatchie River and consists of: (1) A 160-foot-long dam with an 80-foot-long, 12-foot-high concrete gravity spillway with a crest elevation of 758.6 feet msl and equipped with a 10-foot-wide notch; (2) a 6-acre reservoir with a gross storage capacity of 23 acre-feet and a normal maximum pool elevation of 758.6 feet msl; (3) a 50-foot-long gated intake structure equipped with a trashrack with 1-inch clear bar spacing; (4) two 6.5-foot-diameter, 90-foot-long steel penstocks; (5) a powerhouse containing two turbines directly connected to two generating units for a total installed capacity of 2.07 MW; (6) a 2,227-foot-long, 2.4–kV transmission line; and (7) appurtenant facilities.

The penstocks and powerhouse bypass about 350 feet of the Oswegatchie River.

Heuvelton

The existing Heuvelton Development is located at river mile 12 of the Oswegatchie River and consists of: (1) A 285-foot-long, 19-foot-high concrete gravity dam with a crest elevation of 276.5 feet msl and equipped with two 10.9-foot-high inflatable rubber bladder gates and four 10.5-foot-high tainter gates; (2) a 239-acre reservoir with a gross storage capacity of 405 acre-feet and a normal maximum pool elevation of 286.2 feet msl; (3) a 70-foot-long gated intake structure equipped with a trashracks with 3.5-inch clear bar spacing; (4) a powerhouse containing two turbines directly connected to two generating units for a total installed capacity of 1.04 MW; (5) a 62-foot-long, 2.4–kV transmission line; and (6) appurtenant facilities.

Eel Weir

The existing Eel Weir Development is located at river mile 5.1 of the Oswegatchie River and consists of: (1) A 1,012-foot-long dam with a short earthen embankment and a 744-foot-long, 26-foot-high Ambursen spillway with a crest elevation of 272.0 feet msl; (2) a 96-acre reservoir with a gross storage capacity of 136.0 acre-feet and a normal maximum pool elevation of 272.0 feet msl; (3) a 117-foot-long gated intake structure equipped with a trashrack with 3.5-inch clear bar spacing; (4) a powerhouse containing three turbines directly connected to three generating units for a total installed capacity of 2.46 MW; (5) a 127-foot-long, 2.4–kV transmission line; and (6) appurtenant facilities.

m. Erie Boulevard Hydropower, L.P. (Erie) filed a Settlement Agreement (Settlement) February 18, 2011 signed by the Adirondack Mountain Club, Adirondack Park Agency, Clifton-Fine Economic Development Group, 5 Ponds Subcommittee, St. Lawrence County, New York State Department of Environmental Conservation, New York State Council of Trout Unlimited, U.S. Fish and Wildlife Service, the National Park Service and Erie (collectively, the Parties). The purpose of the Settlement is to provide for the continued operation of the project with appropriate protection, mitigation and enhancement measures that balance the power and non-power values of the Oswegatchie River. The agreement resolves among the Parties issues related to project operations, fisheries, wildlife, water quality, recreation, and cultural resources. The Parties request that the Commission accept and incorporate, without material modification, Sections 3.1 through 3.9 of the Settlement as numbered license articles.

n. A copy of the application and Settlement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in

accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "PRELIMINARY TERMS AND CONDITIONS," or "PRELIMINARY FISHWAY PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. Procedural Schedule:

The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target Date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	June 2011.
Commission issues EA	October 2011.
Comments on EA	November 2011.
Modified terms and conditions.	January 2012.

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

r. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: April 21, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–10260 Filed 4–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD11–4–000]

North American Electric Reliability Corporation; Order Approving Reliability Standard

April 21, 2011.

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

1. On February 11, 2011, the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), submitted a petition for Commission approval of Emergency Preparedness and Operations (EOP) Reliability Standard EOP–008–1 (Loss of Control Center Functionality). The Reliability Standard requires reliability coordinators, transmission operators, and balancing authorities to have an operating plan and facilities for backup functionality to ensure Bulk-Power System reliability in the event that a control center becomes inoperable. NERC also requests that the Commission approve the retirement of currently effective EOP–008–0 concurrent with the effectiveness of the Standard approved in this Order.

2. In this order, we approve Reliability Standard EOP–008–1, finding that the Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. In addition, we approve the retirement of EOP–008–0 as requested by NERC. Also, we approve NERC's requested effective date, i.e., the date in which applicable entities are subject to mandatory compliance, of 24 months after the first day of the first quarter after approval.

I. Background

3. Currently-effective Reliability Standard EOP–008–0 (Plans for Loss of Control Center Functionality) contains a single Requirement R1, which provides "Each Reliability Coordinator, Transmission Operator and Balancing Authority shall have a plan to continue reliability operations in the event its control center becomes inoperable." Requirement R1 also identifies mandatory elements of the continuity plan.

4. On March 16, 2007, the Commission issued Order No. 693 approving 83 Reliability Standards proposed by NERC, including EOP Reliability Standard EOP–008–0.[1] In addition, pursuant to section 215(d)(5) of the FPA, the Commission directed the ERO to develop modifications to EOP–008–0 to address specific issues identified by the Commission. In particular, the Commission directed the ERO to develop a modification through the Reliability Standards development process that includes a Requirement that provides, as a minimum, for backup capabilities that are independent from the primary control center, capable to operate for a prolonged period corresponding to the time it would take to replace the primary control center, and provide a minimum set of tools and facilities to replicate the critical reliability functions of the primary control center.[2] The Commission directed that the extent of the backup capability should be consistent with the impact of the loss of the entity's primary control center on the reliability of the Bulk-Power System.

5. The Commission also directed that reliability coordinators have fully complete, dedicated backup control centers.[3] In addition, the Commission directed the ERO to modify the Reliability Standard to require that transmission operators and balancing authorities having operational control over significant portions of generation and load have minimum backup capabilities that replicate the critical reliability functions of the primary control center, but they may do so through contracting for these services instead of through dedicated backup control centers.[4]

II. NERC Petition

A. NERC Description of the Benefits of Reliability Standard EOP–008–1

6. In its February 11, 2011 filing,[5] NERC requests Commission approval of

[1] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[2] *Id.* P 663, 672.

[3] *Id.* P 670

[4] *Id.* P 670, 672.

[5] *North American Electric Reliability Corp.,* February 11, 2011 Petition of the North American Electric Reliability Corporation for Approval of One Emergency Preparedness and Operations Reliability Standard EOP–008–1 and Retirement of One Existing Reliability Standard EOP–008–0 (NERC Petition).

proposed Reliability Standard EOP–008–1. NERC states that EOP–008–1 is intended to ensure that a plan is in place for backup functionality and that facilities and personnel are prepared to implement that plan. NERC states that the proposed Reliability Standard represents a significant revision and improvement to the current Standard by eliminating gaps, reducing ambiguity, eliminating fill-in-the-blank components, and addressing the relevant Commission directives in Order No. 693.

7. Discussing the benefits of EOP–008–1, NERC states that the Reliability Standard: (1) Delineates what must be included in a plan for backup functionality; (2) includes a provision for managing the risk to the Bulk-Power System during the transition from primary to backup functionality; (3) requires reliability coordinators to have a dedicated facility for its backup functionality; (4) provides that transmission operators and balancing authorities can have either a dedicated facility or may contract for services to provide backup functionality; (5) address the need for formal review and approval of the plan for backup functionality; (6) mandates independence of the primary and backup capabilities; (7) requires testing of the plan; and (8) establishes a procedure for creating a plan to re-establish backup capability following a catastrophic situation.[6] In addition, NERC discusses how EOP–008–1 satisfies the factors set forth in Order No. 672 for analyzing whether a Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[7]

B. Reliability Standard EOP–008–1

8. Reliability Standard EOP–008–1 contains eight Requirements for the stated purpose of ensuring continued reliable operations of the bulk electric system in the event that a control center becomes inoperable. Requirement R1 requires each applicable entity to have a current operating plan describing the manner in which it will continue to meet its functional obligations in the event that its primary control center functionality is lost. Requirement R2 instructs each applicable entity to have a copy of its current plan for backup functionality at its primary control center and at the location providing backup functionality. Requirement R3 mandates that each reliability coordinator have a backup control center that provides functionality sufficient to maintain compliance with all Reliability Standards that depend on primary control center functionality.

9. Reliability Standard EOP–008–1, Requirement R4 directs balancing authorities and transmission operators to have a backup functionality, either through a facility or contracted services, to maintain compliance with all Reliability Standards that depend on their primary control center functionality. Requirement R5 requires each applicable entity to review annually and approve its plan for backup functionality, and Requirement R7 requires each applicable entity to annually test and document the results of its plan demonstrating the transition time between the simulated loss of the primary control center and the full implementation of the backup functionality. Requirement R6 mandates that primary and backup functionality cannot depend on each other. Finally, each reliability coordinator, balancing authority or transmission operator that experiences a loss of either primary or backup functionality anticipated to last for more than six months must, in accordance with Requirement R8, provide a plan to its Regional Entity within six calendar months of the date when functionality is lost showing how it will re-establish such functionality.

III. Notice of Filing, Interventions and Comments

10. On February 16, 2011, notice of NERC's filing was published in the **Federal Register** with interventions and protests due on or before March 4, 2011.[8] Motions to intervene were timely filed by American Municipal Power, Inc. (AMP) and Modesto Irrigation District (MID). The ISO/RTO Council (ISO/RTO) timely filed a motion to intervene and comments supporting the adoption of proposed Reliability Standard EOP–008–1 and the concurrent retirement of EOP–008–0. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[9] the timely, unopposed motions to intervene serve to make AMP, MID, and ISO/RTO parties to this proceeding.

IV. Discussion

11. The Commission approves Reliability Standard EOP–008–1 as just, reasonable, not unduly discriminatory or preferential and in the public interest.[10] By providing detailed requirements for what must be included in a plan to meet functional obligations in the event a primary control center is lost, by now requiring formal, annual approval of such plans, and by specifically requiring reliability coordinators to have backup facilities and transmission operators and balancing authorities to have backup functionality, EOP–008–1 represents a significant improvement to the currently effective Reliability Standard. The revised Standard addresses the relevant directives in Order No. 693 and specifically requires, among other things, independent backup capabilities, capable of operating for a prolonged period, and providing functionality sufficient to maintain compliance with all Reliability Standards that depend on primary control functionality.

12. Reliability Standard EOP–008–1 requires that all applicable entities have backup functionality. Reliability coordinators in particular must have full backup control centers while balancing authorities and transmission operators may elect to attain backup functionality either by a dedicated facility or by contracted service. This distinction recognizes the comparative difference in the scope of responsibility for a reliability coordinator versus a balancing authority or transmission operator, and the Standard satisfies the Commission directives in this regard.[11]

13. Additionally, we note that Requirement R1 (section 1.5) permits a transition time between the loss of the primary control center and full implementation of backup functionality of up to two hours. NERC states that, in the standards development process, some stakeholders commented that the two hour transition period was too long, others considered it too short, and some argued that the timeframe seemed to weaken the current requirement.[12] According to NERC, the standards drafting team "attempted to develop a reasonable number that would allow for a backup control center to be placed sufficiently far away so that the chances of a single catastrophe affecting both sites were minimal, versus having it so far away that there may be a serious gap

[6] NERC Petition at 4. Pursuant to 18 CFR 40.3 (2010), the ERO must post on its Web site currently effective Reliability Standards. NERC has posted Reliability Standard EOP–008–1 on the NERC Web site at *http://www.nerc.com/page.php?cid=2|20.*

[7] NERC Petition at 8–18. *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[8] 76 FR 13,345.

[9] 18 CFR 385.214.

[10] 16 U.S.C. 824(d)(2).

[11] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 670.

[12] NERC Petition at 37–38.

in reliability during the intervening time before the backup is operational." [13]

14. The Commission is concerned that the two hour transition period may expose the grid to increased reliability risk without control functionality. For this reason it is imperative that full backup functionality occur as soon as possible after the loss of primary control functionality. Nonetheless, until data from drills, exercises and tests can support a specific time period, the Commission approves the Reliability Standard but notes it may revisit this transition timeframe once the applicable entities have developed experience operating under this new Standard.

15. Accordingly, the Commission approves Reliability Standard EOP–008–1, effective the first day of the first calendar quarter twenty-four months after Commission approval. Further, as requested by NERC, we approve the retirement of currently-effective Reliability Standard EOP–008–0 concurrent with the implementation date of EOP–008–1.

V. Violation Risk Factors/Violation Security Levels

16. To determine a base penalty amount for a violation of a Requirement within a Reliability Standard, NERC must first determine an initial range for the base penalty amount. To do so, NERC assigns a violation risk factor to each Requirement and sub-Requirement of a Reliability Standard that relates to the expected or potential impact of a violation of the Requirement on the reliability of the Bulk-Power System. The Commission has established guidelines for evaluating the validity of each violation risk factor assignment.[14]

17. NERC also will assign each Requirement and sub-Requirement one of four violation severity levels—low, moderate, high, and severe—as measurements for the degree to which the Requirement was violated in a specific circumstance. On June 19, 2008, the Commission issued an order establishing four guidelines for the development of violation severity levels.[15]

18. With respect to Reliability Standard EOP–008–1, NERC has assigned violation risk factors only to the main Requirements and did not propose violation risk factors for any of the sub-Requirements.[16] NERC noted that such practice is consistent with NERC's August 10, 2009 informational filing regarding the assignment of violation risk factors and violation severity levels.[17]

19. On May 5, 2010, NERC incorporated by reference into Docket No. RR08–4–005,[18] its August 10, 2009 Information Filing in which NERC proposes assigning violation risk factors and violation severity levels only to the main Requirements in each Reliability Standard, and not to the sub-Requirements. Because the assignment of violation risk factors and violation severity levels for EOP–008–1 is made in accordance with NERC's pending petition, the Commission defers discussion of the proposed violation risk factors and violation severity levels until after the Commission issues a final order acting on NERC's petition in Docket No. RR08–4–005.

VI. Information Collection Statement

20. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency action.[19] 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 this Order will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

21. The Commission is submitting these reporting and recordkeeping 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.

22. Rather than creating entirely new obligations with respect to the loss of control center functionality, Reliability Standard EOP–008–1 upgrades the existing planning requirements contained in EOP–008–0 and specifically requires reliability coordinators, balancing authorities and transmission operators to have backup functionality. Thus, this Order does not impose entirely new burdens on the effected entities. For example, EOP–008–0 requires each applicable entity to have a plan to continue reliable operations in the event its control center becomes inoperable and to conduct reviews and tests, at least annually, to ensure viability of the plan. This Order, however, imposes new requirements regarding the approval, placement, documentation and updating of plans as well as requires entities that may not already possessing backup functionality to obtain, possibly through contractual arrangements, backup capabilities.

23. *Burden Estimate:* Our estimate below regarding the number of respondents is based on the NERC compliance registry as of February 17, 2011. According to the registry, there are 23 reliability coordinators, 120 balancing authorities and 176 transmission operators that will be involved in providing information. Under NERC's compliance registration program, however, entities may be registered for multiple functions or, particularly in the case of reliability coordinators, registered for the same function with multiple regional entities, so these numbers incorporate some double counting. The net number of entities responding will be 215, consisting of 17 reliability coordinators, 94 entities registered as both balancing authorities and transmission operators, and 104 entities registered solely as either a balancing authority or a transmission operator. This Order will require applicable entities to revise their plans and document compliance with the Reliability Standard's requirements. For those balancing authorities and transmission operators that do not already comply with the Standard's requirement for backup functionality, they will, at a minimum, be required to contract for such services. We understand that all reliability coordinators currently have backup control centers and estimate that approximately 27 entities will have to procure backup functionality. The estimated burden for the requirements in this Order follow:

[13] *Id.*

[14] *See North American Electric Reliability Corp.,* 119 FERC ¶ 61,145, *order on reh'g,* 120 FERC ¶ 61,145, at P 8–13 (2007).

[15] *North American Electric Reliability Corp.,* 123 FERC ¶ 61,284, at P 20–35, *order on reh'g & compliance,* 125 FERC ¶ 61,212 (2008).

[16] We note that in *Version Two Facilities Design, Connections and Maintenance Reliability Standards,* Order No. 722, 126 FERC ¶ 61,255, at P 45 (2009), the ERO proposed to develop violation risk factors and violation severity levels for Requirements but not sub-requirements. The Commission denied the proposal as "premature" and, instead, encouraged the ERO to "develop a new and comprehensive approach that would better facilitate the assignment of violation severity levels and violation risk factors." As directed, on March 5, 2010, NERC submitted a comprehensive approach that is currently pending with the Commission in Docket No. RR08–4–005.

[17] NERC Petition at 16–17.

[18] Docket No. RR08–4–005 comprises NERC's March 5, 2010 Violation Severity Level Compliance Filing submitted in response to Order No. 722. *See* Order No. 722, 126 FERC ¶ 61,255 at P 45.

[19] 5 CFR 1320.11.

FERC–725A Data collection	Number of respondents (A)	Number of annual responses per respondent (B)	Hours per respondent per response (C)	Total annual hours (A × B × C)
Review and possible revision of plan (one-time)	215	1	20	4,300
Updating, approving, and maintaining records	215	1	Compliance: 6 .. Recordkeeping: 2.	1,290 430
Balancing authorities and transmission operators contracting for backup functionality (one-time).	27	1	120	3,240
Total one-time				7,540
Total recurring				1,720
Total				9,260

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements and recordkeeping burden associated with Reliability Standard EOP–008–1.

- *Total Annual Hours for Collection:* (Compliance/Documentation + Contracting) = 9,260 hours.
- *Total One-Time Compliance Cost* = 7,540 hours @ $120/hour = $904,800.
- *Total Reoccurring Compliance Cost* = 1,720 hours @ $120/hour = $206,400.
- *Total Recordkeeping Cost* = 430 hours @ $28/hour = $10,240
- *Total First Year Cost* = $1,121,440.
- *Title:* Mandatory Reliability Standards for the Bulk-Power System.
- *Action:* FERC 725A, Proposed Modification to FERC–725A.
- *OMB Control No:* 1902–0244.
- *Respondents:* Business or other for profit, and/or not for profit institutions.
- *Frequency of Responses:* On occasion.
- *Necessity of the Information:* This Order approves revised Reliability Standard that modifies an existing requirement regarding preparing for the loss of control center functionality. Reliability Standard EOP–008–1 requires entities to revise and authorize operating plans for backup control center functionality. It also requires some entities to procure such backup functionality, and in every case imposes requirements to retain records.

24. 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, Office of the Executive Director, e-mail: *DataClearance@ferc.gov*, Phone: (202) 502–8663, fax: (202) 273–0873]. Comments on the requirements of this order 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 should be sent by e-mail to OMB at *oira_submission@omb.eop.gov.* Please reference OMB Control Number 1902–0244 and the docket number of this Order in your submission.

VII. Environmental Analysis

25. 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.[20] The action taken in the Order falls within the categorical exclusion in the Commission's regulations for orders that are clarifying, corrective or procedural, for information gathering, analysis, and dissemination.[21] Accordingly, neither an environmental impact statement nor an environmental assessment is required.

VIII. Regulatory Flexibility Act

26. The Regulatory Flexibility Act of 1980 (RFA)[22] generally requires a description and analysis of orders that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed order and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA's) Office of Size Standards develops the numerical definition of a small business.[23] 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.[24]

27. Comparison of the NERC compliance registry with data submitted to the Energy Information Administration on Form EIA–861 indicates that perhaps as many as 54 balancing authorities and transmission operators to which the requirements of this Reliability Standard will apply will be deemed small entities. Reliability Standard EOP–008–1 clarifies the elements of a plan for the loss of control center functionality, imposes approval and updating requirements for such plans, and requires balancing authorities and transmission operators to have backup control center functionality. Of the 54 small entities, each will incur the compliance and recordkeeping costs of $3,176 associated with revising, approving, maintaining and updating their plans for loss of control center operability, but only that subset of small entities that has not already obtained backup control center functionality, which we estimate to be 27 entities, will face the one-time additional $14,400 burden of contracting for such functionality. The Commission estimates that, in addition to the cost of contracting, the first year's cost of obtaining backup functionality will be approximately $210,000 with each subsequent year costing $60,000. In aggregate, the Commission estimates that this Reliability Standard may impose on small entities that do not currently have backup functionality an initial cost of perhaps $227,576 with the cost of subsequent years being reduced to $60,776. Accordingly, the cost of Reliability Standard EOP–008–1 should not present a significant operating cost to a substantial number of small entities.

[20] *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).

[21] 18 CFR 380.4(a)(5).

[22] 5 U.S.C. 601–12.

[23] 13 CFR 121.101.

[24] 13 CFR 121.201, Sector 22, Utilities & n. 1.

28. Based on this understanding, the Commission certifies that this Reliability Standard will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

IX. Effective Date

29. This order will become effective June 27, 2011.

The Commission Orders

(A) Reliability Standard EOP–008–1, submitted by the North American Electric Reliability Corporation, is hereby approved, as discussed in the body of this order.

(B) Reliability Standard EOP–008–0 is hereby retired upon implementation of EOP–008–1, as discussed in the body of this order.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–10266 Filed 4–27–11; 8:45 am]

BILLING CODE 6717–01–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: EC11–73–000.

Applicants: Standard Binghamton LLC, Alliance Energy, New York LLC, Standard Power LLC.

Description: Application of Standard Binghamton LLC, *et al.*

Filed Date: 04/22/2011.

Accession Number: 20110422–5044.

Comment Date: 5 p.m. Eastern Time on Friday, May 13, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3048–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc.'s additional information regarding the Installed Capacity Requirement Values for the 2014/2015 Capability Year Forward Capacity Auction, pursuant to the FERC Deficiency Letter dated April 14.

Filed Date: 04/20/2011.

Accession Number: 20110420–5186.

Comment Date: 5 p.m. Eastern Time on Friday, April 29, 2011.

Docket Numbers: ER11–3048–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc.'s Motion for Leave to File One Day Out-of-Time Supporting Materials, Including CEII, in Response to Deficiency Letter.

Filed Date: 04/21/2011.

Accession Number: 20110421–5167.

Comment Date: 5 p.m. Eastern Time on Friday, April 29, 2011.

Docket Numbers: ER11–3414–000.

Applicants: Blue Canyon Windpower VI LLC.

Description: Blue Canyon Windpower VI LLC submits tariff filing per 35.12: Blue Canyon Windpower VI LLC MBR Tariff to be effective 6/20/2011.

Filed Date: 04/21/2011.

Accession Number: 20110421–5142.

Comment Date: 5 p.m. Eastern Time on Thursday, May 12, 2011.

Docket Numbers: ER11–3415–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 04–21–11 Exit Fee Agmt to be effective 5/31/2011.

Filed Date: 04/21/2011.

Accession Number: 20110421–5143.

Comment Date: 5 p.m. Eastern Time on Thursday, May 12, 2011.

Docket Numbers: ER11–3416–000.

Applicants: Alta Wind VI, LLC.

Description: Alta Wind VI, LLC submits tariff filing per 35.12: Alta Wind VI, LLC MBR Tariff to be effective 5/16/2011.

Filed Date: 04/21/2011.

Accession Number: 20110421–5147.

Comment Date: 5 p.m. Eastern Time on Thursday, May 12, 2011.

Docket Numbers: ER11–3417–000.

Applicants: Alta Wind VIII, LLC.

Description: Alta Wind VIII, LLC submits tariff filing per 35.12: Alta Wind VIII, LLC MBR Tariff to be effective 5/16/2011.

Filed Date: 04/21/2011.

Accession Number: 20110421–5148.

Comment Date: 5 p.m. Eastern Time on Thursday, May 12, 2011.

Docket Numbers: ER11–3418–000.

Applicants: Xoom Energy, LLC.

Description: Xoom Energy, LLC submits tariff filing per 35.12: Xoom Energy, LLC Application for Market-Based Rates to be effective 5/23/2011.

Filed Date: 04/21/2011.

Accession Number: 20110421–5155.

Comment Date: 5 p.m. Eastern Time on Thursday, May 12, 2011.

Docket Numbers: ER11–3419–000.

Applicants: South Carolina Electric & Gas Company.

Description: South Carolina Electric & Gas Company submits tariff filing per 35.13(a)(2)(iii): FERC Electric Rate Schedule No. 60 to be effective 4/21/2011.

Filed Date: 04/21/2011.

Accession Number: 20110421–5189.

Comment Date: 5 p.m. Eastern Time on Thursday, May 12, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–22–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Second Amendment to Application of the Midwest Independent Transmission System Operator, Inc. under Section 204 of the Federal Power Act to Issue Securities.

Filed Date: 04/21/2011.

Accession Number: 20110421–5191.

Comment Date: 5 p.m. Eastern Time on Monday, May 2, 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: April 22, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–10271 Filed 4–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–103–000]

Southcross CCNG Transmission Ltd.; Notice of Filing

Take notice that on April 19, 2011, Southcross CCNG Transmission Ltd. filed a revised Statement of Operating Conditions with a proposed effective date of April 19, 2011.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, May 2, 2011.

Dated: April 21, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–10259 Filed 4–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–102–000]

NorthWestern Corporation; Notice of Filing

Take notice that on April 15, 2011, NorthWestern Corporation filed a Statement of Operating Conditions to comply with Order No. 714 and the Commission Order issued on March 31, 2011 in Docket No. CP11–76–000.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, May 2, 2011.

Dated: April 21, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–10262 Filed 4–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–3416–000]

Alta Wind VI, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Alta Wind VI, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to

intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 12, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links *at http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 22, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–10269 Filed 4–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–3418–000]

Xoom Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Xoom Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 12, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 22, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–10267 Filed 4–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–3414–000]

Blue Canyon Windpower VI LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Blue Canyon Windpower VI LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 12, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 22, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–10270 Filed 4–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–3417–000]

Alta Wind VIII, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Alta Wind VIII, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 12, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 22, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–10268 Filed 4–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–17–003]

Humble Gas Pipeline Company; Notice of Motion for Extension of Rate Case Filing Deadline

Take notice that on April 15, 2011, Humble Gas Pipeline Company (HGPC) filed a request for an extension consistent with the Commission's revised policy of periodic review from a triennial to a five year period. The Commission in Order No. 735 modified its policy concerning periodic reviews of rates charges by section 311 and Hinshaw pipelines to extend the cycle for such reviews from three to five years.[1] Therefore, HGPC requests that the date for its next rate filing be extended to March 1, 2014, which is five years from the date of HGPC's most recent rate filing with this Commission.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, May 2, 2011.

Dated: April 21, 2011,

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–10261 Filed 4–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–180–000]

Colorado Interstate Gas Company; Notice of Request Under Blanket Authorization

Take notice that on April 7, 2011, Colorado Interstate Gas Company (CIG) filed a prior notice request pursuant to sections 157.205(b), 157.216(b) of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act, for authorization to abandon and remove its Desert Springs Compressor Station located in Sweetwater County, Wyoming, under CIG's blanket certificate issued in Docket No. CP83–21–000.[1] Specifically, CIG proposes to remove all above and below-ground facilities and the abandonment and plugging of an on-site

[1] Contract Reporting Requirements of Intrastate Natural Gas Companies, Order No. 735, 131 FERC ¶ 61,150 (May 20, 2010).

[1] *See Colorado Interstate Gas Company,* 3 FERC ¶ 61,165 (1978).

water well, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this prior notice should be directed Susan C. Stires, Director, Regulatory Affairs Department, Colorado Interstate Gas Company, Post Office Box 1087, Colorado Springs, Colorado 8090, or telephone no. (719) 667–7514.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commentary will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: May 12, 2011.

Dated: April 21, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–10263 Filed 4–27–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9299–5]

Science Advisory Board Staff Office Notification of a Public Meeting of the Clean Air Scientific Advisory Committee (CASAC) Ozone Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public meeting on May 19 and 20, 2011, of the Clean Air Scientific Advisory Committee (CASAC) Ozone Review Panel to conduct a peer review on EPA's *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (March 2011 Draft),* and a consultation on EPA's *Ozone National Ambient Air Quality Standards: Scope and Methods Plan for Health Risk and Exposure Assessment (April 2011 Draft), and Ozone National Ambient Air Quality Standards: Scope and Methods Plan for Welfare Risk and Exposure Assessment (April 2011 Draft).*

DATES: The CASAC Ozone Review Panel meeting will be held on Thursday, May 19, 2011 from 8:30 a.m. to 5:30 p.m. (Eastern Time) and on Friday, May 20, 2011 from 8:30 a.m. to 3:30 p.m. (Eastern Time).

ADDRESSES: The public meeting will be held at the Carolina Inn, 211 Pittsboro Street, Chapel Hill, NC 27516.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the May 19 and 20, 2011 public meeting may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1300 Pennsylvania Avenue, NW., Washington, DC 20004; via telephone/voice mail (202) 546–2073; fax (202) 565–2098; or e-mail at *stallworth.holly@epa.gov.* General information concerning the CASAC can be found on the EPA Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION:

Background: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463 5 U.S.C., App. 2, notice is hereby given that the CASAC Ozone NAAQS Review Panel will hold a public meeting to peer review EPA's first external review draft of the *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (March 2011) (http://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=217463).* The Panel will also provide consultative advice on two draft EPA documents: *Ozone National Ambient Air Quality Standards: Scope and Methods Plan for Health Risk and Exposure Assessment (April 2011), and Ozone National Ambient Air Quality Standards: Scope and Methods Plan for Welfare Risk and Exposure Assessment (April 2011).* These are being prepared as part of the review of the National Ambient Air Quality Standards for Ozone. The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six "criteria" air pollutants, including Ozone. The CASAC Ozone Review Panel previously reviewed EPA's *Integrated Review Plan for the Ozone National Ambient Air Quality Standards Review (External Review Draft, September 2009)* in a teleconference on November 13, 2009 (74 FR 54562–54563) as reported in a letter to the EPA Administrator, dated December 3, 2009 (EPA–CASAC–10–004).

Technical Contacts: Any technical questions concerning the *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (March 2011)* should be directed to Dr. James Brown (*brown.james@epa.gov*). Any technical questions concerning the *Ozone National Ambient Air Quality Standards: Scope and Methods Plan for*

Health Risk and Exposure Assessment (April 2011) should be directed to Mr. John Langstaff (*langstaff.john@epa.gov*). Any technical questions concerning the *Ozone National Ambient Air Quality Standards: Scope and Methods Plan for Welfare Risk and Exposure Assessment (April 2011)* should be directed to Dr. Travis Smith (*smith.jtravis@epa.gov*).

Availability of Meeting Materials: Prior to the meeting, the review documents, agenda and other materials will be accessible through the calendar link on the blue navigation bar at *http://www.epa.gov/casac/.*

Procedures for Providing Public Input: Public comment for consideration by EPA's Federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a Federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a Federal advisory committee to consider as it develops advice for EPA. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public should send their comments directly to the Designated Federal Officer for the relevant advisory committee. *Oral Statements:* To be placed on the public speaker list for the meeting, interested parties should notify Dr. Stallworth, DFO, by e-mail no later than May 12, 2011. Individuals making oral statements will be limited to five minutes per speaker. *Written Statements:* Written statements for the meeting should be received in the SAB Staff Office by May 12, 2011 so that the information may be made available to the Panel for its consideration prior to this meeting. Written statements should be supplied to the DFO via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC Web site. Copyrighted materials will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Stallworth at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: April 22, 2011.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–10287 Filed 4–27–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Safety and Homeland Security Bureau; Federal Advisory Committee Act; Emergency Response Interoperability Center Public Safety Advisory Committee Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this document advises interested persons that the FCC Emergency Response Interoperability Center Public Safety Advisory Committee (PSAC) will hold its second meeting on May 24, 2011, at 10 a.m. in the Commission Meeting Room of the Federal Communications Commission.

DATES: May 24, 2011.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gene Fullano, Designated Federal Official for PSAC at (202) 418–0492 (voice) or *genaro.fullano@fcc.gov* (e-mail); or Brian Hurley, Deputy Designated Federal Official for PSAC at (202) 418–2220 (voice) or *brian.hurley@fcc.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The PSAC is a Federal Advisory Committee that will provide recommendations to assist the Commission and the Emergency Response Interoperability Center (ERIC) in developing a technical interoperability framework for a nationwide interoperable public safety broadband network. On August 6, 2010, the FCC, pursuant to the Federal Advisory Committee Act, filed the charter for the PSAC for a period of two years, through August 6, 2012.

At this meeting, the PSAC will consider recommendations of its Interoperability, Applications and User Requirements, Security and Authentication, and Network Evolution working groups. A more detailed agenda will be released prior to the meeting.

Members of the general public may attend the meeting, and the FCC will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will also provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at *http://www.fcc.gov/live.*

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice; last minute requests will be accepted but may not be possible to accommodate.

The public may submit written comments before the meeting to Gene Fullano, the FCC's Designated Federal Official for the PSAC, by e-mail to *genaro.fullano@fcc.gov* or U.S. Postal Service Mail to Gene Fullano, Associate Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, 445 12th Street, SW., Room 7–C738, Washington, DC 20554.

Federal Communications Commission.

Jennifer A. Manner,

Deputy Chief.

[FR Doc. 2011–10298 Filed 4–27–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission (FCC or Commission).

ACTION: Notice; one new Privacy Act system of records.

SUMMARY: Pursuant to subsection (e)(4) of the *Privacy Act of 1974,* as amended (5 U.S.C. 552a), the FCC proposes to add

a new system of records, FCC/OLA–1, "Legislative Management Tracking System (LMTS)." The FCC's Office of Legislative Affairs (OLA) will use the information contained in FCC/OLA–1 to cover the personally identifiable information (PII) in the Commission's Legislative Management Tracking System (LMTS). OLA uses LMTS to store, track, and manage correspondence from the members of the U.S. House of Representatives and the U.S. Senate and the President of the United States and the Vice President of the United States. This correspondence may include attachments that could contain PII from individuals (members of the public at large) who contacted their Congressional Representative(s) and/or Senator(s) and/or the President and/or the Vice President concerning various telecommunications issues affecting them, *e.g.,* telephone and cable bills, *etc.* In addition, FCC employees may be seeking Congressional assistance with their personal employment issues at the Commission, *e.g.,* hiring and promotion matters, *etc.*

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (e)(11) of the Privacy Act, as amended, any interested person may submit written comments concerning this new system of records on or before May 31, 2011. The Administrator, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act to review the system of records, and Congress may submit comments on or before June 7, 2011. The proposed new system of records will become effective on June 7, 2011 unless the FCC receives comments that require a contrary determination. The Commission will publish a document in the **Federal Register** notifying the public if any changes are necessary. As required by 5 U.S.C. 552a(r) of the Privacy Act, the FCC is submitting reports on this proposed new system to OMB and Congress.

ADDRESSES: Address comments to Leslie F. Smith, Privacy Analyst, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554, or via the Internet at *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Leslie F. Smith, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554, (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed new system of records maintained by the FCC. This notice is a summary of the more detailed information about the proposed new system of records, which may be viewed at the location given above in the **ADDRESSES** section. The purpose for adding this new system of records, FCC/OLA–1, "Legislative Management Tracking System (LMTS)," is to cover the personally identifiable information (PII) in the Commission's Legislative Management Tracking System (LMTS). OLA uses LMTS to store, track, and manage correspondence from members of the U.S. House of Representatives and the U.S. Senate and the President of the United States and the Vice President of the United States. This correspondence may include attachments that could contain personally identifiable information (PII) from individuals (members of the public at large) who contacted their Congressional Representative(s) and/or Senator(s) and/or the President and/or the Vice President concerning various telecommunications issues affecting them, *e.g.,* telephone and cable bills, *etc.* In addition, FCC employees may be seeking Congressional assistance with their personal employment issues at the Commission, *e.g.,* hiring and promotion matters, *etc.*

This notice meets the requirement documenting the proposed new system of records that is to be added to the systems of records that the FCC maintains, and provides the public, OMB, and Congress with an opportunity to comment.

FCC/OLA–1

SYSTEM NAME: LEGISLATIVE MANAGEMENT TRACKING SYSTEM (LMTS).

SECURITY CLASSIFICATION:

The FCC's Security Operations Center (SOC) has not assigned a security classification to this system of records.

SYSTEM LOCATION:

Office of Legislative Affairs (OLA), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals in the Legislative Management Tracking System (LMTS) include members of the U.S. House of Representatives and the U.S. Senate, the President of the United States, the Vice President of the United States, members of the public at large, and FCC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the Legislative Management Tracking System (LMTS), including any attachments, may include:

1. Members of the public at large: individual's name, home address, home telephone number(s), personal cell phone number(s), account number(s) for telephone, cell phone, cable television, and satellite television services, and other, miscellaneous information that an individual may include in his/her Congressional (constituent) complaint(s) and/or consumer complaints, *etc.;* and

2. FCC employees: individual's name, home address, home telephone number(s), personal cell phone number(s), FCC employment records, and other miscellaneous, information that a Commission employee may include in a complaint to his/her Senator(s) and/or Congressional representative(s) and/or to the President and/or Vice President.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; and 47 U.S.C. 154(i), (j), and (k), and 47 U.S.C. 155(a).

PURPOSE(S):

OLA uses the Legislative Management Tracking System (LMTS) to store, track, and manage correspondence from the members of the U.S. House of Representatives and the U.S. Senate and the President of the United States and the Vice President of the United States. This correspondence may include attachments that could contain PII from individuals (members of the public at large) who contacted their Congressional Representative(s) and/or Senator(s) and/or the President and/or the Vice President concerning various telecommunications issues affecting them, *e.g.,* telephone and cable bills, *etc.* In addition, FCC employees may be seeking Congressional assistance with their personal employment issues at the Commission, *e.g.,* hiring and promotion matters, *etc.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about individuals in this system of records may routinely be disclosed under the following conditions:

1. Congressional Inquiries—When requested by a Congressional office in response to an inquiry that an individual made to the Congressional office for his/her own records or for the adjudication of consumer complaints,

e.g., telephone and/or cable bills, *etc,* or other miscellaneous FCC-related matters, such as licensing issues, *etc.;*

2. Executive Branch Inquiries—When requested by the Executive Branch of the U.S. Government in response to an inquiry that an individual made to the President of the United States and/or the Vice President of the United States in response to an inquiry that the individual made to the Executive Branch for assistance with various telecommunications issues affecting them;

3. Government-wide Program Management and Oversight—When requested by the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906; when the U.S. Department of Justice (DOJ) is contacted in order to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act; or when the Office of Management and Budget (OMB) is contacted in order to obtain that office's advice regarding obligations under the Privacy Act; and

4. Breach Notification—A record from this system may be disclosed to appropriate agencies, entities, and persons when (1) the Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information in the Legislative Management Tracking System (LMTS) includes paper documents, records, and files that are stored in file cabinets in the OLA office suite, and electronic records, files, and data that are stored in the FCC's computer network databases.

RETRIEVABILITY:

Information in the Legislative Management Tracking System (LMTS) is retrieved by the correspondence log-in file number, Congressional Representative's name, and/or type of complaint, *etc.* Regardless of the circumstances, OLA always redacts the Social Security Number and birthdate before entering a document into LMTS. Other personally identifiable information (PII) in an attachment may also be redacted prior to filing the correspondence if it is not relevant to the complaint or inquiry.

SAFEGUARDS:

The paper documents are maintained in file cabinets that are located in the OLA office suite, whose access is through a card-coded main door. Access to these files is restricted to authorized OLA supervisors and staff.

Access to the electronic files, which are housed in the FCC's computer network databases, is restricted to authorized OLA supervisors and staff and to the Information Technology Center (ITC) staff and contractors, who maintain the FCC's computer network. Other FCC employees and contractors may be granted access on a "need-to-know" basis. The FCC's computer network databases are protected by the FCC's security protocols, which include controlled access, passwords, and other security features. Information resident on the OLA database servers is backed-up routinely onto magnetic media. Back-up tapes are stored on-site and at a secured, off-site location.

RETENTION AND DISPOSAL:

Pursuant to FCC records schedule N1–173–03–2, item 5, information in the Legislative Management Tracking System (LMTS) is retained at the FCC for three years after cut-off at the end of each calendar year. The documents relating to FCC policy, *e.g.,* Chairman correspondence, *etc.,* are then transferred to the National Archives and Records Administration (NARA). The paper documents, records, and files are destroyed by shredding. The electronic records, data, and files (electronic storage media) are destroyed physically or by electronic erasure.

SYSTEM MANAGER(S) AND ADDRESS:

Address inquiries to the Office of Legislative Affairs (OLA), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the Office of Legislative Affairs (OLA), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

RECORD ACCESS PROCEDURES:

Address inquiries to the Office of Legislative Affairs (OLA), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

CONTESTING RECORD PROCEDURES:

Address inquiries to the Office of Legislative Affairs (OLA), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

RECORD SOURCE CATEGORIES:

The sources for the information in the Legislative Management Tracking System are the Congressional and Executive Branch correspondence, including attachments, which may include complaints related to telephone, wireless, and cable billing or service; licensing inquiries; or other inquiries on issues under FCC jurisdiction, *etc.,* submitted by constituents (members of the public at large); or personnel actions or complaints from constituents who are FCC employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Federal Communications Commission.

Avis Mitchell,

Information Specialist.

[FR Doc. 2011–10202 Filed 4–27–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[PS Docket Nos. 11–60 and 10–92; ET Docket No. 06–119]

Reliability and Continuity of Communications Networks, Including Broadband Technologies; Effects on Broadband Communications Networks of Damage or Failure of Network Equipment or Severe Overload; Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Federal Communications Commission

(Commission) seeks comment on a broad range of issues regarding the reliability and resiliency of our Nation's communications networks. Our goal is to establish a vigorous dialog with all interested stakeholders, particularly with respect to what action, if any, should be taken by the Commission to address these matters. In addition, the Commission seeks comment on whether it should terminate the following proceedings: Effects on Broadband Communications Networks of Damage or Failure of Network Equipment or Severe Overload, and Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks. If these two earlier proceedings were to be terminated, the record developed therein would be consolidated into this single new proceeding, which will enable the Commission to consider all relevant matters in a more comprehensive fashion.

DATES: Comments with respect to the proposed termination of PS Docket 10–92 and EB Docket 06–119 are due on or before May 31, 2011. Comments with respect to all other matters raised in this document are due on or before July 7, 2011 and reply comments are due on or before September 1, 2011.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th St., SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Lisa M. Fowlkes, Deputy Bureau Chief, Public Safety and Homeland Security Bureau at 202–418–7452 or *lisa.fowlkes@fcc.gov;* or Jeffery Goldthorp, Associate Chief for Cybersecurity and Communications Reliability, Public Safety and Homeland Security Bureau at 202–418–1096 or *jeffery.goldthorp@fcc.gov;* or Lauren Kravetz, Deputy Chief, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau at 202–418–7944 or *lauren.kravetz@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry (NOI) in PS Docket Nos. 11–60 and 10–92; and ET Docket No. 06–119, adopted and released on April 7, 2011. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th St., SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor Best Copy and Printing, Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 488–5300, facsimile (202) 488–5563, or via e-mail at *fcc@bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary of the Notice of Inquiry

1. *Overview.* By this NOI, the Federal Communications Commission (Commission) seeks comment on a broad range of issues regarding the reliability and resiliency of our Nation's communications networks.

2. In addition, the Commission seeks comment on whether it should terminate two of the above-captioned proceedings—PS Docket 10–92 (Effects on Broadband Communications Networks of Damage or Failure of Network Equipment or Severe Overload), and EB Docket 06–119 (Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks).

3. *Reliability and Continuity Matters.* This NOI initiates a comprehensive examination of issues regarding the reliability, resiliency and continuity of communications networks, including broadband technologies.

4. Today's increasingly interconnected world is one in which communications services, including broadband technologies, play a critical role in all segments of our Nation's society and economy.

5. Businesses rely on communications to conduct financial and other transactions, and hospitals and healthcare providers rely on communications services to provide medical care. Government agencies, at all levels, rely on communications services to ensure the safety of the public and to provide other services, while power companies and other utilities use communications services for their operations and to deploy energy-efficient technologies.

6. For example, power companies are looking to broadband technologies as they begin to deploy Smart Grid. Hospitals and healthcare providers can leverage broadband technologies for video consultation, remote patient monitoring, and better access to electronic healthcare records. Financial institutions use broadband technology to clear large volumes of transactions to keep the economy running efficiently. Moreover, consumers increasingly are relying on broadband platforms in addition to, or in place of, legacy platforms for voice communications.

7. Thus, it is vital that our Nation maintain a communications network that offers reliable and resilient service in the face of significant equipment or system failure and that is sufficiently survivable to provide some continuity of service during major emergencies, regardless of whether the network is legacy or broadband-based.

8. In addition, as the communications infrastructure migrates from legacy connection-based wireline technologies to connectionless Internet Protocol (IP)-based broadband technology, the Commission believes that it does not have sufficient information to know

whether critical communications services will be carried over a communications network infrastructure that will remain functional during significant natural and manmade disasters. At the same time, the Commission believes that users of communications services today generally do not readily distinguish between legacy and broadband technologies, and are thus more likely than ever before to expect the same levels of "carrier grade" service reliability no matter what communications platform they use. As a result, the potential for disparities in service reliability is a source of concern for critical sectors of our economy, including homeland security, public safety, energy, finance and healthcare services, as well as for the government and consumers in general.

9. Against this backdrop, the NOI brings together several lines of inquiry derived from initiatives set forth in the Commission's National Broadband Plan (NBP). For example, the NBP identified insufficient communications backhaul redundancy and inadequacy of backup power as key factors that contribute to the congestion or failure of commercial wireless data networks, particularly during emergencies such as large-scale natural and man-made disasters. The NBP also recommended that the Commission engage in an exploration of the reliability and resiliency standards applied to broadband networks to ascertain what action, if any, the Commission should take to bolster the reliability of broadband infrastructures.

10. In the course of exploring these considerations, the NOI looks at four major areas of concern. First, it explores the ability of communications networks to provide continuity of service during major emergencies, such as large-scale natural and man-made disasters. This includes a discussion of the use of backup power and improved backhaul redundancy solutions. Second, it examines whether we might need standards for broadband network reliability and resiliency to ensure adequate levels of service to meet public safety and other critical infrastructure needs. This includes consideration of protocols and equipment reliability, as well as system capacity and maintenance issues. Third, the NOI seeks comment on what actions, if any, the Commission should take to foster improved performance with respect to the continuity and reliability of operations during major emergencies. And, fourth, it seeks comment on the sources of legal authority that could provide the basis for Commission action, if any.

11. *Termination of Earlier Proceedings.* The NOI also seeks comment on whether the Commission should terminate the dockets in two earlier proceedings—PS Docket 10–92 (Effects on Broadband Communications Networks of Damage or Failure of Network Equipment or Severe Overload), and EB Docket 06–119 (Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks). The issues raised in these two earlier proceedings are interrelated to and overlap with issues raised by this NOI. Thus, to ensure a comprehensive examination of all issues related to reliability, resiliency, survivability, and continuity of communications networks in this NOI proceeding, the Commission believes that termination of the two older proceedings and consolidation of all of the relevant issues under this NOI proceeding would serve the public interest.

12. *Conclusion.* The Commission intends for the record generated by this proceeding to provide the opportunity for a thorough discussion of the reliability and continuity of the operational capabilities of our Nation's communications infrastructure.

Ordering Clauses

13. Accordingly, *it is ordered* that, pursuant to sections 1, 4(i), 4(j), 4(o), 7(b), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j) & (o), 157(b) and 403, this *NOI is adopted.*

14. *It is further ordered* that comments with respect to the proposed termination of PS Docket 10–92 and EB Docket 06–119 are due on or before May 31, 2011.

Federal Communications Commission.

Jeffery Goldthorp,

Associate Chief.

[FR Doc. 2011–10232 Filed 4–27–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The FDIC is soliciting comments on renewal of three information collections described below.

DATES: Comments must be submitted on or before June 27, 2011.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room F–1084, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

1. *Title:* Recordkeeping and Disclosure Requirements in Connection with Regulation Z (Truth in Lending).

OMB Number: 3064–0082.

Frequency of Response: On occasion.

Affected Public: State nonmember banks that regularly offer or extend consumer credit.

Estimated Number of Respondents: 5,200.

Estimated Time per Response: 491.11 hours.

Total Annual Burden: 2,553,775 hours.

General Description of Collection: Regulation Z (12 CFR 226), issued by the Board of Governors of the Federal Reserve System, prescribes uniform methods of computing the cost of credit, disclosure of credit terms, and procedures for resolving billing errors on certain credit accounts.

2. *Title:* Recordkeeping and Disclosure Requirements in Connection with Regulation M (Consumer Leasing).

OMB Number: 3064–0083.

Frequency of Response: On occasion.

Affected Public: State nonmember banks engaging in consumer leasing.

Estimated Number of Respondents: 2,000.

Estimated Time per Response: 75 hours.

Total Annual Burden: 150,000 hours.

General Description of Collection: Regulation M (12 CFR 213), issued by the Board of Governors of the Federal Reserve System, implements the consumer leasing provisions of the Truth in Lending Act.

3. *Title:* Recordkeeping and Disclosure Requirements in Connection with Regulation B (Equal Credit Opportunity).

OMB Number: 3064–0085.

Frequency of Response: On occasion.

Affected Public: State nonmember banks engaging in credit transactions.

Estimated Number of Respondents: 5,200.

Estimated Time per Response: 135.16 hours.

Total Annual Burden: 702,832 hours.

General Description of Collection: Regulation B (12 CFR 202), issued by the Board of Governors of the Federal Reserve System, prohibits creditors from discriminating against applicants on any of the bases specified by the Equal Credit Opportunity Act, establishes guidelines for gathering and evaluating credit information, and requires creditors to give applicants a written notification of rejection of an application.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 22nd day of April 2011.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2011–10215 Filed 4–27–11; 8:45 am]

BILLING CODE 6741–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments on renewal of the information collection titled: Notice of Branch Closure (OMB Number: 3064–0109).

DATES: Comments must be submitted on or before June 27, 2011.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail:* comments@fdic.gov Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202–898–3877), Counsel, Room F–1086, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to OMB Number 3064–0109. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

1. *Title:* Notice of Branch Closure.

OMB Number: 3064–0109.

Frequency of Response: On occasion.

Affected Public: Insured depository institutions.

Estimated Number of Respondents: 509.

Estimated Time per Response: 2.6 hours.

Total Annual Burden: 1,319 hours.

General Description of Collection: An institution proposing to close a branch must notify its primary regulator no later than 90 days prior to the closing. Each FDIC-insured institution must adopt policies for branch closings. This collection covers the requirements for notice, and for policy adoption.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 22nd day of April 2011.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2011–10217 Filed 4–27–11; 8:45 am]

BILLING CODE 6741–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, May 3, 2011, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

Items To Be Discussed

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2011–10463 Filed 4–26–11; 4:15 pm]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–New]

Agency Information Collection Request; 60-Day Public Comment Request

Agency: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Assessing the Availability of Primary Care Physicians Accepting New Patients and Timeliness of Services for New Patients Using a Mystery Shopper Approach—OMB No. 0990–NEW—Assistant Secretary Planning Evaluation (ASPE).

Abstract: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is requesting Office of Management and Budget (OMB) approval on a new collection to utilize a mystery shopper approach to collect data from physician offices in order to accurately gauge availability of Primary Care Physicians (PCPs) accepting new patients, assess the timeliness of services from PCPs, and gain insight into the precise reasons that PCP availability is lacking. This study will provide current information on the availability and accessibility of PCPs to publicly and privately insured patients with a range of medical needs. To conduct this study, ASPE will contact 465 PCPs in each of the nine selected states. Each PCP's office will be contacted twice; once using a privately insured patient scenario, and once using a publicly insured patient scenario. The scenarios will simulate requests for an appointment with the sampled PCP from a new patient with both public or private insurance and either an urgent medical concern or routine exam appointment. A standard protocol will accompany each patient scenario, ensuring that the key research questions are addressed and the necessary standardized information from the calls is collected. Additionally, 465 PCPs across all the nine states will be contacted a third time using a direct questioning approach. These physicians will be informed about the study and asked directly if they are accepting new patients and how long it would take to obtain an appointment. The purpose of this additional data collection component is to evaluate the validity of the mystery shopper approach in generating accurate estimates of physician availability and timeliness of services. Data collection activities will be completed within 4 months of OMB Clearance.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
PCP Office Staff (Mystery Shopper)	4,185	2	8,370	5/60	698
PCP Office Staff (Direct Questioning)	465	1	465	5/60	39
Total					737

Mary Forbes,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2011–10251 Filed 4–27–11; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Information Collection Request; 60–Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, to *Ed.Calimag@hhs.gov,* or call the Reports Clearance Office on (202) 690–7569. Written comments and recommendations for the proposed information collections must be directed to the Grants.gov Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: SF–424 Research and Related Form-Extension—OMB No. 4040–0001—Grants.gov.

Abstract The SF–424 Research and Related form (R&R) is an OMB approved collection (4040–0001). We propose revising the collection to include changes adopted by the cross-agency R&R working group. This working group established the original proposed collection of 4040–0001 in 2004. The form instructions will also be revised.

This collection will be utilized by up to 26 Federal grant-making agencies. The 4040–0001 collection expires on

June 30, 2011. We are requesting a three-year clearance of this collection. The 4040–0001 proposed collection encompasses 14 forms.

There are four requested changes to the SF 424 (R&R) Application for Federal Assistance (Cover) and, there are four requested changes to the R&R Other Project Information form.

These changes to the instructions will increase data quality and clarity for the collection. Agencies will not be required to collect all of the information in the proposed data set. The agency will identify the data that must be provided by applicants through instructions that will accompany the application forms.

ESTIMATED ANNUALIZED BURDEN TABLE FOR SF–424 R&R

Agency	Type of respondent	Number of annual respondents	Number of responses per respondent	Average burden on respondent per response in hours	Total burden hours
DHS	Grant Applicant	173	1	60	10,380
DOC	Grant Applicant	165	1	60	9,900
DOD	Grant Applicant	17,943	1	60	1,076,580
DOE	Grant Applicant	7,292	1	60	437,520
DOI	Grant Applicant	41	1	60	2,460
DOT	Grant Applicant	370	1	60	22,200
ED	Grant Applicant	2,000	1	60	120,000
HHS	Grant Applicant	62,133	1	60	3,727,980
NARA	Grant Applicant	1	1	60	60
NASA	Grant Applicant	102	1	60	6,120
NRC	Grant Applicant	2	1	60	120
NSF	Grant Applicant	1,001	1	60	60,060
USAID	Grant Applicant	9	1	60	540
USDA	Grant Applicant	6,349	1	60	380,940
Total		97,581			5,854,860

Mary Forbes,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2011–10250 Filed 4–27–11; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions, and Delegations of Authority; National Institutes of Health

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 66 FR 6617, January 22, 2001, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to establish the Division of the National Toxicology Program (NTP) within the National Institute of Environmental Health Sciences (NIEHS).

Section N–V, Organization and Functions, is amended as follows:

Immediately after the paragraph headed "Office of Translational Research" (N V4, formerly HN V4), insert the following:

Division of the National Toxicology Program (N V5, formerly HN V5). (1) Provides toxicological evaluations on substances of public health concern; (2) develops and validates improved toxicology methods (more sensitive, specific, and rapid); (3) develops approaches and generates data to strengthen the science base for risk assessments; and (4) communicates results with all stakeholders. Program goals are achieved through a highly integrated, cooperative research and testing program carried out through in-house research, research and development contracts, cooperative agreements, and other support mechanisms.

Biomolecular Screening Branch (N V52, formerly HN V52). (1) Develops research and testing activities in high and medium throughput screening assays for rapid detection of biological activities of significance to toxicology and carcinogenesis, (2) carries out the NTP automated screening assays with C. elegans, (3) develops analysis tools and approaches to allow an integrated assessment of high throughput screening endpoints and associations with findings from traditional toxicology and cancer models, and (4) develops assays and approaches to understand the genetic and epigenetic bases for differences in susceptibility.

Cellular and Molecular Pathology Branch (N V53, formerly HN V53). Responsible for (1) managing, evaluating, reviewing, and reporting all pathology data generated through conduct of NTP toxicity and carcinogenicity studies; (2) establishing standards, terminology, and diagnostic criteria for rodent pathology; (3) providing laboratory animal medicine support for the NTP and Division of Intramural Research (DIR); (4) maintaining the NTP Archives; and (5) managing pathology, toxicology, and other contracts to support NTP and DIR investigators. Staff veterinary scientists provide collaborative pathology diagnostic support for DIR investigators and mentoring/training in toxicologic pathology and laboratory animal medicine.

Program Operations Branch (N V54, formerly HN V54). (1) Provides recommendations to the NTP for scientific, administrative, and fiscal procedures and requirements by which NTP goals may be accomplished through in-house and contract activities; (2) provides resources for analytical chemistry, toxicokinetics, and evaluations of bioavailability and biotransformation; (3) initiates the contract award process and participates with the NIEHS contracts office in the review and award of the contract; (5) manages toxicity and carcinogenicity studies performed under contract and monitors them for technical and fiscal performance; (6) manages the receipt, maintenance, tracking, and dissemination of NTP documents and data.

Toxicology Branch (N V55, formerly HN V55). (1) Responsible for the design, interpretation, review, and reporting of general toxicology and carcinogenicity studies, usually in rodent models, as well as studies to evaluate targeted effects on the immune system, reproduction, development, and interference with chromosomes and

DNA for substances studied by the NTP; (2) integrates information derived from studies of absorption, metabolism, distribution, and excretion of test substances within the body and the development of mathematical models that utilize this information in the extrapolation and prediction of findings across different species and exposure conditions; (3) oversees analysis and development of models using information derived from studies of gene expression in different tissues; (4) incorporates systems biology approaches; (5) reports results from all these specialized toxicology studies; (6) develops new methodologies for toxicological assessments; and (7) provides guidance on the proper utilization of new types of toxicology information in hazard identification, hazard characterization, and regulatory decision-making.

NTP Laboratory (NTPL) (N V56, formerly, HN V56). Responsible for providing laboratory capabilities and support for the performance of agent-specific, targeted research directly related to specific substances nominated to the NTP, issues of central importance to programs of the NTP, or the development of new methods to advance the scientific programs of the NTP.

Delegations of Authority Statement: All delegations and redelegations of authority to officers and employees of NIH that were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect, pending further redelegation.

Dated: April 20, 2011.

Francis S. Collins,

Director.

[FR Doc. 2011–10318 Filed 4–27–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–11–10GI]

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

Evaluating Act Against AIDS Social Marketing Campaign Phases Targeting Consumers—New—National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In response to the continued HIV epidemic in our country, CDC has launched Act Against AIDS (AAA), a 5-year, multifaceted communication campaign to reduce HIV incidence in the United States. CDC plans to release the campaign in phases, with some of the phases running concurrently. Each phase of the campaign will use mass media and direct-to-consumer channels to deliver HIV prevention and testing messages. Some components of the campaign will be designed to provide basic education and increase awareness of HIV/AIDS among the general public, and others will be targeted to specific subgroups or communities at greatest risk of infection. The current study addresses the need to assess the effectiveness of these social marketing messages aimed at increasing HIV awareness and delivering HIV prevention and testing messages among at-risk populations.

This study will evaluate the *AAA* social marketing campaign aimed at increasing HIV/AIDS awareness, increasing prevention behaviors, and improving HIV testing rates among consumers. The study will consist of a quarterly tracking survey of *AAA* target audiences to measure exposure to each phase of the campaign and interventions implemented under *AAA.* Each extended survey will have a core set of items asked in all rounds, as well as a module of questions relating to specific *AAA* activities and communication initiatives that are occurring during a given quarter. Each extended survey sample will consist of 1,000 respondents selected from a combination of sources, including a national opt-in e-mail list sample and respondent lists generated by partnership organizations (*e.g.*, the National Urban League, the National Medical Association). Participants will self-administer the extended survey at home on personal computers. The research will include 12 data collections over a 3-year period: four self-administered quarterly extended surveys per year over 3 years, with a total of 12,000 respondents. There is no cost to the respondents other than their time. The total estimated annual burden hours are 2667.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Individuals (male and female) aged 18 years and older/Study Screener.	Study Screener	20,000	1	2/60
Individuals (male and female) aged 18 years and older.	Extended survey	4,000	1	30/60

Dated: April 21, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–10256 Filed 4–27–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Prospective Granting of an Exclusive License

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i) that the Technology Transfer Office of the Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), is contemplating granting a worldwide exclusive license to AES Raptor, LLC, located in North Kansas City, Missouri. Under this exclusive license, only AES Raptor, LLC would be permitted to commercialize the technology described in the patent applications listed below. CDC intends to grant rights to commercialize this invention to no other licensees. The patent rights in this invention have been assigned to the government of the United States of America. The invention to be licensed is:

Title: Barricade System and Barricade Bracket for Use Therein, CDC Ref. #: I–016–04, a safety rail system that provides protection to individuals working on inclined structures. The system is designed to prevent individuals from falls to a lower level.

U.S. Patent No.: 7,509,702.

U.S. Application No.: 11/257,472.

Filing date: 10/24/2005.

Canadian Application No.: 2,565,354.

Filing date: October 23, 2006.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

ADDRESSES: Requests for a copy of this patent application, inquiries, comments, and other materials relating to the contemplated licenses should be directed to Andrew Watkins, Director, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, Mailstop K–79, Atlanta, GA 30341, telephone: (770) 488–8610; facsimile: (770) 488–8615. Applications for an exclusive license filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Only written comments and/or applications for a license which are received by CDC within thirty days of this notice will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2011–10257 Filed 4–27–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0588]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Exceptions or Alternatives to Labeling Requirements for Products Held by the Strategic National Stockpile

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 31, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0614. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Exceptions or Alternatives to Labeling Requirements for Products Held by the Strategic National Stockpile; Interim Final Rule—(OMB Control Number 0910–0614)—Extension

Under the Public Health Service Act (PHS Act), the Department of Health and Human Services stockpiles medical products that are essential to the health security of the nation (see PHS Act, section 319F–2, 42 U.S.C. 247d–6b). This collection of medical products for use during national health emergencies, known as the Strategic National Stockpile (SNS), is to "provide for the emergency health security of the United States, including the emergency health security of children and other vulnerable populations, in the event of a bioterrorist attack or other public health emergency."

It may be appropriate for certain medical products that are or will be held in the SNS to be labeled in a manner that would not comply with certain FDA labeling regulations given their anticipated circumstances of use in an emergency. However, noncompliance with these labeling requirements could render such products misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the FD& C Act) (21 U.S.C. 352).

In the **Federal Register** of December 28, 2007 (72 FR 73589), FDA published an interim final rule entitled "Exceptions or Alternatives to Labeling Requirements for Products Held by the Strategic National Stockpile." In the interim final rule, FDA issued regulations under §§ 201.26, 610.68, 801.128, and 809.11 (21 CFR 201.26, 610.68, 801.128, and 809.11), which allow the appropriate FDA Center Director to grant a request for an exception or alternative to certain regulatory provisions pertaining to the labeling of human drugs, biological products, medical devices, and in vitro diagnostics that currently are or will be included in the SNS if certain criteria are met. The appropriate FDA Center Director may grant an exception or alternative to certain FDA labeling requirements if compliance with these labeling requirements could adversely affect the safety, effectiveness, or availability of products that are or will be included in the SNS. An exception or alternative granted under the

regulations may include conditions or safeguards so that the labeling for such products includes appropriate information necessary for the safe and effective use of the product given the product's anticipated circumstances of use. Any grant of an exception or alternative will only apply to the specified lots, batches, or other units of medical products in the request. The appropriate FDA Center Director may also grant an exception or alternative to the labeling provisions specified in the regulations on his or her own initiative.

Under §§ 201.26(b)(1)(i) (human drug products), 610.68(b)(1)(i) (biological products), 801.128(b)(1)(i) (medical devices), and 809.11(b)(1)(i) (in vitro diagnostic products for human use), an SNS official or any entity that manufactures (including labeling, packing, relabeling, or repackaging), distributes, or stores such products that are or will be included in the SNS may submit, with written concurrence from a SNS official, a written request for an exception or alternative to certain labeling requirements to the appropriate FDA Center Director. Except when initiated by an FDA Center Director, a request for an exception or alternative must be in writing and must:

- Identify the specified lots, batches, or other units of the affected product;
- Identify the specific labeling provisions under this rule that are the subject of the request;
- Explain why compliance with the specified labeling provisions could adversely affect the safety, effectiveness, or availability of the product subject to the request;
- Describe any proposed safeguards or conditions that will be implemented so that the labeling of the product includes appropriate information necessary for the safe and effective use of the product given the anticipated circumstances of use of the product;
- Provide copies of the proposed labeling of the specified lots, batches, or other units of the affected product that will be subject to the exception or alternative; and
- Provide any other information requested by the FDA Center Director in support of the request.

If the request is granted, the manufacturer may need to report to FDA any resulting changes to the New Drug Application, Biologics License Application, Premarket Approval Application, or Premarket Notification (510(k)) in effect, if any. The submission and grant of an exception or an alternative to the labeling requirements specified in the interim final may be used to satisfy certain reporting obligations relating to changes to product applications under § 314.70 (21 CFR 314.70) (human drugs), § 601.12 (21 CFR 601.12) (biological products), § 814.39 (21 CFR 814.39) (medical devices subject to premarket approval), or § 807.81 (21 CFR 807.81) (medical devices subject to 510(k) clearance requirements). The information collection provisions in §§ 314.70, 601.12, 807.81, and 814.39 have been approved under OMB control numbers 0910–0001, 0910–0338, 0910–0120, and 0910–0231, respectively. On a case-by-case basis, the appropriate FDA Center Director may also determine when an exception or alternative is granted that certain safeguards and conditions are appropriate, such as additional labeling on the SNS products, so that the labeling of such products would include information needed for safe and effective use under the anticipated circumstances of use.

Respondents to this collection of information are entities that manufacture (including labeling, packing, relabeling, or repackaging), distribute, or store affected SNS products. Based on the number of requests for an exception or alternative received by FDA since issuance of the interim final rule, FDA estimates an average of two requests annually. FDA is estimating that each respondent will spend an average of 24 hours preparing each request. The hours per response for each submission are based on the estimated time that it takes to prepare a supplement to an application, which may be considered similar to a request for an exception or alternative. To the extent that labeling changes not already required by FDA regulations are made in connection with an exception or alternative granted under the interim rule, FDA is estimating one occurrence annually in the event FDA would require any additional labeling changes not already covered by FDA regulations, and that it would take 8 hours to develop and revise the labeling to make such changes.

In the **Federal Register** of November 30, 2010 (75 FR 74062), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received no comments.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Part	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
201.26(b)(1)(i), 610.68(b)(1)(i), 801.128(b)(1)(i), and 809.119(b)(1)(i)	2	1	2	24	48
201.26(b)(1)(i), 610.68(b)(1)(i), 801.128(b)(1)(i), and 809.11(b)(1)(i) ..	1	1	1	8	8
Total					56

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The information collection provisions in §§ 314.70, 601.12, 807.81, and 814.39 have been approved under OMB control numbers 0910–0001, 0910–0338, 0910–0120, and 0910–0231, respectively.

Dated: April 22, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–10254 Filed 4–27–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0230]

Agency Information Collection Activities; Proposed Collection; Comment Request; Examination of Online Direct-to-Consumer Prescription Drug Promotion

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a series of studies, Examination of Online Direct-to-Consumer Prescription Drug Promotion. These studies are designed to test different ways of presenting benefit and risk information in online direct-to-consumer (DTC) prescription drug Web sites.

DATES: Submit either electronic or written comments on the collection of information by June 27, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7726, e-mail: *Ila.Mizrachi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Examination of Online Direct-to-Consumer Prescription Drug Promotion—(OMB Control Number 0910—New)

Pharmaceutical products are launched and marketed in a number of new modalities and venues that did not exist a short time ago. Increasingly, prescription products are promoted to consumers online in such formats as banner ads, Web sites, and videos. The interactive nature of the Internet allows for features not possible with traditional media (*i.e.,* print, radio, and television), such as scrolling information, pop up windows, linking to more information, and embedding videos. FDA regulations require that prescription drug advertisements include a "fair balance" of information about the benefits and risks of advertised products, both in terms of the content and presentation of the information (21 CFR 202.1(e)(5)(ii)). All prescription drug ads that make claims about a product must, therefore, also include risk information in a "balanced" manner. Currently, there are a number of questions surrounding how to achieve "fair balance" in online DTC promotion.

A few studies have examined how well online DTC Web sites communicate benefit and risk information. Although content analyses demonstrate that most Web sites include information on side effects and contraindications (Ref. 1), risk information is often presented less prominently and in fewer locations on the Web site (Refs. 2, 3, and 4). Content analyses also suggest that risk information on DTC prescription drug Web sites is often incomplete (Ref. 5) and written at very high literacy levels (Ref. 6).

One study examined how users interact with prescription drug Web sites (Ref. 7). This study found that the placement of risk and benefit information on a Web site is an important factor in whether it achieves "fair balance." Specifically, participants' ability to find and accurately recall risk information was enhanced when risk and benefit information were presented separately and when risk information was presented on a higher order page (*i.e.,* on a second-level page clearly linked from the homepage or on the homepage).

This project is designed to test different ways of presenting prescription drug risk and benefit information on branded drug Web sites. This research is relevant to current policy questions and debate and will complement qualitative research we plan to conduct on issues surrounding social media. The original regulations that presently determine FDA's position on DTC promotion were written at a time when the available media for DTC promotion were print and broadcast, and the primary audience was health care professionals. This dynamic is shifting, and evidence is needed to support guidance development. The series of studies described in this notice will provide data that, along with other input and considerations, will inform the development of future guidance.

Design Overview: This research will be conducted in three concurrent studies. The first three studies are experimental and the fourth is qualitative.

The purpose of study 1 is to investigate whether the presentation of risk information on branded drug Web sites influences consumers' perceptions and understanding of the risks and benefits of the product. In study 1, we will examine the format (*e.g.,* whether the risk information is presented in a paragraph or as a bulleted list) and

visibility (*i.e.,* the risk information can be seen without scrolling down versus the risk information cannot be seen without scrolling down) of risk information on the homepage of a prescription drug Web site. Participants will be randomly assigned to experimental conditions in a factorial design as follows:

TABLE 1—STUDY 1 PROPOSED DESIGN (2×5)

Visibility	Format				
	Paragraph	Bullet list	Checklist	Highlighted box	Animated spokesperson
Scrolling Needed					
No Scrolling Needed					

The purpose of study 2 is to investigate how special features such as personal testimonial videos and interactive visuals on branded drug Web sites influence perceptions and understanding of the risks and benefits of the product. Examples of special features we may examine include personal testimonial video and interactive mechanism of action visuals. We will examine these special features in the context of the prominence of the presentation of risk information in two levels, more prominent and less prominent. An example of a more prominent display of risk information might involve including the risks as part of the spoken testimonial, whereas a less prominent display may involve a scrolling text of the risks after the animated video. We will include a control condition in which participants view a Web page with no special features. Participants will be randomly assigned to experimental conditions in a factorial design as follows:

TABLE 2—STUDY 2 PROPOSED DESIGN (2×2+1)

Risk presentation	Special features		
	Personal testimonial	Interactive visual	Control group
Prominent			
Less Prominent			

The purpose of study 3 is to investigate whether links to and citations from external organizations referenced on the homepage of branded drug Web sites influence consumer perceptions and understanding of the risks and benefits of the product. We will examine two types of information: Hyperlinks to the external organization's Web site (*e.g.,* a link to the American Heart Association) and citations from an external organization (*e.g.,* a citation to American Heart Association guidelines). We will also examine the type of organization (*e.g.,* nonprofit or online health community). Participants will be randomly assigned to experimental conditions in a factorial design as follows:

TABLE 3—STUDY 3 PROPOSED DESIGN (8×2+1)

Organization type	Information type	
	Hyperlink to organization Web site	Citation
Government		
Nonprofit		
Health Care		
Health Professions Associations		
Academic		
Commercial		
Online Health Community		
Pharmaceutical Company-Sponsored Community		
Control Group		

In these three studies, participants will be randomly assigned to view one version of a (fictitious) prescription drug Web site. After viewing the Web site, participants will answer a series of questions about the drug. We will test how the manipulations affect outcomes such as perceived efficacy, perceived risk, behavioral intention, and accurate understanding of the benefit and risk information. In each study, the fictitious prescription drug will be for the treatment of a high prevalence medical condition and modeled on an actual drug used to treat that condition. Participants will be consumers who have been diagnosed with the medical condition of interest. For instance, the medical conditions may be high cholesterol and seasonal allergies for study 1, depression and acid reflux disease for study 2, and high blood pressure for study 3.

For studies 1 to 3, interviews are expected to last no more than 25 minutes (the questionnaire is available upon request). This will be a one-time (rather than annual) collection of information.

FDA estimates the burden of this collection of information as follows:

TABLE 4—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours) [2]	Total hours
Screener	20,000	1	20,000	2/60	667
Pretests	1,200	1	1,200	20/60	400
Study 1	4,000	1	4,000	25/60	1,667
Study 2	2,000	1	2,000	25/60	834
Study 3	3,600	1	3,600	25/60	1,500
Total					5,068

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Burden estimates of less than 1 hour are expressed as a fraction of an hour in the format "[number of minutes per response]/60".

I. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Macias, W. and L. Stavchansky Lewis, "How Well Do Direct-to-Consumer (DTC) Prescription Drug Web Sites Meet FDA Guidelines and Public Policy Concerns?" *Health Marketing Quarterly,* vol. 22, pp. 45–71, 2005.
2. Hicks, K. E., M. S. Wogalter, and W. J. Vigilante, Jr., "Placement of Benefits and Risks in Prescription Drug Manufacturers' Web Sites and Information Source Expectations," *Drug Information Journal,* vol. 39, pp. 267–278, 2005.
3. Huh, J. and B. J. Cude, "Is the Information 'Fair and Balanced' in Direct-to-Consumer Prescription Drug Web Sites?" *Journal of Health Communication,* vol. 9, pp. 529–540, 2004.
4. Sheehan, K. B., "Direct-to-Consumer (DTC) Branded Drug Web Sites Risk Presentation and Implications for Public Policy," *Journal of Advertising,* vol. 36, pp. 123–135, 2007.
5. Davis, J. J., E. Cross, and J. Crowley, "Pharmaceutical Web Sites and the Communication of Risk Information," *Journal of Health Communication,* vol. 12, pp. 29–39, 2007.
6. Naik, S. and S. P. Desselle, "An Evaluation of Cues, Inducements, and Readability of Information on Drug-Specific Web Sites," *Journal of Pharmaceutical Marketing and Management,* vol. 17, pp. 61–81, 2007.
7. Vigilante, Jr., W. J., and M. S. Wogalter, "Assessing Risk and Benefit Communication in Direct-to-Consumer Medication Web Site Advertising," *Drug Information Journal,* vol. 39, pp. 3–12, 2005.

Dated: April 22, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–10253 Filed 4–27–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0287]

Guidance for Industry on Fish and Fishery Products Hazards and Controls, Fourth Edition; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Fish and Fishery Products Hazards and Controls Guidance, Fourth Edition." The updated guidance supports and complements FDA's regulations for the safe and sanitary processing and importing of fish and fishery products using hazard analysis and critical control point (HACCP) methods.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Contact the Florida Sea Grant, IFAS–Extension Bookstore, University of Florida, P.O. Box 110011, Gainesville, FL 32611–0011, 1–800–226–1764, for single copies of this guidance. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Bruce F. Wilson, Center for Food Safety and Applied Nutrition (HFS–325), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2300.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of the guidance for industry entitled "Fish and Fishery Products Hazards and Controls Guidance, Fourth Edition." This guidance is being issued consistent with FDA's good guidance practices (GGP) regulation (§ 10.115 (21 CFR 10.115)). This guidance is being implemented without prior public comment because the Agency has determined that prior public participation is not feasible or appropriate (§ 10.115(g)(2)). The Agency made this determination because the updated information in this guidance will significantly enhance the seafood industry's ability to protect the public health and will provide important recommendations for conducting a hazard analysis and implementing a HACCP plan. Although this guidance document is immediately in effect, it remains subject to comment in accordance with the Agency's GGP regulation.

This guidance provides industry with information that will assist processors of seafood products in identifying the likelihood that a food safety hazard may occur in their product and will guide them in the preparation of appropriate HACCP plans for those hazards that are reasonably likely to occur. A summary of the changes from the third edition is included in the discussion section of the guidance.

Under FDA's fish and fishery products regulations (part 123 (21 CFR part 123)), processors of fish and fishery products are required to operate preventive control systems under the principles of HACCP. Fish and fishery products are adulterated under section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(4)) if a processor fails to have and implement a HACCP plan when one is necessary

(§ 123.6(g)) or otherwise fails to meet any of the requirements of the fish and fishery products regulations (part 123).

FDA published the first edition of the guidance in September 1996 (about 1 year before the fish and fishery products regulations became effective), issued the second edition in January 1998, and issued the third edition in June 2001. In February 2008, FDA updated the third edition to include ciguatera fish poisoning guidance for northern Gulf of Mexico processors and seafood processors that purchase grouper, amberjack, and related predatory reef species captured from the northern Gulf of Mexico. On January 4, 2011, the President signed into law the FDA Food Safety Modernization Act (FSMA) (Pub. L 111–353). Section 103(h) of FSMA requires FDA to update the Fish and Fisheries Products Hazard and Control Guidance within 180 days to take into account advances in technology. This updated guidance satisfies the requirements of section 103(h). The guidance provides current information relating to: (1) Potential hazards associated with the known commercial species of vertebrate and invertebrate seafood, (2) potential hazards associated with certain processing operations, (3) HACCP strategies that may be used to control the potential hazards, and (4) other information related to food safety.

There are a number of important changes to this edition of the HACCP guidance. For example, a new chapter has been added containing guidance for the control of pathogen survival through processes designed to retain raw product characteristics; food safety hazards are identified for additional species; new control recommendations are listed for the natural toxin action level for diarrhetic shellfish poisoning; and tolerances for additional chemical hazards are listed.

The guidance represents the Agency's current thinking on fish and fishery products hazards and controls. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

The guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 123.6(a), (b), (c), (c)(5), and (c)(7), 123.7(d), 123.8(a)(1), (c), and (d), 123.11(c), 123.12(a)(2), (a)(2)(ii), and (c) have been approved under OMB control number 0910–0354.

III. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/downloads/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/Seafood/UCM251970.pdf* or *http://www.regulations.gov.* Always access an FDA document by using the FDA Web site listed previously to find the most current version of the guidance.

Dated: April 22, 2011,

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–10234 Filed 4–27–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0019 (formerly Docket No. 2007D–0223)]

Guidance for Industry: "Computer Crossmatch" (Computerized Analysis of the Compatibility Between the Donor's Cell Type and the Recipient's Serum or Plasma Type); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: 'Computer Crossmatch' (Computerized Analysis of the Compatibility between the Donor's Cell Type and the Recipient's Serum or Plasma Type)" dated April 2011. The guidance document provides blood establishments that perform compatibility testing using a computer crossmatch system to perform computerized matching of blood with recommendations consistent with current good manufacturing practice (CGMP) requirements. Blood establishments are required to have standard operating procedures to demonstrate incompatibility between the donor's cell type and the recipient's serum or plasma type. The guidance describes practices that we believe satisfy those requirements to help ensure detection of an incompatible crossmatch when using a computerized system for matching a donor's cell type with a recipient's serum or plasma type. The guidance announced in this notice finalizes the draft guidance entitled "Guidance for Industry: 'Computer Crossmatch' (Electronic Based Testing for the Compatibility between the Donor's Cell Type and the Recipient's Serum or Plasma Type)" dated June 2007.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Melissa Reisman, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: 'Computer Crossmatch' (Computerized Analysis of the Compatibility between the Donor's Cell Type and the Recipient's Serum or Plasma Type)" dated April 2011. The guidance document provides blood establishments that perform compatibility testing using a computer crossmatch system to perform computerized matching of blood with recommendations consistent with

CGMP requirements in 21 CFR Parts 210, 211, and 606.

In the **Federal Register** of August 6, 2001 (66 FR 40886), FDA issued a final rule that revised 21 CFR 606.151(c) to allow for the use of either a serologic crossmatch or a computer crossmatch as an acceptable method of establishing the compatibility between the donor's cell type and recipient's serum or plasma type (*i.e.,* major crossmatch). Prior to the issuance of the final rule, a blood establishment could only use a computer crossmatch if FDA gave its written approval for the use of a computer crossmatch as an alternative procedure under 21 CFR 640.120. With this revision to 21 CFR 606.151(c), establishments are no longer required to submit an application to FDA to permit use of a computer crossmatch as an alterative procedure. The guidance does not apply to those circumstances where the donor's blood has not been screened for agglutinating, coating and hemolytic antibodies. In such cases, 21 CFR 606.151(d) requires that "* * * the recipient's cells shall be tested with the donor's serum (minor crossmatch) by a method that will so demonstrate."

The guidance document describes the practices that FDA believes satisfy the requirements in 21 CFR 606.151(c) to help ensure detection of an incompatible crossmatch when using a computerized system for matching a donor's cell type with a recipient's serum or plasma type. We consider computer crossmatch an acceptable method of compatibility analysis when it is properly designed, validated, implemented, and monitored. In addition, the guidance contains recommendations for blood establishments performing compatibility testing that intend to implement a computer crossmatch procedure. For licensed establishments, the guidance also describes how to report this manufacturing change to FDA under 21 CFR 601.12.

In the **Federal Register** of June 21, 2007 (72 FR 34259), FDA announced the availability of the draft guidance entitled "Guidance for Industry: 'Computer Crossmatch' (Electronic Based Testing for the Compatibility between the Donor's Cell Type and the Recipient's Serum or Plasma Type)" dated June 2007. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. In addition, editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated June 2007.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

The guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 211.68(a) and (b) and 211.100(a) have been approved under OMB control number 0910–0139. The collections of information in 21 CFR 606.100(b), 606.121, 606.151, and 606.160 have been approved under OMB control number 0910–0116. The collections of information in 21 CFR 601.12 have been approved under OMB control number 0910–0338.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: April 22, 2011,

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–10221 Filed 4–27–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Study Methodologies for Diagnostics in the Postmarket Setting; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled "Study Methodologies for Diagnostics in the Postmarket Setting." The purpose of the public workshop is to provide a forum for discussion among FDA, governmental Agencies, academia, physicians, and various stakeholders with expertise in epidemiology, statistics, diagnostics, and biomedical research to advance the methodologies for diagnostics in the postmarket setting.

Date and Time: The public workshop will be held on May 12, 2011, from 8:30 a.m. to 5:15 p.m. Participants are encouraged to arrive early to ensure time for parking and security screening before the workshop. Sign-in will be required.

Location: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

The public workshop with also be available to be viewed via online Web-cast (see *Registration*).

Contact Person: Hui-Lee Wong, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4611, Silver Spring, MD 20993–0002, 301–796–6234, e-mail: *hui-lee.wong@fda.hhs.gov;* or Xueying Sharon Liang, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4110, Silver Spring, MD 20993–0002, 301–796–9601, e-mail: *XueyingSharon.Liang@fda.hhs.gov.*

Registration: In-person and Web-cast registration and information are available at the following Web site: *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/*

ucm251696.htm. There is no fee to attend the public workshop, but attendees must register in advance. Registration will be on a first-come, first-served basis. Non-U.S. citizens are subject to additional security screening, and they should register as soon as possible. Registration ends May 5, 2011.

If you need special accommodations because of a disability, please contact Susan Monahan at *susan.monahan@fda.hhs.gov* at least 7 days in advance of the public workshop.

SUPPLEMENTARY INFORMATION:

I. Why are we holding this public workshop?

The purpose of the public workshop is to facilitate discussion among FDA, governmental Agencies, academia, physicians, and the key stakeholders in the scientific community on issues related to the studies and methodological approaches examining diagnostics in the postmarket settings. We aim to create a dialogue between professionals with epidemiologic, statistical, and clinically relevant expertise in diagnostic devices to determine the evidence gaps and questions, datasets and approaches for conducting postmarket surveillance and robust analytic studies to improve our understanding of the performance of diagnostics at the postmarket settings.

II. Who is the target audience for this public workshop? Who should attend this public workshop?

This public workshop is open to all interested parties. The target audience is professionals in the scientific community with experience in epidemiology, diagnostics, or biomedical research with an interest in diagnostic devices and epidemiologic study methodology.

III. What are the topics we intend to address at the public workshop?

We intend to discuss a large number of methodological concerns at the workshop, including, but not limited to the following:

- Gaps and challenges in postmarket studies of diagnostics,
- Identifying and verifying emerging data sources and methodologies, and
- Fostering interdisciplinary collaboration towards identifying new opportunities in methodologies for diagnostic devices.

IV. Where can I find out more about this public workshop?

Background information on the public workshop, registration information, the agenda, information about lodging, transcripts, and other relevant information will be posted, as it becomes available, on the Internet at *http://www.fda.gov/cdrh/meetings.html.*

Dated: April 22, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–10273 Filed 4–27–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group; Interventions Committee for Adult Disorders.

Date: June 1, 2011.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: David I. Sommers, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Initial Review Group; Interventions Committee for Disorders Involving Children and Their Families.

Date: June 6, 2011.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: David I. Sommers, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Initial Review Group; Mental Health Services in Non-Specialty Settings.

Date: June 15, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Aileen Schulte, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Initial Review Group; Mental Health Services in Specialty Settings.

Date: June 16, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Marina Broitman, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 21, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10294 Filed 4–27–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, NIDA B/START Small Grant Review.

Date: May 11, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4238, MSC 9550, 6001 Executive Blvd,. Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, New Molecular Entities to Treat Substance Use Disorders.

Date: May 24, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sofitel Washington DC Lafayette Square, 806 15th Street, NW., Washington, DC 20005.

Contact Person: Jose F. Ruiz, PhD, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, Room 4228, MSC 9550, 6001 Executive Blvd, Bethesda, MD 20892–9550, 301–451–3086, *ruizjf@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, NIDA I/START Small Grant Review.

Date: May 25, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4238, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, NIDA I/START Small Grant Review.

Date: May 25, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4238, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, NIDA I/START Small Grant Review.

Date: May 25, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4238, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, NIDA B/START Small Grant Review.

Date: June 8, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4238, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Training and Career Development Subcommittee.

Date: June 29–30, 2011.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4245, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, 301–451–4530, *el6r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 21, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10296 Filed 4–27–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel Osteoarthritis.

Date: June 8, 2011.

Time: 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging and the Immune System.

Date: June 16, 2011.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Lewis, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 22, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10299 Filed 4–27–11; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: June 15, 2011.

Open: 8 a.m. to 12 p.m.

Agenda: To discuss program policies and issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m..

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Stephen C. Mockrin, Ph.D., Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892, (301) 435–0260, *mockrins@nhlbi.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(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: April 22, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10304 Filed 4–27–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: May 17–18, 2011.

Open: May 17, 2011, 1 p.m. to 5 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6C6, Bethesda, MD 20892.

Closed: May 18, 2011, 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6C6, Bethesda, MD 20892.

Contact Person: Mary E. Kerr, FAAN, RN, PhD, Deputy Director, National Institute of Nursing, National Institutes of Health, 31 Center Drive, Room 5B–05, Bethesda, MD 20892–2178, 301/496–8230, *kerrme@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/ninr/a_advisory.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: April 22, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10303 Filed 4–27–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Data Management Center for MTA (5565).

Date: June 7–8, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Courtyard by Marriott Rockville, 2500 Research Boulevard, Rockville, MD 20850.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 435–1439, *lf33c.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and

Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 21, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10293 Filed 4–27–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Liver Pathophysiology.

Date: June 1, 2011.

Time: 11 a.m. to 2 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: Mushtaq A Khan, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cell Death in Neurodegeneration.

Date: June 2, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Jerry L Taylor, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301–435–1175, *taylorje@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Rehabilitation Sciences Study Section.

Date: June 3, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Jo Pelham, BA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786, *pelhamj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Adult Psychopathology and Disorders of Aging.

Date: June 3, 2011.

Time: 8:30 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Mark D Lindner, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301–435–0913, *lindnermd@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: June 6–7, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Madison, 1177 15th Street, NW., Washington, DC 20005.

Contact Person: Maribeth Champoux, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 594–3163, *champoum@csr.nih.gov.*

Name of Committee: Oncology 1–Basic Translational Integrated Review Group; Tumor Microenvironment Study Section.

Date: June 6–7, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Eun Ah Cho, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301)451–4467, *choe@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Injury, Repair, and Remodeling Study Section.

Date: June 6–7, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Ghenima Dirami, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Cellular Signaling and Regulatory Systems Study Section.

Date: June 6–7, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Elena Smirnova, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–357–9112, *smirnove@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Clinical, Integrative and Molecular Gastroenterology Study Section.

Date: June 6, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont San Francisco Hotel, 950 Mason Street, San Francisco, CA 94108.

Contact Person: Chantal A Rivera, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892, 301–435–1243, *riveraca@mail.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Language and Communication Study Section.

Date: June 6, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Weijia Ni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 237–9918, *niw@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Motor Function, Speech and Rehabilitation Study Section.

Date: June 6, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiovascular Differentiation and Development Study Section.

Date: June 6–7, 2011.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: The Renaissance Seattle Hotel, 515 Madison Street, Seattle, WA 98104.

Contact Person: Maqsood A Wani, PhD, DVM, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular Aspects of Diabetes and Obesity Study Section.

Date: June 6–7, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Robert Garofalo, PhD, Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6156, MSC 7892, Bethesda, MD 20892, 301–435–1043, *garofalors@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Anterior Eye Disease Study Section.

Date: June 6–7, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Washington DC. Downtown, 1201 K Street, NW., Washington, DC 20005.

Contact Person: Jerry L Taylor, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301–435–1175, *taylorje@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Brain Injury and Neurovascular Pathologies Study Section.

Date: June 6–7, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington, DC Downtown Hotel, 999 Ninth Street, NW., Washington, DC 20001.

Contact Person: Alexander Yakovlev, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Membrane Biology and Protein Processing Study Section.

Date: June 6–7, 2011.

Time: 8 a.m. to 5:50 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street, NW., Washington, DC 20004.

Contact Person: Janet M Larkin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Development—2 Study Section.

Date: June 6–7, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Seattle Hotel, 515 Madison Street, Seattle, WA 98104.

Contact Person: Rass M Shayiq, PhD, Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Cellular and Molecular Biology of the Kidney Study Section.

Date: June 6, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont San Francisco Hotel, 950 Mason Street, San Francisco, CA 94108.

Contact Person: Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Hepatobiliary Pathophysiology Study Section.

Date: June 6–7, 2011.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Seattle, 1900 Fifth Avenue, Seattle, WA 98101.

Contact Person: Bonnie L. Burgess-Beusse, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–435–1783, *beusseb@mail.nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Tumor Cell Biology Study Section.

Date: June 6–7, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715, *ngan@mail.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Child Psychopathology and Developmental Disabilities Study Section.

Date: June 6–7, 2011.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: The Doubletree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Anterior Eye Disease.

Date: June 6–7, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Washington, DC Downtown, 1201 K Street, NW., Washington, DC 20005.

Contact Person: Kevin Walton, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *kevin.walton@nih.hhs.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 21, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10292 Filed 4–27–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Removing Designated Countries From the National Security Entry-Exit Registration System (NSEERS)

AGENCY: Office of the Secretary, DHS.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) is eliminating redundant programs by removing the following countries from, and relieving nonimmigrant nationals or citizens of the following countries from compliance with, the special registration procedures under the National Security Entry-Exit Registration System (NSEERS): Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen. Over the past six years, the Department of Homeland Security (DHS) has implemented several new automated systems that capture arrival and exit information on nonimmigrant travelers to the United States, and DHS has determined that recapturing this data manually when a nonimmigrant is seeking admission to the United States is redundant and no longer provides any increase in security. DHS, therefore, has determined that it is no longer necessary to subject nationals from these countries to special registration procedures, and this notice deletes all currently designated countries from NSEERS compliance.

DATES: *Effective Date:* This notice is effective April 28, 2011.

FOR FURTHER INFORMATION CONTACT: Raphael Henry, Program Manager, U.S. Customs and Border Protection, Department of Homeland Security, Washington, DC 20229, telephone (202) 344–1438 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Justice created the National Security Entry-Exit Registration System (NSEERS) in 2002 pursuant to sections 262(a) and 263(a) of the Immigration and Nationality Act (INA), 8 U.S.C. 1302(a) and 1303(a), to provide the Federal government with records of the arrival and departure of nonimmigrant aliens from specific countries designated by the Attorney General.[1] The NSEERS regulations require nonimmigrant aliens who are nationals or citizens of countries designated by the Secretary of Homeland Security, upon consultation with the Secretary of State, to comply with special registration requirements, including providing fingerprints, a photograph, and any additional information required by DHS to DHS officials at the time the nonimmigrant applies for admission at a U.S. port of entry. 8 CFR 264.1(f)(3). Countries are designated for NSEERS by notice published in the **Federal Register**. 8 CFR 264.1(f)(2). Nonimmigrants subject to NSEERS requirements also may be required to appear at a U.S. Immigration and Customs Enforcement office in person to verify information by providing additional information or to provide documentation confirming compliance with the conditions of their status and admission. *Id.* Finally, such nonimmigrants are required to depart through specified ports to record their departures from the United States. 8 CFR 264.1(f)(8)(i).

Pursuant to prior designations, nonimmigrant nationals or citizens of the following countries currently must comply with NSEERS requirements: Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen. *See, e.g.,* 67 FR 67766 (Nov. 6, 2002); 67 FR 70526 (Nov. 22, 2002); 67 FR 77642 (Dec. 18, 2002); 68 FR 2363 (Jan. 16, 2003).

Since its establishment in 2003, DHS has developed substantial infrastructure and adopted more universally applicable means to verify the entry and exit of aliens into and out of the United States. Improved intelligence exchange between the United States and other countries has further informed DHS's understanding of the threat posed to the United States by international terrorism. Based on global and individualized intelligence, DHS has refined its approach to identifying aliens posing a threat to the nation and applied these techniques to foreign national non-immigrants generally. As threats to the United States evolve, DHS seeks to identify specific individuals and actions that pose specific threats, rather than focusing on more general designations of groups of individuals, such as country of origin.

DHS has implemented and improved the data systems that support individualized determinations of admissibility. DHS established the United States Visitor and Immigrant Status Indicator Technology Program ("US–VISIT"), in January 2004, to record the arrival and departure of aliens; verify aliens' identities; and authenticate and biometrically compare travel documents issued to non-U.S. citizens by DHS and the Department of State. Under U.S.–VISIT requirements, most aliens seeking admission to the United States must provide finger scans and a digital photograph upon entry to the United States at U.S. ports of entry. 8 CFR 235.1(f)(1).

DHS also currently requires the collection and electronic transmission to U.S. Customs and Border Protection (CBP) of manifest information for passengers and crew members entering and departing the United States by air or sea. Commercial air carriers departing foreign destinations for the United States or departing the United States for a foreign destination are required to transmit passenger manifests electronically to CBP's Advance Passenger Information System (APIS) within strict time limits as prescribed by regulation. 19 CFR 122.49a, 122.49b, 122.75a, 122.75b. Vessels departing from foreign ports for the United States or departing from the United States for a foreign port must provide passenger and crew manifest data within strict time limits as prescribed by regulation. 19 CFR 4.7b; 4.64(b). DHS recently implemented APIS requirements for private aircraft arriving in or departing from the United States. 19 CFR 122.22, 122.26, 122.31.

In light of the development of and improvements to the Department's information collection systems and international information sharing agreements, the Secretary has determined that subjecting nationals from designated countries to a special registration process that manually recaptures data already collected through automated systems is redundant and does not provide any increase in security.

After careful consideration, the Secretary of Homeland Security, by this notice, is removing all currently designated countries from the listing of countries whose nationals and citizens are required to comply with NSEERS registration requirements: Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, North Korea, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen. Effective upon publication of this Notice, nonimmigrant nationals and citizens of these countries are no longer required to comply with the requirements of 8 CFR 264.1(f), including the requirement that they exit through designated ports of entry. Accordingly, nationals and citizens from these countries are no longer subject to the NSEERS registration requirement. Accordingly, DHS will no longer register aliens under NSEERS effective on April 28, 2011. This notice does not relieve any alien of any other requirement under the law.

Janet Napolitano,

Secretary.

[FR Doc. 2011–10305 Filed 4–27–11; 8:45 am]

BILLING CODE 9110–06–P

[1] See 67 FR 40581 (June 13, 2002) (proposed rule); 67 FR 52584 (Aug. 12, 2002) (final rule). The functions of the former Immigration and Naturalization Service, including NSEERS, were transferred to DHS in 2003. *See* Homeland Security Act of 2002 (HSA), Public Law 107–296, tit. XV, sec. 1517, 116 Stat. 2135, 2311, 6 U.S.C. 557 (transfer of regulatory authority).

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1968–DR; Docket ID FEMA–2011–0001]

California; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–1968–DR), dated April 18, 2011, and related determinations.

DATES: *Effective Date:* April 18, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 18, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of California resulting from tsunami waves on March 11, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Sandy Coachman, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of California have been designated as adversely affected by this major disaster:

Del Norte and Santa Cruz Counties for Public Assistance.

All counties within the State of California are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–10338 Filed 4–27–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1969–DR; Docket ID FEMA–2011–0001]

North Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–1969–DR), dated April 19, 2011, and related determinations.

DATES: *Effective Date:* April 21, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 19, 2011.

Craven, Currituck, Greene, Hertford, Hoke, Pitt, Robeson, and Sampson Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–10335 Filed 4–27–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: File Number OMB 22; Extension of an Existing Information Collection: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: OMB 22, National Interest Waivers; Supplemental Evidence to I–140 and I–485; OMB Control No. 1615–0063.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 27, 2011.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB control No. 1615–0063 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning OMB 22, National Interest Waivers; Supplemental Evidence to I–140 and I–485. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies

should address one or more of the following four points:

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

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

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

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

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* National Interest Waivers; Supplemental Evidence to I–140 and I–485.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; File No. OMB–22. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The supplemental documentation will be used by the U.S. Citizenship and Immigration Services to determine eligibility for national interest waiver requests and to finalize the request for adjustment to lawful permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,000 responses, two responses per respondent, at one (1) hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 16,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.* We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

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

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

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

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Supplement A to Form I–539 (Filing Instructions for V Nonimmigrant Status Applicants).

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Supplement A to Form I–539. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This form will be used for nonimmigrants to apply for an extension of stay, for a change to another nonimmigrant classification, or for obtaining V nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.* We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: April 22, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–10245 Filed 4–27–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Supplement A to Form I–539: Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Supplement A to Form I–539 (Filing Instructions for V Nonimmigrant Status Applicants); OMB Control No. 1615–0004.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 27, 2011.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0004 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning the extension of Supplement A to Form I–539 (Filing Instructions for V Nonimmigrant Status Applicants). Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Dated: April 22, 2011.

Evadne Hagigal,

Senior Management and Program Analyst, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–10246 Filed 4–27–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–11015, AA–12590; LLAK–962000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Chugach Alaska Corporation. The decision will approve the conveyance of the surface and subsurface estates in certain lands pursuant to the Alaska Native Claims Settlement Act. The lands are located east and southeast of Whittier, Alaska, and aggregate 11.78 acres. Notice of the decision will also be published four times in the *Anchorage Daily News.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until May 31, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by e-mail at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Dina L. Torres,

Land Transfer Resolution Specialist, Branch of Preparation and Resolution.

[FR Doc. 2011–10247 Filed 4–27–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19155–10; LLAK964000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of modified decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management's (BLM) decision approving lands for conveyance to Doyon, Limited, notice of which was published in the **Federal Register** on November 3, 2009, 74 FR 56860, will be modified to include reservation of an easement and to reject a State selection.

Notice of the modified decision will also be published four times in the *Fairbanks Daily News-Miner.*

DATES: Any party claiming a property interest in the lands affected by the change made by the modified decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until May 31, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their right. Except as modified, the decision of November 3, 2009, notice of which was given November 3, 2009, is final.

ADDRESSES: A copy of the modified decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by e-mail at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Barbara J. Walker,

Land Law Examiner, Land Transfer Adjudication I Branch.

[FR Doc. 2011–10233 Filed 4–27–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT922200–11–L13100000–FI0000–P; NDM 98791, NDM 98792, NDM 98793 and NDM 98794]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases NDM 98791, NDM 98792, NDM 98793 and NDM 98794

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per 30 U.S.C. 188(d), BTA Oil Producers, LLC timely filed a petition for reinstatement of competitive oil and gas leases NDM 98791, NDM 98792, NDM 98793 and NDM 98794, Billings and Golden Valley Counties, North Dakota. The lessee paid the required rentals accruing from the date of termination.

No leases were issued that affect these lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre and 16⅔ percent. The lessee paid the $500 administration fee for the reinstatement of each lease and $163 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the leases per Sec. 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing

to reinstate the leases, effective the date of termination subject to:

- The original terms and conditions of the leases;
- The increased rental of $10 per acre;
- The increased royalty of 16⅔ percent; and
- The $163 cost of publishing this Notice.

FOR FURTHER INFORMATION CONTACT: Teri Bakken, Chief, Fluids Adjudication Section, Bureau of Land Management Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5091. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

Teri Bakken,

Chief, Fluids Adjudication Section.

[FR Doc. 2011–10230 Filed 4–27–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

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

ACTION: Notice and request for comments (1029–0055).

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM or we) is announcing our intention to request renewed approval for the collection of information for States or Indian Tribes, pursuant to an approved reclamation program, to use police powers, if necessary, to effect entry upon private lands to conduct reclamation activities or exploratory studies if the landowner's consent is refused or the landowner is not available. The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burdens and costs.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, your comments should be submitted to OMB by May 31, 2011, in order to be assured of consideration.

ADDRESSES: Your comments should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via e-mail at *OIRA_Docket@omb.eop.gov,* or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please reference 1029–0055 in your submission.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.* You may also review this collection by going to *http://www.reginfo.gov* (Information Collection Review, Currently Under Review, Agency is Department of the Interior, DOI–OSMRE).

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. We have submitted a request to OMB to approve the collection of information for 30 CFR 877—Rights of Entry. We are requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control number for this collection of information is displayed in 30 CFR 877.10 (1029–0055).

As required under 5 CFR 1320.8(d), we published a **Federal Register** notice seeking public comments on this collection of information on February 7, 2011 (76 FR 6631). No comments were received. This notice gives you an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR 877—Rights of Entry.

OMB Control Number: 1029–0055.

Summary: This regulation establishes procedures for non-consensual entry upon private lands for the purpose of abandoned mine land reclamation activities or exploratory studies when the landowner refuses consent or is not available.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State abandoned mine land reclamation agencies.

Total Annual Responses: 12.

Estimated Time per Response: 2 hours for uncomplicated situations and 9 hours for complicated situations.

Total Annual Burden Hours: 38 hours.

Total Annual Non-wage Costs: $1,080 for publication costs.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the addresses listed under **ADDRESSES**. Please refer to the appropriate OMB control number in all correspondence.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 21, 2011.

Stephen M. Sheffield,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2011–10205 Filed 4–27–11; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–340–E and 340–H (Third Review)]

Solid Urea From Russia and Ukraine; Scheduling of Full Five-Year Reviews Concerning the Antidumping Duty Orders on Solid Urea From Russia and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on solid urea from Russia and Ukraine would be likely to lead to

continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* April 21, 2011.

FOR FURTHER INFORMATION CONTACT: Nathanael Comly (202–205–3174), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov).* The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On March 7, 2011, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (76 FR 15339, March 21, 2011). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on September 14, 2011, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on October 4, 2011, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 27, 2011. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 29, 2011, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *incamera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is September 23, 2011. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is October 13, 2011; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before October 13, 2011. On November 4, 2011, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 8, 2011, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 Fed. Reg. 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: April 25, 2011.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2011–10281 Filed 4–27–11; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–692]

Certain Ceramic Capacitors and Products Containing Same; Notice of the Commission's Final Determination of No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there has been no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in this investigation, and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 4, 2009, based on a complaint filed by Murata Manufacturing Co., Ltd. of Kyoto, Japan and Murata Electronics North America, Inc. of Smyrna, Georgia (collectively, "Murata"). 74 FR 57193–94 (Nov. 4, 2009). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ceramic capacitors and products containing the same by reason of infringement of various claims of United States Patent Nos. 6,266,229 ("the '229 patent"); 6,014,309 ("the '309 patent"); 6,243,254 ("the '254 patent"); and 6,377,439 (subsequently terminated from the investigation). The complaint named Samsung Electro-Mechanics Co., Ltd. of Suwon City, Korea and Samsung Electro-Mechanics America, Inc. of Irvine, California (collectively, "Samsung") as respondents.

On December 22, 2010, the ALJ issued his final ID, finding no violation of section 337 by Respondents with respect to any of the asserted claims of the asserted patents. Specifically, the ALJ found that the accused products do not infringe the asserted claims of the '254 patent. The ALJ also found that none of the cited references anticipates the asserted claims and that none of the cited references renders the asserted claims obvious. The ALJ further found that the asserted claims are not rendered unenforceable due to inequitable conduct. The ALJ, however, found that asserted claims 11–14, 19, and 20 of the '254 patent fail to satisfy the requirements of 35 U.S.C. 112 for lack of written description. Regarding the '309 patent, the ALJ found that the accused products do not infringe asserted claim 3 and that none of the cited references anticipates or renders obvious asserted claim 3. The ALJ further found that the asserted claim is not rendered unenforceable due to inequitable conduct. With respect to the '229 patent, the ALJ found that the accused products meet all the limitations of the asserted claims and that the asserted claims are not rendered unenforceable due to inequitable conduct. The ALJ further found that the cited references do not anticipate the asserted claims but found that the prior art renders the asserted claims obvious. The ALJ concluded that an industry exists within the United States that practices the '254 patent and the '229 patent but that a domestic industry that practices the '309 patent does not exist as required by 19 U.S.C. 1337(a)(2) and (3).

On January 4, 2011, Murata and the Commission investigative attorney filed petitions for review of the ID. That same day, Samsung filed a contingent petition for review of the ID. On January 12, 2011, the parties filed responses to the various petitions and contingent petition for review.

On February 23, 2011, the Commission determined to review the final ID in part and requested briefing on several issues it determined to review, and on remedy, the public interest and bonding. 76 FR 11275 (Mar. 1, 2011). The Commission determined to review the findings related to the '229 patent and in particular the finding that the AAPA (Applicant Admitted Prior Art) does not invalidate the asserted claims of the '229 patent. The Commission determined not to review any issues related to the '309 patent and the '254 patent and terminated those patents from the investigation.

On March 8, 2011, the parties filed written submissions on the issues under review, remedy, the public interest, and bonding. On March 15, 2011, the parties filed reply submissions on the issues on review, remedy, the public interest and bonding.

Having examined the record of this investigation, including the ALJ's final ID, the Commission has determined that there is no violation of section 337. Specifically, the Commission has determined to (1) reverse the ALJ's finding to the extent that it suggests that the AAPA cannot constitute prior art and (2) find that the asserted claims of the '229 patent are obvious in light of a combination of (i) the AAPA and the knowledge in the art at the time of filing the patent's priority document, (ii) the AAPA and Nagakari (Japanese unexamined patent application H11–21429), or (iii) the AAPA and the deNeuf product (product samples sold by Murata and provided by Mr. deNeuf). The Commission vacates the ALJ's finding that the AAPA does not anticipate the asserted claims of the '229 patent; however, given the Commission's finding that the asserted claims of the '229 patent are invalid for obviousness, the Commission does not reach the issue of anticipation. The Commission adopts the ALJ's findings regarding the '229 patent in all other respects.

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 210.42–46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46).

By order of the Commission.

Issued: April 22, 2011,

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–10238 Filed 4–27–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—LiMo Foundation

Notice is hereby given that, on March 23, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), LiMo Foundation ("LiMo") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Mutecsoft Corporation, Seoul, REPUBLIC OF KOREA, have been added as a party to this venture. Also, SFR Enterprises, Paris, FRANCE, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and LiMo intends to file additional written notifications disclosing all changes in membership.

On March 1, 2007, LiMo filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 9, 2007 (72 FR 17583).

The last notification was filed with the Department on November 2, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 17, 2010 (75 FR 79025).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–10127 Filed 4–27–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on March 21, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Pistoia Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, HCL Technologies Ltd., Maidenhead, Berkshire, UNITED KINGDOM; Richard Hather (individual), Baldock, UNITED KINGDOM; Semtific, San Diego, CA; UCB Pharma, Bruxelles, BELGIUM; UCL—Peter Coveney Group, London, UNITED KINGDOM; InfoChem GmbH, Munich, GERMANY; and Titian Software, Westborough, MA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on December 16, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 1, 2011 (76 FR 5610).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–10126 Filed 4–27–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Industry Data Exchange, Inc.

Notice is hereby given that, on March 21, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Petroleum Industry Data Exchange, Inc. ("PIDX") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Petroleum Industry Data Exchange, Inc., Houston, TX. The nature and scope of PIDX's standards development activities are: to develop and publish technology, information and business process standards that allow the implementation of electronic commerce in the energy industry on a worldwide basis.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–10122 Filed 4–27–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Axis Group, Inc.

Notice is hereby given that, on March 22, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open Axis Group, Inc. ("Open Axis") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Radixx International, Orlando, FL; Everbread Limited, London, UNITED KINGDOM; AgentWare Inc., Atlanta, GA; Klee Data Systems SA, Le Plessis-Robinson, FRANCE; Alaska Airlines, Seattle, WA; Association of Retail Travel Agents-Canada, Toronto, Ontario, CANADA; and OpenJaw Technologies Ltd., Dublin, IRELAND, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Open Axis intends to file additional written notifications disclosing all changes in membership.

On October 6, 2010, Open Axis filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 16, 2010 (75 FR 70031).

The last notification was filed with the Department on December 27, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act February 1, 2011 (76 FR 5610).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–10123 Filed 4–27–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Media Workflow Association, Inc.

Notice is hereby given that, on March 21, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Advanced Media Workflow Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cube-Tec International GmbH, Bremen, GERMANY; Harmonic, Inc., Sunnyvale, CA; Oracle America, Inc., Redwood Shores, CA; John Footen (individual member), Lansdowne, VA; and Yoshiaki Shibata (individual member), Yokohama, JAPAN, have been added as parties to this venture.

Also, Ascent Media, Stamford, CT, and Omneon, Inc., Sunnyvale, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Media Workflow Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on January 6, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act February 2, 2011 (76 FR 5826).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–10125 Filed 4–27–11; 8:45 am]

BILLING CODE 4410–11–M

U.S. DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Opensaf Foundation

Notice is hereby given that, on April 4, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), OpenSAF Foundation ("OpenSAF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aricent Technologies (holding) Ltd., Gurgaon, Haryana, INDIA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains Open, and OpenSAF intends to file additional written notifications disclosing all changes in membership.

On April 8, 2008, OpenSAF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 16, 2008 (73 FR 28508).

The last notification was filed with the Department on January 19, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act February 22, 2011 (76 FR 9811).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–10124 Filed 4–27–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. *Lucasfilm Ltd.*; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comments received on the proposed Final Judgment in *United States* v. *Lucasfilm Ltd.,* Civil Action No. 1:10–CV–02220, which was filed in the United States District Court for the District of Columbia on April 15, 2011, together with the response of the United States to the comments.

Copies of the comments and the response are available for inspection at the Department of Justice Antitrust Division, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, Plaintiff,

v.

Lucasfilm Ltd., Defendant.

Response of Plaintiff United States to Public Comments on the Proposed Final Judgment

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) ("APPA" or "Tunney Act"), the United States hereby responds to the public comments received regarding the proposed Final Judgment in this case. After careful consideration of the comments, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comments and this response have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

The United States filed a civil antitrust complaint against Lucasfilm on December 21, 2010, seeking injunctive and other relief to remedy the likely anticompetitive effects of a three-part agreement between Lucasfilm and Pixar to forbid cold-calling and to restrict certain other employee recruiting practices. The agreement reduced competition for highly-skilled digital animators and other employees, diminished potential employment opportunities for those

employees, and interfered with the proper functioning of the price-setting mechanism that would otherwise have prevailed.

Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment and Stipulation signed by the plaintiff and Lucasfilm, consenting to the entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act, 15 U.S.C. 16.[1] Pursuant to those requirements, the United States filed its Competitive Impact Statement ("CIS") with the Court also on December 21, 2010; published the proposed Final Judgment and CIS in the **Federal Register** on December 28, 2010, see *United States, et al.* v. *Lucasfilm Ltd.,* 75 FR 81651; and caused to be published in The Washington Post summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, for seven days beginning on December 25, 2010, and ending on December 31, 2010. The 60-day period for public comments ended on March 1, 2011; three comments were received as described below and attached hereto.

I. The Investigation and Proposed Final Judgment

The proposed Final Judgment is the culmination of an investigation of agreements between Lucasfilm and Pixar to restrain employee recruiting and cold-calling practices. As part of its investigation, the Justice Department issued Civil Investigative Demands to Pixar and Lucasfilm. The Department reviewed the documents and other materials from them, and interviewed witnesses to the activity. The investigative staff carefully analyzed the information obtained and thoroughly considered all of the issues presented.

Lucasfilm and Pixar are rival employers of digital animators. Beginning no later than January 2005, Lucasfilm and Pixar agreed to a three-part protocol that restricted recruiting of each other's employees. First, Lucasfilm and Pixar agreed they would not cold call each other's employees.[2] Second, they agreed to notify each other before making an offer to an employee of the other firm. Third, they agreed that, when offering a position to the other company's employee, neither would counteroffer above the initial offer. The protocol covered all digital animators and other employees of both firms and was not limited by geography, job function, product group, or time period.

Lucasfilm's and Pixar's agreed-upon protocol disrupted the competitive market forces for employee talent. It eliminated a significant form of competition to attract digital animation employees and other employees covered by the agreement. Overall, it substantially diminished competition to the detriment of the affected employees who likely were deprived of information and access to better job opportunities.

After reviewing the investigative materials, the Department determined that the agreement between the two firms was a naked restraint of trade that was per se unlawful under Section 1 of the Sherman Act, 15 U.S.C. 1, as alleged in the Complaint.

The proposed Final Judgment is designed to restore competition for digital animators and other employees. Section IV of the proposed Final Judgment prohibits Lucasfilm, and others in concert with it who have notice of the proposed Final Judgment, from agreeing, or attempting to agree, with another person to refrain from cold calling, soliciting, recruiting, or otherwise competing for employees of the other person. Lucasfilm is also prohibited from requesting or pressuring another person to refrain from cold calling, soliciting, recruiting, or otherwise competing for employees of the other person. These provisions prohibit agreements not to make counteroffers and agreements to notify each other when making an offer to each other's employee. In Section V, the proposed Final Judgment states that it does not prohibit "no direct solicitation provisions" when they are reasonably necessary for, and thus ancillary to, legitimate procompetitive collaborations. Such ancillary restraints remain subject to scrutiny under the rule of reason, in accord with antitrust precedents. See CIS at 6–8. In this manner, the proposed Final Judgment prohibits anticompetitive conduct while preserving procompetitive collaborations.

II. Standard of Judicial Review

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination in accordance with the statute, the court is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A)–(B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995); see generally *United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev NV./S.A.,* 2009–2 Trade Cas. (CCH) ¶76,736, No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the Final Judgment are clear and manageable").

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See Microsoft, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); see also Microsoft, 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); InBev, 2009 U.S. Dist. LEXIS 84787, at *3 Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[3] In determining whether a proposed settlement is in the public interest, the court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." SBC Commc'ns, 489 F. Supp. 2d at 17; see also Microsoft, 56 F.3d at 1461

[1] Pixar was not named as a defendant because Pixar is currently bound by a similar Final Judgment entered in *United States* v. *Adobe Systems, Inc.,* No. 1:10–cv–01629 (D.D.C. entered March 17, 2011).

[2] Cold calling involves communicating directly in any manner (including orally, in writing, telephonically, or electronically) with another firm's employee who has not otherwise applied for a job opening.

[3] Cf. BNS, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). See generally Microsoft, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ").

(noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is "within the reaches of public interest." *United States* v. *Am. Tel. & TeL Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), aff d sub nom. *Maryland* v. *United States,* 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). Therefore, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." SBC Commc'ns, 489 F. Supp. 2d at 17.

In its 2004 amendments to the Tunney Act,[4] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, stating "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." SBC Commc'ns, 489 F. Supp. 2d at 11.[5]

[4] The 2004 amendments substituted the word "shall" for "may" when directing the courts to consider the enumerated factors and amended the list of factors to focus on competitive considerations and address potentially ambiguous judgment terms. Compare 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006); see also SBC Commc'ns, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

[5] See *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should. * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

III. Summary of Public Comments and the United States' Response

During the 60-day comment period, the United States received three comments, which are attached hereto in the Appendix to this Response. The United States has carefully reviewed the comments and has determined that the proposed Final Judgment remains in the public interest. We address first the one from Mr. Kent Martin and then together, the two from The Association of Executive Search Consultants ("AESC").

A. Kent Martin

Mr. Martin is an employee in the digital film industry. He wrote that he believed the proposed Final Judgment would be unenforceable and that the firms would alter their practices and conspire in other ways to achieve the same result. Mr. Martin also asked that financial penalties be imposed, and in particular, that the penalties be distributed to workers in the industry. He felt this was necessary for the settlement to have an effective impact and to compensate employees industry-wide. Finally, he expressed the view that attempts to control wages are not limited to the Lucasfilm-Pixar recruiting agreement but could involve other studios.

After carefully considering Mr. Martin's comments, the United States believes that the proposed changes are inappropriate and entry of the judgment in its current form is in the public interest. First, the proposed Final Judgment is enforceable. As with any court order, the Final Judgment would be enforceable through civil and criminal contempt proceedings. The proposed Final Judgment gives the Antitrust Division the ability to investigate any possible violations of its terms. If the Antitrust Division learns of any violations, it can pursue a contempt action. In addition, Lucasfilm must disclose to the Antitrust Division any actual or potential violations of the Judgment. Lucasfilm officials must certify that they have read the Final Judgment and understand that violations can result in a civil or criminal contempt action.

Second, the proposed Final Judgment is designed to prevent Lucasfilm from entering into other agreements that limit competition for employees. Although the complaint alleges only that Lucasfilm and Pixar entered into agreements to refrain from cold-calling and counter offering, and to notify each other before making job offers, Section IV of the proposed Final Judgment more broadly enjoins agreements regarding solicitation, cold calling, recruitment, or other methods of competing for employees to provide prophylactic protection against other activities that could interfere with competition for employees. Third, Mr. Martin's request for financial penalties is not appropriate.

The proposed Final Judgment may not be rejected or modified simply because a different remedy might better serve an individual's interests, including individual employees. The United States represents the public interest. Unless the "decree will result in positive injury to third parties," a district court "should not reject an otherwise adequate remedy simply because a third party claims it could be better treated." Microsoft, 56 F.3d at 1461 n.9. Here, the proposed Final Judgment clearly remedies the conduct alleged by the United States and does not result in positive injury to Mr. Martin or other employees in the digital animation industry.

Finally, while Mr. Martin is of the view that others may be involved in similar or related conduct, this case was filed against Lucasfilm for conspiring with Pixar as alleged in the Complaint. Accordingly, the Final Judgment can only reach Lucasfilm and that conduct. As stated above, Pixar is already subject to a similar Final Judgment.[6]

B. AESC

AESC is a worldwide professional association of executive search consulting firms. Its members identify and recruit senior executive talent for organizations in many industries. AESC submitted two comments about the proposed Final Judgment dated February 25, 2011, and March 15, 2011. Both comments focused on Section V.A.3. which allows Lucasfilm to enter no-direct solicitation agreements that are "reasonably necessary for contracts with. * * * recruiting agencies."

AESC's first comment asked that the term "reasonably necessary" be defined in the judgment, including enumerating factors, such as the duration and geographic scope of the no-direct solicitation restraint, that a court would consider in determining whether the restraint was reasonably necessary to the recruiting engagement. AESC is concerned that without a more precise definition, executive search firms will not know whether their no direct solicitation provisions in agreements with clients violate the law or the proposed Final Judgment. The second comment expanded upon the first. AESC noted that executive search firms may gain exposure to proprietary details about a client's business, and it may be reasonably necessary for the client and executive search firm to agree on a narrowly-tailored no direct solicitation covenant. For example, they may enter a limited-duration agreement restricting the executive search firm from soliciting employees who work in the relevant office or division of the client corporation. By contrast, some clients may request multi-year prohibitions that cover the entire company. AESC expressed the concern that overly broad restrictions could have the effect of placing significant numbers of individuals off limits to recruiters and thus narrow the pool of accessible talent from which to draw when conducting executive searches. AESC feared that the proposed Final Judgment could encourage the use of overly broad

[6] Pixar and four other defendants are subject to the Final Judgment entered in *United States* v. *Adobe Systems, Inc.,* No. 1:10–cv–01629 (D.D.C. entered March 17, 2011).

agreements. Accordingly, AESC asked that the Judgment be modified to state:

All no direct solicitation provisions that relate to agreements with recruiting agencies described in Section 5.A.3 shall be narrowly tailored such that the scope of the no direct solicitation provision bears a reasonable relationship to the scope of the recruiting engagement, including with respect to geographic reach, duration, and the number of personnel and business units affected.

After carefully considering AESC's comments, the United States has determined that the proposed modification is inappropriate, and entry of the proposed Final Judgment in its current form is in the public interest.

As explained in the CIS, naked agreements among horizontal competitors to restrain cold calling and recruiting of employees are per se unlawful. But agreements, even among horizontal competitors, that are ancillary to a legitimate procompetitive venture may be lawful. Such agreements are evaluated under the rule of reason, which balances a restraint's procompetitive benefits against its anticompetitive effects.

A determination of whether a restraint is ancillary to a legitimate collaboration depends on whether it is "reasonably necessary" to achieve the procompetitive benefits of the collaboration. The "reasonably necessary" standard is well understood in the antitrust case law.[7] The cases demonstrate that the determination of whether the conduct at issue meets the standard is made based on the facts of each individual case. It is not possible to identify every factor a court may choose to consider in every situation in every industry. Rather, the standard is flexible and allows the court discretion to protect legitimate restraints on competition while prohibiting those that are unlawful. The courts must consider each situation's individual facts and determine whether the agreement is "reasonably necessary" for the collaboration.[8]

In the CIS, the United States identified several facts that caused it to conclude that the Lucasfilm-Pixar agreement was not properly ancillary to any legitimate procompetitive collaboration between them. Indeed, the agreement was not tied to any specific collaboration. In addition, the agreement extended to all employees at the firms and was not limited by geography, job function, product group, or time period. See CIS at 7–8.

The factors identified by AESC certainly appear to be relevant to assessing the reasonable necessity of a non-solicitation. They are similar to the factors identified in the United States' CIS. However, to enumerate a list of factors courts must consider in determining reasonable necessity is both impractical and unnecessary. Moreover, the agreements AESC is concerned about-agreements between clients and executive search firms-are vertical in nature. They are not horizontal agreements between competitors, like the Lucasfilm-Pixar agreement. Vertical agreements are judged under the rule of reason where the court weighs the potential anticompetitive effects of the activity and its alleged procompetitive virtues.

For these reasons, the United States believes that the modification proposed by AESC is inappropriate. The public interest is well served by entering the Final Judgment as proposed.

IV. Conclusion

After carefully reviewing the public comments, the United States has determined that the proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. The United States will move this Court to enter the proposed Final Judgment after the comments and this response are published in the **Federal Register**.

Dated: April 15, 2011.

Respectfully submitted,

Adam T. Severt,
Ryan S. Struve (DC Bar #495406),
Jessica N. Butler-Arkow (DC Bar #430022),
H. Joseph Pinto III,
Anthony D. Scicchitano,
Trial Attorneys.

U.S. Department of Justice, Antitrust Division, Networks and Technology Section, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530. Telephone: (202) 307–6200. Facsimile: (202) 616–8544. *adam.severt@usdoj.gov.*

From: Kent Martin,
Sent: Wednesday, February 16, 2011 9:22 pm,
To: ATR-Antitrust—Internet; Severt, Adam T,
Subject: United States of America vs. LucasFilm LTD.

Greetings Department of Justice,

As a member of the digital film community some of my co-workers made me aware of the case being brought against LucasFilm and the proposed settlement. After reading the proposed settlement I was rather disappointed. If I may oversimplify the proposal, simply giving a directive to stop the practice or practices being questioned is unenforceable. The Human Resources and Recruiting staffs will continue to operate as they have for many years. Attempts to control wages is not limited to the agreement uncovered between Pixar and LucasFilm. The major players in the LA area, including The Walt Disney Company, DreamWorks Animation, and Sony Pictures Imageworks all engage, in one form or another, in practices intended to limit wages as employees move between studios. And moving between studios is becoming ever more common as many studios are executing layoffs to minimize their full time staff and will rely on what effectively become temporary staff to complete the work.

Lowering or controlling wages is all about saving money. Any settlement to this case that does not involve financial penalties will fall short of having any effective impact. But how would financial penalties, if any be disbursed? To union pension plans? Not all studios are union. Payments to only those employees affected? In some way the entire industry has been affected, except for the few that seem to have secured lifetime positions at some outrageous hourly rate. Some form of payment to employees of the companies involved during the time period the practices were determined to have been in effect? Maybe. That would be a start.

A very good mess indeed. So a slap on the wrist will be administered, and I will watch my hourly rate continue to plummet as wage control techniques continue on.

Thought I would submit a few comments on this matter, even though it is shortly before the deadline. I am hoping that many more of my colleagues have taken the time to submit even a short comment on the matter.

Thank You for your time.

Kent Martin,
Digital Film employee for over 15 years.

The Association of Executive Search Consultants' Comments on the Proposed Final Judgment Between the Department of Justice and Lucasfilm

The Association of Executive Search Consultants ("AESC") respectfully submits these comments to the Proposed Final

[7] See generally Department of Justice, Antitrust Division, and Federal Trade Commission, Antitrust Guidelines for Collaborations among Competitors § 1.2 (2000) ("Collaboration Guidelines"). See also *Major League Baseball* v. *Salvino,* 542 F.3d 290, 339 (2d Cir. 2008) (Sotomayor, J., concurring) ("a per se or quick look approach may apply * * * where a particular restraint is not reasonably necessary to achieve any of the efficiency-enhancing benefits of a joint venture and serves only as a naked restraint against competition."); *Dagher* v. *Saudi Refining, Inc.,* 369 F.3d 1108, 1121 (9th Cir. 2004), rev 'd on other grounds sub nom. *Texaco* v. *Dagher,* 547 U.S. 1, 8 (2006); *Rothery Storage & Van Co.* v. *Atlas Van Lines, Inc.,* 792 F.2d 210, 227 (DC Cir. 1986); In re Polygram Holdings., Inc., 2003 WL 21770765 (F.T.C. 2003) (parties must prove that the restraint was "reasonably necessary" to permit them to achieve particular alleged efficiency), aff'd, *Polygram Holdings, Inc.* v. *F.T.C.,* 416 F.3d 29 (DC Cir. 2005).

[8] See, *e.g., Freeman* v. *San Diego Ass'n of Realtors,* 322 F.3d 1133 (9th Cir. 2003) (agreeing on a fixed fee was not reasonably necessary for a shared multi-state listing database because it was not a "necessary consequence" of the MLS' activities; organizations had shared databases in past without fixing fees); Salvino, 542 F.3d at 337 (Sotomayor, J., concurring) (Major League Baseball teams created a formal joint venture to exclusively license, and share profits for, team trademarks, resulting in "decreased transaction costs, lower enforcement and monitoring costs, and the ability to one-stop shop. * * * " Such benefits "could not exist without the * * * agreements."); *Blackburn* v. *Sweeney,* 53 F.3d 825 (7th Cir. 1995) (Agreement between former law partners to ban advertising in certain areas was an illegal horizontal market allocation and not an ancillary restraint. It was not reasonably necessary to partnership dissolution agreement, as the agreement was of unlimited duration and the firms had split before the agreement was written); Rothery, Storage & Van Co., 792 F.2d at 227 (court determined that national moving network in which the participants shared physical resources, scheduling, training, and advertising resources, could forbid contractors from free riding by using its equipment, uniforms, and trucks for business they were conducting on their own); *Addamax* v. *Open Software Found.,* 152 F.3d 48 (1st Cir. 1998) (computer manufacturers formed nonprofit joint research and development venture to develop operating system; agreement on price to be paid for security software that was used by joint venture was ancillary to effort to develop a new system).

Judgment between the Department of Justice ("DOJ") and Lucasfilm. In summary, the AESC is supportive of the Proposed Final Judgment with one exception: Section V.A. of the Proposed Final Judgment lacks sufficient clarity with respect to the circumstances under which "no direct solicitation" provisions are permitted in the context of "contracts with * * * recruiting agencies," and specifically what factors should be considered in determining whether such provisions are "reasonably necessary." AESC therefore respectfully requests that DOJ, prior to entry of the Proposed Final Judgment, supplement the language of the judgment to communicate clearer guidance both to recruiting agencies and to the firms that engage such agencies to perform employee and executive search functions.

The AESC is the worldwide professional association for retained executive search consulting firms. An offshoot of management consulting, retained. executive search consulting has played a major role in the identification and recruitment of senior executive talent for organizations in a wide variety of industries and countries. The success of executive search consulting is such that the profession has grown to become a global industry with revenues in excess of $10 billion. Today, the AESC is widely recognized as the standard bearer for the executive search industry and represents member firms in seventy (70) countries around the world, employing more than 6,000 search professionals. It is estimated that AESC member firms are retained by clients to conduct approximately 50,000 senior executive searches every year.

The AESC is concerned that ambiguity in the Proposed Final Judgment creates uncertainty regarding the extent to which "no direct solicitation" provisions are permitted in executive search contracts. Section V.A. of the Proposed Final Judgment expressly permits "no direct solicitation" provisions that are "reasonably necessary for contracts with * * * recruiting agencies." However, the judgment fails to define the term "reasonably necessary." Nor does the government's Competitive Impact Statement identify the factors that are relevant to determining whether a "no direct solicitation" covenant in an agreement with a recruiting or executive search agency would comply with Federal antitrust law. This ambiguity will make it difficult for executive search firms to ensure that they are complying with the terms of the judgment in any future contracts with Lucasfilm. More broadly, to the extent the judgment reflects Dal's current legal positions and antitrust enforcement policies, the lack of clarity on this issue could complicate the ability of executive search firms to ensure that their contractual practices comply with Federal antitrust law.

Accordingly, the AESC respectfully requests that DOJ modify the Proposed Final Judgment to provide further guidance regarding the circumstances under which "no direct solicitation" provisions in client engagement agreements may be deemed "reasonably necessary." For example, in the context of a recruiting engagement involving a single position in a discrete geographic area, would a "no direct solicitation" provision that is unlimited in geographic scope or duration be considered "reasonably necessary"? If not, because of the breadth of the restriction in relation to the limited nature of the search, what factors should be considered in narrowing the scope of the "no direct solicitation" provision? Likewise, would a "no direct solicitation" provision that broadly prohibits an executive search firm from contacting any employee at a large, diversified company be considered "reasonably necessary" where the firm was engaged only to fill positions in a single division or product group? Again, to the extent that such a provision would deemed overly broad and thus not "reasonably necessary," what principles should be considered in developing a more narrowly tailored restriction?

Questions such as these underscore the practical challenge that executive search firms will face in conforming their contractual practices to the terms of the Proposed Final Judgment, absent further guidance. The AESC therefore urges DOJ to give attention to this issue, and, in order to assure that "the decree is sufficiently clear" to be "in the public interest," Competitive Impact Statement § VIII, make appropriate revisions to the language of the judgment to ensure that it better equips the executive search industry with information needed for continued legal compliance in this area.

Respectfully,

Peter M. Felix, CBE,

President, Association of Executive Search Consultants.

March 15, 2011.

James J. Tierney, Esq.,

Chief, Networks & Technology Enforcement Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW, Suite 7100, Washington, D.C. 20530.

Re: Proposed Final Judgment in US. v. Lucasfilm

Dear Mr. Tierney:

The Association of Executive Search Consultants ("AESC") recently filed public comments concerning DOJ's proposed consent decree in the Lucasfilm matter. In its public comments, the AESC outlined practical scenarios in which a broad no direct solicitation provision in an executive search contract might not be "reasonably necessary." The AESC urged DOJ to consider adding language to the proposed Final Judgment identifying guideposts for tailoring overly broad non-solicitation provisions to more appropriately track the scope of a recruiting or executive search engagement. As the AESC noted, absent further clarification it may be difficult for executive search firms to ensure compliance with the standards of conduct outlined by the proposed Lucasfilm consent decree. In addition, the AESC believes there are policy issues that should be of some concern to DOJ, issues that could effectively be addressed through relatively minor revisions to the language of the proposed Final Judgment.

When a corporation engages an outside consultant to perform an executive search, the consultant may learn a great deal about the office or business in question, including its internal structure, personnel, reporting relationships, and compensation practices. Such knowledge can be very useful to the outside consultant and can aid the process of identifying and recruiting talented, well-placed executives, leading to better and more rapid results for the client. Where an executive search firm, in the course of its work, gains exposure to proprietary details about an aspect of a client's business, it is understandable that the client would desire to ensure that such knowledge is not used for the benefit of the search firm's other clients. Thus, to facilitate executive search engagements, it may be "reasonably necessary" for the client and search firm to agree upon a narrowly tailored non-solicitation covenant. An example would be a covenant of limited duration restricting the search firm from contacting, for recruiting purposes, individuals who work within the relevant office or division of the client corporation.

But as noted in the examples highlighted by our public comments, executive search clients can demand much broader non-solicitation terms. For instance, a large multinational corporate client could demand a multi-year contractual ban on solicitations extending across the client's entire global enterprise, even where the search that is the subject of the retention agreement is limited to a single position or a discrete business unit.

Where a client negotiates for and receives an overly broad non-solicitation covenant in a contract with an executive search firm, this alone likely would not raise antitrust concerns. Indeed, absent collusion, even pervasive use of overly broad non-solicitation terms in retention agreements with leading executive search firms likely would not rise to the level of an antitrust violation. Yet agreements containing such terms, if widespread within a given industry, do pose an arguable threat to competition, inasmuch as they tend to place significant numbers of talented individuals off limits from employment opportunities. If a corporation can broadly place its personnel off limits to top executive search firms, this serves to insulate the corporation from normal marketplace pressures, which in the words of the Lucasfilm Competitive Impact Statement could interfere with "the proper functioning of the price-setting mechanism."

Although inclusion of overbroad non-solicitation provisions in vertical retention agreements between executive search consultants and their corporate clients is not a matter of acute antitrust sensitivity, given the potential competition-reducing effect of such provisions presumably DOJ would not wish to encourage the use of such provisions. Yet as currently worded the proposed Final Judgment may do just that. The proposed Final Judgment addresses this subject under the heading of "Conduct Not Prohibited." This, combined with the fact that the term "reasonably related" is nowhere defined or clarified, could be interpreted to suggest that no direct solicitation provisions, no matter how broadly defined, are unlikely to pose legal concerns as long as they bear some relation to the recruiting or consulting engagement.

With relatively minor language revisions, DOJ could send a more constructive message, counseling in favor of some restraint in this area. What is missing from the proposed Final Judgment is simply some indication of the factors that would be relevant to consider in assessing the "reasonable necessity" of a non-solicitation restraint—factors such as:

- the nature and scope of the recruiting engagement;
- the extent to which the search consultant is given access to proprietary details about the client's business;
- the breadth of the proposed non-solicitation restraint in relation to the scope of the recruiting engagement and any proprietary information conveyed by the client in the course of facilitating the engagement; and
- the duration and geographic scope of the proposed non-solicitation restraint in relation to the scope of the recruiting engagement.

The AESC would therefore propose that DOJ consider adding this language as a new Section V.B. to the proposed Final Judgment, with the current Section V.B. being re-designated as Section V.C., etc.:

B. All no direct solicitation provisions that relate to agreements with recruiting agencies described in Section 5.A.3 shall be narrowly tailored such that the scope of the no direct solicitation provision bears a reasonable relationship to the scope of the recruiting engagement, including with respect to geographic reach, duration, and the number of personnel and business units affected.

Inclusion of additional language as simple and straightforward as this would establish a useful reference for executive search consultants and their clients when entering into non-solicitation terms. This would help to ensure against overly broad contractual restrictions that have the effect of placing significant numbers of individuals off limits to recruiters, thus expanding the pool of accessible talent from which to draw when conducting executive searches. The chief beneficiary of such a trend would be individual corporate executives and employees whose range of opportunities would be enhanced. This outcome is entirely in keeping with the policies that motivated the DOJ's action in the Lucasfilm matter, and we hope that you will give serious consideration to revising the proposed Final Judgment accordingly.

Sincerely,

Peter M. Felix,

President, Association of Executive Search Consultants.

[FR Doc. 2011–10121 Filed 4–27–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Collection of Information; Comment Request

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed information collection request (ICR) that is described below. A copy of the ICR may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

DATES: Written comments must be submitted to the office shown in the Addresses section on or before June 27, 2011.

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers); E-mail: *ebsa.opr@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor's Employee Benefits Security Administration (EBSA) maintains a program designed to provide education and technical assistance to participants and beneficiaries as well as to employers, plan sponsors, and service providers related to their health and retirement benefit plans. EBSA assists participants in understanding their rights, responsibilities, and benefits under employee benefit law and intervenes informally on their behalf with the plan sponsor in order to assist them in obtaining the health and retirement benefits to which they may have been inappropriately denied, which can avert the necessity for a formal investigation or a civil action. EBSA maintains a toll-free telephone number through which inquirers can reach Benefits Advisors in ten Regional Offices.

EBSA also has made a request for assistance form available on its Web site for those wishing to contact EBSA on-line. Contact with EBSA is entirely voluntary. To date, the Web form has included only basic identifying information which is necessary for EBSA to contact the inquirer. The proposed collection of information would require the same identifying information—first name, last name, street address, city, zip code, and telephone number. In order to improve customer service and enhance its capacity to handle greater inquiry volume, EBSA is proposing to include additional information on the form such as the plan type, broad categories of problem type, contact information for responsible parties, and a mechanism for the inquirer to attach relevant documents.

This information will be used by EBSA to make informed and efficient decisions when contacting inquirers who have requested EBSA's informal assistance with understanding their rights and obtaining benefits they may have been denied inappropriately. EBSA also will use the information to evaluate its service to inquirers, support the development of a broader understanding of the nature of current issues in employee benefit plans, and to respond to requests for information regarding employee benefit plans from members of Congress and governmental oversight entities in accordance with ERISA section 513.

II. Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Web Intake Form.

Type of Review: New collection of information.

OMB Number: 1210–NEW.

Affected Public: Individuals or households, businesses or other for-profits and not-for-profits.

Respondents: 30,000.

Responses: 30,000.

Estimated Total Burden Hours: 15,000.

Estimated Total Burden Cost (Operating and Maintenance): $3,100.

Comments submitted in response to this notice will be summarized and/or included in the ICRs for OMB approval of the information collection; they will also become a matter of public record.

Dated: April 22, 2011.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 2011–10265 Filed 4–27–11; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that one meeting of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending time is approximate):

Research (application review): May 11, 2011, by teleconference. This meeting, from 2 p.m. to 3 p.m. EDT, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of November 10, 2009, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: April 22, 2011.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2011–10216 Filed 4–27–11; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0096]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance and availability of Draft Regulatory Guide, DG–1197, "Inservice Inspection of Prestressed Concrete Containment Structures with Grouted Tendons."

FOR FURTHER INFORMATION CONTACT: Herman Graves, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 251–3307or e-mail to *Madhumita.Sircar@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), titled, "Inservice Inspection of Prestressed Concrete Containment Structures with Grouted Tendons," is temporarily identified by its task number, DG–1197, which should be mentioned in all related correspondence.

DG–1197, proposed Revision 2 of Regulatory Guide 1.90, describes an approach that the staff of the NRC considers acceptable for use in developing an appropriate surveillance program for prestressed concrete containment structures with grouted tendons. The purpose of this guide is to provide recommendations for inservice inspection (ISI) of containments and quality standards that should be maintained when portland cement grout is used for the corrosion protection of prestressing steel.

The recommendations described in this draft regulatory guide are an approach acceptable to the NRC staff for satisfying the requirements of General Design Criterion (GDC) 53, "Provisions for Containment Testing and Inspection," as specified in Appendix A, "General Design Criteria for Nuclear Power Plants," to Title 10, Part 50, "Domestic Licensing of Production and Utilization Facilities," of the Code of Federal Regulations (10 CFR part 50). Among the specific requirements of GDC 53 are that the containment be designed to permit (1) appropriate periodic inspection of all important areas and (2) an appropriate surveillance program.

II. Further Information

The NRC staff is soliciting comments on DG–1197. Comments may be accompanied by relevant information or supporting data, and should mention DG–1197 in the subject line.

ADDRESSES: Please include Docket ID NRC–2011–0096 in the subject line of your comments. 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. 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–2011–0096. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

You can access publicly available documents related to this notice 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, O1–F21, One White Flint North, 11555 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 online in the NRC Library 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 the 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, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. The Regulatory Analysis is available electronically under ADAMS Accession Number ML103190466.

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0096.

Comments would be most helpful if received by June 26, 2011. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1197 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML081560507.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland this 19th day of April, 2011.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–10336 Filed 4–27–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–338; NRC–2010–0246]

Virginia Electric Power Company, LLC, North Anna Power Station, Unit No. 1; Exemption

1.0 Background

Virginia Electric Power Company (VEPCO, the licensee) is the holder of Facility Operating License No. NPF–4, which authorizes operation of North Anna Power Station (NAPS), Unit No. 1. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Louisa County, Virginia.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Section 50.48(b) requires nuclear power plants licensed before January 1, 1979, to meet 10 CFR Part 50, Appendix R, Section III.O. NAPS Unit No. 1 was licensed on April 1, 1978. Appendix R, Section III.O requires a reactor coolant pump (RCP) oil collection system (OCS) that is capable of collecting lube oil from all potential pressurized and unpressurized leakage sites in the reactor coolant pump lube oil system.

The licensee requested an exemption from the requirements to the extent that minor oil misting may not be captured within the OCS. This applies to all three Unit 1 RCPs.

In summary, by letter dated April 23, 2010 (Agencywide Documents Access and Management System (ADAMS), Accession No. ML101160376), as supplemented by letters dated May 13, 2010 (ADAMS Accession No. ML101380270), October 11, 2010 (ADAMS Accession No. ML102870109), and November 15, 2010 (ADAMS Accession No. ML103200451), the licensee requested an exemption from 10 CFR Part 50, Appendix R, Section III.O because small amounts of oil from the RCP were misting, were being transported by the ventilation system, and were condensing on the RCP motor stator coolers (hereafter referred to as coolers). The exemption would allow the licensee to install features to collect any oil that accumulates on the coolers instead of preventing the oil mist from escaping the OCS.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. These circumstances include the special circumstances that application of the regulation is not necessary to achieve the underlying purpose of the rule.

Authorized by Law

This exemption would allow the licensee to install features to collect any oil that accumulates on the coolers from oil mist condensation instead of preventing the oil mist from escaping the OCS. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purposes of 10 CFR Part 50, Appendix R, Section III.O is to ensure that failure of the RCP lube oil system will not lead to fire during normal or design basis accident conditions and that there is reasonable assurance that the system will withstand the Safe Shutdown Earthquake. The regulation intends licensees to accomplish this by extending the concept of defense-in-depth to fire protection in fire areas important to safety, with the following objectives:

(1) To prevent fires from starting;

(2) To rapidly detect, control, and extinguish promptly those fires that do occur;

(3) To provide protection for structures, systems, and components important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown (SSD) of the plant.

In their request, as supplemented, the licensee described elements of their fire protection program that provide their justification that the concept of defense-in-depth that is in place in the affected important to safety fire area (FA), FA 1–1, is consistent with that required by the regulation. The licensee states in their request, as supplemented, that the modification to install oil collection trays on the coolers with piping connected to the RCP OCS is scheduled to be installed during the next Unit 1 refueling outage. Operating experience based on a similar design for Unit 2 has indicated that the oil mist primarily condenses on the coolers and the oil collection tray collects oil dripping from the coolers. This will reduce the potential for significant quantities of oil pooling to occur outside the OCS. The remaining oil sheen that may develop due to misting does not present a safety

concern due to the small volume of oil. The licensee further states in their request, as supplemented, that the purpose of their request was to address expected, minor RCP oil misting. The collection of the oil in the tray below the coolers and the piping to the OCS is in addition to the protective measures installed to meet Section III.O of 10 CFR Part 50, Appendix R.

In the licensee's request, as supplemented, an analysis was provided that described how fire prevention, detection, control, extinguishment and preservation of safe shutdown capability is addressed for FA 1–1 in the Unit 1 containment, as summarized below.

Fire Prevention

The licensee states that administrative controls are in place to control combustibles in the plant. No transient combustible materials are normally allowed in the containment while the unit is at power. This is ensured by implementing a Unit 1 containment checklist prior to placing the unit into operation. Hot work does not occur within the RCP cubicles during power operations. The RCP cubicles are concrete compartments that are open to the containment on the top and house the RCPs, the steam generators and the reactor coolant system piping.

NRC Information Notice 94–58, "Reactor Coolant Pump Lube Oil Fire" (ADAMS Accession No. ML031060498), alerted industry that a credible ignition source for RCP oil is hot RCS piping. Ignition has typically occurred due to the oil soaking fibrous insulation. Inadequately designed oil collection systems and oil leaking onto RCP piping insulation was identified as a cause.

The licensee's April 23, 2010, letter proposes to modify the OCS to further eliminate the potential for oil pooling outside the OCS. The modification will also prevent oil from collecting on three sections of fiberglass cloth covered Tempmat insulation under the RCP motors. Tempmat insulation is noncombustible and is not an Appendix R concern with respect to combustible loading. The licensee states that the modifications to the OCS are scheduled to be installed during the next refueling outage.

The licensee states that additional defense-in-depth at NAPS Unit No. 1 is achieved through the physical properties of the oil itself combined with the limited amount of ignition sources within the area. The flashpoint of the oil currently used is 374 °F, with an auto-ignition temperature of 608 °F. Nominal temperatures of the RCP motor and pump flange are approximately 220 °F and 550 °F, respectively. These temperatures would not be sufficient to cause auto-ignition of the oil. However, given the flashpoint of the oil, it is conceivable that the oil could be ignited in the presence of an ignition source. A review of equipment in the area has identified one potential ignition source in addition to the RCPs themselves. The RCP is protected from being an ignition source by the installed OCS. The other potential ignition source is the cold leg loop stop valve (LSV) motor operated valve (MOV), which is in close proximity to the RCP. Due to the size of the LSV MOV actuator motor, it could also be considered an ignition source. However, power is removed from the cold leg LSV MOVs by opening the supply breakers prior to startup and administratively verified open throughout the cycle. Therefore, the ignition source is effectively eliminated. In addition, guidance in the "Station Lubrication Manual" outlines the procedural controls that ensure that RCP oil of different properties is not used. The Station Lubrication Manual is procedurally controlled and requires authorization to be changed.

With the exception of the oil contained within the RCP motor, combustibles within each cubicle and loop room are negligible. Furthermore, containment is maintained at a sub-atmospheric pressure and not routinely occupied during operation. As a result, the introduction of transient combustibles into this area at power is negligible.

Each RCP motor has a dedicated OCS tank that is designed to contain the entire oil inventory of the motor. A vent and flame arrestor are provided on top of the tank. Operations procedures verify the oil collection tanks are empty prior to unit start-up from Mode 5. In addition, tank drain lines were extended in the mid-1990's to allow draining the tank from outside the loop rooms (lower radiation dose area).

A design change to enhance the baffled ventilation openings of the RCP oil lift pump enclosure that ensures that all oil will be contained in the event of pressurized oil leakage inside these enclosures has been installed on NAPS Unit No. 1.

A design change to install oil collection trays on the coolers with piping connected to the RCP OCS tank is scheduled to be installed on NAPS Unit No. 1 during the next refueling outage. This piping will direct the oil in the cooler collection trays to the RCP OCS tank. The oil collection trays will be installed in the areas where the most oil outside the OCS has been found. Prior to installation of the collection trays on NAPS Unit No. 2, licensee staff identified oil pooling under the coolers. Approximately 6 months after the collection trays were installed, a walkdown of NAPS Unit No. 2 RCP A and B verified that the oil collection trays were performing as designed.

The licensee states that all preventative maintenance tasks are controlled by established preplanned work orders under the recurring task evaluation (RTE) process. Deferral of any of these work orders will require an RTE that will be evaluated by VEPCO on a case-by-case basis. The licensee states that they follow the manufacturer's recommendations for maintenance of the RCPs and that the RCPs are refurbished every 9 years by an offsite vendor.

Detection, Control and Extinguishment

Fire detection within the NAPS Unit Nos. 1 and 2 containment consists of linear heat detection on each RCP, smoke and heat detection within the cable penetration area of containment, heat detection for the residual heat removal pumps, and duct smoke detection on the outlet of each of the three containment air recirculation fans. The RCP linear heat detection alarms at 575 °F. The alarm is received locally in containment at the local control panel, on the control room vertical board, and on the control room fire detection panel. System trouble conditions are annunciated similarly.

Manual fire suppression equipment for containment consists of a 100 lb.-wheeled CO_2 unit on each floor of containment, three CO_2 and one dry chemical extinguisher at the personnel entrance to containment, and a dry standpipe system with hose stations. Hoses are not normally connected to the hose valves. A fire brigade equipment locker is provided outside of the personnel entrance to containment.

The licensee states that the CO_2 extinguishers and the dry chemical extinguisher are rated for a Class B fire (flammable and combustible liquids). The initial fire fighting attack can be made using either a CO_2 or dry chemical extinguisher. A fire hose can be used if CO_2 is ineffective or does not completely extinguish the fire. In addition, foam is available and can be applied if determined necessary by the fire brigade.

Preservation of Safe Shutdown Capability

The licensee states that FA 1–1 is the primary containment for NAPS Unit No. 1. The area is a multi-level structure. The boundary fire barriers for containment are of heavy reinforced

concrete construction with an inherent fire rating in excess of 3 hours. Access is gained into containment through a personnel access lock. The RCP motor cubicles are located above the associated reactor coolant system loop room. The floor of the RCP motor cubicle consists of steel grating with multiple openings between the motor cubicle and reactor coolant system loop room. The rooms are separated from the remainder of containment by heavy concrete shield walls, with a personnel access door for each cubicle and loop room. There are multiple openings in the ceiling of the motor cubicles. Although not maintained as rated fire boundaries, the heavy shield walls provide a degree of separation.

The license states that the only SSD function instruments present are the three resistance temperature detectors (RTDs) that provide indication of the RCS hot leg temperature in the control room. There is no credible means for minor oil misting to impact the safe shutdown function of the hot leg RTDs. Each RTD is separated from the closest redundant RTD located in another pump cubicle by two heavy concrete walls. Therefore, a credible fire in one RCP cubicle would not affect RCS temperature indication from the other two loops.

Summary of Defense-in-Depth

In summary, the defense-in-depth concept for a fire in FA 1–1 discussed above provides an adequate level of safety through the prevention of fires, detection, control and extinguishment of fires that occur and the protection of structures, systems and components important to safety. As discussed above, the licensee has provided preventative and protective measures that together demonstrate the licensee's ability to preserve or maintain SSD capability in the event of a fire within an RCP cubicle or reactor coolant system loop room.

Based on the above, the NRC staff concludes that the licensee has met the defense-in-depth objectives and no new accident precursors are created by the installation of features to collect any oil that accumulates on the coolers from oil mist condensation instead of preventing the oil mist from escaping the OCS, thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The proposed exemption would allow the licensee to install features to collect any oil that accumulates on the coolers from oil mist condensation instead of preventing the oil mist from escaping the OCS. This change to the plant has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purposes of 10 CFR Part 50, Appendix R, Section III.O is to ensure that failure of the RCP lube oil system will not lead to fire during normal or design basis accident conditions and that there is reasonable assurance that the system will withstand the Safe Shutdown Earthquake. As described above, the defense-in-depth concept for a fire in FA 1–1 discussed above provides an adequate level of safety through prevention of fires, detection, control and extinguishment of fires that do occur and the protection of structures, systems and components important to safety. In addition, the licensee has provided preventative and protective measures that together demonstrate the ability to preserve or maintain SSD capability in the event of a fire in an RCP cubicle and loop room. Allowing the collection of oil that accumulates on the coolers instead of preventing the oil mist from escaping the OCS does not impact the ability of the OCS to withstand the Safe Shutdown Earthquake. Therefore, since the underlying purpose of 10 CFR Part 50, Appendix R is achieved, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption from 10 CFR Part 50, Appendix R exist.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants VEPCO an exemption from 10 CFR Part 50, Appendix R, Section III.O to the extent that minor oil misting may not be captured within the OCS. This applies to all three RCPs for NAPS Unit No. 1. Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment as published in the **Federal Register** on July 8, 2010 (75 FR 39285).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 21st day of April 2011.

For the Nuclear Regulatory Commission.

Robert A. Nelson,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–10282 Filed 4–27–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0093; Docket No. 50–400]

Carolina Power And Light Company; Notice of Withdrawal of Application for Amendment to Renewed Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has granted the request of the Carolina Power and Light Company (the licensee) to withdraw its application dated March 28, 2010, as supplemented by letter dated December 9, 2010, for a proposed amendment to Renewed Facility Operating License No. NPF–63 for the Shearon Harris Nuclear Power Plant, Unit 1, located in Wake County, North Carolina.

The proposed amendment would have modified revise Technical Specification Section 6.9.1.6 to add the NRC-approved topical report, EMF–2103(P)(A), Revision 0, "Realistic Large-Break LOCA [Loss-of-Coolant Accident] Methodology for Pressurized Water Reactors," to the Core Operating Limits Report methodologies list. This change would have allowed the use of the thermal-hydraulic computer analysis code S–RELAP5 for the Final Safety Analysis Report (FSAR) Chapter 15 realistic large-break LOCA in the Shearon Harris Nuclear Power Plant, Unit 1 safety analyses. Topical Report, EMF–2103(P)(A), Revision 0, was approved by the NRC on April 9, 2003, for the application of the S–RELAP5 thermal-hydraulic analysis computer code to FSAR Chapter 15 realistic large-break LOCA.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 8, 2010, (75 FR 32511). However, by letter dated March 28, 2011, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 23, 2010

(Agencywide Documents Access and Management System (ADAMS) Accession No. ML100890594), as supplemented by letter dated December 6, 2010 (ADAMS Accession No. ML103500470), and the licensee's letter dated March 28, 2011, which withdrew the application for license amendment.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland this 20th day of April 2011.

For the Nuclear Regulatory Commission.

Brenda Mozafari,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–10276 Filed 4–27–11; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64324; File No. SR–NYSEArca–2011–19]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit the Listing of Series With $0.50 and $1 Strike Price Increments on Certain Options Used To Calculate Volatility Indexes

April 22, 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 April 19, 2011, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Commentary .11 to NYSE Arca Rule 6.4 to permit the listing of strike prices in $0.50 intervals where the strike price is less than $75, and strike prices in $1.00 intervals where the strike price is between $75 and $150 for option series used to calculate volatility indexes. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to permit the Exchange to list strike prices in $0.50 intervals where the strike price is less than $75, and strike prices in $1.00 intervals where the strike price is between $75 and $150 for option series used to calculate volatility indexes. The proposal is based on a recently approved rule change by the Chicago Board Options Exchange ("CBOE").[3]

To effect this change, the Exchange is proposing to add new Commentary .11 to Rule 6.4, Series of Options Open for Trading. The new provisions will permit the listing of strike prices in $0.50 intervals where the strike price is less than $75, and strike prices in $1.00 intervals where the strike price is between $75 and $150 for option series used to calculate volatility indexes.[4]

Volatility indexes are calculated and disseminated by the CBOE, which also list options on the resulting index. At this time, NYSE Arca has no intention of listing volatility options, and will not be selecting options on any equity securities, Exchange-Traded Fund Shares, Trust Issued Receipts, Exchange Traded Notes, Index-Linked Securities, or indexes to be the basis of a volatility index.

To the extent that the CBOE or another exchange selects a multiply listed product as the basis of a volatility index, proposed Commentary .11 would permit NYSE Arca to list and compete in all series listed by the CBOE for purposes of calculating a volatility index.

NYSE Arca has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing of strike prices in $0.50 intervals where the strike price is less than $75, and strike prices in $1.00 intervals where the strike price is between $75 and $150 for option series used to calculate volatility indexes in securities selected by the CBOE.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by allowing the Exchange to offer a full range of all available option series in a given class, including those selected by other exchanges to be the basis of a volatility index. While this proposal will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal is restricted to a limited number of classes. Further, the Exchange does not believe that the proposal will result in a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 64189 (April 5, 2011), 76 FR 20066 (April 11, 2011).

[4] For example, CBOE calculates the CBOE Gold ETF Volatility Index ("GVZ"), which is based on the VIX methodology applied to options on the SPDR Gold Trust ("GLD"). The current filing would permit $0.50 strike price intervals for GLD options where the strike price is $75 or less. NYSE Arca is currently permitted to list strike prices in $1 intervals for GLD options (where the strike price is $200 or less), as well as for other exchange-traded fund ("ETF") options. See Rule 6.4, Commentary .05.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

material proliferation of additional series because it is restricted to a limited number of classes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[9] Therefore, the Commission designates the proposal operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day prefiling requirement.

[9] *See supra* note 3.

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NYSEArca–2011–19 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–NYSEArca–2011–19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2011–19 and should be submitted on or before May 19, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–10214 Filed 4–27–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2011–0019]

Agency Information Collection Activities: Approval of a Revision in Information Collection(s); Comments Requested: National Infrastructure Investments Grant Program or "TIGER II Discretionary Grants"

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments on a request to the Office of Management and Budget (OMB) to approve the revision and amendment of a previously approved Information Collection Request (OMB Control # 2105–0563) in accordance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 USC 3501 *et seq.*).

The previous approval granted the Department of Transportation authority to collect information involving National Infrastructure Investments or "TIGER II" Discretionary Grants pursuant to Title I of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act for 2010 (the "FY 2010 Appropriations Act). The Office of the Secretary of Transportation ("OST") is referring to these grants as "TIGER II Discretionary Grants." The original collection of information was necessary in order to receive applications for grant funds pursuant to the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act of 2010 ("FY 2010 Appropriations Act"), Title I—Department of Transportation, Office of the Secretary, National Infrastructure Investments, Public Law 111–117, 123 Stat. 3034. The purpose of the TIGER II Discretionary Grants program is to advance projects that will have a significant impact on the Nation, Metropolitan area or a region.

This revision revises the original request to include an additional information collection. The additional

[11] 17 CFR 200.30–3(a)(12).

information to be collected will be used to, and is necessary to, evaluate the effectiveness of projects that have been awarded grant funds and to monitor project financial conditions and project progress in support of the Supplemental Discretionary Grants for Capital Investments in Surface Transportation Infrastructure, referred to by the Department as "Grants for Transportation Investment Generating Economic Recovery", or "TIGER" Discretionary Grants program authorized and implemented pursuant to the American Recovery and Reinvestment Act of 2009 (the "Recovery Act") (*OMB Control Number:* 2105–0560) and the grants for National Infrastructure Investments under the FY 2010 Appropriations Act or TIGER II" Discretionary Grants. The purposes of the TIGER and TIGER II Discretionary Grant programs include promoting economic recovery and supporting projects that have a significant impact on the Nation, a metropolitan area, or a region.

A 60-day **Federal Register** notice was published on February 15, 2011 (76 FR 8804). Since the publication of the 60-day **Federal Register** notice, no comments were received to the Docket (DOT–OST–2011–0019) and therefore no review of comments was required, so none was performed by the Department.

DATES: Written comments should be submitted by May 31, 2011 and submitted to the attention of the DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503 with the associated OMB Control Number 2105–0563 and Dockets (DOT–OST–2011–0019).

ADDRESSES: You may submit comments [identified by Docket No. DOT–OST–2011–0019] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert Mariner, U.S. Department of Transportation, Office of the Assistant Secretary for Transportation Policy, at 202–366–8914 or *Robert.Mariner@dot.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0563.

Title: National Infrastructure Investments Grant Program or "TIGER II Discretionary Grants".

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: On February 17, 2009, the President of the United States signed the Recovery Act to, among other purposes, (1) preserve and create jobs and promote economic recovery, (2) invest in transportation infrastructure that will provide long-term economic benefits, and (3) assist those most affected by the current economic downturn. The Recovery Act appropriated $1.5 billion of discretionary grant funds to be awarded by the Department of Transportation for capital investments in surface transportation infrastructure. The Department refers to these grants as "Grants for Transportation Investment Generating Economic Recovery" or "TIGER" Discretionary Grants. Funding for 51 projects totaling nearly $1.5 billion under the TIGER program was announced on February 17, 2010. Projects were selected based on their alignment with the selection criteria specified in the **Federal Register** notice for the TIGER Discretionary Grant program. On December 16, 2009 the President signed the FY 2010 Appropriations Act. The FY 2010 Appropriations Act appropriated $600 million for National Infrastructure Investments using language that is very similar, but not identical to the language in the Recovery Act authorizing the TIGER Discretionary Grants. The Department is referring to the grants for National Infrastructure Investments as TIGER II Discretionary Grants. Like the TIGER Discretionary Grants, TIGER II Discretionary Grants are for capital investments in surface transportation infrastructure and are to be awarded on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area, or a region. Funding for 75 projects totaling nearly $600 million under the TIGER II program was announced on October 20, 2010. Projects were selected based on their alignment with the selection criteria specified in the **Federal Register** notice for the TIGER II Discretionary Grant program. As announced in the **Federal Register** notices for each of the TIGER and TIGER II Discretionary Grant programs, grantees are expected to provide information to the Government so that the Government may monitor the financial conditions and progress of projects, as well as the effectiveness of projects using performance measurement metrics negotiated between the grantees and the Government. This request revises the existing PRA clearance to cover additional information from grantees that is necessary to negotiate the grant agreements and to cover the reporting requirements agreed to by the grant recipients of the TIGER and TIGER II Discretionary Grant programs.

The reporting requirements are as follows:

Grantees will submit reports on the financial condition of the project and the project's progress. Grantees will submit progress reports and the Federal Financial Report (SF–425) to the Government on a quarterly basis, beginning on the 20th of the first month of the calendar-year quarter following the execution of a grant agreement, and on the 20th of the first month of each calendar-year quarter thereafter until completion of the project. The initial quarterly report will include a detailed description, and, where appropriate, drawings, of the items funded.

Grantees will also submit an Annual Budget Review and Program Plan to the Government, via e-mail, 60 days prior to the end of each Agreement year that they are receiving grant funds. The Annual Budget Review and Program Plan will provide a detailed schedule of activities, estimate of specific performance objectives, include forecasted expenditures, and a schedule of milestones for the upcoming year. If there is an actual or projected project cost increase, the Annual Budget Review and Program Plan will include a written plan for providing additional sources of funding to cover the project budget shortfall or supporting documentation of committed funds to cover the cost increase.

This information will be used to monitor grantees' use of Federal funds, ensuring accountability and financial transparency in the TIGER and TIGER II Discretionary Grant programs.

Grantees will also submit reports on the performance (or projected performance) of the project using performance measures that the grantee and the Government selected through negotiations. The grantees will submit a Pre-project Report that will consist of current baseline data for each of the performance measures specified in the Performance Measurement Table in the grant agreement negotiated between the grantee and the Government. The Pre-project Report will include a detailed description of data sources, assumptions, variability, and the estimated level of precision for each measure. The grantees will submit quarterly Project Performance

Measurement Reports to the Government for each of the performance measures specified in the Performance Measurement Table in the grant agreement negotiated between the grantee and the Government. Grantees will submit reports at each of the intervals identified for the duration of the time period specified in the Performance Measurement Table in the grant agreement negotiated between the grantee and the Government. The grantees will submit a Project Outcomes Report after the project is completed that will consist of a narrative discussion detailing project successes and/or the influence of external factors on project expectations.

Respondents will have the opportunity to submit the information either electronically or by using fillable PDF, word processing or spreadsheet files. This information will be used to evaluate and compare projects and to monitor results that grant funds achieve, ensuring that grant funds achieved the outcomes targeted by the TIGER and TIGER II Discretionary Grant programs.

The Department's estimated burden for the new information to be collected is as follows:

Expected Number of Respondents: 126.

Frequency: Quarterly, and yearly.

Estimated Average Burden per Response: 8 hours for each Quarterly Progress and Monitoring Report; 8 hours for each Annual Budget Review; 8 hours for each Quarterly Performance Measurement Report.

Estimated Total Annual Burden: 9,072 hours.

The following is detailed information and instructions regarding the specific reporting requirements for each report identified above:

TIGER and TIGER II Discretionary Grant program grantees will submit a Project Progress and Monitoring Report and the Federal Financial Report (SF–425) to the Government on a quarterly basis. Grantees should use the following structure when preparing the quarterly Project Progress and Monitoring Report.

- *Project Progress and Monitoring Report*
  - *Frequency:* Quarterly (on the 20th of the first month of the calendar quarter).
  - *Report covers:* Previous quarter, along with a two-quarter forecast.
  - *Start:* Upon award of grant.
  - *End:* Once construction is complete.
  - *Format/Fields and accompanying instructions (beyond project ID information):*

1. *Executive Summary.*—A clear and concise summary of the current status of the project, including identification of any major issues that have an impact on the project's scope, budget, schedule, quality, or safety, including:

- Current total project cost (forecast) vs. latest budget vs. baseline budget. Include an explanation of the reasons for any deviations from the approved budget.
- Current overall project completion percentage vs. latest plan percentage.
- Any delays or exposures to milestone and final completion dates. Include an explanation of the reasons for the delays and exposures.
- A summary of the projected and actual dates for notices to proceed for significant contracts, start of construction, start of expenditure of TIGER and TIGER II Discretionary Grant funds, and project completion date. Include an explanation of the reasons for any discrepancies from the corresponding project milestone dates included in the Agreement.
- Any Federal obligations and/or TIFIA disbursements occurring during the month versus planned obligations or disbursements.
- Any significant contracts advertised, awarded, or completed.
- Any significant scope of work changes.
- Any significant items identified as having deficient quality.
- Any significant safety issues.
- Any significant Federal issues such as environmental compliance, Buy America/Buy American (whichever is applicable to this Project), Davis Bacon Act Prevailing Wage requirements, *etc.*

2. *Project Activities and Deliverables.*—Highlighting the project activities and deliverables occurring during the previous quarter (reporting period), and (2) define the activities and deliverables planned for the next two reporting periods. Activities and deliverables to be reported on should include meetings, audits and other reviews, design packages submitted, advertisements, awards, construction submittals, construction completion milestones, submittals related to Recovery Act requirements, media or Congressional inquiries, value engineering/constructability reviews, and other items of significance. The two reporting period "look ahead schedule" will enable the Government to accommodate any activities requiring input or assistance.

3. *Action Items/Outstanding Issues.*—Drawing attention to, and tracking the progress of, highly significant or sensitive issues requiring action and direction in order to resolve. In general, issues and administrative requirements that could have a significant or adverse impact to the project's scope, budget, schedule, quality, safety, and/or compliance with Federal requirements should be included. Status, responsible person(s), and due dates should be included for each action item/outstanding issue. Action items requiring action or direction should be included in the quarterly status meeting agenda. The action items/outstanding issues may be dropped from this section upon full implementation of the remedial action, and upon no further monitoring anticipated.

4. *Project Schedule.*—An updated master program schedule reflecting the current status of the program activities should be included in this section. A Gantt (bar) type chart is probably the most appropriate for quarterly reporting purposes, with the ultimate format to be agreed upon between the grantee and the Government. It is imperative that the master program schedule be integrated, *i.e.*, the individual contract milestones tied to each other, such that any delays occurring in one activity will be reflected throughout the entire program schedule, with a realistic completion date being reported. Narratives, tables, and/or graphs should accompany the updated master program schedule, basically detailing the current schedule status, delays and potential exposures, and recovery efforts. The following information should also be included:

- Current overall project completion percentage vs. latest plan percentage.
- Completion percentages vs. latest plan percentages for major activities such as right-of-way, major or critical design contracts, major or critical construction contracts, and significant force accounts or task orders. A schedule status description should also be included for each of these major or critical elements.
- Any delays or potential exposures to milestone and final completion dates. The delays and exposures should be quantified and overall schedule impacts assessed. The reasons for the delays and exposures should be explained, and initiatives being analyzed or implemented in order to recover the schedule should be detailed.

5. *Project Cost.*—An updated cost spreadsheet reflecting the current forecasted cost vs. the latest approved budget vs. the baseline budget should be included in this section. One way to track project cost is to show: (1) Baseline Budget, (2) Latest Approved Budget, (3) Current Forecasted Cost Estimate, (4) Expenditures or Commitments To Date, and (5) Variance between Current Forecasted Cost and Latest Approved Budget. Line items should include all significant cost

centers, such as prior costs, right-of-way, preliminary engineering, environmental mitigation, general engineering consultant, section design contracts, construction administration, utilities, construction packages; force accounts/task orders, wrap-up insurance, construction contingencies, management contingencies, and other contingencies. The line items can be broken-up in enough detail such that specific areas of cost change can be sufficiently tracked and future improvements made to the overall cost estimating methodology. A Program Total line should be included at the bottom of the spreadsheet. Narratives, tables, and/or graphs should accompany the updated cost spreadsheet, basically detailing the current cost status, reasons for cost deviations, impacts of cost overruns, and efforts to mitigate cost overruns. The following information should be provided:

- Reasons for each line item deviation from the approved budget, impacts resulting from the deviations, and initiatives being analyzed or implemented in order to recover any cost overruns.
- Transfer of costs to and from contingency line items, and reasons supporting the transfers.
- Speculative cost changes that potentially may develop in the future, a quantified dollar range for each potential cost change, and the current status of the speculative change. Also, a comparison analysis to the available contingency amounts should be included, showing that reasonable and sufficient amounts of contingency remain to keep the project within the latest approved budget.
- Detailed cost breakdown of the general engineering consultant (GEC) services (if applicable), including such line items as contract amounts, task orders issued (amounts), balance remaining for tasks, and accrued (billable) costs.
- Federal obligations and/or TIFIA disbursements for the project, compared to planned obligations and disbursements.

6. *Project Funding Status.*—The purpose of this section is to provide a status report on the non-TIGER and non TIGER II Discretionary Grant funds necessary to complete the project. This report section should include a status update of any legislative approvals or other actions necessary to provide the non-TIGER and non TIGER II Discretionary Grant funds to the project. Such approvals might include legislative authority to charge user fees or set toll rates, or the commitment of local funding revenues to the project. In the event that there is an anticipated or actual project cost increase, the project funding status section should include a report on the anticipated or actual source of funds to cover the cost increase and any significant issues identified with obtaining additional funding.

7. *Project Quality.*—The purpose of this section is to: (1) Summarize the Quality Assurance/Quality Control activities during the previous month (reporting period), and (2) highlight any significant items identified as being deficient in quality. Deficient items noted should be accompanied by reasons and specifics concerning the deficiencies, and corrective actions taken or planned. In addition, the agency or firm responsible for the corrective action should be documented. Planned corrective actions should then be included as Action Items/Outstanding Issues.

8. *Federal Financial Report (SF–425).*—The Federal Financial Report (SF–425) *(available at http://www.forms.gov/bgfPortal/docDetails.do?dId=15149)* is a financial reporting form used throughout the Federal Government Grant system. Grantees should complete this form and attach it to each quarterly Project Progress and Monitoring Report.

TIGER and TIGER II Discretionary Grant program grantees will submit an Annual Budget Review and Program Plan to the Government 60 days prior to the end of each Agreement year that they are receiving grant funds. Grantees should use the following structure when preparing the Annual Budget Review Report.

- *Annual Budget Review Report*
  - *Frequency:* Yearly (60 days before the end of the Agreement year).
  - *Report covers:* Upcoming Agreement year.
  - *Start:* 60 days before first anniversary of grant award.
  - *End:* Once construction is complete.
  - *Format/Fields and accompanying instructions (beyond project ID information):*

1. *Detailed Schedule of Activities.*—An updated master program schedule reflecting the current status of the program activities should be included in this section. A Gantt (bar) type chart is probably the most appropriate for annual reporting purposes.

2. *Estimate of Specific Performance Objectives.*—This section will discuss, what, if any performance objectives of the project will be achieved over the course of the upcoming Agreement Year and note any differences from the original project plan.

3. *Forecasted Expenditures.*—This section will discuss financial outlays that will occur in support of the project over the course of the upcoming Agreement Year and note any differences from the original project plan.

4. *Schedule of Milestones for the Upcoming Agreement Year.*—This section will discuss, what, if any project milestones will be achieved over the course of the upcoming Agreement Year and the obligations associated with each milestone, noting any differences from the original project plan.

If there are no proposed deviations from the Approved Detailed Project Budget, the Annual Budget Review shall contain a statement stating such. The grantee will meet with the Government to discuss the Annual Budget Review and Program Plan. If there is an actual or projected project cost increase, the annual submittal should include a written plan for providing additional sources of funding to cover the project budget shortfall or supporting documentation of committed funds to cover the cost increase. To the extent the annual budget update deviates from the approved project budget by more than 10 percent, then work proposed under the Annual Budget Review and Program Plan shall not commence until written approval from the Government is received.

TIGER and TIGER II Discretionary Grant program grantees will submit Performance Measure Reports on the performance (or projected performance) of the project using the performance measures that the grantee and the Government selected through negations.

- *Performance Measurement Reports*
  - *Frequency:* Quarterly (on the 20th of the first month of the calendar quarter).
  - *Report covers:* Previous quarter.
  - *Start:* Once, upon award of grant; Quarterly, once construction complete.
  - *End:* At the end of agreed upon performance measurement period.
  - *Format/Fields and accompanying instructions (beyond project ID information):*

1. *Performance Measures Narrative.*—Including a detailed description of data sources, assumptions, variability, and the estimated level of precision for each measure.

2. *Performance Measures Spreadsheet.*—Government and grantee will agree on the format of the spreadsheet for each individual project. Measures (to be negotiated between grantees and the Government, individually) may include, but are not limited to: average tons handled/day;

average daily gross ton-miles (GTM); average container lifts per day (TEUs); containers transported on lines (TEUs); transit passenger miles and hours of travel; transit passenger & non-passenger counts; transit rider characteristics; average bike and or pedestrian users at key locations; average daily traffic (ADT) and average daily truck traffic (ADTT); average daily total train delay (minutes); average daily total (all vehicles) vehicle delay at crossings; transit service level; facility service level; average hourly (or peak & off-peak) vehicle travel time; average hourly (or peak & off-peak) buffer index; annual crash rates by type/severity; average slow order miles and average daily delay minutes due to slow orders; bridge condition (Sufficiency Rating); road closure/lost capacity time (lane-hours).

3. *[For final Report] Project Outcomes.*—Detailing Project successes and/or the influence of external factors on Project expectations. Including an *ex post* examination of project effectiveness in relation to the Pre-project Report baselines.

A 60-day **Federal Register** notice was published on February 15, 2011 (76 FR 8804). Since the publication of the 60-day **Federal Register** notice, no comments were received to the Docket (DOT–OST–2011–0019) and therefore no review of comments was required, so none was performed by the Department.

The Department's estimated burden for this information collection is the following:

Expected Number of Respondents: 126.

Frequency: Quarterly, and yearly.

Estimated Average Burden per Response: 8 hours for each Quarterly Progress and Monitoring Report; 8 hours for each Annual Budget Review; 8 hours for each Quarterly Performance Measurement Report.

Estimated Total Annual Burden: 9,072 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 148.

Issued in Washington, DC on April 22, 2011.

Claire W. Barrett,

Chief Information Management and Privacy Officer.

[FR Doc. 2011–10184 Filed 4–27–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Dubois Regional Airport, Reynoldsville, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Dubois Regional Airport, Reynoldsville, Pennsylvania under the provisions of Section 47125(a) of Title 49 United States Code (U.S.C.).

DATES: Comments must be received on or before May 31, 2011.

ADDRESSES: Comments on this application may be mailed or delivered to the following address: Robert W. Shaffer, Manager, Dubois Regional Airport, 377 Aviation Way, Reynoldsville, PA 15851; and at the FAA Harrisburg Airports District Office: Lori K. Pagnanelli, Manager, Harrisburg Airports District Office, 3905 Hartzdale Dr., Suite 508, Camp Hill, PA 17011.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Community Planner, Harrisburg Airports District Office location listed above.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Dubois Regional Airport under the provisions of Section 47125(a) of Title 49 U.S.C. On April 20, 2011, the FAA determined that the request to release property at the Dubois Regional Airport (DUJ), Pennsylvania submitted by the Clearfield-Jefferson Counties Regional Airport Authority (Authority) met the procedural requirements.

The following is a brief overview of the request:

The Authority requests the release of real property totaling 5.01 acres, of non-aeronautical airport property to AVERA Companies of Houston, TX. The land was originally purchased with Federal funds in 1988, AIP Grant 3–42–0023–05–88. The undeveloped property is located on the southeast corner within the Air Commerce Park, which is directly north of the main DuBois Regional Airport parking lot. AVERA Companies is proposing to develop the property and erect a building. The subject land does not serve an aeronautical purpose and is not needed for airport development, as shown on the Airport Layout Plan. All proceeds from the sale of property are to be used for the capital development of the airport. Fair Market Value (FMV) will be obtained from the land sale and reinvested back into an AIP eligible project at the airport.

Any person may inspect the request by appointment at the FAA office address listed above. Interested persons are invited to comment on the proposed release from obligations. All comments will be considered by the FAA to the extent practicable.

Issued in Camp Hill, Pennsylvania, on April 20, 2011.

Lori K. Pagnanelli,

Manager, Harrisburg Airports District Office.

[FR Doc. 2011–10236 Filed 4–27–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2010–0010]

Reclassification of Motorcycles (Two and Three Wheeled Vehicles) in the Guide to Reporting Highway Statistics

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final Notice.

SUMMARY: This Notice announces the revision to FHWA's guidance regarding State reporting of motorcycle registration information disseminated to the public in FHWA's annual publication *Guide to Reporting Highway Statistics.* The intent of this action is to improve FHWA's motorcycle registration data to assist in the analysis of crash data relating to these vehicles. Thus, it is critical that the motorcycle registration data collected and published by FHWA is accurate, comprehensive, and timely. The FHWA's *Guide to Reporting Highway Statistics (Guide)* is the document that FHWA uses to instruct States about what data is required by FHWA to perform its mission of informing Congress, the highway community, and the general public on a wide variety of highway extent, condition, use, and performance measures.

DATES: *Effective Date:* 90 days after date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ralph Erickson, Highway Funding and Motor Fuels Team Leader, Office of Policy, HPPI–10, (202) 366–9235, or Adam Sleeter, Office of the Chief Counsel, (202) 366–8839, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC

20590. Office hours are from 8 a.m. to 4:30 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document, the original notice, and comments received may be downloaded from the Office of the Federal Register's home page at: *http://www.gpoaccess.gov/fr/index.html* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov.*

Background

The information collected in accordance with the *Guide* [1] is authorized under 23 U.S.C. 315, which authorizes the Secretary of Transportation to prescribe and promulgate rules and regulations to carry out the requirements of Title 23 of the United States Code. Under 23 CFR 1.5, FHWA has the ability to request data that is used to relate highway system performance to investment under FHWA's strategic planning and performance reporting process in accordance with the requirements of the *Government Performance and Results Act.*[2] Additionally, 23 CFR 420.105(b) requires States to provide data that support FHWA's responsibilities to the Congress and the public. The *Guide* has approval from the Office of Management and Budget (OMB) under the control number 2125–0032.

The FHWA's current definition of a motorcycle is two-fold: (1) Motorcycles, and (2) motor bicycles and scooters. The specific language for defining motorcycles, provided in FHWA's *Guide,* follows:

Item I.E.2. Motorcycles: This item includes two-wheeled and three-wheeled motorcycles. Sidecars are not regarded as separate vehicles—a motorcycle and sidecar are reported as a single unit.

Item I.E.3. Motor bicycles and scooters: Mopeds should be included with motor-driven cycles (motor bicycles) in the States that require their registration.

States annually report data to FHWA from their motor vehicle registration systems. As a result, such data is based on the definitions developed by States which may or may not approximate FHWA's definition of motorcycles, motor bicycles, scooters or personalized conveyances.

The FHWA researched State legislation (including the District of Columbia, but not Puerto Rico) for definitions of motorcycles and similar vehicles. We found several characteristics that specifically differentiated motorcycle-type vehicles from other vehicle types. Several States further defined the difference between motorcycles and mopeds, or in a few States, motor scooters. The characteristics for defining motorcycles included vehicles: With two to three wheels in contact with the ground (48 States), with a seat or saddle for the passenger(s) (36 States), with a sidecar or trailer (4 States), and with a steering handlebar (2 States). Additionally, one State defined motorcycles as having no enclosure on the vehicle for the operator (driver) or passenger.

The following characteristics were used by some States to define the difference between motorcycles, mopeds, and in a few cases, motor scooters: Speeds not in excess of 25 to 45 miles per hour (MPH) (3 States mention 25 MPH, 13 mention 30 MPH, 1 State each mentions 35 or 45 MPH); engine displacement of not greater than 50 to 150 cubic centimeters (cc) (21 States mention 50 cc, 1 State mentions 55 cc, and 1 State mentions 150 cc). Some States used brake horsepower (HP) instead of, or in addition to, displacement to identify vehicle power (4 States mention 1.5 HP, 12 mention 2.0 HP, 1 State mentions 2.7 HP, and 1 State mentions 5 HP). Wheel diameter for differentiating motorcycles and mopeds from motor scooters is mentioned by 5 States (2 States mention wheel diameter greater than 10 inches, 1 State mentions wheel diameter greater than 14 inches, and 2 States mention wheel diameter greater than 16 inches); and 4 States mentioned a platform or deck for a standing driver as a characteristic of a motor scooter.

History

The FHWA has collected motorcycle registration data since 1914. This data reveals that in the last few years the population of motorcycles and related vehicle types has risen dramatically. In turn, the crash data for motorcycles has shown dramatic increase due to many factors including, but not limited to, rider experience, rider impairment, decreased use of helmets, and increased exposure. Exposure is a statistical term of reference that indicates increasing performance of a given activity yields an increase in the chance that some related event will occur, in this case crashes related to motorcycle riding activity will occur.

Data from the National Highway Traffic Safety Administration's (NHTSA) *Fatality Analysis Reporting System* (FARS) [3] indicated in 2009, motorcycle rider fatalities decreased for the first time after 11 consecutive years of increases: From 2,116 in 1997 to 5,312 in 2008, and then down to 4,462 in 2009. Other trends include a dramatic rise in motorcycle ownership and changes in other factors such as motorcycle size and new designs for these vehicles. However, this increase in fatality data is disproportionate to reported increases in motorcycle registration and in reported miles traveled. Due to this disconnect, safety advocates have encouraged improving the data collection process in order to better analyze and identify rider exposure and crash causality.

On October 3, 2007, the National Transportation Safety Board (NTSB) sent a letter to FHWA containing an NSTB Safety Recommendation H–07–34, which states:

> Following the 2007 Motorcycle Travel Symposium, develop guidelines for the states to use to gather accurate motorcycle registrations and motorcycle vehicle miles traveled data. The guidelines should include information on the various methods to collect registrations and vehicle miles traveled data and how these methods can be put into practice.

The FHWA is committed to improving both sets of data identified in the NTSB safety recommendation. This final notice addresses the NTSB recommendation to gather more accurate motorcycle registration data. To achieve this goal, FHWA established an interagency review team consisting of experts from FHWA's Offices of Safety and Research, and various NHTSA offices, to assist in the following activities:

1. Review State laws to determine the State of practice for motorcycle registrations by documenting State laws and practices;
2. Improve the definition of motorcycles in the *Guide to Reporting Highway Statistics;*
3. Develop guidelines for the States to use to gather and report more accurate motorcycle registration data;
4. Include information on the various methods to collect and report registrations in the guidelines; and
5. Initiate actions to bring the best methods in wider practice.

The FHWA is seeking to provide better registration data for other agencies and the general public to analyze motorcycle crash data. For FHWA, the issue is two-fold: FHWA must provide the States complete and comprehensive instructions on the data

[1] *Guide,* Chapter 3, Report Identifying Motor-Vehicle Registrations and Taxation, page 3–2.

[2] Government Performance and Results Act of 1993 (GPRA), Sec. 3 and 4, Public Law 103–62.

[3] FARS data can be viewed at: *http://www-fars.nhtsa.dot.gov/Main/index.aspx.*

FHWA needs to collect to perform its responsibilities, and FHWA must work with the States to assure that they are providing accurate data to the extent that they can in accordance with FHWA instructions. A corollary to both issues is that FHWA's instructions should allow the States to provide the data that they actually collect and not to demand data that they do not already gather.

The FHWA will refine its definition of motorcycles and related two- and three-wheeled vehicles to better differentiate motorcycles, mopeds and motor scooters. This document was coordinated with NHTSA. As indicated above, this document addresses State reporting of motorcycle registration information. It should be understood that the definitions used for reporting purposes do not comport in all particulars with the definitions used by NHTSA. For example, NHTSA has specific definitions for "motorcycle" and "motor driven cycle" as part of the Federal motor vehicle safety standards (FMVSSs) (see 49 CFR 571.3). The issue of whether a product is considered a motorcycle for purposes of the FMVSSs is dependent on NHTSA's regulations and the statutes administered by NHTSA. Any questions about motorcycles in the context of NHTSA's regulations or programs should be directed to NHTSA.

Reference Material

The *Guide to Reporting Highway Statistics* is FHWA's guidance to the States for reporting a variety of data items, including two categories of motorcycles: Motorcycles and motorized bicycles.

The *American National Standards Institute (ANSI) D 16.1*[4] defines a motorcycle as any motor vehicle having a seat or saddle for the use of its operator and designed to travel on not more than three wheels in contact with the ground. This includes large motorcycles, motor-driven cycles, speed limited motor-driven cycles, mopeds, motor scooters, and motorized or motor assisted bicycles.

The definitions of motorcycle type vehicles found in 49 CFR 571.3 state that:

Motorcycle means a motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

Motor-driven cycle means a motorcycle with a motor that produces 5-brake horsepower or less.

The *Model Minimum Uniform Crash Criteria* (MMUCC)[5] defines a motorcycle as a two- or three-wheeled motor vehicle designed to transport one or two people. Included are motor scooters, mini-bikes, and mopeds.

The FARS and National Automotive Sampling System (NASS) General Estimates System (GES) follows the ANSI D 16.1 definition. The FARS and GES data are used in traffic safety analyses by NHTSA as well as other public and private entities. The information is used to estimate how many motor vehicle crashes of different kinds take place, and is also used in the analyses by researchers and highway safety professionals in order to determine the factors involved in the crashes.

Discussion of Comments

The comment period opened on March 23, 2010, and closed on June 24, 2010. Ninety-six comments were received.

Commenters on the notice fell into several categories: An organization representing States and State registration administrators, individual States, a major private manufacturer, individuals representing motorcycle "clubs," and many individuals. Commenters addressed a range of subjects.

Concerns About Varied Motorcycle Definitions

The American Association of Motor Vehicle Administrators, (AAMVA), listed a number of vehicle characteristics for which there are discrepancies among States' motorcycle definitions. Some States require a motorcycle to have a seat that the rider straddles, while others do not. Some State laws allow a steering wheel. Other States do not specify, meaning they do not restrict registration to vehicles with handlebars. Many States do not include a requirement for wheel rim diameters exceeding 10 inches. Many States do not disqualify vehicles with a full enclosure for rider or passenger. Most States do not regard sidecars as separate vehicles, although most States would consider a trailer a separate vehicle and may require a separate registration. In terms of mopeds, the same difficulties exist regarding the characteristics of a seat, saddle, and steering handle as those noted for motorcycles. The AAMVA also noted that some States do not require mopeds to have pedals, and that many do not have a brake horsepower requirement in their definition.

A number of commenters discussed problems that may arise due to the different State laws and regulations classifying motorcycles and other similar vehicles. Some of these commenters expressed concerns about vehicles that would not fit any of FHWA's proposed definitions and therefore would be left without a means for certification for road and highway use. Enclosed and three-wheeled vehicles are of primary concern, because some States do not classify them as motorcycles. Therefore, if the new definitions exclude them from the definition of motorcycle, States will need to create new regulations to certify these types of vehicles for driving. Additionally, a commenter from Oregon stated that a handlebar requirement for motorcycles would leave certain vehicles in Oregon without a classification for registration. Some commenters also addressed the need to keep these smaller fuel-efficient vehicles on the road, both for energy conservation reasons and to allow individuals with disabilities or older individuals an option for driving similar to the experience of motorcycling.

Some commenters noted that new definitions are necessary due to the proliferation of new vehicle types and the unintended consequences of misclassification. Harley Davidson Motor Company (HDMC) stated that the need to revise the regulations is timely as many new motorcycle-type vehicles are reaching the market and traditional definitions do not address these newer vehicles. One commenter stated that new regulations are needed because classifying mopeds and scooters as motorcycles leads to increased theft because it may require that these lighter weight vehicles be parked on the street.

The FHWA's intent is to provide guidance in the form of suggested categories to address the proliferation of motorcycle vehicle types for data collection and analysis purposes. The FHWA recognizes the wide variation of vehicles that are primarily described as motorcycles, and does not want to impose rigid definitions. Rather, FHWA is organizing a set of definitions more specific than the existing, general descriptions of motorcycles to improve State data reporting.

Reporting and Registration Concerns: New Classifications

States expressed concerns about the administrative, logistical and financial burdens of providing information based on the updated guidance. The Florida Department of Highway Safety and Motor Vehicles, (FDHSMV) referred to Bill 971, which was recently passed by

[4] American National Standards Institute, *http://webstore.ansi.org.*

[5] Model Minimum Uniform Crash Criteria: *http://www.mmucc.us/.*

the Florida legislature and includes a definition for three-wheeled vehicles. The FDHSMV suggested adding a category for three-wheeled vehicles to accommodate the Florida classification. A commenter stated that Oregon currently registers mopeds, but not motor scooters or motor-assisted bicycles and that legislation would be required to change this. The Washington Department of Licensing (WDOL) only records and reports registrations for two classifications: Motorcycles and mopeds. The Washington State Department of Transportation does not have a means to determine which mopeds would be categorized as cycles or scooters under FHWA's new categories. Accordingly, the WDOL estimated that the cost of updating their computers to process the information included in the new guidance would be over $620,000 in the first year. The WDOL also pointed out that unless FHWA requires manufacturers to report the new information required for categorization on the Manufacturer's Statement of Origin or the Manufacturer's Certificate of Origin, there is no mechanism for WDOL to collect the data.

The FHWA recognizes that some States may incur significant costs if they choose to adopt the new definitions provided in FHWA's guidance. However, this guidance is not mandatory, therefore, States may avoid incurring any costs by continuing to collect and provide motorcycle data according to their own existing legislative guidelines. If a State determines that the costs outweigh the benefits of adopting the new definitions, then the State may continue to provide motorcycle data according to their own existing definitions.

Reporting Concerns: Vehicle Identification Numbers (VINs)

The Insurance Institute for Highway Safety, (IIHS), supports the use of VINs for reporting vehicle information. The IIHS has grouped street legal motorcycles into 10 different classes: Scooter, cruiser, chopper, touring, dual purpose, standard, sport touring, unclad sport, sport, and super sports. These classifications consider design characteristics such as intended use, riding position, engine power, passenger comfort, and cost. Statistical analyses performed on this data by IIHS and the Highway Loss Data Institute (HLDI), an affiliate of IIHS, which was derived from VINs, revealed substantial differences in accident data of these vehicle classifications. The IIHS stated that using VINs will create the opportunity for more sophisticated classification of motorcycle types than the limited categories in the Guide. Therefore, using VINs will increase FHWA's ability to assess the safety risks of new types of vehicles as they are used and enter the market. Additionally, IIHS stated that VIN information may be easier for many States to provide than vehicle classification.

The FHWA agrees that studies done by both the HLDI and the IIHS establish the important conclusion that motorcycle classifications reveal differing accident characteristics. The HLDI has offered to license the software or provide the service to FHWA free of charge. The FHWA appreciates this offer, and may pursue this cooperative research outside the scope of this notice.

The FDHSMV commented that collecting VIN information would put a substantial burden on the States. Additionally, AAMVA, and the FDHSMV, questioned the value of reporting VIN information, stating that VINs for motorcycles are far less standardized than VINs for cars and trucks.

Commenters also cited privacy concerns associated with collecting VINs and possible violations of the Drivers Privacy Protection Act.

The FHWA concurs with the view that collecting VINs from the States would incur significant costs to the States and FHWA and the benefits of this approach are not worth the cost of collection. By not collecting VINs, FHWA will avoid potential privacy concerns raised in the comments.

Safety Issues

Some comments addressed safety issues. Some stated that the lack of safety features such as airbags and sidecars is a necessary requirement for motorcycles, because simple two-wheeled vehicles do not require the additional complexity of safety features. Additionally, some commenters felt that seatbelts or other restraints should not be included in the definition of a motorcycle, because in the event of a crash on that type of vehicle the operator and the vehicle should part ways for safety reasons. One commenter suggested that helmets should not be required for enclosed three-wheeled vehicles that pass safety tests.

An individual representing the American Automobile Association stated that the skill set for driving a three-wheeled vehicle is different from the skill set required for driving a motorcycle. Therefore, any attempt to make two- and three-wheeled vehicle definitions all-inclusive for the new generation of three-wheeled vehicles potentially endangers the public.

One commenter suggested that a distinction should be made between on-road and off-road vehicles, because off-road vehicles may have features that make them more dangerous in the event of an accident, such as being low to the ground. Additionally, according to this commenter, operators of off-road vehicles may be more inclined to ignore the rules of the road than operators of on-road vehicles.

These comments are outside the scope of this notice, as FHWA is not considering safety features or handling characteristics as descriptors in the definition of motorcycle types. State registrations and FHWA characteristics are based on the physical appearance of the vehicles.

International Classification System

The HDMC advocates synchronizing FHWA vehicle classes with classes used internationally, specifically with the United Nations Economic Commission for Europe's classification scheme. The FHWA researched the suggested United Nations Economic Commission for Europe standards and concludes that they suffer from the same lack of detail that makes FHWA's current definitions insufficient.

Request for a Committee

The American Motorcyclist Association requested that FHWA create a Motorcycle Definition Committee with representatives from FHWA and State departments of transportation to overhaul the current definition(s) of motorcycles and similar vehicles. The FHWA believes the request for comments on this notice was sufficient notification and that comments to the docket are sufficient for FHWA to understand the issues involved.

Enclosed Vehicles

The AAMVA stated that States are currently struggling with how to register enclosed two- and three-wheel vehicles, as well as how best to test the drivers on their ability to drive those vehicles. AAMVA is working to create a group to consider these issues, though some States would already consider enclosed vehicles to be motorcycles because they have no specific definition or requirements related to whether the vehicle is enclosed or not. The AAMVA noted that most States would currently consider three-wheeled vehicles that are small, lightweight, and not enclosed motorcycles for registration purposes. These States most likely could not distinguish them from other motorcycles for purposes of reporting to FHWA. The FHWA agrees and has

decided to incorporate a separate category to capture these vehicles.

Steering Mechanisms

The HDMC notes that while steering handlebars are traditional for motorcycles, the newer categories of motorcycles may have other steering mechanisms, and they recommend that FHWA remove handlebars as a motorcycle-defining characteristic. An individual representing the ABATE (A Brotherhood Against Totalitarian Enactments) organization of Maryland recommended that the definition of motorcycle require handlebars. Additionally, a commenter from Oregon stated that requiring handlebars for motorcycles would leave certain vehicles in Oregon without a classification for registration. The FHWA concurs with HDMC and will remove the handlebar characteristic from the motorcycle classification.

Opinions on Motorcycle Definitions Generally

There were a number of comments by individuals representing organizations expressing their opinions on the definition of a motorcycle. The Vice–Chair of Oregon Governors' Advisory Commission on Motorcycle Safety stated that a traditional motorcycle is a single–track vehicle that is directed by a combination of counter-steering and leaning, primarily the former, and a three wheel vehicle requires neither. An individual representing the Minnesota Motorcycle Safety Advisory Committee defined a motorcycle as a vehicle powered entirely by a motor with two or three wheels, handlebars and without a roof. These two comments are addressed in FHWA's motorcycle definition.

An individual representing the ABATE organization of Maryland stated that the new definition of a motorcycle should be broken down into three types: Two wheels, three wheels ("trikes," whether the two-wheeled axle is in front or in back), and four wheel all terrain vehicles (ATV or quad bike). Motorcycles would have the following traits: Handlebars rather than a steering wheel, no side by side seating for passengers, and the rider in a straddle position when riding. The FHWA considered these vehicle characteristics in its typology, removed the handlebar requirement as noted above, and did not exclude side-by-side seating, which may or may not be a characteristic of a motorcycle with an enclosure. The FHWA does not include four-wheeled vehicles in this motorcycle typology, as a four-wheeled vehicle licensed for highway use would in popular usage be described as an automobile and not a motorcycle.

The Motorcycle Industry Council proposed that the moped and motor bicycle classification vehicle engine size should not exceed 2 brake horsepower, rather than 5 brake horsepower as proposed, which they stated applies specifically to a "motor-driven cycle." The FHWA agrees and has incorporated this recommendation into the moped and motor bicycle typology because horsepower is a useful distinguishing characteristic between mopeds and the more powerful motorcycles.

The HDMC made specific comments on FHWA's proposed definitions. FHWA concurs with HDMC's comment advocating removing handlebars as a motorcycle-defining characteristic as discussed above. The HDMC does not consider either a seat or saddle for driver and passengers nor a wheel diameter suitable defining characteristics. The FHWA considers both wheel diameter and seat arrangements appropriate defining characteristics. The FHWA has changed the wheel diameter characteristic to wheel rim diameter to better define wheel diameter.

The HDMC also stated that the distinction between motorcycles, mopeds, and scooters is best made by distinguishing vehicles by design speed (such as 30 miles per hour), rather than by vehicle physical appearance. This concept has merit; vehicles used on the streets and highways that have insufficient power to keep up with normal traffic should not be registered for highway use. In those conditions they are unsafe and highly disruptive to normal traffic flow. However, it will be difficult to determine the level of speed that constitutes a defining characteristic agreeable to the various stakeholders.

Many individuals commenting on their own behalf expressed strong opinions on the definitions of motorcycles, often demonstrating their passion for motorcycles and the motorcycle community. The majority of individual commenters to the docket agreed that motorcycles are a two-wheeled, powered vehicle for one or two people. For example, an individual wrote that motorcycles should "include all two wheeled vehicles that the rider sits straddled the frame/motor or fuel tank with passenger seating also straddled and behind the rider." The FHWA believes this wording is overly specific and is not normally used by States as distinguishing characteristics, and therefore does not include them in the definition. Some individuals suggested that the definition of motorcycle include all motorcycle type vehicles, with multiple subdefinitions, to avoid certification and registration issues. The FHWA concurs and believes the typology used in FHWA notice adequately addresses this comment.

Beyond these comments, the comments on motorcycle characteristics and attributes varied widely. The FHWA considered these comments. However, these comments failed to address a comprehensive typology of motorcycle and like vehicles, which was the focus of FHWA's request for comments. Many of these comments are incorporated into FHWA's modified categories. The remainder represented differing opinions such that no consistent conclusions could be drawn from them. None of these individual comments offered a considered, complete description of motorcycle types. The FHWA concludes that these comments are sufficiently incorporated into FHWA's modified definitions.

The current language for defining motorcycles in FHWA's *Guide to Reporting of Highway Statistics* (Chapter 3, Report Identifying Motor Vehicle Registration and Taxation, page 3–2) is as follows:

Item I.E.2. Motorcycles: This item includes two-wheeled and three-wheeled motorcycles. Sidecars are not regarded as separate vehicles— a motorcycle and sidecar are reported as a single unit.

Item I.E.3. Motor bicycles and scooters: Mopeds should be included with motor-driven cycles (motor bicycles) in the States that require their registration.

Based on the comments received, the current language for defining motorcycles in FHWA's *Guide to Reporting of Highway Statistics* (Chapter 3, Report Identifying Motor Vehicle Registration and Taxation, page 3–2) is updated as follows:

Item I.E.2. Motorcycles (without enclosures): This item includes vehicles with the following characteristics:

1. Two or three wheels in contact with the ground (excluding trailers suitable for motorcycle hauling)
2. A seat or saddle for driver and passengers
3. Wheel rim diameters 10 inches or more
4. Do not include an enclosure for the driver or passengers
5. Sidecars and trailers are not regarded as separate vehicles— a motorcycle and sidecar or trailer is reported as a single unit.

Item I.E.3. Motorcycles (with enclosures): This item includes vehicles with the following characteristics:

1. Two or three wheels in contact with the ground (excluding trailers suitable for motorcycle hauling)
2. A seat or saddle (in-line or side-by-side) for driver and passengers
3. Wheel rim diameters 10 inches or more
4. Includes an enclosure for the driver or passengers

5. Sidecars and trailers are not regarded as separate vehicles—a motorcycle and sidecar or trailer is reported as a single unit.

Item I.E.4 Mopeds or motor bicycles: This item includes vehicles with the following characteristics:

1. Two wheels in contact with the ground
2. A seat or saddle for driver and passengers (if any)
3. A steering handle bar
4. Do not include an enclosure for the driver or passengers
5. Have a brake horsepower not exceeding 2 HP.

Item I.E.5 Personalized conveyances licensed for highway use: This item includes vehicles with the following characteristics:

1. Two wheels in contact with the ground
2. Has a platform or deck for the use of a standing operator
3. A steering handle bar
4. Do not include an enclosure for the driver or passengers
5. Have a brake horsepower not exceeding 2 HP.
6. Have a direct drive energy transmission from the engine to the drive wheel(s) (no transmission).

Issued on: April 20, 2011.

Victor M. Mendez,

Administrator.

[FR Doc. 2011–10258 Filed 4–27–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service Proposed Collection of Information: CMIA Annual Report and Direct Cost Claims

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the "CMIA Annual Report and Direct Cost Claims."

DATES: Written comments should be received on or before June 27, 2011.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Victor Poore, Program Manager, Cash Management Improvement Act Program, 401 14th Street, SW., Room 420, Washington, DC 20227, (202) 874–6751.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: CMIA Annual Report and Direct Cost Claims.

OMB Number: 1510–0061.

Form Number: None.

Abstract: States and Territories must report interest owed to and from the Federal government for major Federal assistance programs on an annual basis. The data is used by Treasury and other Federal agencies to verify State and Federal interest claims, to assess State and Federal cash management practices and to exchange amounts of interest owed.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 56.

Estimated Time per Respondent: average of 393.5 hours per state.

Estimated Total Annual Burden Hours: 22,036.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: April 14, 2011.

Kristine Conrath,

Assistant Commissioner, Federal Finance.

[FR Doc. 2011–10129 Filed 4–27–11; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service Proposed Collection of Information; Financial Institution Agreement and Application for Designation as a Treasury Tax and Loan Depositary; and Resolution Authorizing the Financial Institution Agreement and Application

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the FMS 458 and FMS 459 forms "Financial Institution Agreement and Application for Designation as a Treasury Tax and Loan Depositary; and Resolution Authorizing the Financial Institution Agreement and Application for Designation as a Treasury Tax and Loan Depositary."

DATES: Written comments should be received on or before June 27, 2011.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East-West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Mauricio Mattos, Investment Management Division, 401 14th Street, SW., Room 318A, Washington, DC 20227, (202) 874–7868.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Financial Institution Agreement and Application for Designation as a Treasury Tax and Loan Depositary; and Resolution Authorizing the Financial Institution Agreement and Application for Designation as a Treasury Tax and Loan Depositary.

OMB Number: 1510–0052.

Form Number: FMS 458 and FMS 459.

Abstract: Financial institutions are required to complete an Agreement and Application to participate in the Federal Tax Deposit/Treasury Tax and Loan Program. The approved application

designates the depositary as an authorized recipient of taxpayers' deposits for Federal taxes.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 450.

Estimated Time per Respondent: 30 minutes (15 mins. per form).

Estimated Total Annual Burden Hours: 225.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: April 14, 2011.

Kristine Conrath,

Assistant Commissioner, Federal Finance.

[FR Doc. 2011–10128 Filed 4–27–11; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service Proposed Collection of Information: Schedule of Excess Risks

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form "Schedule of Excess Risks."

DATES: Written comments should be received on or before June 27, 2011.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Rose Miller, Manager, Surety Bond Branch, 3700 East West Highway, Room 632F, Hyattsville, MD 20782, (202) 874–1427.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Schedule of Excess Risks.

OMB Number: 1510–0004.

Form Number: FMS 285–A.

Abstract: This information is collected to assist the Treasury Department in determining whether a certified or applicant company is solvent and able to carry out its contracts, and whether the company is in compliance with Treasury excess risk regulations for writing Federal surety bonds.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,066 (with 30 apps).

Estimated Time per Respondent: 20 hours.

Estimated Total Annual Burden Hours: 5,780.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Linda S. Kimberling,

Assistant Commissioner, Management (CFO).

[FR Doc. 2011–10130 Filed 4–27–11; 8:45 am]

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S. 307/P.L. 112–11
To designate the Federal building and United States courthouse located at 217 West King Street, Martinsburg, West Virginia, as the ''W. Craig Broadwater Federal Building and United States Courthouse''. (Apr. 25, 2011; 125 Stat. 213)

S.J. Res. 8/P.L. 112–12
Providing for the appointment of Stephen M. Case as a citizen regent of the Board of Regents of the Smithsonian Institution. (Apr. 25, 2011; 125 Stat. 214)

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