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RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Proclamation 8673 of May 12, 2011

Small Business Week, 2011

By the President of the United States of America

A Proclamation

Our country started as an idea, and it took hard-working, dedicated, and visionary patriots to make it a reality. Successful businesses start much the same way—as ideas realized by entrepreneurs who dream of a better world and work until they see it through. From the family businesses that anchor Main Street to the high-tech startups that keep America on the cutting edge, small businesses are the backbone of our economy and the cornerstones of America's promise.

Throughout our economic recovery, persevering small businesses have helped put our country back on track. Countless new and saved jobs have come from small businesses who took advantage of tax relief, access to capital, and other tools in the Recovery Act, the Small Business Jobs Act, and other initiatives launched by my Administration to put Americans back to work. To ensure the stability of our recovery, we must continue to provide new opportunities for small business owners and the next generation of entrepreneurs, who will help us out-innovate our global competitors to win the future.

To support high-growth businesses, my Administration has launched Startup America, an initiative that will strengthen access to capital and mentoring while reducing barriers to growth for small businesses. Entrepreneurship is essential to the strength and resilience of our economy and our way of life. Startup America will give entrepreneurs the tools they need to build their business into the next great American company. To encourage innovation, we released the *Strategy for American Innovation*, a report outlining my Administration's plan to harness ingenuity. This means investing in the building blocks of innovation, like education and infrastructure, while promoting market-based growth through tax credits and effective intellectual property laws.

The National Export Initiative is working to open markets to American businesses and support small exporters, who increase American competitiveness abroad and create good jobs here at home. We continue to create opportunities for businesses in underserved communities through new lending initiatives, expanded access to counseling, and technical assistance. We are also working to provide small businesses more opportunities to compete for Federal contracts. This gives Federal agencies access to some of our country's best products and services while helping these businesses grow and employ community members. Through these and other initiatives, we are supporting the entrepreneurs and small businesses that provide work for half of American workers and create two out of every three new private sector jobs.

Small businesses embody the promise of America: that if you have a good idea and are willing to work hard enough, you can succeed in our country. This week, we honor and celebrate the individuals whose inspiration and efforts keep America strong.

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 May 15 through May 21, 2011, as Small Business Week. I call upon all Americans to recognize the contributions of small businesses to the competitiveness of the American economy with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of May, 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. 2011–12307
Filed 5–17–11; 8:45 am]
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Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR 1221

[AMS–LS–11–0040]

Sorghum Promotion, Research, and Information Program; State Referendum Results

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Announcement of referendum results.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing that sorghum producers voting in a national referendum from February 1, 2011, through February 28, 2011, have approved the continuation of the Sorghum Promotion, Research, and Information Order (Order).

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief; Marketing Programs Branch, Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA, Room 2628–S; STOP 0251; 1400 Independence Avenue, SW., Washington, DC 20250–0251, telephone number 202/720–1115, fax number 202/720–1125, or by e-mail at: *Kenneth.Payne@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Pursuant to the Commodity Promotion, Research, and Information Act of 1996 (Act) (7 U.S.C. 7411–7425), the Department of Agriculture conducted a referendum from February 1, 2011, through February 28, 2011, among eligible sorghum producers, and importers to determine if the Order would continue to be effective. A final rule was published in the November 18, 2010, **Federal Register** (75 FR 70573) outlining the procedures for conducting the referendum.

Of the 1,204 valid ballots cast, 917 or 76.2 percent favored the program and 287 or 23.7 percent opposed continuing the program. For the program to continue, it must have been approved by at least a majority of those eligible persons voting for approval who were engaged in the production and sale of sorghum during the period July 1, 2008, through Dec. 31, 2010.

Therefore, based on the referendum results, the Secretary of Agriculture has determined that the required majority of eligible voters who voted in the nationwide referendum from February 1, 2011, through February 28, 2011, voted to continue the Order. As a result, the Sorghum Checkoff Program will continue to be funded by a mandatory assessment on producers, and importers at the rate of 0.6 percent of net market value of grain sorghum and 0.35 percent of net market value for sorghum forage, sorghum hay, sorghum haylage, sorghum billets, and sorghum silage. Imports of such products would also be assessed, although, very limited imports exist at this time.

STATE REFERENDUM RESULTS

[February 1, 2011 through February 28, 2011]

State	Yes votes	No votes	Total eligible votes
Alabama	0	0	0
Alaska	0	0	0
Arizona	0	0	0
Arkansas	18	0	18
California	0	0	0
Colorado	20	12	32
Connecticut	0	0	0
Delaware	0	0	0
Florida	0	0	0
Hawaii	0	0	0
Idaho	0	0	0
Illinois	21	7	28
Indiana	2	4	6
Iowa	0	0	0
Kansas	247	183	430
Maine	0	0	0
Maryland	4	2	6
Massachusetts	0	0	0
Michigan	0	0	0
Minnesota	0	0	0
Mississippi	0	0	0
Missouri	12	7	19
Montana	0	0	0
Nebraska	26	9	35
Nevada	0	0	0
New Hampshire	0	0	0
New Jersey	0	0	0
New Mexico	26	3	29

STATE REFERENDUM RESULTS—Continued

[February 1, 2011 through February 28, 2011]

State	Yes votes	No votes	Total eligible votes
New York	0	0	0
North Dakota	0	0	0
Ohio	0	0	0
Oklahoma	38	13	51
Oregon	0	0	0
Pennsylvania	0	0	0
Rhode Island	0	0	0
South Dakota	6	0	6
Texas	486	45	531
Utah	0	0	0
Vermont	0	0	0
Washington	0	0	0
West Virginia	0	0	0
Wisconsin	0	0	0
Wyoming	0	0	0
Combined Total for States with 3 or Fewer Eligible Votes: Georgia, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee & Virginia	11	2	13
Total	917	287	1,204

Authority: 7 U.S.C. 7411–7425.

Dated: May 12, 2011.

David R. Shipman,

Acting Administrator.

[FR Doc. 2011–12134 Filed 5–17–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1228; Directorate Identifier 2009–NM–015–AD; Amendment 39–16666; AD 2011–09–04]

RIN 2120–AA64

Airworthiness Directives; Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires repetitive inspections for any damage of the lower surface of the center wing box, and corrective actions if necessary. This AD was prompted by reports of fatigue cracks of the lower surface of the center wing box. We are issuing this AD to detect and correct such cracks, which could result in the structural failure of the wings.

DATES: This AD is effective June 22, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 22, 2011.

ADDRESSES: For service information identified in this AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P–58, 86 S. Cobb Drive, Marietta, Georgia 30063; telephone 770–494–5444; fax 770–494–5445; e-mail *ams.portal@lmco.com;* Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5554; fax: (404) 474–5606; e-mail: *Carl.W.Gray@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on January 5, 2010 (75 FR 262). That NPRM proposed to require repetitive inspections for any damage of the lower surface of the center wing box, and corrective actions if necessary.

Comments

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

Support for the NPRM

Lockheed Martin Aeronautics Company (LM Aero) recognized and agreed with the need to adopt an AD. Lynden Air Cargo (LAC) agreed in concept that the inspections in the NPRM are beneficial and enhance safety.

Requests To Clarify Paragraph (l) of the NPRM

LAC and Safair Operations (Pty) Ltd (Safair) asked that we clarify paragraph (l) of the NPRM, which states that "Inspections accomplished before the effective date of this AD in accordance with Lockheed Service Bulletin 382–57–83 (82–783), Revision 1, dated August 22, 2006, including Appendix B, dated March 18, 2005, are considered

acceptable for compliance with the corresponding action specified in paragraph (g) of this AD." The commenters pointed out that Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007, refers to Appendix A, rather than Appendix B, of Lockheed Service Bulletin 382–57–83 (82–783), Revision 1. The commenters asked if the reference to Appendix B is a typo and, if not, why we consider Appendix B of Lockheed Service Bulletin 382–57–83 (82–783), Revision 1, as an acceptable means of compliance with the actions specified in paragraph (g) of the NPRM. The commenters pointed out that neither Appendix A nor Appendix B of Lockheed Service Bulletin 382–57–83 (82–783), Revision 1, is an acceptable means of compliance for the whole AD.

We agree to clarify paragraph (l) of the NPRM. There are no corresponding actions in this AD for the inspections in Appendix B of Lockheed Service Bulletin 382–57–83 (82–783), Revision 1; the inspection in Appendix B of Lockheed Service Bulletin 382–57–83 (82–783) and the inspections in Lockheed Service Bulletin 382–57–85 (82–790) are different. We refer to Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007, including Appendixes A, B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007, as the appropriate source of service information for doing the actions in this AD. Therefore, paragraph (l) of the NPRM does not provide any credit for any of the actions in paragraph (g) of the AD and, as a result, we have removed paragraph (l) of the NPRM.

Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, does refer to Appendix A of Lockheed Service Bulletin 382–57–83 (82–783), Revision 1, for guidance about performing part of the actions required by this AD—in this case, the non-destructive test of the center wing lower surface panels at the rainbow fittings. The reference in Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, to Appendix A of Lockheed Service Bulletin 382–57–83 (82–783), Revision 1, is correct and provides sufficient guidance for operators to perform the non-destructive test of the center wing lower surface panels at the rainbow fittings.

Requests for Clarification of Credit for Various Revisions of Service Information

LAC and Safair requested that we clarify which revisions of Lockheed Service Bulletin 382–57–85 (82–790) are acceptable for compliance with the actions proposed in the NPRM.

LAC noted that there are some minor differences between revisions of Lockheed Service Bulletin 382–57–85 (82–790) that have a negligible effect on the intent of the proposed AD and stated that there are no compelling safety reasons that would justify re-accomplishment of that service bulletin before the next inspection period. LAC requested that, if compliance with earlier revisions of that service bulletin is not acceptable, we capture the cost of re-inspections in the cost estimate. LAC also stated that although it accomplished Lockheed Service Bulletin 382–57–85 (82–790), dated August 4, 2005, it removed the wing attach angles to facilitate the inspection and then installed new attach angles even before this action was specified in later revisions of that service bulletin.

Safair stated that Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007, is apparently not currently FAA-approved, although Lockheed Service Bulletin 382–57–85 (82–790), dated August 4, 2005, appears to be.

Safair also requested clarification about what is meant in the Compliance paragraph (paragraph (f)) of the NPRM, which states "unless the actions have already been done." Safair stated that it is unclear which revision of Lockheed Service Bulletin 382–57–85 (82–790) would satisfy having "already been done." Safair also noted that in Lockheed Service Bulletin 382–57–85 (82–790), dated August 4, 2005, the drag angle (wing attach angle) is not removed, and Safair asked if any credit would be given for having performed the (other) actions in that service bulletin.

We agree with the requests to clarify which revisions of the service information are acceptable for compliance with the requirements of this AD. Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007, including Appendixes A, B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007, has been approved by the FAA. Lockheed Service Bulletin 382–57–85 (82–790), Revision 1, dated March 8, 2007, has also been approved by the FAA, and is acceptable for doing the inspections required by this AD if done before the effective date of this AD.

Lockheed Service Bulletin 382–57–85 (82–790), dated August 4, 2005, is also acceptable for compliance with inspections required by this AD, if the actions in that service bulletin are done before the effective date of this AD.

The phrase in paragraph (f) of this AD, "unless the actions have already been done," refers to requirements of the AD that have been done before the effective date of the AD. For example, if, before the effective date of the AD, an operator performed an inspection in accordance with Lockheed Service Bulletin 382–57–85 (82–790), dated August 4, 2005; Revision 1, dated March 8, 2007; or Revision 2, August 23, 2007, including Appendixes A, B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007; that operator would be in compliance with the intent of the AD for that inspection; however, all inspections done after the effective date of the AD must be accomplished in accordance with Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007, including Appendixes A, B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007.

We have added new paragraphs (l) and (m) to this AD to give credit to operators that have accomplished the actions required by paragraph (g) of this AD using Lockheed Service Bulletin 382–57–85 (82–790), dated August 4, 2005; or Revision 1, dated March 8, 2007.

Requests To Revise Costs of Compliance

Safair suggested that we revisit the Costs of Compliance section, which lists only work-hours and appears to have ignored the material and loss of earnings due to extended downtime. LAC also stated that the section should be revised to address fixed costs that continue to accrue while the airplane is down. LAC also pointed out that the costs beyond the 2,000 work-hours specified in the NPRM for the inspection are another 1,000 to 3,000 work-hours for defect rectification, cold working, angle replacement, reassembly, and restoration. LAC stated that part and material costs, including replacement wing attach angles and fasteners, are approximately $30,000 per airplane. LAC estimated that the average maintenance costs to comply with the actions proposed in the NPRM would be $350,000 per airplane, per inspection cycle.

We partially agree with the commenter's requests to change the costs of compliance. We disagree with the requests to address the costs of extended downtime. We included a grace period in this AD so that the effect on operations would be minimized and the inspections could be scheduled during regular maintenance checks. We have not changed the Costs of Compliance in this regard. We agree with the request to include the costs for the corrective action (defect rectification, *etc.*). Since we issued the NPRM, FAA policy has been revised to allow for inclusion of on-condition costs

(*e.g.,* costs that depend on inspection findings). Therefore, we have added a table in the Costs of Compliance section of this AD that includes an estimate of the cost of the corrective actions.

Requests To Differentiate Inspection Intervals for Different Fasteners

LM Aero believed that there should be a differentiation between the repetitive inspection intervals for Taper-Lok fastened joints (original production configuration) and the inspection intervals for Hi-Tigue fasteners installed in cold-worked holes. LM Aero pointed out that this differentiation is outlined in Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007 (10,000-flight-hour re-inspection for Taper-Loks and 20,000 flight hours for Hi-Tigues in cold-worked holes). LM Aero stated that the installation process for Hi-Tigue fasteners removes small fatigue cracks that are below the detection threshold for the bolt hole eddy current inspection, and is effective in retarding the growth of very short fatigue cracks, which could remain in the structure after inspection and over-sizing. LM Aero added that this allows the post-inspection flaw size to be set to 0.05 inch and that the post-inspection flaw size for Taper-Lok fasteners is set to 0.15 inch, which results in a shorter repetitive inspection interval. LM Aero stated that not acknowledging this improvement in terms of an increase in recurring inspection intervals would limit, if not end, an operator's consideration of this life-enhancing repair fastener system for aircraft. LM Aero believed operators that invested in Hi-Tigue fasteners should be compensated by allowing a repetitive interval of 20,000 flight hours.

LM Aero also stated that the implementation of the widespread fatigue damage (WFD) rule, FAA–2006–24281 (75 FR 69746, November 15, 2010), would require that a life limit be developed for the center wing, which would dictate the number of times that the inspections proposed in the NPRM could be used to maintain safety of flight. Airplanes exceeding the life limit would not be considered airworthy until an approved WFD repair is installed.

LAC agreed with the LM Aero comment. LAC did not agree that all holes should be inspected at the 10,000-flight-hour interval and added that repeated removals create the potential for insufficient remaining edge distance for the fasteners, as the hole clean-up might require fastener oversize. LAC stated that it has found that some fasteners are already approaching minimal edge distance even after the first fastener removal and replacement, especially if the Taper-Lok fasteners have been replaced with Hi-Tigue fasteners. LAC asserted that repeated and unnecessary fastener removals will make complicated repairs necessary and possibly lead to early replacement of structural components, up to and including replacement of the center wing itself. Safair also notes that with a reduced interval for cold-worked holes, the edge distance will be exhausted and the center wing will be scrapped.

We partially agree with the requests to differentiate the repetitive inspection intervals. We agree that those operators that invested in the Hi-Tigue fastening system in cold-worked holes should be given credit for their efforts by allowing a longer repetitive inspection interval. We disagree with revising this AD to include additional compliance times because the compliance times will vary for each airplane depending on how many holes in the center wing have been cold worked and have had Hi-Tigue fasteners installed. We do not consider it appropriate to include various provisions in an AD applicable only to individual airplanes. However, operators should note that under the provisions of paragraph (n) of the final rule, we will consider requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. We will consider requests for approval of alternative methods of compliance (AMOCs) on a case-by-case basis to address cold-worked holes and installation of Hi-Tigue fasteners in affected areas of the airplane.

We also acknowledge that the WFD rule specifies that airplanes exceeding the WFD life limit would not be considered airworthy until an approved WFD repair is installed. We point out, however, that since this AD contains inspection requirements for detection of generalized fatigue cracking and possible onset of WFD, extending the repetitive interval any longer could jeopardize the safety of the airplane. While we agree that repeated fastener removal could lead to complicated repairs and early replacement of structural components, this replacement would likely occur anyway as a result of the WFD that is known to exist in the inspection area. We have not changed the AD in this regard.

Requests To Extend Inspection Threshold in Paragraph (g)(2) of the NPRM

Safair and LAC requested that we extend the compliance time of "within 365 days" specified in paragraph (g)(2) of the NPRM. LAC stated that 365 days is not adequate to plan for and execute the proposed requirements of the AD and suggested the compliance time be changed to "within 48 months." Safair stated that 365 days is too restrictive and is not in line with maintenance recommendations of the original equipment manufacturer for structural work. Safair added that unscheduled maintenance visits would drive up cost and requested that the compliance time be revised to "at the next 3 year or 6 year structural inspection."

We disagree with the request to extend the compliance time specified in paragraph (g)(2) of this AD. In developing an appropriate compliance time for this AD, we considered not only the safety implications, but the manufacturer's recommendations, the availability of required parts, and the practical aspect of accomplishing the modification within an interval of time that corresponds to typical scheduled maintenance for affected operators. The 365-day compliance time reduces the impact on airplanes that have exceeded the thresholds specified in paragraph (g) of this AD and maintains an adequate level of safety of the airplane. Because of the possible onset of widespread fatigue damage of the center wing lower surface structure, any further extension of the compliance time could jeopardize safety. Under the provisions of paragraph (n) of this AD, however, we may consider requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. We have not revised this AD in this regard.

Request To Clarify Exceptions to the Service Bulletin

LAC stated that paragraph (i) of the NPRM and the requirements of an AMOC are redundant, and that if paragraph (i) of the NPRM is an exception, then the NPRM should allow the exception without an AMOC process.

We infer that LAC is requesting clarification of the exception to Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007, including Appendixes A, B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007, as specified in paragraph (i) of this AD. Paragraph (i) of this AD clarifies that the AD requirements are different from those specified in Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007, including Appendixes A, B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007. Specifically, paragraph 1.B.(5) of Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated

August 23, 2007, specifies that an extension of the compliance period can be addressed by completion of an evaluation form in another service bulletin. Paragraph 1.B.(5) of Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007, indicates that repetitive intervals may be revised in a later revision of Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007. However, operators must comply with the compliance times and inspection methods specified in this AD. Paragraph (i) of this AD explains that if operators want to use different intervals or inspection methods, they must request an AMOC.

Request To Clarify and Justify FAA Approval of Repairs

Safair requested clarification of the requirement in paragraph (h) of the NPRM to do repairs in accordance with a method approved by the FAA, Atlanta Aircraft Certification Office (ACO). Safair asked if the Atlanta ACO would provide rapid approval of proposed repairs. Safair asked if FAA Designated Engineering Representative (DER)-developed repairs may be submitted via the Atlanta ACO. Safair also stated it assumed that structural repair manual (SRM) repairs in the affected areas would still be approved repairs.

LAC requested justification of the requirement in paragraph (h) of the NPRM to do repairs in accordance with a method approved by the Atlanta ACO. LAC stated that requiring ACO approval for repairs is an excessive regulatory burden and will likely result in excessive downtime for an airplane. LAC noted that it accomplishes repairs 24 hours a day and 7 days a week and utilizes FAA DERs. LAC further stated that the repairs in the SRM are already FAA-approved, and there is no benefit to requiring additional ACO approval.

We acknowledge the commenters' concerns with requiring repairs to be approved by the Atlanta ACO. If operators notify the FAA immediately when a crack is found during an inspection, the FAA should have adequate time to respond. Operators also should contact Lockheed Martin with any finding, and work with it or the DERs to develop a repair to support the request for approval of an AMOC. The sooner the operator can provide us with the recommended repair, whether developed with Lockheed Martin or DERs, the sooner we can review it and approve it. If we find an issue with the proposed repair, we will notify the operator as soon as possible to resolve the issue and to limit potential airplane downtime. We have not changed the final rule in regard to this issue.

Regarding SRMs, the structural repair manual is accepted by the FAA, but is not FAA-approved, and may be changed in future revisions. In many instances, the Lockheed 382 SRM repairs did not take into consideration WFD. This SRM also does not include repairs for all areas of the center wings inspected as required by this AD. Also, since any new repairs might prevent the repair areas from being inspected as required by this AD, new inspections will have to be developed for the affected areas with new inspection intervals that have to be approved by the Atlanta ACO. We have not changed this AD in this regard.

Request for Reports

LAC requested that we include the reports referred to in the "Differences Between the Proposed AD and Relevant Service Information" section of the NPRM in the public docket. LAC asked what reports we referred to when we specified that "reports indicate that fatigue cracks are of sufficient size and density, requiring a shorter compliance time."

We do not agree to add reports to this AD or the public docket. There have been several accidents related to Model C–130A airplanes in which the wings separated from the airplane in flight as a result of fatigue cracks in the center wing. This information is available in National Transportation Safety Board reports. In addition, the military services have also had similar accidents on their Model C–130 airplanes. Also, there are service difficulty reports on the Model L–382 commercial fleet that are available on the FAA Web site.

We have determined that existing inspections did not adequately address areas related to widespread fatigue damage that were often buried under existing structures. The reports we referred to are publicly available and are not reproduced in this AD. We have not revised this AD in this regard.

Request To Require Reporting

Lockheed requested that we revise paragraph (k) of the NPRM to require reporting instead of specifying that no reporting is required. Lockheed stated that it requires service data to properly maintain the flight safety of the Model 382 airplanes.

We do not agree to add a reporting requirement to this AD. Adding an additional requirement would further delay the publication of this AD because we would need to issue a supplemental NPRM. To delay this action would be inappropriate, since we have determined that an unsafe condition exists and that inspections must be conducted to ensure continued safety. We acknowledge the importance of operators reporting findings to the manufacturer and encourage operators to report findings, as specified in Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007. We have not changed this AD in this regard.

Request To Allow Credit for Actions Done per Structural Maintenance Plan (SMP) Cards

LAC requested that we give credit for accomplishment of Lockheed SMP515–C cards SP–216 (for Appendix A, if applicable) and/or SP–217 (for Appendix B, if applicable). LAC states that Lockheed Service Bulletin 382–57–83 (82–783), Revision 1, dated August 22, 2006, contains a provision for this.

We do not agree. As stated previously, Lockheed Service Bulletin 382–57–83 (82–783), Revision 1, dated August 22, 2006, including Appendix B, dated March 18, 2005, is not acceptable for credit for actions required by this AD. The corresponding SMP cards referenced in Lockheed Service Bulletin 382–57–83 (82–783), Revision 1, dated August 22, 2006, including Appendix B, dated March 18, 2005, also do not correspond to the actions required by this AD. We have not changed this AD in this regard.

Request To Revise Public Comment Period

LAC requested that we allow a 60-day comment period for NPRMs. LAC stated that this NPRM had only a 45-day comment period and that Executive Order 12866 specifies that in most cases the public comment period on any proposed regulation should be "of not less than 60 days." LAC stated it did not see a justification for this NPRM to have a reduced comment period.

We do not agree with the commenter's request to extend the comment period. While Executive Order 12866 does not specifically require a 60-day comment period for AD actions, the FAA has established a standard 45-day comment period for AD actions issued as NPRMs. In addition, the Administrative Procedure Act does not prescribe a specific amount of time for comment periods. We have not revised this AD in this regard.

Request To Consider Significant Economic Impact of the NPRM

Safair and LAC requested that we consider the significant economic impact of the NPRM. Safair stated that the NPRM would have a significant impact on the ability of non-

governmental organizations to deliver aid and relief. LAC stated that the NPRM could be considered to have a significant economic impact on a number of small entities. LAC stated the inspections would cost $350,000 per inspection and, therefore, would cost $2,100,000 over the life of an airplane, based on 10,000 work-hours per inspection. LAC noted the total cost for U.S. operators would be $31,500,000.

We note that the numbers provided by LAC are higher than those specified in this AD (this AD specifies costs of $160,000 per airplane and $2,400,000 for the U.S. fleet). The work-hour estimate in this AD is 2,000 work-hours, based on the estimate from the manufacturer. LAC's work-hour estimate is considerably higher than the manufacturer's estimate. In addition, LAC's estimate for the life of an airplane is unlikely since most airplanes will not operate close to 100,000 flight hours. We have not revised this AD in this regard.

Additionally, we are aware that some of the civilian operators use their Model 382 airplanes for aid and relief missions, and we do not intend to interfere with those missions. However, this AD addresses an identified unsafe condition by requiring repetitive inspections to detect damage, including fatigue cracking, of the lower surface of the center wing box. This type of damage is a significant safety issue, and we have determined that the inspection threshold and repetitive intervals are warranted. The inspection threshold does include a grace period for the initial inspections in paragraph (g)(2) of this AD to allow operators additional time to coordinate the initial inspections. We have not changed this AD in this regard.

Request To Consider Military Data

Safair asked whether the FAA was aware of the Model 382 civilian fleet hours and cycles, as opposed to the military Model C–130 fleet status. Safair also noted that the data collected by the military is "readily transferable to the more sedately operated civilian version of the airplane."

We are aware of the data for both military and civilian versions of the airplane. We developed the compliance times in this AD to address the identified unsafe condition on the civilian Model 382 airplanes. We have not revised this AD in this regard.

Request To Revise Service Bulletin To Address Flight Hours

Safair requested that Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007, be revised to specify flight hours for civilian airplanes. Safair stated that Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007, refers to equivalent baseline hours (EBH) and not flight hours, while the NPRM refers to flight hours.

We disagree with the commenter that Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007, needs to be revised. The compliance times in this AD require compliance within the specified flight hours. Operators should not refer to Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007, for compliance times. Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007, refers to EBH to distinguish between military usage and commercial usage. EBH is the baseline used in the analysis of the data. The results of an investigation showed that civilian usage and military usage were very similar and, therefore, correspond one-to-one. Operators should note that under the provisions of paragraph (n) of the final rule, we will consider requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. Operators are advised that an extension of the compliance times of this AD may be initiated by completing a Lockheed Martin operation usage evaluation and submitting it to the Atlanta ACO. We have not revised this AD in this regard.

Request To Clarify How Existing Repairs Are Addressed

LAC asked how existing repairs would be addressed if the NPRM is adopted as proposed.

We agree to provide clarification. Operators do not need to get approval from the Atlanta ACO for repairs done before the effective date of this AD. However, if an operator is unable to do an inspection required by this AD because of an existing repair, the operator must request approval of an AMOC to do the inspection. It should also be noted that all existing repairs will be evaluated during audits required by the Aging Aircraft Safety Rule, FAA–1999–5401, effective March 4, 2005 (70 FR 5518, February 2, 2005). [A correction of that rule was published in the **Federal Register** on May 6, 2005 (70 FR 23935).]. Any repair determined to be inadequate will have to be replaced with an FAA-approved repair that will require post-repair inspections. We have not changed this AD in this regard.

Request To Revise Flight Hour Reference

LAC requested that we revise the reference to 22,000 flight hours in the "Differences Between the Proposed AD and Relevant Service Information" section of the NPRM. LAC noted that Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007, including Appendixes A, B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007, specifies 20,000 flight hours for that compliance time.

We agree that 20,000 flight hours is the correct compliance time reference. However, the "Differences Between the Proposed AD and Relevant Service Information" section is not restated in the final rule. We have not changed this AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously—and minor editorial changes. We have determined that these minor changes:

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

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 15 airplanes of U.S. registry. We also estimate that it will take about 2,000 work-hours per product to comply with inspection requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD for U.S. operators to be $2,550,000, or $170,000 per airplane.

We estimate the following costs to do any necessary corrective action that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need corrective action.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Corrective actions	1,000 to 3,000 work-hours × $85 per hour = $85,000 to $255,000	$30,000	$115,000 to $285,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–09–04 Lockheed Martin Corporation/Lockheed Martin Aeronautics Company: Amendment 39–16666; Docket No. FAA–2009–1228; Directorate Identifier 2009–NM–015–AD.

Effective Date

(a) This AD is effective June 22, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 57, Wings.

Unsafe Condition

(e) This AD results from reports of fatigue cracks of the lower surface of the center wing box. The Federal Aviation Administration is issuing this AD to detect and correct such cracks, which could result in the structural failure of the wings.

Compliance

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

Inspection

(g) At the time specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, whichever occurs latest: Do a nondestructive inspection of the lower surface of the center wing box for any damage, in accordance with Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007, including Appendixes A, B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007. Repeat the inspections thereafter at intervals not to exceed 10,000 flight hours.

(1) Prior to the accumulation of 40,000 total flight hours on the center wing.

(2) Within 365 days after the effective date of this AD.

(3) Within 10,000 flight hours on the center wing box after the accomplishment of the service bulletin if done before the effective date of this AD.

Note 1: These inspection procedures supplement the existing Hercules Air Freighter progressive inspection procedures and previously issued Lockheed Martin service bulletins. After the effective date of this AD, there are no inspection procedures in those documents that fully meet the requirements of this AD.

Corrective Action

(h) If any damage is found during any inspection required by this AD: Before further flight, repair any damage using a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Exceptions to the Service Bulletin

(i) Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007, including Appendixes A, B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007, specifies that operators may adjust thresholds and intervals, use alternative repetitive inspection intervals, and use alternative inspection methods, if applicable. However, this AD requires that any alternative methods or intervals be approved by the Manager, Atlanta ACO. For any alternative methods or intervals to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(j) Where Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007, including Appendixes A, B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007, specifies that alternative repetitive inspection intervals may be used for cold-worked holes, this AD does not allow the longer interval. This AD requires that all cold-worked and non-cold worked holes be re-inspected at 10,000-flight-hour intervals.

(k) Where Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007, including Appendixes A, B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007, describes procedures for submitting a report of any damages, this AD does not require such action.

Credit for Actions Accomplished in Accordance With Previous Service Information

(l) Actions done before the effective date of this AD in accordance with Lockheed Service Bulletin 382–57–85 (82–790), Revision 1, dated March 8, 2007, are acceptable for compliance with the requirements of paragraph (g) of this AD.

(m) Actions done before the effective date of this AD in accordance with Lockheed Service Bulletin 382–57–85 (82–790), dated August 4, 2005, are acceptable for compliance with the requirements of paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

Related Information

(o) For more information about this AD, contact Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5554; fax: (404) 474–5606; e-mail: *Carl.W.Gray@faa.gov.*

Material Incorporated by Reference

(p) You must use Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007, including Appendixes A, B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Lockheed Service Bulletin 382–57–85 (82–790), Revision 2, dated August 23, 2007, including Appendixes A, B, C, D, E, F, and G, all Revision 1, all dated March 8, 2007, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P–58, 86 S. Cobb Drive, Marietta, Georgia 30063; telephone 770–494–5444; fax 770–494–5445; e-mail *ams.portal@lmco.com;* Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html.*

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

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

Issued in Renton, Washington, on April 12, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–11900 Filed 5–17–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0348; Directorate Identifier 2011–NM–069–AD; Amendment 39–16701; AD 2011–08–51]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This emergency AD was sent previously to all known U.S. owners and operators of these airplanes. This AD requires repetitive external eddy current inspections of the lap joints at stringers S–4R and S–4L, along the entire length from body station (BS) 360 to BS 908. If a crack indication is found, the AD requires either confirming the crack by doing internal eddy current inspections, or repairing the crack. As an alternative to the external eddy current inspections, the AD provides for internal eddy current and detailed inspections for cracks in the lower skin at the lower row of fasteners at stringers S–4L and S–4R. This AD was prompted by a report indicating that a Model 737–300 series airplane experienced a rapid decompression when the lap joint at stringer S–4L between BS 664 and BS 727 cracked and opened up due to cracking in the lower skin at the lower row of fasteners. We are issuing this AD to detect and correct such cracking, which could result in an uncontrolled decompression of the airplane.

DATES: This AD is effective June 2, 2011 to all persons except those persons to whom it was made immediately effective by Emergency AD 2011–08–51, issued on April 5, 2011, which contained the requirements of this amendment.

The Director of the Federal Register approved the incorporation by reference of certain publications identified in the AD as of June 2, 2011.

We must receive comments on this AD by July 5, 2011.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6447; *fax:* 425–917–6590; *e-mail: wayne.lockett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On April 5, 2011, we issued Emergency AD 2011–08–51, which requires repetitive external eddy current inspections of the lap joints at stringers S–4R and S–4L, along the entire length from body station (BS) 360 to BS 908. If a crack indication is found, the AD requires either confirming the crack by doing internal eddy current inspections, or repairing the crack. As an alternative to the external eddy current inspections, the AD provides for internal eddy current and detailed inspections for cracks in the lower skin at the lower row of fasteners at stringers S–4L and S–4R. This action was prompted by a report indicating that a Model 737–300 series airplane experienced a rapid decompression when the lap joint at stringer S–4L between BS 664 and BS 727 cracked and opened up due to cracking in the lower skin at the lower row of fasteners. The airplane had accumulated 39,781 total flight cycles

and 48,740 total flight hours. Such cracking, if not corrected, could result in an uncontrolled decompression of the airplane.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 737–53A1319, dated April 4, 2011. That service bulletin describes procedures for external eddy current inspections of the lap joints at stringers S–4R and S–4L, along the entire length from BS 360 to BS 908. If a crack indication is found, that service bulletin specifies either confirming the crack by doing internal eddy current inspections, or repairing the crack. As an alternative to the external eddy current inspections, that service bulletin provides procedures for internal eddy current and detailed inspections for cracks in the lower skin at the lower row of fasteners at stringers S–4L and S–4R. That service bulletin specifies contacting Boeing for crack repair instructions.

Since we issued the emergency AD, we have approved Revision 1 of this service bulletin as an alternative method of compliance (AMOC) with certain requirements of emergency AD 2011–08–51. We have added paragraph (l)(4) to this AD to provide information on this approved AMOC.

FAA's Determination

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

AD Requirements

This AD requires accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the AD and the Service Information."

Differences Between the AD and the Service Information

That service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this AD requires repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because cracking in the lower skin at the lower row of fasteners of the lap joints at stringers S–4R and S–4L, along the entire length from BS 360 to BS 908, could open up and result in an uncontrolled decompression of the airplane. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2011–0348 and Directorate Identifier 2011–NM–069–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 195 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	6 or 15 work-hours (depending on inspection method) × $85 per work-hour.	None	$510 or $1,275 per inspection cycle	$99,450 or $248,625 per inspection cycle.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions (confirming crack indications and repairing cracks) specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–08–51 The Boeing Company: Amendment 39–16701; Docket No. FAA–2011–0348; Directorate Identifier 2011–NM–069–AD.

Effective Date

(a) This AD is effective June 2, 2011 to all persons except those persons to whom it was made immediately effective by Emergency AD 2011–08–51, issued on April 5, 2011, which contained the requirements of this amendment.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 737–300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–53A1319, dated April 4, 2011.

Subject

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

Unsafe Condition

(e) This AD was prompted by a report indicating that a Model 737–300 series airplane experienced a rapid decompression when the lap joint at stringer S–4L between body station (BS) 664 and BS 727 cracked and opened up due to cracking in the lower skin at the lower row of fasteners. We are issuing this AD to detect and correct such cracking, which could result in an uncontrolled decompression of the airplane.

Compliance

(f) Comply with this AD within the compliance times specified, unless already done.

Inspections

(g) At the applicable time specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD: Except as provided by paragraphs (h) and (i) of this AD, do external eddy current inspections of the lap joint at stringers S–4R and S–4L, along the entire length from body station (BS) 360 to BS 908, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1319, dated April 4, 2011. If any crack indication is detected, before further flight, either confirm the crack indication by doing eddy current inspections from the interior of the fuselage in the lower skin at the lower row of fasteners at stringer S–4L and S–4R, in accordance with Boeing Alert Service Bulletin 737–53A1319, dated April 4, 2011, or repair in accordance with paragraph (j) of this AD.

(1) For airplanes that have accumulated fewer than 30,000 total flight cycles as of the effective date of this AD: Inspect before the accumulation of 30,000 total flight cycles, or within 20 days after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 30,000 or more total flight cycles and fewer than 35,000 total flight cycles as of the effective date of this AD: Inspect within 20 days after the effective date of this AD.

(3) For airplanes that have accumulated 35,000 total flight cycles or more as of the effective date of this AD: Inspect within 5 days after the effective date of this AD.

(h) For areas repaired with external doublers, paragraphs (h)(1) and (h)(2) of this AD apply.

(1) If the repair meets the criteria specified in paragraphs 3.B.1.c.(1) and 3.B.1.c.(2) of Boeing Alert Service Bulletin 737–53A1319, dated April 4, 2011, no inspection of the lower skin at the lap joint lower fastener row is required under the doubler.

(2) If the repair does not meet the criteria specified in paragraphs 3.B.1.c.(1) and 3.B.1.c.(2) of Boeing Alert Service Bulletin 737–53A1319, dated April 4, 2011, inspect the lower skin lap joint lower row internally in the area covered by the doubler, in accordance with Boeing Alert Service Bulletin 737–53A1319, dated April 4, 2011.

(i) The inspections required by paragraph (g) of this AD may alternatively be done by internal eddy current and detailed inspections for cracks in the lower skin at the lower row of fasteners at stringer S–4L and S–4R, along the entire length from BS 360 to BS 908, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1319, dated April 4, 2011.

(j) If any crack is found during any inspection required by this AD: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(k) Repeat the inspections specified in either paragraph (g) or (i) of this AD thereafter at intervals not to exceed 500 flight cycles. Either inspection method may be used at any repetitive inspection cycle.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to 9–ANM–Seattle–*ACO–AMOC–Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(4) AMOCs approved for emergency AD 2011–08–51 are approved as AMOCs for the corresponding requirements of this AD.

Related Information

(m)(1) For further information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6447; *fax:* 425–917–6590; *e-mail: wayne.lockett@faa.gov*.

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

Material Incorporated by Reference

(n) You must use Boeing Alert Service Bulletin 737–53A1319, dated April 4, 2011, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and

Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 6, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–11928 Filed 5–17–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0230; Directorate Identifier 2011–CE–004–AD; Amendment 39–16699; AD 2011–11–01]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Regional Aircraft Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 Airplanes

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

ACTION: Final rule.

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

As a result of fatigue-testing programme on Jetstream aeroplanes, cracks have been found on the main landing gear (MLG) fittings that embody modifications JM5218 or JM8003.

This condition, if not detected and corrected, could lead to a MLG collapse on the ground or during landing, possibly resulting in a fuel tank rupture, consequent damage to the aeroplane or injury to the occupants.

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

DATES: This AD becomes effective June 22, 2011.

On June 22, 2011, the Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD.

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

For service information identified in this AD, contact BAE Systems (Operations) Ltd, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; phone: +44 1292 675207, fax: +44 1292 675704; Internet: *http://www.baesystems.com/WorldWideLocations/UK/.* E-mail: *RApublications@baesystems.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090; e-mail: *taylor.martin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 16, 2011 (76 FR 14349). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

As a result of fatigue-testing programme on Jetstream aeroplanes, cracks have been found on the main landing gear (MLG) fittings that embody modifications JM5218 or JM8003.

This condition, if not detected and corrected, could lead to a MLG collapse on the ground or during landing, possibly resulting in a fuel tank rupture, consequent damage to the aeroplane or injury to the occupants.

Analysis of this failure indicates that an inspection regime has to be implemented in order to ensure the safe operation of the MLG beyond the accumulation of 41,000 Flight Cycles (FC).

For the reasons described above, this AD requires initial and repetitive eddy current inspections, and depending on findings, accomplishment of corrective actions.

The MCAI requires replacing or repairing any cracked MLG fitting found during the initial and repetitive inspections. You may obtain further information by examining the MCAI in the AD docket

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 190 products of U.S. registry. We also estimate that it will take about 20 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $323,000 or $1,700 per product.

In addition, we estimate that any necessary follow-on actions will take about 4 work-hours and require parts costing $8,000, for a cost of $8,340 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–11–01 British Aerospace Regional Aircraft: Amendment 39–16699; Docket No. FAA–2011–0230; Directorate Identifier 2011–CE–004–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 22, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to British Aerospace Regional Aircraft Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes, all serial numbers, that are:

(1) Equipped with main landing gear (MLG) fittings, part number (P/N) 1379133B1/B2/B3/B4 that incorporate Modifications JM5218 or JM8003; and

(2) Certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

Reason

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

As a result of fatigue-testing programme on Jetstream aeroplanes, cracks have been found on the main landing gear (MLG) fittings that embody modifications JM5218 or JM8003.

This condition, if not detected and corrected, could lead to a MLG collapse on the ground or during landing, possibly resulting in a fuel tank rupture, consequent damage to the aeroplane or injury to the occupants.

Analysis of this failure indicates that an inspection regime has to be implemented in order to ensure the safe operation of the MLG beyond the accumulation of 41 000 Flight Cycles (FC).

For the reasons described above, this AD requires initial and repetitive eddy current inspections, and depending on findings, accomplishment of corrective actions.

The MCAI requires replacing or repairing any cracked MLG fitting found during the initial and repetitive inspections. You may obtain further information by examining the MCAI in the AD docket.

Actions and Compliance

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

(1) Upon accumulating 41,000 flight cycles (landings) on the MLG since first installation or within the next 2,000 flight cycles (landings) on the MLG after June 22, 2011 (the effective date of this AD), whichever occurs later, eddy current inspect all the MLG leg pivot beam fastener bores for cracks. Do the inspections following British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, Revision 1, dated January 18, 2010.

(2) Before further flight after any inspection required in paragraphs (f)(1), (f)(2)(i), (f)(2)(ii), and (f)(3) of this AD in which cracks are found, replace the MLG fitting or repair any cracks. Cracks are defined in paragraph 2.D.(4) of British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, Revision 1, dated January 18, 2010. Replace or repair the MLG fitting following British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, Revision 1, dated January 18, 2010. Any time the MLG fitting is repaired or replaced, do the following actions as applicable:

(i) *MLG fitting is replaced with a new MLG fitting as specified in paragraph (f)(2) of this AD:* Upon accumulating 41,000 flight cycles (landings) after replacement, eddy current inspect all the MLG leg pivot beam fastener bores for cracks. Do the inspections following British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, Revision 1, dated January 18, 2010.

(ii) *MGL fitting is repaired as specified in paragraph (f)(2) of this AD:* Upon accumulating 27,000 flight cycles (landings) after the last repair and repetitively thereafter at intervals not to exceed 27,000 flight cycles (landings), eddy current inspect all the MLG leg pivot beam fastener bores for cracks. Do the inspections following British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, Revision 1, dated January 18, 2010.

(3) If no cracks are found during any inspection required in paragraph (f)(1), (f)(2)(i), or (f)(2)(ii) of this AD, repetitively thereafter upon accumulating 27,000 flight cycles (landings) after the last inspection, eddy current inspect all the MLG leg pivot beam fastener bores for cracks.

(4) As of June 22, 2011 (the effective date of this AD), only install a MLG fitting specified in paragraph (c)(1) of this AD that has been eddy current inspected and found free of cracks following British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, Revision 1, dated January 18, 2010.

(5) Some of the compliance times of this AD are presented in flight cycles (landings). If the total flight cycles have not been kept, multiply the total number of airplane hours time-in-service by 0.75. For the purposes of this AD:

(i) 75 cycles equals 100 hours TIS; and

(ii) 750 cycles equals 1,000 hours TIS.

Note 1: Credit will be given for the inspection required in paragraph (f)(1) of this AD and the corrective action required in paragraph (f)(2) of this AD if already done before June 22, 2011 (the effective date of this AD) following British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, original issue dated April 29, 2009; and BEA Systems All Operator Message: Ref 09–014J–1, issue 1, dated July 31, 2009.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090; e-mail: *taylor.martin@faa.gov.* Before

using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2011–0016, dated February 1, 2011; British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, original issue dated April 29, 2009; British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, Revision 1, dated January 18, 2010; and BAE Systems All Operator Message: Ref 09–014J–1, issue 1 dated July 31, 2009, for related information.

Material Incorporated by Reference

(i) You must use British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, Revision 1, dated January 18, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact BAE Systems (Operations) Ltd, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone: +44 1292 675207; fax: +44 1292 675704; Internet: *http://www.baesystems.com/WorldWideLocations/UK/;* e-mail: *RApublications@baesystems.com.*

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

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

Issued in Kansas City, Missouri, on May 10, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–11932 Filed 5–17–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1228; Directorate Identifier 2009–SW–12–AD; Amendment 39–16693; AD 2011–10–12]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, B1, B2, B3, BA, and EC130 B4 Helicopters

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the specified Eurocopter France (ECF) helicopters. This AD results from a mandatory continuing airworthiness information (MCAI) AD issued by the aviation authority of the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The superseding MCAI AD states that several engine flameouts have involved failure of the 41-tooth pinion in the engine accessory gearbox. Each affected helicopter had a starter-generator manufactured by one company. Investigation revealed the torque damping system of the starter-generator was inoperative due to incorrect adjustment that caused bending stresses on the 41-tooth pinion. Failure of the pinion causes the engine fuel pump to stop operating, resulting in an engine flameout. The EASA AD requires a new adjustment procedure to optimize the performance of the specified starter-generator damping assembly. This AD is intended to prevent failure of a pinion and a fuel pump, engine flameout, and subsequent loss of control of the helicopter.

DATES: This AD becomes effective on June 22, 2011.

The incorporation by reference of certain publications is approved by the Director of the Federal Register as of June 22, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://regulations.gov* or in person at the Docket Operations office, U.S. Department of Transportation, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone 972–641–3460, fax 972–641–3527, or at *http://www.eurocopter.com.*

Examining the AD Docket: The AD docket contains this Final rule, the Notice of proposed rulemaking (NPRM), the economic evaluation, any comments received, and other information. The street address and operating hours for the Docket Operations office (telephone 800–647–5527) are in the **ADDRESSES** section of this AD. Comments will be available in the AD docket shortly after they are received.

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, Ed Cuevas, ASW–112, Aviation Safety Engineer, Rotorcraft Directorate, Safety Management Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone 817–222–5355, fax 817–222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to the specified ECF helicopters on December 6, 2010. That NPRM was published in the **Federal Register** on December 21, 2010 (75 FR 79988). That NPRM proposed to require within 110 hours time-in-service or 3 months, whichever occurs first:

- Modifying and marking the Aircraft Parts Corporation (APC) starter generator; and
- Before installing an APC starter-generator with a part number (P/N) of 150SG122Q or 200SGL130Q, complying with the requirements of the proposed AD.

You may obtain further information by examining the MCAI AD and any related service information in the AD docket.

Comments

By publishing the NPRM, we gave the public an opportunity to participate in

developing this AD. However, we received no comment on the NPRM or on our determination of the cost to the public. Therefore, based on our review and evaluation of the available data, we have determined that air safety and the public interest require adopting the AD as proposed.

Related Service Information

ECF has issued Alert Service Bulletin (ASB) No. 80.00.07, Revision 1, dated February 6, 2009, for the Model AS350B, BA, BB, B1, B2, and B3 helicopters; and ASB No. 80A003, Revision 1, dated February 6, 2009, for the Model EC130 B4 helicopters. The Model AS350 BB helicopter is not type certificated in the United States. These ASBs specify disassembly of the damping system, replacing the Belleville springs (cup springs) and the self-locking nut, and aligning the shaft damping system of the APC starter-generator.

The actions described in the MCAI AD are intended to correct the same unsafe condition as that identified in the service information.

Differences Between This AD and the MCAI AD

The MCAI AD refers to flight hours instead of hours time-in-service.

Costs of Compliance

We estimate that this AD will affect about 847 helicopters. We also estimate that it will take about 3 work-hours per helicopter to modify the starter-generator. The average labor rate is $85 per work-hour. ECF states in its ASBs that one nut (P/N 150SG1071, $36.12) and two springs (P/N 150SG1093, $29.14 each) are required for the P/N 150SG122Q starter-generator and one nut (P/N 150SG1071, $36.12) and two springs (P/N 200SGL1093, $33.64 each) are required for the P/N 200SGL130Q starter-generator. Based on these figures, we estimate the cost of this AD on U.S. operators to be $299,749 ($215,985 for labor and $83,764 for parts), assuming that both starter-generators are evenly distributed in the fleet and that the entire fleet is modified.

Authority for This Rulemaking

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

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

Regulatory Findings

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

Therefore, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–10–12 Eurocopter France: Amendment 39–16693; Docket No. FAA–2010–1228; Directorate Identifier 2009–SW–12–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on June 22, 2011.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model AS350B, B1, B2, B3, BA, and EC130 B4 helicopters with ARRIEL engines with Aircraft Parts Corporation (APC) starter-generators, part number (P/N) 150SG122Q or P/N 200SGL130Q, without "004" marked on the identification plate, installed, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) AD states that several engine flameouts involved failure of the 41-tooth pinion in the engine accessory gearbox that caused the engine fuel pump to fail. Each affected helicopter had an APC (currently UNISON) starter-generator installed. Investigation revealed the torque damping system of the starter-generator was inoperative. The EASA AD requires a new adjustment procedure to optimize the performance of the specified starter-generator damping assembly. The required actions are intended to prevent failure of a pinion and a fuel pump, engine flameout, and subsequent loss of control of the helicopter.

Actions and Compliance

(e) Within 110 hours time-in-service (TIS) or 3 months, whichever occurs first, unless already accomplished, do the following:

(1) Replace the cup springs and fan nut, functionally test the damping system, and after this modification, mark "004" on the identification plate of the APC starter generator, as depicted in Figures 1 and 2, and by following the Accomplishment Instructions, paragraph 2.B.2., of Eurocopter Alert Service Bulletin (ASB) No. 80.00.07, Revision 1, dated February 6, 2009, for the Model AS350B, BA, B1, B2, and B3 helicopters; or ASB No. 80A003, Revision 1, dated February 6, 2009, for the Model EC130 B4 helicopter.

(2) Before installing an APC starter-generator with P/N 150SG122Q or P/N 200SGL130Q, comply with the requirements of this AD.

Differences Between This AD and the MCAI AD

(f) The MCAI AD refers to flight hours instead of hours time-in-service.

Other Information

(g) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, *Attn:* DOT/FAA Southwest Region, Ed Cuevas, ASW–112, Aviation Safety Engineer, Rotorcraft Directorate, Safety Management Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone 817–222–5355, fax 817–222–5961, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) EASA AD No. 2009–0027, dated February 18, 2009, which supersedes and cancels EASA AD No. 2009–0004, dated January 12, 2009, contains related information.

Joint Aircraft System/Component (JASC) Code

(i) The JASC Code is 2435: Starter-Generator.

Material Incorporated by Reference

(j) You must use the specified portions of Eurocopter Alert Service Bulletin No. 80.00.07, Revision 1, dated February 6, 2009; or Eurocopter Alert Service Bulletin No. 80A003, Revision 1, dated February 6, 2009, to do the actions required.

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

(2) For service information identified in this AD, contact American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone 972–641–3460, fax 972–641–3527, or at *http://www.eurocopter.com*.

(3) You may review copies at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Fort Worth, Texas 76137; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Fort Worth, Texas, on April 28, 2011.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2011–11795 Filed 5–17–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0043; Directorate Identifier 2010–NM–192–AD; Amendment 39–16700; AD 2011–11–02]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model DHC–8–400 Series Airplanes

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

ACTION: Final rule.

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

During production quality inspections of the aeroplane fuel motive flow system, it was discovered that some motive flow check valves (MFCV) were manufactured with an outlet fitting containing red anodized threads. These MFCV do not provide adequate electrical bonding between the valve and the adjacent fitting.

In the absence of proper electrical bonding within the motive flow system, the aeroplane fuel tank could be exposed to ignition sources in the case of a lightning strike.

* * * * *

The unsafe condition is the potential for ignition sources inside the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 22, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 22, 2011.

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

FOR FURTHER INFORMATION CONTACT: James Delisio, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7321; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 23, 2011 (76 FR 9982). The MCAI states:

During production quality inspections of the aeroplane fuel motive flow system, it was discovered that some motive flow check valves (MFCV) were manufactured with an outlet fitting containing red anodized threads. These MFCV do not provide adequate electrical bonding between the valve and the adjacent fitting.

In the absence of proper electrical bonding within the motive flow system, the aeroplane fuel tank could be exposed to ignition sources in the case of a lightning strike.

This [TCCA] directive is issued to [do a general visual inspection to] verify the proper configuration of the MFCV and if required, replace the affected MFCV with a MFCV that has a chemically filmed (gold color) outlet valve fitting, which provides adequate electrical bonding.

The unsafe condition is the potential for ignition sources inside the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Costs of Compliance

Based on the service information, we estimate that this AD affects about 67 products of U.S. registry. We also estimate that it takes about 33 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $130 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $196,645, or $2,935 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–11–02 Bombardier, Inc.: Amendment 39–16700. Docket No. FAA–2011–0043; Directorate Identifier 2010–NM–192–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 22, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model DHC–8–400, -401, and -402 airplanes, certificated in any category; having serial numbers 4001 through 4190 inclusive, 4199 through 4201 inclusive, and 4203 through 4216 inclusive; equipped with a motive flow check valve (MFCV) having part number (P/N) 2960018–101.

Subject

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

Reason

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

During production quality inspections of the aeroplane fuel motive flow system, it was discovered that some motive flow check valves (MFCV) were manufactured with an outlet fitting containing red anodized threads. These MFCV do not provide adequate electrical bonding between the valve and the adjacent fitting.

In the absence of proper electrical bonding within the motive flow system, the aeroplane fuel tank could be exposed to ignition sources in the case of a lightning strike.

* * * * *

The unsafe condition is the potential for ignition sources inside the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Actions

(g) Within 6,000 flight hours after the effective date of this AD, do a general visual inspection for red anodized threads of the outlet fitting of the MFCV having P/N 2960018–101 installed in the left and right wing fuel tanks, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–28–08, dated March 11, 2010. If the MFCV has a chemical film coating (gold color) outlet fitting, no further action is required by AD, except as required by paragraph (i) of this AD.

(h) If during the inspection required by paragraph (g) of this AD, a MFCV having a red anodized check valve outlet fitting is found: Before further flight, replace the MFCV with a MFCV that has a chemical film coating (gold color) check valve outlet fitting, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–28–08, dated March 11, 2010.

(i) As of the effective date of this AD, no person may install a replacement MFCV having P/N 2960018–101, with a red anodized check valve outlet fitting, on any airplane.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the New York ACO, send it to *Attn:* Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(k) Refer to Transport Canada Civil Aviation Airworthiness Directive CF–2010–21, dated July 20, 2010; and Bombardier Service Bulletin 84–28–08, dated March 11, 2010; for related information.

Material Incorporated by Reference

(l) You must use Bombardier Service Bulletin 84–28–08, dated March 11, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on May 6, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–11929 Filed 5–17–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1027; Airspace Docket No. 10–AGL–15]

Amendment of Class E Airspace; Indianapolis Executive Airport, IN

Correction

In rule document 2011–9404 appearing on pages 22013–22014 in the issue of Wednesday, April 20, 2011, make the following corrections:

§ 71.1 [Corrected]

■ 1. On page 22014, in the second column, on the 4th line from the bottom of the page, "86°102′7″ W" should read "86°10′27″ W".

■ 2. On the same page, in the third column, on the 4th line from the top of the page, "86°092′0″ W" should read "86°09′20″ W".

[FR Doc. C1–2011–9404 Filed 5–17–11; 8:45 am]

BILLING CODE 1505–01–D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AC46

Commodity Pool Operators: Relief From Compliance With Certain Disclosure, Reporting and Recordkeeping Requirements for Registered CPOs of Commodity Pools Listed for Trading on a National Securities Exchange; CPO Registration Exemption for Certain Independent Directors or Trustees of These Commodity Pools

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is adopting amendments to its regulations as they affect certain commodity pool operators (CPOs) of commodity pools whose units of participation are listed and traded on a national securities exchange (Amendments). Specifically, this action codifies the relief from certain disclosure, reporting, and recordkeeping requirements that Commission staff previously had issued to these CPOs on a case-by-case basis. It also codifies relief from the CPO registration requirement for certain independent directors or trustees of actively-managed commodity pools that Commission staff similarly has issued.

DATES: *Effective date:* June 17, 2011.

FOR FURTHER INFORMATION CONTACT: Christopher W. Cummings, Special Counsel, Division of Clearing and Intermediary Oversight, or Barbara S. Gold, Associate Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, *telephone number:* (202) 418–5450; *facsimile number:* (202) 418–5528; and *electronic mail: ccummings@cftc.gov,* or *bgold@cftc.gov,* respectively.

SUPPLEMENTARY INFORMATION:

I. Background

In order to make generally available the relief that Commission staff previously had issued on a case-by-case basis to individual CPOs of publicly-offered, exchange-listed pools, on September 9, 2010, the Commission published in the **Federal Register** proposed amendments to its Regulations 4.12 and 4.13 [1] (Proposing Release).[2] The Proposing Release commenced by explaining the history and background of the regulation of CPOs by the Commission under the Commodity Exchange Act (Act) [3] and the background and development of various statutory and regulatory provisions granting relief from CPO regulation. With respect to this relief the Commission stated:

> In implementing its statutory mandate to regulate the activities of CPOs, the Commission has endeavored to refine its regulations as appropriate to respond to changing market conditions in a manner consistent with customer protection. In addition to the issuance of relief by Commission staff on a case-by-case basis to facilitate application of regulatory requirements to new market conditions, the Commission has provided certain exemptions for registered CPOs from various of the requirements of Part 4 of its regulations, and where appropriate, it has provided exemptions from the CPO registration requirement itself.[4]

The Proposing Release then went on to discuss the relatively recent development of publicly-offered commodity pools with units of participation listed on a national securities exchange (Commodity ETFs) [5] and to describe the numerous similar requests for relief from CPOs of Commodity ETFs that Commission staff had received, and to which they had favorably responded (Prior Relief Letters).[6] Because the requests for relief and the Prior Relief Letters the staff had issued in response thereto had become fairly standardized and routine, the Commission proposed to amend the relevant regulations so as to make the relief generally available to all CPOs who meet the requisite criteria.

Thus, the Commission proposed adding new paragraph (c) to Regulation 4.12 that, subject to specified conditions, would permit the CPO of a Commodity ETF to claim relief from the specific Disclosure Document delivery and acknowledgment requirements of Regulation 4.21, the monthly Account Statement delivery requirement of Regulation 4.22, and the requirement to keep the CPO's books and records at its main business address in Regulation 4.23. In addition, the Commission proposed, subject to certain conditions, to exempt from CPO registration an independent director or trustee of a Commodity ETF, where that person was required to serve as a director or trustee solely for purposes of constituting and maintaining the audit committee required for actively-managed public companies (including actively-managed Commodity ETFs) under provisions of the Sarbanes-Oxley Act of 2002 [7] (and Securities and Exchange Commission rules and exchange listing requirements adopted pursuant thereto) by adding new paragraph (a)(5) to Regulation 4.13.

As the Proposing Release explained, then, the Commission's actions were intended to respond to financial market developments in the limited context of CPOs whose units of participation in the pools they operated were listed for trading on a national securities exchange.[8] The specific changes that the Commission proposed, as well as the rationale for those proposed changes, are set forth in the Proposing Release.[9]

In light of the generally favorable comments it received (discussed in Section II below), the Commission is adopting the Amendments essentially as proposed. In this regard, however, and

[1] 17 CFR 4.12 and 4.13. Commission regulations may be accessed through the Commission's Web site, at *http://www.cftc.gov.*

[2] 75 FR 54794.

[3] 7 U.S.C. 1 *et seq.* (2006), *as amended by* The Dodd Frank Wall Street Reform and Consumer Protection Act. Public Law 111–203, 124 Stat. 1376 (2010). The Act similarly may be accessed through the Commission's Web site.

[4] 75 FR 54794.

[5] *See* 75 FR 54794, at 54794–95. The Commission explained the origin and use of the term "Commodity ETF".

[6] *Id.* at 54795–96.

[7] Public Law 107–204, 116 Stat. 745, enacted July 30, 2002. *See* Section 10A(m) of the Securities Exchange Act of 1934 (Exchange Act), 78j–1(m) (2006), and Rule 10A–3 under the Exchange Act, 17 CFR 240.10A–3 (2010).

[8] 75 FR at 54795.

[9] *See* 75 FR at 54796–98.

as the Commission stated in the Proposing Release, it is important to note that:

> [R]egardless of registration status, all persons who come within the CPO definition are subject to certain operational and advertising requirements under Part 4, to all other provisions of the Act and the Commission's regulations prohibiting fraud that apply to CPOs, and to all other relevant provisions of the Act and the Commission's regulations that apply to all commodity interest market participants, such as the general antifraud provisions, prohibitions against manipulations, and the trade reporting requirements.[10]

Accordingly, while the regulations being published by this **Federal Register** release provide an exemption from registration for certain CPOs, these persons nonetheless remain subject to the Commission's jurisdiction.

Consistent with past practice, in a separate document published elsewhere in today's **Federal Register**, the Commission is issuing a Notice and Order that authorizes the National Futures Association to process: (1) Claims of exemption from certain Part 4 requirements for CPOs with respect to Commodity ETFs; and (2) notices of exemption from registration as a CPO filed by independent directors or trustees of Commodity ETFs.

II. The Comments on the Proposing Release

The Commission received five comment letters on the Proposing Release, as follows: Two from CPOs of Commodity ETFs; one from a registered futures association; one from a national securities exchange; and one from a bar association.[11] The commenters were uniformly in support of the amendments to the Commission's regulations set forth in the Proposing Release. In the words of the registered futures association, for example, the proposed amendments would "provide the appropriate relief without materially impacting customer protection," and they would serve as an appropriate modification of the Commission's existing requirements by "promot[ing] innovation in the marketplace." The national securities exchange provided similar comments, stating that the Proposing Release would "provide[] appropriate regulatory relief in response to the developing financial marketplace consistent with the goal of customer protection."

Commenters nonetheless requested certain clarifications and enhancements of the proposed amendments to the Commission's regulations.

A. Clarification of Relief From the Disclosure Document Delivery and Acknowledgment Requirements of Regulation 4.21

Several commenters asked whether the Disclosure Document delivery and acknowledgment requirements would apply under proposed Regulation 4.12(c) in various circumstances, including: Secondary market transactions not involving a direct purchase from the CPO; secondary market transactions not involving an underwriter or distributor; sales or resales by Authorized Participants;[12] and purchases and resales of Commodity ETF shares by an underwriter or distributor.

As a general principle, the Commission believes that secondary market transactions to which a CPO or any person acting as the agent of the CPO is not a party do not trigger the requirement for the CPO to deliver a Disclosure Document or to obtain a signed acknowledgment of receipt.[13] For a CPO of a Commodity ETF who has claimed an exemption under Regulation 4.12(c), the Disclosure Document delivery and acknowledgment requirements also do not apply in the case of transactions involving Authorized Participants or transactions involving the underwriters or distributors (acting as the CPO's agents) of the Commodity ETF's securities offering. Nevertheless, the CPO claiming relief under Regulation 4.12(c) is obligated to keep the Commodity ETF's Disclosure Document current and posted on the CPO's Web site, regardless of whether the CPO of the Commodity ETF has characterized its pool as an "open-end" or "closed-end" fund.[14]

B. Requirement To Clearly Inform Prospective Participants of the CPO's Internet Web Site

One commenter sought guidance on the requirement in proposed Regulation 4.12(c)(2)(i)(C) to"[c]learly inform prospective pool participants of the Internet address of such Web site" on which the CPO has posted the Commodity ETF's Disclosure Document. The commenter pointed out that, in the context of a pool whose shares are traded on a national securities exchange, the CPO typically does not know the identities of many prospective pool participants.

In response, the Commission has revised the text of Regulation 4.12(c)(2)(i)(C) to make clear that the CPO is required to clearly inform those prospective pool participants *with whom it has contact* of the Web site address. Additionally, and as proposed, the regulation requires the CPO to direct brokers, dealers and other selling agents to so inform prospective pool participants. Based on the representations made by the CPOs to whom the Prior Relief Letters were issued, and the Commission's understanding of the Federal securities laws applicable to the sale of publicly-offered, exchange-listed securities, the Commission expects that persons will purchase shares in a Commodity ETF through a registered broker or dealer.

C. Request To Expand Relief From Regulation 4.22 To Include Annual Reports

Another commenter asked that the CPO of a Commodity ETF claiming relief under proposed Regulation 4.12(c) be permitted to satisfy the Annual Report requirement under Regulation 4.22(c) by providing the Commodity ETF's Form 10–K on the same Web site where the CPO makes available the Commodity ETF's Disclosure Document and monthly Account Statements.

The Commission did not include such an amendment to Regulation 4.22 in the Proposing Release, and it is not including one in the Amendments. This is because the Commission believes that the benefits to Commodity ETF participants of a familiar, standardized, certified, annual report of the Commodity ETF's financial condition outweigh the burden of, for example, ascertaining the names and addresses of participants at year-end and preparing and delivering the Annual Report (all of which the CPO has 90 days to accomplish). Accordingly, the CPO of a Commodity ETF claiming exemption

[10] 75 FR 54794 (footnotes omitted).

[11] These comment letters are available on the Commission's Web site at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=761.*

[12] In the case of many Commodity ETFs, one or more registered broker dealers (Authorized Participants) contract with the CPO to purchase or redeem large blocks of Commodity ETF units as necessary to ensure that the unit price and the Commodity ETF's net asset value do not diverge and create arbitrage opportunities. *See e.g.,* CFTC Staff Letter 05–19 [2005–2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,164 (Nov. 10, 2005).

[13] *See* 44 FR 25658 (May 2, 1979), where in interpreting newly-adopted Regulation 4.21 the Commission stated:

> The operator of a commodity pool is not required to provide a Disclosure Document [rule 4.21] to a person who purchases a unit of participation or interest in the pool from a pool participant if the pool operator did not solicit the purchase.

[14] *See, e.g.,* CFTC Staff Letter 05–19 [2005–2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,164 (Nov. 10, 2005), where the CPO in making its request characterized its pool as an "open end" fund, and CFTC Staff Letter 10–06 [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 31,557 (Mar. 29, 2010), where the CPO characterized its pool as a "closed-end" fund.

under Regulation 4.12(c) remains subject to the Annual Report requirements of Regulation 4.22(c).[15]

D. Filing Requirement for Statement by an Alternate Recordkeeper

The Commission also received a comment recommending that instead of filing with the National Futures Association (NFA), as proposed, the statement required of an alternate recordkeeper by proposed Regulation 4.12(c)((2)(iii)(C), the CPO should be required "to maintain the statement as a business record and make it available to NFA" upon NFA's request.

In response, the Commission notes that the statement, whereby an alternate recordkeeper acknowledges its role, agrees to carry it out in compliance with Regulation 1.31, and agrees to keep the records it keeps open to inspection by Commission or Department of Justice representatives and available to pool participants, is a pre-requisite and condition precedent to effectiveness of relief from Regulation 4.23. Moreover, if for some reason, the books and records kept at the CPO's main business address are unavailable, the statement would be inaccessible as well. Accordingly, the Commission is retaining the filing requirement of Regulation 4.12(c)(2)(iii)(C).

E. Clarification of Effect on Recipients of Prior Relief Letters

In the Proposing Release the Commission stated that, after adoption of final regulations, a recipient of a Prior Relief Letter could continue to rely upon the Prior Relief Letter without taking any further action (such as filing a notice under Regulation 4.12(d)), so long as the requirements of the final regulations were no more restrictive than the requirements of the Prior Relief Letter to which the recipient was subject. One of the commenters asked for clarification of the words "no more restrictive."

Inasmuch as the requirements of Regulations 4.12(c) and 4.13(a)(5) as adopted are no more restrictive than those of any of the Prior Relief Letters, by this **Federal Register** release the Commission confirms that each recipient of a Prior Relief Letter may continue to rely upon that letter without taking any further action. Nevertheless, and as the Commission stated in the Proposing Release:

> [I]f the facts and representations upon which a Prior Relief Letter was based materially change, the [recipient of that Prior Relief Letter] will be required to file a [n]otice under the final rule, or cease engaging in the activities that prompted the request for the Prior Relief Letter.[16]

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[17] requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[18] With respect to CPOs, the Commission has previously determined that a CPO is a small entity if it meets the criteria for exemption from registration under current Regulation 4.13(a)(2).[19] Therefore, the requirements of the RFA do not apply to CPOs who do not meet those criteria. The Commission believes that the Amendments will not place any burdens, whether new or additional, on CPOs who would be affected hereunder. This is because the certain of the Amendments provide disclosure, reporting and recordkeeping relief for more CPOs, and another Amendment provides registration relief. The Commission did not receive any comments relative to its analysis of the RFA in the Proposing Release.

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

B. Paperwork Reduction Act

The final rule affects information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission has submitted a copy of this section to the Office of Management and Budget for its review. The information collection burdens created by the Commission's proposed rules, which were discussed in detail in the Proposing Release, are identical to the collective information collection burdens of the final rules.

The Commission invited the public and other Federal agencies to comment on any aspect of the information collection requirements discussed above. The Commission received no comment on its burden estimates or on any other aspect of the information collection requirements contained in its proposing release. The affected collection is Collection 3038–0005 (part 4 of the Commission's regulations).

C. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that 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 financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission could 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 rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission has considered the costs and benefits of these new regulations in light of the specific provisions of Section 15(a) of the Act. The Commission has determined that the costs of the Amendments are not significant. While the Amendments are expected to lessen the burden that would otherwise be imposed upon CPOs of Commodity ETFs, market participants and members of the public will nonetheless be protected because any exemption of persons from regulatory requirements would be based on such factors as substituted compliance with other similar requirements. The Commission has determined that the benefits of the Amendments are substantial. The Amendments will promote efficiency in the markets by providing uniform standards for CPOs and by reducing duplicative regulation.

The Commission requested comment on its application of these factors in the Proposing Release. No such comments were received.

After considering the costs and benefits, the Commission has determined to adopt the Amendments.

[15] Regulation 4.22(c) sets forth the basic requirement for distribution of the Annual Report. Regulations 4.22(d) through (i) contain additional provisions concerning the Annual Report, all of which remain applicable to the CPO.

[16] 75 FR 54794, 54798.

[17] 5 U.S.C. 601 *et seq.*

[18] 47 FR 18618 (Apr. 30, 1982).

[19] *Id.* at 18619–20.

List of Subjects in 17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Reporting and recordkeeping requirements.

For the reasons presented above, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6*l,* 6m, 6n, 6*o,* 12a and 23

■ 2. Section 4.12 is amended by:
■ a. Revising the heading of paragraph (b);
■ b. Revising the introductory text of paragraph (b)(1);
■ c. Amending paragraph (b)(2) by adding a heading;
■ d. Redesignating paragraphs (b)(3) through (b)(6) as paragraphs (d)(1) through (d)(4) and revising newly redesignated paragraphs (d)(1) introductory text, (d)(1)(iii)(A), (d)(1)(iii)(B), (d)(1)(iv), and (d)(2)(ii); and
■ e. Adding new paragraph (c), to read as follows:

§ 4.12 Exemption from provisions of part 4.

* * * * *

(b) *Exemption from Subpart B for certain commodity pool operators based on amount and nature of commodity interest trading.* (1) *Eligibility.* Subject to compliance with the provisions of paragraph (d) of this section, any person who is registered as a commodity pool operator, or has applied for such registration, may claim any or all of the relief available under paragraph (b)(2) of this section if:

* * * * *

(2) *Relief available to pool operator.* * * *

* * * * *

(c) *Exemption from Subpart B for certain commodity pool operators based on listing of pool participation units for trading on a national securities exchange.* (1) *Eligibility.* Subject to compliance with the provisions of paragraph (d) of this section, any person who is registered as a commodity pool operator, or has applied for such registration, may claim any or all of the relief available under paragraph (c)(2) of this section if the units of participation in the pool for which it makes such claim:

(i) Will be offered and sold pursuant to an effective registration statement under the Securities Act of 1933; and

(ii) Will be listed for trading on a national securities exchange registered as such under the Securities Exchange Act of 1934.

(2) *Relief available to pool operator.* The commodity pool operator of a pool whose units of participation meet the criteria of paragraph (c)(1) of this section may claim the following relief:

(i) In the case of § 4.21, exemption from the Disclosure Document delivery and acknowledgment requirements of that section, *Provided, however,* that the pool operator:

(A) Cause the pool's Disclosure Document to be readily accessible on an Internet Web site maintained by the pool operator;

(B) Cause the Disclosure Document to be kept current in accordance with the requirements of § 4.26(a);

(C) Clearly inform prospective pool participants with whom it has contact of the Internet address of such Web site and direct any broker, dealer or other selling agent to whom the pool operator sells units of participation in the pool to so inform prospective pool participants; and

(D) Comply with all other requirements applicable to pool Disclosure Documents under Part 4. The pool operator may satisfy the requirement of § 4.26(b) to attach to the Disclosure Document a copy of the pool's most current Account Statement and Annual Report if the pool operator makes such Account Statement and Annual Report readily accessible on an Internet Web site maintained by the pool operator.

(ii) In the case of § 4.22, exemption from the Account Statement distribution requirement of that section; *Provided, however,* that the pool operator:

(A) Cause the pool's Account Statements, including the certification required by § 4.22(h), to be readily accessible on an Internet Web site maintained by the pool operator within 30 calendar days after the last day of the applicable reporting period and continuing for a period of not less than 30 calendar days; and

(B) Cause the Disclosure Document for the pool to clearly indicate:

(*1*) That the information required to be included in the Account Statements will be readily accessible on an Internet Web site maintained by the pool operator; and

(*2*) The Internet address of such Web site.

(iii) In the case of § 4.23, exemption from the requirement to keep the books and records specified by that section at the pool operator's main business office; *Provided, however,* that:

(A) The books and records that the pool operator will not keep at its main business office will be maintained by one or more of the following: The pool's administrator, distributor or custodian, or a bank or registered broker or dealer acting in a similar capacity with respect to the pool;

(B) At the time it files electronically with the National Futures Association the notice required under paragraph (d) of this section, the pool operator files a statement that:

(*1*) Identifies the name, main business address, and main business telephone number of the person(s) who will be keeping required books and records *in lieu* of the pool operator;

(*2*) Sets forth the name and telephone number of a contact for each person who will be keeping required books and records *in lieu* of the pool operator;

(*3*) Specifies, by reference to the respective paragraph of § 4.23, the books and records that such person will be keeping; and

(*4*) Contains representations from the pool operator that:

(*i*) It will promptly amend the statement if the contact information or location of any of the books and records required to be kept by § 4.23 changes, by identifying in such amendment the new location and any other information that has changed;

(*ii*) It remains responsible for ensuring that all books and records required by § 4.23 are kept in accordance with § 1.31;

(*iii*) Within forty-eight hours after a request by a representative of the Commission, it will obtain the original books and records from the location at which they are maintained, and provide them for inspection at the pool operator's main business office; *Provided, however,* that if the original books and records are permitted to be, and are maintained, at a location outside the United States, its territories or possessions, the pool operator will obtain and provide such original books and records for inspection at the pool operator's main business office within seventy-two hours of such a request; and

(*iv*) It will disclose in the pool's Disclosure Document the location of its books and records that are required under § 4.23.

(C) At the time it files the notice required under paragraph (d) of this section, the pool operator files electronically with the National Futures Association a statement from each person who will be keeping required

books and records *in lieu* of the pool operator wherein such person:

(*1*) Acknowledges that the pool operator intends that the person keep and maintain required pool books and records;

(*2*) Agrees to keep and maintain such required books and records in accordance with § 1.31 of this chapter; and

(*3*) Agrees to keep such required books and records open to inspection by any representative of the Commission or the United States Justice Department in accordance with § 1.31 of this chapter and to make such required books and records available to pool participants in accordance with § 4.23 of this chapter.

* * * * *

(d)(1) *Notice of claim for exemption.* Any registered commodity pool operator, or applicant for commodity pool operator registration, who desires to claim the relief available under paragraph (b) or (c) of this § 4.12 must file electronically a claim of exemption with the National Futures Association through its electronic exemption filing system. Such claim must:

* * * * *

(iii) * * *

(A) The pool will be operated in compliance with paragraph (b)(1)(i) of this section and the pool operator will comply with the requirements of paragraph (b)(1)(ii) of this section; or

(B) The pool will be operated in compliance with paragraph (c)(1) of this section;

(iv) Specify the relief sought under paragraph (b)(2) or (c)(2) of this section, as the case may be, and

* * * * *

(2)(i) * * *

(ii) The claim of exemption shall be effective upon filing; *Provided, however,* That any exemption claimed hereunder:

(A) Will not be effective unless and until the notice required by this paragraph (d) contains all information called for herein and any statements required under paragraph (c)(2)(iii) have been provided; and

(B) Will cease to be effective upon any change which would render the representations made pursuant to paragraph (d)(1)(iii) of this section inaccurate or the continuation of such representations false or misleading.

* * * * *

■ 3. Section 4.13 is amended by:

■ a. Removing the word "or" at the end of paragraph (a)(3)(iv);

■ b. Removing the period at the end of paragraph (a)(4)(ii)(B) and adding "; or";

■ c. Redesignating paragraph (a)(5) as paragraph (a)(6), and revising newly redesignated paragraph (a)(6)(i) introductory text;

■ d. Adding new paragraph (a)(5); and

■ e. Revising paragraphs (b)(1)(ii) and (b)(2), to read as follows:

§ 4.13 Exemption from registration as a commodity pool operator.

* * * * *

(a) * * *

(5) The person is acting as a director or trustee with respect to a pool whose operator is registered as a commodity pool operator and is eligible to claim relief under § 4.12(c) of this chapter, *Provided, however,* that:

(i) The person acts in such capacity solely to comply with the requirements under section 10A of the Securities Exchange Act of 1934, as amended, and any Securities and Exchange Commission rules and exchange listing requirements adopted pursuant thereto, that the pool have an audit committee comprised exclusively of independent directors or trustees;

(ii) The person has no power or authority to manage or control the operations or activities of the pool except as necessary to comply with such requirement; and

(iii) The registered pool operator of the pool is and will be liable for any violation of the Act or the Commission's regulations by the person in connection with the person's serving as a director or trustee with respect to the pool.

(6)(i) Eligibility for exemption under paragraph (a)(1), (a)(2), (a)(3) or (a)(4) of this section is subject to the person furnishing in written communication physically delivered or delivered through electronic transmission to each prospective participant in the pool:

* * *

* * * * *

(b)(1) * * *

(ii) Contain the section number pursuant to which the operator is filing the notice (i.e., § 4.13(a)(1), (a)(2), (a)(3), (a)(4) or (a)(5), or both (a)(3) and (a)(4)) and represent that the pool will be operated in accordance with the criteria of that paragraph or paragraphs; and

* * * * *

(2) The person must file the notice by no later than the time that the pool operator delivers a subscription agreement for the pool to a prospective participant in the pool; *Provided, however,* that in the case of a claim for relief under § 4.13(a)(5), the person must file the notice by the later of the effective date of the pool's registration statement under the Securities Act of 1933 or the date on which the person first becomes a director or trustee; and *Provided, further,* that where a person registered with the Commission as a commodity pool operator intends to withdraw from registration in order to claim exemption hereunder, the person must notify its pool's participants in written communication physically delivered or delivered through electronic transmission that it intends to withdraw from registration and claim the exemption, and it must provide each such participant with a right to redeem its interest in the pool prior to the person filing a notice of exemption from registration

* * * * *

Issued in Washington, DC, on May 5, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2011–11551 Filed 5–17–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0389]

Drawbridge Operation Regulation; Calcasieu River, Westlake, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad swing bridge across the Calcasieu River, mile 36.4, at Westlake, Calcasieu Parish, Louisiana. The deviation is necessary to upgrade the electrical and mechanical systems of the bridge. This deviation allows the bridge to remain closed-to-navigation on five different dates in June.

DATES: This deviation is effective from 8 a.m. on Thursday, June 2, 2011, through 5 p.m. on Thursday, June 30, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0389 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0389 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 Kay Wade, Bridge Administration Branch, Coast Guard; telephone 504–671–2128, e-mail *Kay.B.Wade@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad has requested a temporary deviation from the operating schedule for the swing span bridge across the Calcasieu River, mile 36.4, at Westlake, Calcasieu Parish, Louisiana. The swing span bridge has a vertical clearance of 1.07 feet above mean high water, elevation 3.56 feet Mean Gulf Level in the closed-to-navigation position.

In accordance with 33 CFR 117.5, the bridge currently opens on signal for the passage of vessels. This deviation allows the swing span of the bridge to remain closed to navigation from 8 a.m. through 5 p.m. with an opening for the passage of vessels from 12 noon to 1 p.m. on the following Thursdays: June 2, 9, 16, 23, and 30, 2011.

The closures are necessary in order to remove and install the structural steel, new gear motors, and shafts at both ends of the bridge and the center pivot pier. This maintenance is essential for the continued operation of the bridge. Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System.

Navigation on the waterway is minimal at the bridge site. The very limited commercial traffic at the bridge site consists of commercial tugs with tows. There are only two companies that transit above the bridge. The bridge will be able to open for emergencies if necessary. There are no alternate waterway routes available. Based on experience and coordination with waterway users, it has been determined that these closures will not have a significant effect on vessels that use the waterway.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 9, 2011.

David M. Frank,

Bridge Administrator.

[FR Doc. 2011–12246 Filed 5–17–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2003–0062: FRL–9306–9]

RIN 2060–AP75

Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$); Final Rule To Repeal Grandfather Provision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is issuing a final rule that repeals the "grandfather" provision for particulate matter less than 2.5 micrometers ($PM_{2.5}$) under the Federal Prevention of Significant Deterioration (PSD) permit program, which is administered by EPA in states that lack a PSD permit program in their approved state implementation plan (SIP). The grandfather provision allowed certain facilities under certain circumstances to satisfy the PSD permit program requirements for $PM_{2.5}$ by meeting the requirements for controlling particulate matter less than 10 micrometers (PM_{10}) and analyzing impacts on PM_{10} air quality as a surrogate approach based on an EPA policy known as the "1997 PM_{10} Surrogate Policy." In its February 11, 2010, notice of proposed rulemaking, EPA also proposed to end early the 1997 PM_{10} Surrogate Policy in EPA-approved state PSD programs during the remainder of the SIP development period, which ends on May 16, 2011. EPA is taking no final action on that aspect of the proposal.

DATES: This final rule is effective on July 18, 2011.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0062. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, Northwest, 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 Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Dan deRoeck, Air Quality Policy Division, (C504–03), U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711; telephone number (919) 541–5593; fax number (919) 541–5509; or e-mail address: *deroeck.dan@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this Supplementary Information section of this preamble is organized as follows:

I. General Information
- A. Does this action apply to me?
- B. Where can I get a copy of this document and other related information?

II. Overview of This Final Rule

III. Background
- A. Prevention of Significant Deterioration Program
- B. Fine PM and the NAAQS for $PM_{2.5}$
- C. How is the PSD program for $PM_{2.5}$ implemented?

IV. Grandfather Provision for $PM_{2.5}$ in the Federal PSD Program
- A. What is the grandfather provision for $PM_{2.5}$?
- B. Why did EPA propose to repeal the grandfather provision for $PM_{2.5}$?
- C. Summary of Comments and Responses on the Proposed Repeal of the Grandfather Provision
- D. What final action is EPA taking on the grandfather provision for $PM_{2.5}$?

V. What action is EPA taking on the 1997 PM_{10} Surrogate Policy for state PSD programs?

VI. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act
- L. Conclusion and Determination Under Section 307(d)

VII. Judicial Review

VIII. Statutory Authority

I. General Information

A. Does this action apply to me?

Entities potentially affected by this action include those proposed new and modified major stationary sources subject to the Federal PSD program that submitted a complete application for a PSD permit before the July 15, 2008, effective date of the final $PM_{2.5}$ New Source Review (NSR) Implementation Rule (73 FR 28321), but have not yet received a final and effective permit authorizing the source to commence construction.

The EPA estimates that fewer than 30 proposed new major sources or modifications will be affected by the repeal of the grandfather provision in the Federal PSD program. At least two projects known to have been grandfathered received final permits to construct (that are effective) prior to EPA taking action to stay the provision in June 2009; EPA's final action to repeal the grandfather provision does not apply retroactively to such permits.

The majority of sources potentially affected are expected to be in the following groups:

Industry group	NAICS [a]
Electric services	221111, 221112, 221113, 221119, 221121, 221122.
Petroleum refining	32411.
Industrial inorganic chemicals	325181, 32512, 325131, 325182, 211112, 325998, 331311, 325188.
Industrial organic chemicals	32511, 325132, 325192, 325188, 325193, 32512, 325199.
Miscellaneous chemical products	32552, 32592, 32591, 325182, 32551.
Natural gas liquids	211112.
Natural gas transport	48621, 22121.
Pulp and paper mills	32211, 322121, 322122, 32213.
Paper mills	322121, 322122.
Automobile manufacturing	336111, 336112, 336712, 336211, 336992, 336322, 336312, 33633, 33634, 33635, 336399, 336212, 336213.
Pharmaceuticals	325411, 325412, 325413, 325414.

[a] North American Industry Classification System.

Entities affected by this action also include state and local governments responsible for implementing PSD pre-construction permit programs for new and modified major stationary sources under the Federal PSD permit program (40 CFR 52.21).

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this final rule will be posted in the regulations and standards section of our NSR home page located at *http://www.epa.gov/nsr.*

II. Overview of This Final Rule

In this final rule we [1] are taking final action on one of the two actions that we proposed in a notice of proposed rulemaking on February 11, 2010, at 75 FR 6827. We are taking final action on the proposal to repeal the grandfather provision for $PM_{2.5}$ contained in the Federal PSD rules at 40 CFR 52.21(i)(1)(xi). The grandfather provision, applicable only to PSD source applications that were determined to be complete before July 15, 2008, enabled those applications to continue to be reviewed for PM_{10} (*i.e.,* the 1997 PM_{10} Surrogate Policy) in lieu of the new requirements for $PM_{2.5}$, which became effective on July 15, 2008.

When EPA issued the PM_{10} Surrogate Policy in 1997, the policy enabled sources, EPA, and state and local permitting authorities to address the PSD requirements for $PM_{2.5}$ simply by satisfying the requirements for PM_{10}—a regulated form of particulate matter (PM) that includes $PM_{2.5}$ as well as larger particles. As explained in the 1997 PM_{10} Surrogate Policy, some alternative to directly addressing $PM_{2.5}$ was necessary at that time because of various technical problems that made it infeasible to estimate $PM_{2.5}$ and conduct the analyses necessary to demonstrate compliance with the applicable $PM_{2.5}$ requirements under the PSD program as required by section 165 of the Clean Air Act (CAA or Act).

More recently, EPA has made important progress in addressing the technical issues that impeded a $PM_{2.5}$ analysis. With the deployment and operation of the monitoring network for $PM_{2.5}$ beginning in 1999, ambient air quality monitoring data has become more abundantly available. Also, EPA has promulgated screening tools, including a significant emissions rate (SER), significant impact levels (SILs), and a significant monitoring concentration (SMC) to streamline the implementation of the PSD program for $PM_{2.5}$. Finally, EPA has issued revised test methods for sampling emissions of $PM_{2.5}$ and its condensable fraction, and issued interim modeling guidance for modeling $PM_{2.5}$ emissions to complete a cumulative air quality analysis for $PM_{2.5}$.

Accordingly, in this final action, EPA will end the use of the 1997 PM_{10} Surrogate Policy for PSD permits under the Federal PSD program (40 CFR 52.21) for sources that have been covered by the grandfather provision (that is, those sources for which a complete permit application was submitted before July 15, 2008 [2]) and that have not yet been issued a permit by the effective date of this final rule. After this final rule becomes effective, in order for those permits to be issued, such applications will have to be reviewed directly against the $PM_{2.5}$ requirements or, alternatively, use a surrogate approach for $PM_{2.5}$ (other than the 1997 PM_{10} Surrogate Policy) that is consistent with the applicable case law. Thus, those affected PSD permit applications must be amended to include further analyses to demonstrate compliance with the PSD requirements for $PM_{2.5}$. Alternatively, those affected PSD permit applications must show that PM_{10} is an adequate surrogate for $PM_{2.5}$ for that specific project. The demonstration must show, at a minimum, that the source's emissions are controlled to a level that satisfies Best Available Control Technology (BACT) requirements for $PM_{2.5}$ and that the emissions will not cause or contribute to a violation of any National Ambient Air Quality Standard (NAAQS or standard) for $PM_{2.5}$.

[1] In this preamble, the terms "we," "us," and "our" refer to the EPA.

[2] Sources that applied for a PSD permit under the Federal PSD program on or after July 15, 2008, are already excluded from using the 1997 PM_{10} Surrogate Policy as a means of satisfying the PSD requirements for $PM_{2.5}$. *See* 73 FR 28321.

We believe that it is appropriate to terminate the use of the 1997 PM_{10} Surrogate Policy at this time for those PSD applications grandfathered under the Federal PSD program because the necessary technical tools to conduct $PM_{2.5}$ analyses for PSD sources are now available. The 1997 PM_{10} Surrogate Policy was always intended as an interim measure that was to remain in effect only as long as needed. Over the past 13 years, EPA believes that the necessary technical tools and test methods required to show compliance with $PM_{2.5}$ have been developed and, hence, we believe that the need for this interim approach no longer exists.

We do not believe that the use of the 1997 PM_{10} Surrogate Policy affords the same degree of protection of the $PM_{2.5}$ NAAQS from major new and modified stationary sources as does the direct analysis of $PM_{2.5}$ emissions. In addition to the fact that the original $PM_{2.5}$ NAAQS promulgated in 1997 were generally more stringent than the corresponding PM_{10} NAAQS, the strengthening of the 24-hour primary $PM_{2.5}$ NAAQS in 2005 created a greater disparity between the relative stringency of the $PM_{2.5}$ and PM_{10} standards. Thus, now that the necessary technical tools are available, we believe that it is important to move as quickly as possible to implement fully the PSD program for $PM_{2.5}$.

We recognize that this action will in some cases increase the PSD permit review timeframe (although not unexpectedly) for the affected grandfathered sources, but we believe that the use of the 1997 PM_{10} Surrogate Policy should be permanently discontinued under the Federal PSD program. Those grandfathered sources with pending permits have been on notice since June 1, 2009, (the date of our **Federal Register** notice announcing that we had agreed to reconsider the grandfather provision and to administratively stay the provision so that we could propose repealing it) that EPA was considering ending the grandfather provision for $PM_{2.5}$ and, as noted above, now have additional technical tools to complete the permitting process for $PM_{2.5}$.

In our February 2010 proposed rule, we also proposed to end the use of the 1997 PM_{10} Surrogate Policy for permits issued under PSD programs implemented by states as part of their approved SIP. We received and have reviewed some comments that support an early end to the policy and some comments that oppose ending the policy earlier than the original May 16, 2011, sunset date. Some of the opposing comments also asked EPA to extend the time that the policy could be used beyond the original sunset date. At this time, however, we are taking no action on our proposal to end the use of the 1997 PM_{10} Surrogate Policy or to otherwise change the time period during which the policy could continue to be used.

Thus, as announced in the May 2008 rulemaking, the 1997 PM_{10} Surrogate Policy may not be used for any state PSD permits after the 3 years allowed for SIP development (ending May 16, 2011). With the end of the 1997 PM_{10} Surrogate Policy in SIP-approved states on May 16, 2011, and the repeal of the grandfather provision in this final action, the 1997 PM_{10} Surrogate Policy may not be relied on for any pending or future applications.

III. Background

A. Prevention of Significant Deterioration Program

The NSR provisions of the Act are a combination of air quality planning and air pollution control technology program requirements for new and modified major stationary sources of air pollution. Section 109 of the Act requires EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. Once we have set these standards, states must develop, adopt, and submit to us for approval SIPs that contain emission limitations and other control measures to attain and maintain the NAAQS and to meet the other requirements of section 110(a) of the Act.

Part C of title I of the Act contains the requirements for a component of the major NSR program known as the PSD (short for "Prevention of Significant Deterioration") program. The PSD program sets forth procedures for the preconstruction review and permitting of new and modified major stationary sources of air pollution locating in areas meeting the NAAQS ("attainment" areas) and areas for which there is insufficient information to classify an area as either attainment or nonattainment ("unclassifiable" areas). In most states, EPA has approved a PSD permit program that is part of the applicable SIP. The Federal PSD program at 40 CFR 52.21 applies in states that lack a SIP-approved PSD permit program, and in Indian country.[3] The applicability of the PSD program to a new major stationary source or major modification must be determined in advance of construction and is a pollutant-specific determination. Once a major new source or major modification is determined to be subject to the PSD program (*i.e.,* to be a "PSD source"), among other requirements, it must undertake a series of analyses for each regulated NSR pollutant subject to review to demonstrate that it will use the BACT and will not cause or contribute to a violation of any NAAQS or increment. In cases where the source's emissions of any NSR regulated pollutant may adversely affect an area specially classified as "Class I," such as national parks and wilderness areas, additional review must be conducted to protect the Class I area's increments and special attributes referred to as "air quality related values."

When the reviewing authority reaches a preliminary decision to authorize construction of a proposed major new source or major modification, the authority must provide notice of the preliminary decision and an opportunity for comment by the general public, industry, and other persons that may be affected by the emissions of the proposed major source or major modification. After considering these comments, the reviewing authority issues a final determination on the construction permit in accordance with the PSD regulations. However, under EPA regulations at 40 CFR part 124 and similar state regulations, an administrative appeal of a permitting determination may prevent the permit from becoming final and effective until the appeal is resolved.

B. Fine PM and the NAAQS for $PM_{2.5}$

Fine particles in the atmosphere are made up of a complex mixture of components. Common constituents include sulfates; nitrates; ammonium; elemental carbon; a great variety of organic compounds; and inorganic material (including metals, dust, sea salt, and other trace elements) generally referred to as "crustal" material, although it may contain material from other sources. Airborne PM with a nominal aerodynamic diameter of 2.5 micrometers or less (a micrometer is one-millionth of a meter, and 2.5 micrometers is less than one-seventh the average width of a human hair) is considered to be "fine particles," and is also known as $PM_{2.5}$. "Primary" particles are emitted directly into the air as solid or liquid particles (*e.g.,* elemental

[3] We have delegated our authority to some states that lack an approved PSD program in their SIPs and have requested the authority to implement the Federal PSD program. The EPA remains the reviewing authority in non-delegated states lacking SIP-approved programs. The current status of individual state PSD programs can be found at EPA's Web site at *http://www.epa.gov/nsr/where.html.*

carbon from diesel engines or fire activities, or condensable organic particles from gasoline engines). "Secondary" particles (*e.g.,* sulfates and nitrates) form in the atmosphere as a result of various chemical reactions.

The health effects associated with exposure to $PM_{2.5}$ are significant and well studied. Epidemiological studies have shown a significant correlation between elevated $PM_{2.5}$ levels and premature mortality. Other important effects associated with $PM_{2.5}$ exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children.

The EPA has established primary health-based long-term and short-term NAAQS for $PM_{2.5}$. The long-term annual average standard is 15 micrograms per cubic meter ($\mu g/m^3$), established in 1997. *See* 62 FR 38652. The short-term 24-hour standard is 35 $\mu g/m^3$, established in 2006. *See* 71 FR 61286. At the time we established the primary standards in 1997, we also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of $PM_{2.5}$ such as visibility impairment, soiling, and materials damage.

In addition, EPA has established a short-term primary and secondary NAAQS for PM_{10} as an indicator for coarse PM. The short-term standard for PM_{10} is 150 $\mu g/m^3$. *See* 71 FR 61236.

C. How is the PSD program for $PM_{2.5}$ implemented?

After we promulgated the NAAQS for $PM_{2.5}$ in 1997, we issued a guidance document titled, "Interim Implementation for the New Source Review Requirements for $PM_{2.5}$" (John S. Seitz, EPA, October 23, 1997).[4] That guidance document, referred to throughout this preamble as the "1997 PM_{10} Surrogate Policy," allows proposed major sources and major modifications to satisfy the PSD requirements for $PM_{2.5}$ by meeting the requirements for controlling PM_{10} and for analyzing impacts on PM_{10} air quality as a surrogate approach. The 1997 PM_{10} Surrogate Policy was designed to temporarily help states implement the CAA requirements for PSD pertaining to the new $PM_{2.5}$ NAAQS and $PM_{2.5}$ as a regulated pollutant. We intended to make the policy available until we resolved the known technical difficulties associated with addressing $PM_{2.5}$.[5]

We believed the 1997 PM_{10} Surrogate Policy was necessary because section 165(a)(1) of the Act provides that no new or modified major source may be constructed without a PSD permit that meets all of the section 165(a) requirements with respect to the regulated pollutant. Moreover, section 165(a)(3) provides that the emissions from any such source may not cause or contribute to a violation of "any NAAQS." The EPA policy for implementing the Federal PSD program provides that the term "any NAAQS" applies to any existing NAAQS, including new or revised NAAQS upon their effective date. Also, section 165(a)(4) requires BACT for each pollutant subject to PSD regulation. $PM_{2.5}$ became a regulated pollutant when EPA promulgated the NAAQS for $PM_{2.5}$ in 1997.

On November 1, 2005, we proposed the Clean Air Fine Particle Implementation Rule ($PM_{2.5}$ Implementation Rule) to implement the 1997 $PM_{2.5}$ NAAQS. *See* 70 FR 65984. The $PM_{2.5}$ Implementation Rule proposal described the requirements that states and tribes must meet in their implementation plans for attainment of the $PM_{2.5}$ NAAQS. Among other things, that rule proposal sought comments on revisions to the NSR program in attainment and unclassifiable areas (the PSD program), and in nonattainment areas (the nonattainment NSR program).

For PSD, EPA proposed to revise the existing PSD rules in several ways: by proposing a PSD major source threshold and SER for $PM_{2.5}$; proposing to define applicable precursors to regulate under PSD and SERs for those precursors; proposing to clarify that condensable $PM_{2.5}$ must be included in determining major source status; proposing options for implementing the preconstruction monitoring requirements for $PM_{2.5}$; and proposing transition provisions for implementing the new PSD requirements for $PM_{2.5}$.

On September 21, 2007, EPA proposed additional program elements for the PSD program for $PM_{2.5}$ that were not included in the 2005 $PM_{2.5}$ Implementation Rule proposal. The 2007 PSD proposal included several options for defining the $PM_{2.5}$ increments, SILs, and an SMC for $PM_{2.5}$. Increments define maximum allowable increases in pollutant concentrations above a baseline concentration for a particular area. The SILs and SMC are useful screening tools for effectively implementing the air quality impact requirements under PSD. *See* 72 FR 54112.

On May 16, 2008, EPA published a final $PM_{2.5}$ NSR Implementation Rule to complete the rulemaking for NSR based on the 2005 $PM_{2.5}$ Implementation Rule proposal. The 2008 $PM_{2.5}$ NSR Implementation Rule contains requirements for state and tribal plans to implement the Act's preconstruction review provisions for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas. *See* 73 FR 28321. The 2008 $PM_{2.5}$ NSR Implementation Rule generally requires that, as of the effective date of the new rule (July 15, 2008), major stationary sources seeking permits must begin directly satisfying the $PM_{2.5}$ requirements, rather than relying on the 1997 PM_{10} Surrogate Policy. In $PM_{2.5}$ attainment (or unclassifiable) areas, the new PSD requirements under 40 CFR 51.166 set forth the $PM_{2.5}$ requirements for states with SIP-approved programs to include in their state PSD programs; similar requirements were added to 40 CFR 52.21—the Federal PSD program—for EPA (or, where applicable, delegated state agencies) to use for implementing the new $PM_{2.5}$ requirements in states lacking approved PSD programs in their SIPs.

Although the 2008 $PM_{2.5}$ NSR Implementation Rule generally requires states to begin implementing the new $PM_{2.5}$ requirements upon the July 15, 2008, effective date of the rule, EPA provided two transition provisions within the PSD program under specific conditions. The first of these transition provisions, a grandfather provision, applied specifically to certain sources that had applied for PSD permits pursuant to the Federal PSD program under 40 CFR 52.21. The second transition provision allowed states to continue using the 1997 PM_{10} Surrogate Policy on an interim basis to implement the $PM_{2.5}$ requirements in any state PSD program that is part of an approved SIP. This latter exception was to apply to permit reviews under state PSD programs until the end of the 3-year SIP development period (which ends in May 2011) or until EPA approves the revised state program, whichever comes first.

[4] Available in the docket for this rulemaking, ID No. EPA–HQ–OAR–2003–0062, and at *http://www.epa.gov/region07/programs/artd/air/nsr/nsrmemos/pm25.pdf.*

[5] We identified various technical difficulties, including the lack of necessary tools to calculate the emissions of $PM_{2.5}$ and related precursors, the lack of adequate modeling techniques to project ambient impacts, the lack of $PM_{2.5}$ monitoring sites, and the lack of adequate approved test methods.

IV. Grandfather Provision for $PM_{2.5}$ in the Federal PSD Program

A. What is the grandfather provision for $PM_{2.5}$?

Under certain circumstances, EPA has allowed proposed new major sources and major modifications that have submitted a complete PSD permit application before the effective date of an amendment to the PSD regulations, but have not yet received a final and effective PSD permit, to continue relying on information already in the application rather than immediately having to amend applications to demonstrate compliance with the new PSD requirements. In such a way, these proposed sources and modifications were "grandfathered" or exempted from the new PSD requirements that would otherwise have applied to them. For example, the Federal PSD regulations at 40 CFR 52.21(i)(1)(x) provide that the owners or operators of proposed sources or modifications that submitted a complete permit application before July 31, 1987, (*i.e.,* the effective date of the revisions to the Federal PSD regulations to implement the PM_{10} NAAQS) are not required to meet the requirements for PM_{10}, but may instead satisfy the requirements for total suspended particulate matter (TSP) that were previously in effect.

In addition, EPA has allowed some grandfathering for permit applications submitted before the effective date of an amendment to the PSD regulations establishing new maximum allowable increases in pollutant concentrations (also known as PSD increments). The Federal PSD regulations at 40 CFR 52.21(i)(10) provide that proposed sources or modifications that submitted a complete permit application before the effective date of the increments for PM_{10} in the applicable implementation plan are not required to meet the increment requirements for PM_{10}, but may instead satisfy the increment requirements for TSP that were previously in effect. Also, 40 CFR 52.21(b)(i)(9) provides that new sources or sources making modifications that submitted complete permit applications before the provisions embodying the maximum allowable increase for nitrogen oxides (the nitrogen dioxide increments) took effect are not required to demonstrate compliance with the new increment requirements to be eligible to receive the permit.

Similarly, the 2008 $PM_{2.5}$ NSR Implementation Rule added a grandfather provision allowing permit applicants that had submitted a complete application under the Federal PSD program at 40 CFR 52.21 prior to the July 15, 2008, effective date, but had not yet received their PSD permit by that date, to continue being reviewed using the 1997 PM_{10} Surrogate Policy. The grandfather provision for $PM_{2.5}$, added as new paragraph (xi) to 40 CFR 52.21(i)(1), was not proposed for notice and comment in the 2005 $PM_{2.5}$ Implementation Rule proposal. Instead, the 2005 $PM_{2.5}$ Implementation Rule proposal had provided that when we issued the final rule, the new $PM_{2.5}$ requirements would take effect immediately in PSD permits issued in states where the Federal PSD program applies. *See* 70 FR 65986 at 66043.

As described more in the discussion that follows in section IV.B of this preamble, EPA has twice stayed the grandfather provision for $PM_{2.5}$, with the first of the two stays beginning on June 1, 2009. Consequently, permits covered by the grandfather provision that had not already been issued by the effective date of the first stay could not be issued relying upon the 1997 PM_{10} Surrogate Policy as the basis for approval during the time periods that the stays remained in effect.[6] Prior to the stays, the grandfather provisions remained in effect from July 15, 2008, until June 1, 2009, during which time PSD permit applications relying on the 1997 PM_{10} Surrogate Policy to satisfy the PSD requirements for $PM_{2.5}$ continued to be acceptable for purposes of approving and issuing the PSD permits.

B. Why did EPA propose to repeal the grandfather provision for $PM_{2.5}$?

On July 15, 2008, Earthjustice, acting on behalf of the Natural Resources Defense Council and the Sierra Club, submitted a petition to the Administrator seeking reconsideration of four provisions of the 2008 $PM_{2.5}$ NSR Implementation Rule.[7] One of the four challenged provisions was the grandfather provision for $PM_{2.5}$ under the Federal PSD program. In the petition, the petitioners argued that "EPA unlawfully failed to present this grandfather provision and accompanying rationale to the public for comment." *See* July 15 Petition at 6. Thus, petitioners argued, EPA had not given interested parties any notice of and the opportunity to comment on the grandfather provision that EPA adopted in 40 CFR 52.21(i)(1)(xi) in the final rule. Moreover, with regard to the grandfather provision itself, the petitioners questioned EPA's authority to waive statutory requirements by establishing such a provision, and argued that Congress specifically addressed the issue of grandfathering in section 168(b), where it allowed for the grandfathering of only those sources on which construction had commenced before enactment of the 1977 Clean Air Act Amendments. *See* July 15 Petition at 7.

Finally, petitioners argued that the technical difficulties associated with ambient monitoring, estimating emissions, and air quality modeling that led to the adoption of the 1997 PM_{10} Surrogate Policy no longer existed. Hence, the petitioners argued that all sources must conduct the required analyses for $PM_{2.5}$ directly without relying on the 1997 PM_{10} Surrogate Policy, and, therefore, there was no justification for continuing to allow any sources to rely on the grandfather provision. *See* July 15 Petition at 8. In sum, petitioners asserted that the grandfather provision in 40 CFR 52.21(i)(1)(xi) was illegal and arbitrary, and requested that EPA stay the provision.

On January 14, 2009, EPA responded in a letter to the petitioners that the Agency was denying all aspects of the petition for reconsideration. However, on February 10, 2009, the same petitioners submitted a second petition similar to thefirst to EPA.[8]

The second petition made the same arguments that were presented in the July 15, 2008, petition seeking reconsideration and an administrative stay and sought reconsideration of both the 2008 $PM_{2.5}$ NSR Implementation Rule and the January 2009 denial of petitioners' first petition for reconsideration. In response to the second petition, the Administrator reversed the Agency's earlier decision and agreed to reconsider each of the four challenged provisions.

In a letter dated April 24, 2009, the Administrator indicated that the Agency would reconsider the grandfather provision and propose to repeal the grandfather provision "on the grounds that it was adopted without prior public notice and is no longer substantially justified in light of the resolution of the technical issues with respect to $PM_{2.5}$ monitoring, emissions estimation, and air quality modeling that led to the PM_{10} Surrogate Policy in 1997." Finally, the

[6] At the time the grandfather provision for $PM_{2.5}$ was put into effect, we estimate that fewer than thirty proposed new or modified major stationary sources were covered. Of these, at least two projects subsequently received final and effective PSD permits after the July 15, 2008, effective date of the final rule and before the June 1, 2009, administrative stay took effect.

[7] Available in the docket for this rulemaking at *http://www.regulations.gov,* document number EPA–HQ–OAR–2003–0062–0279.1.

[8] Available in the docket for this rulemaking at *http://www.regulations.gov,* document number EPA–HQ–OAR–2003–0062–0281.

Administrator's letter announced an administrative stay of the grandfather provision for 3 months under the authority of section 307(d)(7)(B) of the Act.

The 3-month administrative stay became effective on June 1, 2009—the date the notice announcing the stay was published in the **Federal Register**—and ended on September 1, 2009. *See* 74 FR 26098. In order to allow additional time necessary to finalize this rulemaking, EPA proposed and promulgated a second stay that stayed the grandfather provision until June 22, 2010. *See* 74 FR 48153, September 22, 2009. During the second stay, on February 11, 2010, EPA issued a notice of proposed rulemaking that proposed repealing the grandfather provision. *See* 75 FR 6827. The same notice also proposed to end early the use of the 1997 PM_{10} Surrogate Policy in PSD programs implemented by states under an approved SIP. EPA is taking no final action on the latter proposed action, as described further in section V of this preamble.

C. Summary of Comments and Responses on the Proposed Repeal of the Grandfather Provision

A total of 38 commenters, including 7 commenters speaking at the public hearing held on February 26, 2010, responded to the 2010 notice of proposed rulemaking. Most of these commenters specifically addressed the proposed repeal of the grandfather provision for $PM_{2.5}$ in the Federal PSD rule at 40 CFR 52.21(i)(1)(xi).

Seven commenters support the proposal to repeal the grandfather provision, while 20 expressly opposed it. The commenters provided various reasons for their positions. The following discussion summarizes the significant comments and our responses categorized by specific topics. A more detailed summary of the comments and our responses is contained in the Response to Comment document in the docket for this rulemaking.

1. Comments on Legal Concerns

Comments on Legality of the Grandfather Provision:

Some environmental group commenters support EPA's proposed repeal, in part, because of their interpretation that the grandfather provision is illegal. The commenters claim that EPA has no discretion to waive or grandfather any permits under the Federal PSD program. On the other hand, 12 commenters disagree that there is anything unlawful about the grandfather provision for $PM_{2.5}$. Those commenters claim that EPA clearly has the authority to establish a grandfather provision as part of a transition procedure for implementing new requirements. Some of these commenters point out that EPA indicated in the 2008 $PM_{2.5}$ NSR Implementation Rule that the grandfather provision was consistent with existing grandfather provisions contained in 40 CFR 52.21(i)(1)(x).

Response:

We disagree with the comments stating that EPA may not establish grandfather provisions in appropriate circumstances. Our decision to repeal the grandfather provision here does not reflect any conclusion by EPA that the grandfather provision for $PM_{2.5}$, or grandfather provisions in general, are unlawful. See also our response to the following comments on statutory authority.

Comments on Statutory Authority:

Several commenters argue against the petitioners' claim in the 2009 petition for reconsideration that section 168(b) of the Act restricts EPA's ability to grandfather sources by allowing for the grandfathering of only those sources on which "construction was commenced * * * after June 1, 1975, and prior to the enactment of the Clean Air Act Amendments of 1977 * * *." These commenters argue that Congress' inclusion of a one-time grandfather provision upon enactment of the PSD program is clearly different from grandfathering when a new pollutant is identified for regulation by a NAAQS, which the Act does not address. These commenters urge EPA to confirm that the grandfather provision in section 168 (intended to ease transition upon enactment of the PSD statute) does not constrain the Agency with respect to offering reasonable transition provisions when pollutants become newly subject to a NAAQS. The commenters argue instead that the existence of the grandfather provision in section 168 generally indicates that Congress intended for smooth transitions to new programs under the Act.

One of these commenters argues that in the PSD program, EPA has included grandfather provisions when it adopted a number of new permitting requirements, and that the Act gives EPA substantial discretion to decide on the specifics of PSD applicability. (Citing *Envt'l Defense* v. *Duke Energy Corp.,* 127 S. Ct. 1423, 1433–34 (2007).) Another of the commenters claims that a repeal of the grandfather provision would be unfair and contrary to the Act.

Finally, some commenters expressly call upon EPA to clarify that it retains the authority to issue transition policies, such as the grandfather provision, when new NAAQS are issued.

Response:

We do not agree with the petitioners' original claim that EPA lacks authority to adopt and implement the grandfather provision for $PM_{2.5}$. Thus, we agree with the commenters who also question the petitioners' claim. In particular, we do not agree that the existence of certain grandfathering in section 168(b) of the Act is properly read to prohibit grandfathering in all other circumstances. As discussed previously in section IV.A of this preamble, and as pointed out in some of the comments, we have relied on the use of grandfather provisions in past NSR regulations where we believed that it was appropriate as part of the transition process for implementing new requirements. In the preamble to the 2008 $PM_{2.5}$ NSR Implementation Rule, we stated our position that the $PM_{2.5}$ grandfather provision is consistent with the existing provision under 40 CFR 52.21(i)(1)(x) whereby EPA grandfathered new and modified major stationary sources with permit applications based on PM (measured as TSP) from the then-new PM_{10} requirements established in 1987. However, while we continue to believe that we have the discretion to use grandfather provisions in the PSD program where appropriate, we have decided to repeal the grandfather provision for $PM_{2.5}$ at 40 CFR 52.21(i)(1)(xi) on policy grounds, as discussed later in this preamble.

Comments on the Section 165(c) Requirement To Issue a PSD Permit within 1 Year:

One commenter points to section 165(c) of the Act as creating a 1-year deadline for issuing a PSD permit after a complete application has been submitted, and argues that since most, if not all, of the permit applications that would be affected by the repeal of the grandfather provision were likely submitted more than 1 year before the initial (administrative) stay of the grandfather provision took effect, those applications are entitled to final action consistent with the grandfather provision and the use of PM_{10} as a surrogate for $PM_{2.5}$. The commenter further argues that, in addition to allowing EPA or states with delegated PSD authority to continue ongoing violations of the section 165(c) deadline, repealing the grandfather provision for $PM_{2.5}$ would deepen and perpetuate the "unlawful" effects of the stay.

Response:

We do not dispute that some of the permit applications relying on the grandfather provision were not granted or denied within the 1-year period provided in section 165(c) of the Act,

but disagree that this is a valid justification for allowing the use of the grandfather provision, for all of the reasons discussed in this preamble. In making this comment, the commenter has not shown that the failure to act on those applications within 1 year can be attributed to the stays of the grandfather provision (which, as the commenter recognizes, came into effect almost 1 year after the grandfather provision for $PM_{2.5}$ was promulgated). Indeed, the fact that a permit was not issued within a year during the time that the grandfather provision was in effect suggests that there were other factors that prevented the source from receiving a permit within the 1-year period provided by CAA section 165(c). Moreover, even if the grandfather provision had not been stayed with respect to those pending applications (or if the 1997 PM_{10} Surrogate Policy were to become available to the applicant through some other mechanism in the future), it is not clear that the applications provided the information or analyses necessary under the case law to demonstrate that PM_{10} is a reasonable surrogate such that the 1997 PM_{10} Surrogate Policy could be used. *See, e.g.,* discussion of case law in 75 FR 6827, 6831–32 (February 11, 2010). Finally, if the applicant believes that it can demonstrate that surrogacy is consistent with the case law, then it may do so under the case law even in the absence of EPA's 1997 PM_{10} Surrogate Policy.

Comments on the Legality of Repealing the Grandfather Provision for $PM_{2.5}$:

Some commenters opposing the proposed repeal of the grandfather provision for $PM_{2.5}$ argue that the repeal, in addition to the second petition for reconsideration, is illegal. With regard to the repeal action, some commenters question EPA's alleged position that it must repeal the grandfather provision because there was not adequate notice to the public of EPA's intent to continue the use of the 1997 PM_{10} Surrogate Policy. The commenters disagree with this position, claiming that a failure to provide for notice and comment on a provision of a rule cannot be a reason to repeal that provision.

One commenter disputes that there was inadequate notice because technical difficulties of measuring, modeling, and monitoring $PM_{2.5}$ have been well known since 1997 and were fully documented during the rulemaking. Thus, the commenter asserts that EPA lacked the technical basis to require sources that had complete applications pending at that time of the promulgation of the 2008 $PM_{2.5}$ NSR Implementation Rule to measure or predict $PM_{2.5}$ concentration. In addition, this commenter asserts that EPA failed to meet the administrative requirements for terminating the 1997 PM_{10} Surrogate Policy. Specifically, the commenter states that EPA would have had to provide notice of the withdrawal of the 1997 PM_{10} Surrogate Policy to reverse its use by sources grandfathered by the final 2008 $PM_{2.5}$ NSR Implementation Rule.[9] Based on these assertions, the commenter contends that EPA may not repeal the grandfather provision retroactively.

Two commenters believe that the grandfather provision, while not explicitly proposed, was a logical outgrowth of the proposal. One of the commenters expresses the belief that EPA raised for comment, in the 2005 $PM_{2.5}$ Implementation Rule proposal, issues concerning appropriate means for and timing of the transition to implementation of $PM_{2.5}$ requirements in the PSD program. The other commenter alleges that the 2005 $PM_{2.5}$ Implementation Rule proposal expressly announced continued use of the 1997 PM_{10} Surrogate Policy as Option 1 at 70 FR 66044 and solicited comment on this approach.

The latter commenter also argues that the 2010 proposal to repeal the grandfather provision for $PM_{2.5}$ represents a dangerous procedural precedent. While acknowledging that some actions adopted in a final rule could clearly be outside the scope of the proposed rule, the commenter asserts that as an overarching rule, the determination of whether regulatory actions adopted by a previous Administration's final rule were a logical outgrowth of the proposed rule should be left for the courts to decide. The commenter believes that leaving such decisions to the courts will ensure objective and consistent determinations of administrative law, rather than politically-influenced determinations that likely will shift from Administration to Administration. The commenter contends that the grandfather provision is not an instance that warrants EPA's departure from that principle.

One commenter claims that the issue of the lawfulness of the grandfather provision was previously addressed and decided by EPA in the January 14, 2009, denial of the first petition for reconsideration of the final 2008 $PM_{2.5}$ NSR Implementation Rule. The commenter contends that EPA's reliance on the second petition for reconsideration, filed on February 10, 2009, is contrary to section 307(d)(7)(B) of the Act because the second petition did not contain any new information that would justify reconsideration and, thus, the second petition was untimely and unfounded.

Response:

We do not agree with the commenters' claim that we are repealing the grandfather provision because of the lack of adequate notice to the public. The lack of prior public notice was a basis only for granting reconsideration and going through a subsequent rulemaking. EPA's decision to repeal the grandfather provision is not based on the fact that the provision was not explicitly proposed in the 2005 $PM_{2.5}$ Implementation Rule proposal. EPA in this rule is not taking any position on whether a lack of public notice could be a basis for repealing a rule, or on the other issues that these comments raise concerning the adequacy of public notice, logical outgrowth, the timeliness of the second petition for reconsideration, and other procedural matters.

We believe that the Act provides EPA with sufficient authority to issue transition policy, including grandfather provisions, as needed to provide for the reasonable implementation of new NSR requirements. This is evidenced by the fact that we have established grandfather provisions in the past, as described in section IV.A of this preamble. However, it should not be taken to mean that we have or intend to automatically use grandfathering as a transition mechanism for all changes in NSR requirements. In this case, we continue to believe that the technical tools needed to carry out a $PM_{2.5}$ analysis are currently available to the degree necessary to justify requiring sources to comply with the $PM_{2.5}$ requirements via $PM_{2.5}$ analyses for BACT and air quality impacts. Indeed, this is what all other sources that are not subject to the grandfather provision but are located in areas subject to the Federal PSD program are required to do. Alternatively, sources may use an appropriate surrogacy demonstration in accordance with past court decisions. For this reason and the other substantive reasons discussed in this preamble, we have decided to repeal the grandfather provision for $PM_{2.5}$.

Finally, we wish to clarify a point made by the commenter who alleged that the 2005 $PM_{2.5}$ Implementation Rule proposal expressly announced and sought comment on the continued use of the 1997 PM_{10} Surrogate Policy as Option 1. That proposal actually

[9] In support of this position, the commenter cites *Appalachian Power* v. *EPA,* 208 F.3d 1015, 1028 (D.C. Cir. 2001); *Alaska Professional Hunters Association* v. *FAA,* 177 F.3d 1030, 1033–34 (D.C. Cir. 1999); and *Paralyzed Veterans of America* v. *D.C. Arena L.P.,* 117 F.3d 579, 586 (D.C. Cir. 1997).

proposed to allow the continued use of the 1997 PM_{10} Surrogate Policy only for states that have SIP-approved PSD programs and need additional time to revise their rules to address the $PM_{2.5}$ requirements. For all other circumstances involving the NSR rules, we clearly stated that PSD applicants would be subject to the $PM_{2.5}$ requirements as of the effective date of the final rule. *See* 70 FR 66043–44.

2. Comments on the Burden on Sources Resulting From Repeal of the Grandfather Provision

In the 2010 proposal to repeal the grandfather provisions for $PM_{2.5}$, EPA solicited comments on the burdens that may be incurred by sources affected by a repeal of the grandfather provision. *See* 75 FR 6833. Several commenters express concern that repeal of the grandfather provision would unfairly penalize permit applicants who were in the process of obtaining construction permits.

Comment:

One commenter states that repeal would effectively impose retroactive requirements on sources that relied on past EPA statements of the law and the effect of the Agency's regulations, which goes against the concepts of fundamental fairness and equity.

Response:

We disagree with the premise of this comment: that the repeal of the grandfather provision imposes new requirements. The 1997 PM_{10} Surrogate Policy did not eliminate any PSD requirements; it simply provided an alternative means of demonstrating compliance with the applicable requirements that were already in the PSD regulations at 40 CFR 52.21 when the $PM_{2.5}$ NAAQS became effective in 1997. Thus, the repeal of the grandfather provision does not impose new requirements on any source. The commenter's concern about the fairness of our decision is addressed in the next response.

Comment:

Some commenters indicate that repeal would result in "permit gridlock." These commenters state that each regulatory change adds another year onto the permitting process, during which more regulations could change and add further delay. The commenters contend that because of the length of the process, the major applicable rules need to stay constant (in all but extraordinary circumstances) in order for the process to proceed in a logical and orderly fashion.

Another commenter claims that repeal of the grandfather provision would arbitrarily and unreasonably penalize applicants for the delay of the reviewing authority in discharging its permitting responsibilities. The commenter provides an example where two applicants (Applicants A and B) submit complete applications on the same date more than a year before the effective date of the stay of the grandfather provision, but Applicant A's permit is approved and issued before the effective date of the stay and Applicant B's permit is not yet ready to be issued on the effective date of the stay. The commenter concludes that, through no fault of Applicant B, EPA's violation of its nondiscretionary statutory duty to act within 1 year would impose on the applicant the significant costs and delay involved in undertaking a new analysis of PM and, potentially, revising the permit application.

One commenter opines that an important principle underlies all grandfather provisions, including this $PM_{2.5}$ grandfather provision. This principle is that a source that relies in good faith on EPA's existing standards and procedures to design a construction project and prepare a PSD permit application based upon that design should have the right to rely upon those existing standards and procedures and should not later be penalized retroactively when the standards and/or procedures change and, more importantly, go into effect after the application was submitted.

The same commenter goes on to point out that the issuance of a PSD permit under the grandfather provision would not establish any future waiver of compliance or long-term exemption under law or in practice because the Act requires all sources, including those that have undergone PSD review, to comply with limitations the state determines in its SIP are necessary to meet NAAQS (including any future revised NAAQS) as well as to comply with any New Source Performance Standards. According to the commenter, this ensures that, regardless of whether a source avoided direct evaluation of its $PM_{2.5}$ emissions during NSR because of the grandfather provision, its $PM_{2.5}$ emissions will still be evaluated for compliance with the $PM_{2.5}$ NAAQS.

Response:

In projecting the burdens of extended permitting time and effort, the commenters assume that if we did not repeal the grandfather provision, sources could rely on the 1997 PM_{10} Surrogate Policy without further analysis. However, as discussed in the 2010 proposal preamble (*see* 75 FR 6831–32) and later in section V.C.1.b of this preamble, at present sources are only able to use the policy after completing a surrogacy demonstration consistent with the case law (*i.e.*, PM_{10} must be shown to be a reasonable surrogate for $PM_{2.5}$ under the circumstances of the specific permit) and within the limits of the policy itself (*i.e.*, there must be continuing technical reasons why a $PM_{2.5}$ analysis is not technically feasible). These key prerequisites cannot be assumed to be met automatically, and the commenters have not shown these prerequisites to be met with respect to any of the applications that would be covered by the grandfather provision. Thus, even if the grandfather provision were to remain in force, additional analysis would be required of sources seeking to continue using the 1997 PM_{10} Surrogate Policy under that provision.

The EPA has considered the comments concerning how a repeal of the grandfather provision might impact the permitting process and allegedly create unfairness and inequity in some of the hypothetical circumstances described in the comments. We recognize that the commenters' concerns pertain to the fairness of our proposal to change the procedures for demonstrating compliance with the $PM_{2.5}$ requirements in mid-permit process for individual permits. However, we believe that we have an obligation to weigh those concerns and associated burdens against our interpretation of the Act, which requires that PSD sources must demonstrate that their emissions will not cause or contribute to a violation of the $PM_{2.5}$ NAAQS, and such demonstration should provide adequate assurance that such compliance will occur. We believe that the 1997 PM_{10} Surrogate Policy, which has been in effect for about 13 years, no longer provides an acceptable means of making the required demonstration in light of the availability of the technical tools needed to complete a $PM_{2.5}$ analysis. Thus, as part of our obligation to evaluate the need for transition policy both initially and on an ongoing basis, we have concluded that such burdens are neither unfair nor inequitable in comparison to the benefits associated with having a better understanding of the impacts the source's emissions will have on the $PM_{2.5}$ NAAQS. This conclusion is based on our belief that the approach set forth in the 1997 EPA policy memo, while necessary in the absence of the technical tools needed to implement the PSD program for $PM_{2.5}$ directly, is sufficiently deficient in its ability to satisfy the $PM_{2.5}$ requirements (in that it lacks a surrogacy demonstration), particularly with regard to possible

adverse impacts on the $PM_{2.5}$ NAAQS, that it should no longer be available as a means of meeting those requirements now that the necessary technical tools for a $PM_{2.5}$ analysis are available. Case law allows the use of surrogates when properly applied. Hence, we point out that the use of a valid surrogate approach in general is not prohibited by our action in this final rule.

Finally, we note that we did not stay the grandfather provision until almost 1 year following its effective date. Some permits were issued during the time that the grandfather provision was in effect. Grandfathered sources for which a PSD permit was not issued during that period likely had problems related to factors other than the $PM_{2.5}$ analyses that prevented the source from receiving a permit.

3. Comments on the Number of Sources Affected by Repeal

Comment:

We did not receive any comments that either validate or dispute the number of sources that we estimated would be affected by the stay of the grandfather provision for $PM_{2.5}$.[10] One commenter observes that EPA has recognized that continued use of the grandfather provision would affect very few, if any, still-pending permits, and finds it hard to understand why EPA feels it necessary not only to discontinue the grandfather provision altogether, but also to do so immediately by issuing the administrative stay. This commenter believes that the facts presented by EPA undercut the petitioners' claim that grandfathering certain permit applications presents an irreparable harm.

Response:

In the 2010 proposal to repeal the grandfather provision, we reported that we were aware of 27 sources that had submitted PSD permit applications under the Federal PSD program prior to July 15, 2008— the effective date of the 2008 $PM_{2.5}$ NSR Implementation Rule— but did not receive their permits by that date. Thus, these applications fell within the scope of the grandfather provision at the time it was promulgated. For at least six of these applications, the permit was either issued or denied, or the project was cancelled, prior to June 1, 2009, when the administrative stay became effective. For most of the remaining 21 applications, it is our understanding that the sources have already directly addressed, or are planning to directly address, the applicable $PM_{2.5}$ requirements in order to obtain a permit. At least two of the sources are reportedly planning to take enforceable emissions limitations on their $PM_{2.5}$ emissions in order to avoid the PSD requirements for $PM_{2.5}$ altogether.

Although only a few remaining grandfathered sources would be affected by a repeal of the grandfather provision, we believe that any air quality assessment contained in a PSD permit should reflect as accurately as possible the actual impacts that could be experienced in the area of concern. We do not believe that an analysis of PM_{10} emissions impacts on the PM_{10} NAAQS sufficiently represents the potential impacts that a source may have on the $PM_{2.5}$ NAAQS. We did not base our decision to repeal the grandfather provision on the number of sources that could ultimately have to submit revised analyses to satisfy the PSD requirements for $PM_{2.5}$.

4. Comments on Retroactive Implementation

Comment:

Several commenters who oppose the proposed repeal of the grandfather provision support a position, based on a statement by EPA in the 2010 proposal, that a repeal of the grandfather provision would not impact any PSD permits that relied on the 1997 PM_{10} Surrogate Policy that became final and effective before the stay of the provision. *See* 75 FR 6833. However, one commenter who supports repealing the grandfather provision takes exception to those opposing commenters' position and requests a clarification as follows:

> To the extent EPA is saying simply that the repeal does not change the defensibility of a source's reliance on the illegal policy, we agree. But EPA should clarify that it is not claiming that its action somehow protects past illegal permitting decisions. The Surrogate Policy is and always has been illegal. Reliance on this illegal policy is subject to challenge and cannot be protected by EPA preamble statements that lack any authority or force of law.

Response:

Neither EPA's repeal of the grandfather provision nor its ending of the 1997 PM_{10} Surrogate Policy in SIP-approved states changes the defensibility of a source's previous reliance on the 1997 PM_{10} Surrogate Policy. Put another way, repeal of the grandfather provision and the ending of the 1997 PM_{10} Surrogate Policy does not create a new basis for arguing that the permit was not properly issued. However, a challenge to a permit that is not based on the repeal itself (such as a challenge claiming that the 1997 PM_{10} Surrogate Policy did not provide a valid means of meeting the CAA requirements or that the policy was not applied properly to the permit being challenged) is not impacted by repealing the grandfather provision for $PM_{2.5}$.

5. Comments on the Technical Tools Needed for a $PM_{2.5}$ Analysis

Some of the commenters responding to the 2010 proposal to repeal the grandfather provision for $PM_{2.5}$ agree with EPA's conclusion that the technical issues associated with the implementation of a PSD program for $PM_{2.5}$ have been largely resolved. However, most of the commenters believe that the necessary technical tools for $PM_{2.5}$, *i.e.*, ambient monitoring data, emissions data (including emissions inventories, emissions factors, and stack testing methods), and air quality modeling techniques, are not yet sufficiently available to carry out an adequate analysis for $PM_{2.5}$. One commenter claims that technical problems continue to exist and points out that even EPA has acknowledged that some technical issues remain to be addressed. The commenter states that this shows EPA has not satisfied its burden to establish that the $PM_{2.5}$ program can be implemented by states.

Response:

We do not agree with the commenter's claim that because some technical issues remain to be addressed, we should not require applicants to begin carrying out a $PM_{2.5}$ analysis to satisfy the PSD requirements. We believe that there is a sufficient technical basis to allow sources to begin focusing on $PM_{2.5}$ emissions and direct demonstrations of compliance with the $PM_{2.5}$ standards without the use of surrogates. In the March 23, 2010, EPA modeling guidance memorandum titled, "Modeling Procedures for Demonstrating Compliance with the $PM_{2.5}$ NAAQS," we provide procedures that help an applicant complete both a preliminary significant impact analysis and a cumulative impact analysis to determine the impact of a PSD source or modification on the $PM_{2.5}$ NAAQS.[11]

In addition, we have recently addressed some of the important components of the PSD program for

[10] A state agency commenter claims that EPA's repeal of the grandfather provision for $PM_{2.5}$ could affect up to 16 of the agency's pending PSD projects. However, this agency's PSD program is part of an EPA-approved SIP and, as such, does not appear to be affected by the grandfather provision. Instead, we believe that the affected PSD projects would be affected by the ending of the 1997 PM_{10} Surrogate Policy. Thus, we address this comment in the section V, where our final action on ending the 1997 PM_{10} Surrogate Policy in SIP-approved PSD programs is addressed.

[11] This guidance memorandum for $PM_{2.5}$ modeling can be found on EPA's Web site at *http://www.epa.gov/ttn/scram.*

$PM_{2.5}$ that were described by various commenters. We published a final rule to revise the PM test methods to measure in-stack concentrations of $PM_{2.5}$ emissions and condensables on December 21, 2010, at 75 FR 80118. As discussed further in section IV.C.6 of this preamble, we issued the final rule containing the $PM_{2.5}$ increments, SILs, and SMC on October 20, 2010, at 75 FR 64864. All of these documents, along with the availability of ambient monitoring data and the other necessary tools that we describe in our responses to comments that follow, provide a sound and sufficient technical basis for completing necessary analyses of impacts of proposed sources on $PM_{2.5}$ ambient levels.

a. Comments on Ambient Monitoring Data

Comment:

One state agency commenter states that ambient air monitoring data may not represent "true" $PM_{2.5}$ concentrations because the Federal Reference Monitors include particle sizes above $PM_{2.5}$ in the $PM_{2.5}$ particle count. The commenter believes that it is difficult to evaluate PSD and minor NSR permits without representative ambient monitoring data to verify the accuracy or appropriateness of emissions factors and dispersion modeling predictions.

Response:

As part of its periodic review of the NAAQS, EPA recently evaluated the latest available science for PM in its "Integrated Science Assessment (ISA) for Particulate Matter" (EPA, 2009). This document included a discussion of Federal Reference Methods (FRMs) and other PM test methods. Also, FRMs and Federal Equivalent Methods for PM were discussed in detail in the 2004 PM Air Quality Criteria Document (EPA, 2004). These discussions document the fact that the size-selective nature of the FRM for $PM_{2.5}$ was developed based on epidemiological studies which used ambient fine particle sampler measurements as indicators of exposure. The position and shape of the $PM_{2.5}$ FRM's fractionation curve was specified as a means of separating particles contained in the fine-thoracic regime of ambient aerosols (*e.g.,* those generated by combustion, coagulation, condensation) from those particles produced by other mechanisms (*e.g.,* mechanically generated). The $PM_{2.5}$ FRM was not designed nor intended to collect all particles less than 2.5 micrometers (μm) aerodynamic diameter while excluding all particles greater than 2.5 μm aerodynamic diameter. Even so, the slope of the $PM_{2.5}$ FRM's fractionation is quite sharp and only a small fraction of particles greater than 2.5 μm are included in the $PM_{2.5}$ mass concentration measurement. As an example, less than 2 percent of 3.2 μm particles in the ambient air are included in the mass concentration measurement, and virtually all particles larger than this size are totally excluded from the $PM_{2.5}$ mass concentration measurement. Therefore, concerns regarding potential $PM_{2.5}$ mass measurement bias associated with large ambient particles are unfounded. As a result, the $PM_{2.5}$ FRM provides accurate $PM_{2.5}$ mass concentration measurements for purposes of determining compliance with the $PM_{2.5}$ NAAQS, and for evaluating the effectiveness of $PM_{2.5}$ control initiatives.

Comment:

Some commenters believe that some states may not have adequate ambient monitoring data to determine ambient background levels. A commenter claims that many states do not yet understand or have sufficient $PM_{2.5}$ ambient data to support the regional modeling initiatives, which would make assessing and enforcing the $PM_{2.5}$ NAAQS difficult and problematic for both the regulators and the regulated community.

Response:

States have been operating a large and robust network of $PM_{2.5}$ samplers since 1999. As part of each state's required monitoring network, each stack is required to have a least one $PM_{2.5}$ site to monitor for regional background and at least one $PM_{2.5}$ site to monitor for regional transport. *See* section 4.7.3, Appendix D to 40 CFR part 58. While there is flexibility in the location and methods used for these sites, given the spatial uniformity of $PM_{2.5}$ compared to PM_{10} and the large number of $PM_{2.5}$ samplers operating, EPA believes there are sufficient $PM_{2.5}$ data to support data needs such as modeling.

Comment:

Another commenter claims that there is no guidance available on how to determine representative (and reasonable) $PM_{2.5}$ background concentrations for air quality modeling analyses. The commenter contends that applying the current EPA-approved methodologies for determining background concentrations to $PM_{2.5}$ would result in background concentrations of $PM_{2.5}$ in excess of 80 percent (and many cases in excess of 95 percent) of the NAAQS for $PM_{2.5}$ for vast areas of the United States, which would leave a $PM_{2.5}$ emission source only an allowable air quality impact (as determined from modeling) of 1–4 μg/m^3. According to the commenter, even a small (less than 25 MMBtu/hr) natural gas-fired boiler or a baghouse with an allowable emission limit of as little 0.2 lb/hr will typically have an impact greater than 1–4 μg/m^3. The commenter believes that without additional guidance, neither of these types of small sources could be permitted.

Response:

Generally, the ambient monitoring data used as part of the cumulative analysis should represent concentrations from emissions from existing sources that are not also being modeled. However, based on recent guidance contained in the March 23, 2010, EPA modeling guidance memorandum titled, "Modeling Procedures for Demonstrating Compliance with the $PM_{2.5}$ NAAQS," [12] we recommend a different approach for $PM_{2.5}$, which reflects the fact that secondary (precursor) impacts on ambient $PM_{2.5}$ concentrations from individual source emissions cannot adequately be estimated by currently-accepted modeling techniques. That is, we recommend that the monitoring data for $PM_{2.5}$ account for the contribution of secondary $PM_{2.5}$ formation representative of the area being modeled for the proposed PSD source. *See* March 23, 2010, Guidance, at pages 7–8. To the extent that accounting for precursor impacts involves sources from which $PM_{2.5}$ emissions are also being modeled, the March 23, 2010, guidance states (at page 7) that the double-counting problem generally will be of less importance for $PM_{2.5}$ than the representativeness of the monitor for secondary contributions. We also intend to address separately more detailed guidance on the determination of representative background data for $PM_{2.5}$.

b. Comments on Emissions Factors and Emissions Inventories

Comment:

Several state agency and industry commenters cite continued problems with inadequate emissions factors and emissions inventories for estimating the amount of $PM_{2.5}$ being emitted from a new project or from existing sources that must be modeled to demonstrate compliance with the $PM_{2.5}$ NAAQS. For example, one commenter states that there is extremely limited information concerning emissions factors for $PM_{2.5}$ from industrial sources, without which it is not possible to accurately model the impacts of $PM_{2.5}$. Another commenter states that emissions inventory data for $PM_{2.5}$ are in development and grossly incomplete. Another commenter disputes EPA's claim that emissions factors and emissions inventory data are

[12] *http://www.epa.gov/ttn/scram.*

readily available, stating that such information is not yet readily available in a quality-assured format on a source-by-source and point-by-point basis as needed for regulatory permitting analyses. Another commenter adds that while progress has occurred since 2008, the inventories are far from complete and EPA has yet to finalize a $PM_{2.5}$ test method.

A state agency commenter claims that representative emission factors are not available for the majority of industries. The commenter adds that EPA clearly stated in the preamble to the final 2007 $PM_{2.5}$ Implementation Rule (citing 72 FR 20654–55, April 25, 2007) that the quality of available direct filterable and condensable $PM_{2.5}$ national industry average emissions factors, such as those found in EPA's "Compilation of Air Pollutant Emission Factors" (AP–42), is often insufficient to establish effective source-specific emissions limits, and expected states to rely on directly measured emissions data.

The same commenter recognizes the caveats related to using the factors in AP–42, but states that often these factors are the "best or only method available for estimating emissions, in spite of their limitations" (quoting from AP–42, Volume I, Fifth Edition, January 1995, Introduction to AP–42). The commenter concludes that while EPA advised stakeholders of its concern related to $PM_{2.5}$ implementation in 1997, EPA has not updated many of the emissions factors. In addition, the commenter believes that factors for condensable emissions are suspect due to the use of a test method EPA is currently seeking to revise, and directly measured data to develop realistic emissions factors are not available for many industries at this time.

Response:

We believe that progress has been made in the development of emissions factors for $PM_{2.5}$ since the time the comments were submitted. When EPA established a transition period for NSR purposes in 2008 waiving the requirement that states address condensable PM in establishing enforceable emissions limits for either PM_{10} or $PM_{2.5}$ in NSR permits, it was to provide time for sources and state/local reviewing authorities to improve the emissions factors for the filterable and condensable PM that they need for the development of emissions inventories, source-specific emissions, and control levels achievable with emissions controls. *See* 73 FR 28334–35 (providing a waiver until January 1, 2011, unless the SIP or applicable permit condition otherwise required their inclusion).

The Agency knows of several states and other organizations that have improved their ability to accurately characterize these emissions. For example, the Mid-Atlantic Regional Air Management Association (MARAMA) conducted a study to identify emissions tests that employed EPA's recommended procedures under Test Method 202, promulgated in 1990. The emissions factors developed by MARAMA are expected to be superior to the latest published AP–42 emissions factors even though both efforts attempted to eliminate tests that did not use the recommended options to minimize artifact formation. Also, the State of Pennsylvania and the San Joaquin Valley United Air Pollution Control District in California have performed or required the performance of tests using Other Test Method (OTM) 27 and/or OTM 28 to better characterize the emissions of $PM_{2.5}$ from sources and source categories from which they believed improved emissions information was needed.[13]

Although the final revised test methods for $PM_{2.5}$ were only recently promulgated, on December 21, 2010, EPA has had a long history of supporting the use of improved procedures to perform particle sizing at 2.5 micrometers using modifications of Method 201A, to employ procedures included in the 1990 version of Method 202 for condensable PM, and to employ the additional changes included in OTM 28 for condensable PM (to minimize artifact formation).

As part of the Information Collection Requests that EPA has issued to sources in support of the development of standards for select source categories, we have required testing using OTM 27 (for $PM_{2.5}$ only) and OTM 28. These emissions data are being used by EPA in the rule development process. These data are also now available for sources and states to use in the development of improved emissions factors, emissions inventories, source emissions estimates, control measures evaluations, and development of applicable requirements.

With regard to comments regarding the adequacy of existing emissions inventories, we respond that, while the National Emissions Inventory (NEI) and state SIP inventories are evolving, their quality is sufficient for permit modeling for including the emissions sources other than the source(s) being permitted. The NEI generally uses the best available information and much of that information is supplied by the states. States can take advantage of new data stemming from OTM 27 and OTM 28, as mentioned previously, to further improve their inventory estimates in the 2009 inventory years and beyond. A preliminary version of the 2008 NEI has been made available to state and local agencies, tribes and EPA Regional Offices, and an updated version is scheduled to be posted on EPA's Web site for public availability in April of 2011, to support future modeling efforts. The NEI and state inventories will continue to improve as emission factors become available based on the new $PM_{2.5}$ test method.

The EPA also has been supplementing the inventories provided by the states with estimates of condensable PM emissions for many years. These estimates have included particle sizing at 2.5 micrometers of the filterable PM and the addition of CPM. We recognize that there are some source categories where the condensable PM emissions may be biased high due to artifact issues and that some source categories where the condensable PM emissions are biased low due to permitted adjustments to test data and absence of condensable PM testing. We do not think that these inventory uncertainties justify not using the available data to develop inventories; we believe that ignoring this information introduces greater error than using the data. The EPA believes that sources and states should use these data as criteria for identifying areas needing emissions testing to correct biases. We will respond to comments concerning the test methods for $PM_{2.5}$ in the immediately following subsection.

c. Comments on the In-Stack Emissions Test Method for $PM_{2.5}$

Comment:

Closely tied to the comments citing a lack of adequate emissions factors for $PM_{2.5}$ are comments claiming the lack of an adequate test method for measuring direct $PM_{2.5}$ emissions—especially condensable PM emissions. Some commenters argue that it would be inappropriate for EPA to repeal the grandfather provision and require applicants to complete a $PM_{2.5}$ analysis without the use of a surrogate until adequate $PM_{2.5}$ emissions test methods are adopted by EPA.

One commenter claims that without final rules on test methods, the state agency is without specific authority to require applicants to comply with this

[13] These OTM methods represent improved methods for measuring $PM_{2.5}$ emissions, including condensable $PM_{2.5}$. These and other OTM methods have not yet been subject to the Federal rulemaking process, but have been reviewed by EPA's Emissions Measurement Center staff and placed on the EPA Web site at *http://www.epa.gov/ttn/emc/prelim.html*.

portion of the $PM_{2.5}$ requirements. An industry commenter expresses concern with being required to perform an emissions test to demonstrate compliance with a PSD permit $PM_{2.5}$ emissions limit when there are no federally approved methods, and with significant remaining technical issues associated with the test methods for measuring $PM_{2.5}$.

Another industry commenter states that although EPA has proposed revisions to existing Method 201A to allow measurement of filterable $PM_{2.5}$, the revised method is not final, and it is not applicable to units with entrained moisture droplets in the stack (*e.g.,* units with wet stacks due to wet flue gas desulfurization (FGD)). Because many sources (including many large electric generating units) use wet FGD to control sulfur dioxide emissions and therefore will be unable to use proposed revised Method 201A, the commenter sees no justification for the conclusion that the technical issues associated with measuring $PM_{2.5}$ have been resolved. Some commenters indicate that problems associated with unacceptable artifact levels in existing test methods can overstate the results when sampling for $PM_{2.5}$ emissions.

Response:

We acknowledge the problems that some states and sources have experienced with sampling $PM_{2.5}$ emissions. Until recently, EPA **Federal Register** test methods have been primarily used for determining compliance with EPA regulations published in parts 60, 61, and 63.[14] We have not seen a need to publish source test methods in the **Federal Register** that are primarily for other regulatory purposes, such as compliance with NAAQS-related permit limits. As a result, many air pollutants or precursor compounds do not have a promulgated Federal test method. Also, the **Federal Register** test methods do not address all possible stack or pollutant release conditions. We provide test methods on our Emissions Measurement Center Web site [15] that can be used to quantify an extended range of pollutants and an extended range of release conditions. While not complete, these measurement methods provide a resource for states to supplement the available **Federal Register** test methods.

We note, however, that on March 25, 2009, EPA proposed amendments to Methods 201A and 202—in-stack test methods for PM. *See* 74 FR 12970. For Method 201A, we proposed to add a particle-sizing device to allow for sampling of $PM_{2.5}$. For at least 5 years prior to the test method proposal, EPA provided guidance addressing the majority of the artifact formation associated with the 1991 published version of that method.[16] As mentioned previously, the final test method rule was promulgated on December 21, 2010, and became effective on January 1, 2011. The amendments to Method 202 revise the sample collection and recovery procedures of the method to reduce the formation of reaction artifact levels that could lead to inaccurate and overstated measurements of condensable PM. The amendments to Method 202 also result in increased precision of the method and improve the consistency of measurements obtained between source tests performed under different regulatory authorities.

As noted by the commenters, at this time there is no recognized method for quantifying $PM_{2.5}$ emissions from sources that have entrained water droplets. We have an active effort to develop a test method that can be used under such conditions, but at this time it is unclear whether a suitable test method can be developed. As provided in the proposed revision to Method 201A, we believe that until the test method development is complete, the use of EPA Method 5 provides a reasonable substitute for a stack condition-specific test method that performs particulate sizing at 2.5 micrometers.

Even before the final test method rule revising Methods 201A and 202 was finalized, for a number of years, we had been posting guidance on our Web site for measuring emissions of $PM_{2.5}$, including the condensable fraction.[17] The equipment, supplies, and procedures provided by this guidance have been improved over time by stakeholders who have submitted constructive comments. We believe this posted guidance has provided a reasonable means to quantify emissions that are suitable for use in developing emissions inventories; for developing information that is useful in developing appropriate achievable emissions levels for sources; and for assessing the performance of a source's PM controls.

We recognize that it is desirable to provide detailed documentation of the conduct of source test methods such that there is consistency between establishing the applicable requirements and the method used to demonstrate compliance with those requirements. We do not believe that sources and states should be limited to **Federal Register** test methods for developing their emissions inventories, for developing applicable requirements, and for demonstrating compliance with applicable requirements. Accordingly, we believe that it is appropriate for sources and states to use other test methods, even if there is a **Federal Register** test method, as long as the test method used is a reliable indicator of the emissions performance for the regulated pollutant.

d. Comments on Air Quality Models

Comment:

Commenters supporting EPA's proposal to repeal the grandfather provision generally believe that sufficient modeling tools are available to complete a $PM_{2.5}$ analysis. One local agency commenter states that air quality modeling of direct $PM_{2.5}$ emissions is readily available using EPA-approved models.

The same commenter also claims that several states (New York, New Jersey, Connecticut) have developed policies by which permit applicants use standard modeling techniques to propose permit limits on $PM_{2.5}$ emissions that would not cause or contribute to an exceedance of the $PM_{2.5}$ NAAQS. The commenter acknowledges the present difficulty in modeling secondary $PM_{2.5}$ emissions, but points out that this does not preclude a permit applicant from determining whether the direct emissions of $PM_{2.5}$ from the proposed source or modification will cause or contribute to a violation of the NAAQS. An environmental group commenter similarly agrees with EPA's conclusion that the challenges related to modeling are not a valid basis for using PM_{10} as a surrogate.

Other commenters, however, express concern about the lack of adequate modeling techniques to fully address the $PM_{2.5}$ impacts resulting from both direct $PM_{2.5}$ emissions and $PM_{2.5}$ precursors. One commenter describes current problems associated with trying to model the impacts of $PM_{2.5}$ precursors and expresses concern that by not including formation of $PM_{2.5}$ from precursor emissions, the complete

[14] **Federal Register** test methods are methods that have been proposed in the **Federal Register** for public review and comment. When those methods are promulgated they become the official Code of Federal Regulations Methods, which may be used individually or in combination with other methods by Federal, State or local agencies or sources to quantify emissions cited by the regulations for which the methods were developed and within the limitations specified in the method itself without further EPA approval.

[15] *http://www.epa.gov/ttnemc01/.*

[16] EPA guidance on predecessors for Method 201A can be found at *http://www.epa.gov/ttn/emc/prelim.html* and *http://www.epa.gov/ttn/emc/ctm.html.*

[17] In addition to the Web sites identified in the earlier footnote, *see* also *http://www.epa.gov/ttn/emc/methods/method202.html.*

impact cannot be assessed. Another commenter acknowledges that the air quality dispersion model, AERMOD, can accurately estimate the impact of direct $PM_{2.5}$ emissions, but believes that this is inadequate because elevated ground level readings of $PM_{2.5}$ seem to have little to do with local direct $PM_{2.5}$ emissions, but instead result from several days of stagnating atmospheric conditions that lead to the build-up of secondary nitrates and sulfates in the air. The commenter points out that AERMOD does not address the chemical transformations that lead to the creation of these nitrates and sulfates from precursor emissions.

Response:

We agree with the commenters who indicate that our proposal to repeal the grandfather provision should be finalized despite the technical difficulties with estimating the impacts from emissions of $PM_{2.5}$ precursors. We acknowledge that current modeling techniques do not adequately account for the secondarily-formed ambient impacts of $PM_{2.5}$ caused by $PM_{2.5}$ precursors. We are currently working on techniques to address such deficiencies in order to improve the ability to estimate overall impacts of $PM_{2.5}$ against the NAAQS and upcoming increments. Nevertheless, models are available to model the ambient impact of direct $PM_{2.5}$ emissions, and we believe that it is reasonable to carry out the required air quality impact analyses with these models. In a March 23, 2010, EPA modeling guidance memorandum titled, "Modeling Procedures for Demonstrating Compliance with $PM_{2.5}$ NAAQS," we provided procedures that enable an applicant to complete both a preliminary significant impact analysis and a cumulative impact analysis to determine the impact of a PSD source or modification on the $PM_{2.5}$ NAAQS.[18] The guidance memorandum refers to the recommended procedures as a screening-level analysis or a "First Tier modeling analysis" for demonstrating compliance with $PM_{2.5}$ NAAQS and increments. The guidance memorandum acknowledges that techniques for modeling the individual source contributions to secondary formation of $PM_{2.5}$ from precursor emissions are not currently provided for within EPA's "Guideline on Air Quality Models" (also published as Appendix W of 40 CFR part 51). However, the March 2010 guideline memorandum provides procedures to account for the secondary contribution from regional and local sources of precursor emissions as part of the cumulative impact analysis for appropriate comparison to the annual and daily $PM_{2.5}$ NAAQS through the use of monitored background ambient concentrations. We are planning to provide additional guidance on $PM_{2.5}$ modeling for PSD permitting that will include more details on conducting such modeling, including options to enable more complete accounting for individual source contributions to secondary $PM_{2.5}$ formation when their precursor emissions are sufficient to warrant inclusion. Therefore, we believe that the tools and models now available to address direct $PM_{2.5}$ emissions, and to a lesser extent secondarily-formed $PM_{2.5}$, are in total sufficient, along with our other reasons provided in this preamble, to support our conclusion that it is appropriate to repeal the grandfather provision for $PM_{2.5}$, thereby ending the use of the 1997 PM_{10} Surrogate Policy under the Federal PSD program.

6. Comments on the Lack of Key $PM_{2.5}$ Implementation Requirements

Comment:

Several state agency, state/local agency association, private citizen, and industry commenters oppose EPA's proposed repeal of the grandfather provision because EPA has yet to take final action under 40 CFR 51.166 and 52.21 to address key parameters needed to implement the PSD permit program for $PM_{2.5}$. The key parameters include SILs, an SMC, and increments for $PM_{2.5}$.

Response:

On October 20, 2010, we promulgated a final rule at 75 FR 64864 that contains the $PM_{2.5}$ increments, SILs, and SMC. Under that rule, the SILs and SMC became effective in the Federal PSD program as of December 20, 2010, and the $PM_{2.5}$ increments will become effective on October 20, 2011. Thus, under the Federal program there is no longer cause for the commenters' concern that implementation of PSD for $PM_{2.5}$ will be difficult and burdensome due to the absence of the screening levels embodied in the SILs and SMC.

There will be some period after the repeal of the grandfather provision under this final rule before the $PM_{2.5}$ increments become effective. However, note that in the preamble to the October 20, 2010, final rule for $PM_{2.5}$ increments, SILs, and SMC we stated that under that rule, sources applying for a PSD permit under the Federal PSD program after the major source baseline date for $PM_{2.5}$ (*i.e.,* after October 20, 2010), but before the $PM_{2.5}$ increments become effective (*i.e.,* before October 20, 2011), will be considered to consume $PM_{2.5}$ increment. (Under section 169(4) of the Act and the implementing regulations at 40 CFR 52.21(b)(13) and (14), any major source that commences construction after the major source baseline date consumes increment, which will be the case for any source that receives its permit after that date.) We stated further that, while EPA will not require any such source to include a $PM_{2.5}$ increment analysis as part of its initial PSD application, an increment analysis ultimately will be required before the permit may be issued if the date of issuance will occur after October 20, 2011 (the trigger date for the $PM_{2.5}$ increment), when the $PM_{2.5}$ increments can be triggered under the Federal PSD program. *See* 74 FR 64899. Any formerly grandfathered source that has not yet received its final permit will be subject to the same transition provisions for $PM_{2.5}$ increments.

D. What final action is EPA taking on the grandfather provision for $PM_{2.5}$?

We have decided to repeal the grandfather provision for $PM_{2.5}$ contained in the Federal PSD program at 40 CFR 52.21(i)(1)(xi). As the result of this final action, any PSD permit application previously covered by the grandfather provision that is not issued a final and effective PSD permit before the effective date of this rule will not be able to rely on the 1997 PM_{10} Surrogate Policy to satisfy the PSD requirements for $PM_{2.5}$. Unless the application includes a valid surrogacy demonstration (*i.e.,* the applicant can show that meeting the requirements for PM_{10} will also meet the requirements for $PM_{2.5}$), the application will need to contain $PM_{2.5}$ data and analyses to meet the $PM_{2.5}$ requirements to ensure that the applicable administrative record for the permit application is sufficient to demonstrate compliance with those requirements. Such requirements include the analyses necessary to (1) establish the appropriate BACT emissions limitation(s) for $PM_{2.5}$ in the permit, as required by section 165(a)(4) of the Act, and (2) demonstrate that the emissions increase from the proposed new or modified major stationary source will not cause or contribute to a violation of the $PM_{2.5}$ NAAQS, as required by section 165(a)(3) of the Act. For any application that previously was relying completely on a PM_{10} surrogate analysis based solely on the 1997 PM_{10} Surrogate Policy, additional information will be required to fulfill these requirements.

The EPA is aware of 27 sources that had submitted PSD permit applications under the Federal PSD program prior to July 15, 2008—the effective date of the 2008 $PM_{2.5}$ NSR Implementation Rule—but did not receive their permits by that

[18] *http://www.epa.gov/ttn/scram.*

date. While some of these applicants for PSD permits have already sought alternative means of obtaining the necessary permit, those that have not yet done so will be required to provide a $PM_{2.5}$ analysis that demonstrates the application of BACT and that the source's emissions will not cause or contribute to a violation of the $PM_{2.5}$ NAAQS or use a surrogate approach, as long as that approach comports with the conditions set forth by previous court determinations concerning surrogacy demonstrations. This final rule ensures that the 1997 PM_{10} Surrogate Policy will no longer be applicable to satisfy the PSD requirements for $PM_{2.5}$ under the Federal PSD program.

V. What action is EPA taking on the 1997 PM_{10} Surrogate Policy for state PSD programs?

On February 11, 2010, EPA proposed to end the 1997 PM_{10} Surrogate Policy in SIP-approved states before May 16, 2008. In that notice, EPA described the current status of the 1997 PM_{10} Surrogate Policy under state PSD programs that are part of an approved SIP, and explained why EPA was proposing to end the use of the 1997 PM_{10} Surrogate Policy early. 75 FR 6833–34 (Feb. 11, 2010). As indicated above, EPA in this **Federal Register** notice is taking no action concerning its proposal to end early the use of the 1997 PM_{10} Surrogate Policy under state PSD programs that are part of an approved SIP. Accordingly, the use of the 1997 PM_{10} Surrogate Policy under such state programs will end on May 16, 2011, in accordance with the discussion in the May 16, 2008, preamble. 73 FR 28321, at 28340–41.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 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 that is not already accounted for in the approved information collection request (ICR) for the NSR program. We are not adding any new paperwork requirements (*e.g.,* monitoring, reporting, and recordkeeping) as part of this final action. This action amends one part of the regulations at 40 CFR 52.21 by repealing the grandfather provision that affects fewer than 30 sources. However, the approved ICR for the NSR program was prepared as if the 2008 $PM_{2.5}$ NSR Implementation Rule, which added $PM_{2.5}$ to the NSR program, would be fully implemented immediately upon the effective date of the rule without any phase-in period during which either the grandfather provision or 1997 PM_{10} Surrogate Policy would apply. Thus, while this action will result in increased permitting burden for those sources who would have otherwise been able to use the grandfather provision or 1997 PM_{10} Surrogate Policy, this burden is already included in the approved ICR. The OMB previously approved the information collection requirements contained in the existing regulations (40 CFR parts 51 and 52) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 2060–0003. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any new requirements or burdens on small entities. We have determined that small entities will not incur any adverse impacts as a result of this action to amend the regulations at 40 CFR 52.21 (by repealing the grandfather provision that affects fewer than 30 sources). Small businesses and other small entities generally are not subject to the PSD program, which applies only to new major stationary sources and major modifications at existing major stationary sources. In addition, we do not believe that any small governments serve as PSD reviewing authorities.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any 1 year. This action only amends one part of the regulations at 40 CFR 52.21 by repealing the grandfather provision that affects fewer than 30 sources. Therefore, this action is not subject to the requirements of sections 202 or 205 of 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. This final rule applies only to new major stationary sources and to major modifications at existing major stationary sources, and we have no indication that small governments own or operate any major sources that are potentially affected by this action. In addition, we do not believe that any small governments serve as PSD reviewing authorities.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. This action only amends one part of the regulations at 40 CFR 52.21 by repealing the grandfather provision for $PM_{2.5}$ that affects fewer than 30 sources. Thus, Executive Order 13132 does not apply to this final 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 solicited comment on the proposed rule from state and local officials. We received comments from 11 state/local regulatory agency and regulatory agency association commenters concerning the proposed repeal of the grandfather provision under the Federal PSD program and the early end of the 1997 PM_{10} Surrogate

Policy under SIP-approved state PSD programs. The comments pertaining to our repeal of the grandfather provision are summarized and addressed in this preamble and in a Technical Support Document in the Docket for this rulemaking.

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 action will not impose any new obligations or enforceable duties on tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 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 Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. In fact, this action will help ensure that the health-based national standards for $PM_{2.5}$ are adequately protected against the adverse effects of $PM_{2.5}$ emissions from new and modified sources of air pollution by ending the use of the 1997 PM_{10} Surrogate Policy as a substitute approach for satisfying the $PM_{2.5}$ requirements under the Federal PSD program.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. The EPA is amending one part of the regulations at 40 CFR 52.21 (expected to affect fewer than 30 regulated entities). Only a portion of the sources involved in the production or distribution of energy could be impacted.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider 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 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.

The EPA has concluded that this final rule does not result in disproportionately high and adverse human health or environmental effects on minority and/or low income populations. The rule only amends one part of the regulations at 40 CFR 52.21 by repealing the grandfather provision that affects fewer than 30 sources. The affected sources, after further analysis and data collection, may receive permitted emissions limits that are equally or more protective of public health than would be likely in the absence of this final rule.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on July 18, 2011.

L. Conclusion and Determination Under Section 307(d)

Pursuant to section 307(d)(1)(J) of the CAA, this action is subject to the provisions of section 307(d). Further, to the extent that any aspects of this rule are not subject to the provisions of section 307(d) pursuant to section 307(d)(1)(J), the Administrator determines that this rule is subject to the provisions of section 307(d) pursuant to section 307(d)(1)(V).

VII. Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by July 18, 2011. Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

VIII. Statutory Authority

The statutory authority for this action is provided by the CAA, as amended (42 U.S.C. 7401 *et seq.*). Relevant portions of the Act include, but are not necessarily limited to, sections 101, 110, 165, and 301 of the CAA as amended (42 U.S.C. 7401, 7410, 7475, and 7601). This action is also subject to section 307(d) of the Act (42 U.S.C. 7607(d)).

List of Subjects in 40 CFR Part 52

Administrative practices and procedures, Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations.

Dated: May 10, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401, *et seq.*

§ 52.21 [Amended]

■ 2. In § 52.21, remove paragraph (i)(1)(xi).

[FR Doc. 2011–12089 Filed 5–17–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0372; FRL–9307–3]

Interim Final Determination To Defer Sanctions, Sacramento Metro 1-Hour Ozone Nonattainment Area, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to defer imposition of sanctions based on a proposed determination, published elsewhere in this **Federal Register**, that the State of California is no longer required to submit or implement a Clean Air Act (CAA) Section 185 fee program (Termination Determination) for the Sacramento Metro 1-hour Ozone nonattainment area (Sacramento Metro Area) to satisfy anti-backsliding requirements for the 1-hour Ozone standard.

DATES: This interim final determination is effective on May 18, 2011. However, comments will be accepted until June 17, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0372, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Lily Wong, EPA Region IX, (415) 947–4114, *wong.lily@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Background

On January 5, 2010 (75 FR 232), we published a finding that the State of California failed to submit State Implementation Plans (SIPs) to satisfy CAA section 185 for three 1-hour Ozone nonattainment areas: Sacramento Metro Area, Southeast Desert, and Los Angeles-South Coast Air Basin. As discussed in our January 2010 action, the finding regarding the Sacramento Metro Area addressed the Yolo/Solano Air Quality Management District, Feather River Air Quality Management District, Placer County Air Pollution Control District and El Dorado County Air Quality Management District. It did not address the Sacramento Metropolitan Air Quality Management District. This finding started a sanctions clock for imposition of offset sanctions 18 months after January 5, 2010 and highway sanctions 6 months later, pursuant to section 179 of the CAA and our regulations at 40 CFR 52.31.

On July 7, 2010 and in an update on April 13, 2011, the California Air Resources Board (CARB) submitted a request that EPA determine that the CAA section 185 obligation has been terminated for the Sacramento Metro Area. This termination determination request was supported by data demonstrating that the Sacramento Metro Area has attained the 1-hour Ozone standard based on the most recent three years of complete, quality-assured and certified data (2007–2009), and that the improvement in air quality resulted from permanent and enforceable emissions reductions. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of this submittal. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to defer imposition of sanctions that were triggered by our January 5, 2010 finding of failure to submit for the Sacramento Metro Area based on a finding that it is more likely than not that the Sacramento Metro Area is no longer obligated to submit a 185 program.

EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed CAA section 185 termination determination for the Sacramento Metro Area, we would take final action proposing to deny or denying the termination determination request and lifting this deferral of the sanctions. If no comments are submitted that change our assessment, then with regard to the finding of failure to submit discussed previously, any imposed sanctions would no longer apply and any sanction clocks would be permanently terminated on the effective date of a final CAA section 185 termination determination.

II. EPA Action

We are making an interim final determination to defer CAA section 179 sanctions associated with the Sacramento Metro Area's 1-hour Ozone CAA section 185 obligation based on our concurrent proposal to approve a CAA section 185 termination determination which would remove the obligation of the state to submit a section 185 SIP when finalized.

Because EPA has preliminarily determined that the State is not obligated to submit the SIP that was the basis of EPA's finding of failure to submit, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with

a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State is no longer obligated to submit the plan that was the basis for the finding that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State no longer is required to submit the plan prior to the rulemaking approving the State's termination determination. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

Note that today's action has no impact on the January 5, 2010 (75 FR 232) findings regarding the Southeast Desert and the Los Angeles-South Coast Air Basin.

III. Statutory and Executive Order Reviews

This action defers Federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule 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).

This rule does not have Tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefore, and established an effective date of May 18, 2011. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements.

Dated: May 9, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–12062 Filed 5–17–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2002–0058; EPA–HQ–2003–0119; FRL–9308–6]

RIN 2060–AQ25; 2060–AO12

Industrial, Commercial, and Institutional Boilers and Process Heaters and Commercial and Industrial Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rules; Delay of effective dates.

SUMMARY: The EPA is delaying the effective dates for the final rules titled "National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters" and "Standards of Performance for New Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units" under the authority of the Administrative Procedure Act (APA) until the proceedings for judicial review of these rules are completed or the EPA completes its reconsideration of the rules, whichever is earlier.

DATES: The effective dates of the final rules published in the **Federal Register** on March 21, 2011 (76 FR 15608 and 76 FR 15704), are delayed until such time as judicial review is no longer pending or until the EPA completes its reconsideration of the rules, whichever is earlier. The Director of the **Federal Register** has reviewed certain

publications listed in these final rules for incorporation by reference approval. That approval is delayed until such time as the proceedings for judicial review of these rules are completed or the EPA completes its reconsideration of the rules, whichever is earlier. The EPA will publish in the **Federal Register** announcing the effective dates and the incorporation by reference approvals once delay is no longer necessary.

ADDRESSES: *Docket:* The final rules, the petitions for reconsideration, and all other documents in the record for the rulemakings are in Docket ID. No. EPA–HQ–OAR–2002–0058 and EPA–HQ–OAR–2003–0119. All documents in the dockets are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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 EPA's Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. This Docket Facility 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 Docket is (202) 566–1741.

FOR FURTHER INFORMATION CONTACT: "National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters": Mr. Brian Shrager, Energy Strategies Group, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–7689, fax number (919) 541–5450, e-mail address: *shrager.brian@epa.gov.* "Standards of Performance for New Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units": Ms. Toni Jones, Fuels and Incineration Group, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (E143–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–0316, fax number (919) 541–3470, e-mail address: *jones.toni@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 21, 2011, the EPA issued a final rule to regulate emissions of hazardous air pollutants (HAP) from industrial, commercial, and institutional boilers and process heaters located at major sources of HAP emissions (the "Major Source Boiler MACT"). On the same date, the EPA issued a final rule to regulate emissions of certain air pollutants from commercial and industrial solid waste incineration units (the "CISWI Rule"). For further information on the Major Source Boiler MACT, *see* 76 FR 15608 (March 21, 2011). For further information on the CISWI Rule, *see* 76 FR 15704 (March 21, 2011). In the March 21 notices, the EPA established an effective date of May 20, 2011, for each rule.

On the same day the rules were issued, the EPA also published a notice explaining that the Agency was in the process of developing a notice proposing reconsideration of certain aspects of both rules. 76 FR 15267. In that notice, the EPA explained that the proposed reconsideration would address issues on which the EPA believes further opportunity for public comment is appropriate, as well as any provisions of the rules that the EPA believes warrant modification after further consideration of the data and comments already received. The EPA has received petitions from a number of interested parties seeking reconsideration of both rules. The petitions identify specific issues that the EPA is being asked to reconsider. The EPA intends to initiate a reconsideration process for both rules, as explained above. The EPA will issue a notice of proposed reconsideration of each rule that identifies the specific issue or issues raised in the petitions on which the Agency is granting reconsideration. The EPA understands that members of the public may wish to submit additional data and information to inform the EPA's proposed reconsideration, and the Agency will consider any additional information submitted in time to do so. Given the anticipated schedule for the reconsideration process, we request that any additional data and information be provided to the EPA by July 15, 2011, to allow the Agency to fully consider it.

The EPA has also received petitions for judicial review of the Major Source Boiler MACT from the United States Sugar Corporation as well as from a coalition of industry groups. The EPA has received a petition for judicial review of the CISWI Rule from a coalition of industry groups as well. Under section 705 of the APA, "an agency * * * may postpone the effective date of [an] action taken by it pending judicial review." The provision requires that the Agency find that justice requires postponing the action, that the action has not gone into effect, and that litigation is pending. As described above, neither the Major Source Boiler MACT nor the CISWI Rule has gone into effect and petitions for judicial review of both rules have been filed.

We find that justice requires postponing the effectiveness of these rules. As explained in the March 21, 2011, notice, EPA has identified several issues in the final rules which it intends to reconsider because we believe the public did not have a sufficient opportunity to comment on certain revisions EPA made to the proposed rules. These issues include revisions to the proposed subcategories and revisions to some of the proposed emissions limits. In addition, EPA received data before finalizing both rules but was unable to incorporate that data into the final rules given the court deadline for issuing the rules, which the Agency was unable to extend. EPA also notes thousands of facilities across multiple, diverse industries will need to begin to make major compliance investments soon, in light of the pressing compliance deadlines. These investments may not be reversible if the standards are in fact revised following reconsideration and full evaluation of all relevant data.

Finally, the EPA notes that it is delaying the effective date of the Major Source Boiler MACT and the CISWI Rule pursuant to the APA, rather than section 307(d)(7)(B) of the Clean Air Act. As explained above, the APA authorizes the EPA to find that justice requires postponing the effective date of a rule when litigation is pending. In contrast, the Clean Air Act authorizes the EPA to stay the effectiveness of a rule for three months if the Administrator has convened a proceeding to reconsider the rule. The EPA further notes that section 307(d) of the Act expressly states that it is intended to replace only sections 553–557 of the APA (except as otherwise provided in section 307(d)), and does not state that it replaces section 705 of the APA. Therefore, the EPA has the discretion to decide whether it is appropriate to delay the effective date of a rule under either provision, based on the specific facts and circumstances before the Agency. Since petitions for judicial review of both the Major Source Boiler MACT and the CISWI Rule have been filed, and, as explained above, justice requires a delay of the effective

dates, it is reasonable for the EPA to exercise its authority to delay the effective dates of the Major Source Boiler MACT and the CISWI Rule under the APA for a period that exceeds three months.

II. Issuance of a Stay and Delay of Effective Date

Pursuant to section 705 of the APA, the EPA hereby postpones the effectiveness of the Major Source Boiler MACT and the CISWI Rule until the proceedings for judicial review of these rules are complete or the EPA completes its reconsideration of the rules, whichever is earlier. By this action, we are delaying the effective date of both rules, published in the **Federal Register** on March 21, 2011 (76 FR 15608 and 76 FR 15704). The delay of the effective date of the CISWI Rule applies only to those provisions issued on March 21, 2011, and not to any provisions of 40 CFR part 60, subparts CCCC and DDDD, in place prior to that date. This delay of effectiveness will remain in place until the proceedings for judicial review are completed or the EPA completes its reconsideration of the rules, whichever is earlier, and the Agency publishes a notice in the **Federal Register** announcing that the rules are in effect.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

For the reasons set forth above, under the authority at 7 U.S.C. 705, the effective dates of FRL 9272–8, 76 FR 15608 (March 21, 2011), and FRL 9273–4, 76 FR 15704 (March 21, 2011) are delayed until further notice.

Dated: May 16, 2011.

Lisa P. Jackson,

Administrator.

[FR Doc. 2011–12308 Filed 5–17–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2004–0080, FRL–9306–8]

RIN 2060–AF00

Method 301—Field Validation of Pollutant Measurement Methods From Various Waste Media

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends EPA's Method 301, Field Validation of Pollutant Measurement Methods from Various Waste Media. We revised the procedures in Method 301 based on our experience in applying the method and to correct errors that were brought to our attention. The revised Method 301 is more flexible, less expensive, and easier to use. This action finalizes amendments to Method 301 after considering comments received on the proposed rule published in the **Federal Register** on December 22, 2004.

DATES: This final rule is effective on May 18, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0080. 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.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Docket Facility and the Public Reading Room are 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 Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Lula H. Melton, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurement Technology Group (E143–02), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2910; fax number: (919) 541–0516; e-mail address: *melton.lula@epa.gov.*

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I. General Information

A. Does this action apply to me?

Method 301 affects/applies to you if you want to propose a new or alternative test method to meet an EPA compliance requirement.

B. Where can I obtain a copy of this action?

In addition to being available in the docket, an electronic copy of this rule will also be available on the Worldwide Web (www) through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the final rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. A redline strikeout

document that compares this final rule to the proposed rule has also been added to the docket.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by July 18, 2011. Under section 307(d)(7)(B) of the CAA, only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by this action may not be challenged separately in civil or criminal proceedings brought by EPA to enforce these requirements.

II. Background

This action amends EPA's Method 301, Field Validation of Pollutant Measurement Methods from Various Waste Media. Method 301 was originally promulgated in Appendix A of 40 CFR part 63 on June 3, 1991. We proposed amendments to Method 301 on December 22, 2004 (69 FR 76642). This action responds to comments received on that proposal and corrects errors found in the method.

III. Summary of the Final Method

You would use Method 301 whenever you propose to use a test method to meet an EPA compliance requirement other than a method required under a 40 CFR part 63 rule. The method specifies procedures for determining and documenting the precision and bias of measured concentrations from various media (*e.g.*, sludge, exhaust gas, wastewater) at the level of an applicable standard for a source. Bias (or systemic error) is established by comparing your proposed method against a reference value.

A correction factor is employed to eliminate/minimize bias. This correction factor is established from data obtained during your validation test. Methods that have bias correction factors outside a specified range are considered unacceptable. Method precision (or random error) at the level of the standard must be demonstrated to be as precise as the validated method for acceptance.

IV. Significant Comments Received on the Proposed Amendments to Method 301

We proposed five major technical changes to Method 301. These technical changes include the following:

(1) Replacing the Practical Limit of Quantitation (PLQ) with a procedure to determine the Limit of Detection (LOD),

(2) Revising the bias acceptance criteria and eliminating correction factors,

(3) Revising precision acceptance criteria when using analyte spiking,

(4) Allowing analyte spiking even when there is an existing test method, and

(5) Establishing new procedures for ensuring sample stability.

The following section provides our response to significant comments received on the proposed technical changes and some inadvertant errors that occurred with the restructuring of and addition of components to the method.

A. Applicability

Two commenters requested clarification that the final rule changes made to Method 301 only apply to methods submitted to EPA after promulgation of the changes and that Method 301 can be used whether or not a validated method exists. We are clarifying in this final rule that amendments to Method 301 do not apply to methods submitted for approval prior to promulgation. Also, Method 301 can be used whether or not a validated method exists. This action clarifies the effective date of the amended Method 301, and Section 1.0 of the final method clarifies that Method 301 can be used whether or not a validated method exists.

B. Reference Material

One commenter provided that, as written, reference material is analogous to analyte. Inadvertantly, in Section 5 of Method 301, "reference materials" was followed by "(analytes)." This paranthetical was modified for clarification purposes as noted below.

A few commenters expressed concern that the standard against which precision and bias are compared is not required to be compared against a true value, usually a traceable standard. We agree that the reference material should be compared to a traceable standard.

We have amended Section 5 of the final method to state the following:

> You must use reference materials (a material or substance whose one or more properties are sufficiently homogenous to the analyte) that are traceable to a national standards body (e.g., National Institute of Standards and Technology (NIST)) at the level of the applicable emission limitation or standard that the subpart in 40 CFR part 63 requires.

C. Validation Testing Over a Broad Range of Concentrations and Extended Period of Time

One commenter requested that validation testing over a broad range of concentrations and/or over an extended period of time be allowed and mentioned that they had developed technology that could test over a broad range of concentrations for an extended time-period. The commenter argued that if the accuracy and precision requirements can be demonstrated with sequential sampling procedures, EPA should allow it. We agree with the commenter. We have approved methods demonstrated with sequential sampling to determine the precision of a proposed alternative method in the past. The final method explicitly states that sequential sampling procedures are allowed.

D. Performance Audit

One commenter stated that they do not agree that the performance audit requirements in Section 6 of the proposed rule should be included in Method 301. The commenter supported their position by stating that the audit material may not correspond to the matrix for which the alternate test method was designed, and it is similar to having to ask EPA permission to use a method that has passed Method 301 validation criteria. In addition, the commenter stated that the 30-day lead time for requesting the performance audit material reduces an affected party's flexibility in meeting performance testing timing requirements.

The function of an audit sample is to allow a tester to demonstrate that their measurement system, using a well-established measurement method, is operating within established quality assurance limits. If the alternative method is being compared to a validated test method as part of the Method 301 validation and an audit sample for the validated method exists, then an audit should be used for the validated method. Since the amendments to Method 301 were proposed on December 22, 2004, EPA promulgated a rule on September 13, 2010 (75 FR 55636), that moves all discussion of audits from the individual rules to the General Provisions of Part 63. Therefore, we have removed the proposed Section 6 which discussed performance audits.

E. Sample Stability Procedures

We proposed procedures for sample stability. Method 301 previously lacked specific procedures for ensuring that samples collected under proposed alternative methods were analyzed

within an appropriate time. We revised Section 7.4 to include a requirement to calculate the difference in the sampling results at the minimum and maximum storage times, determine the standard deviation of the differences, and test the difference in the results for statistical significance by calculating the t-statistic and determining if the mean of the differences between the initial results and the results after storage is significant at the 95 percent confidence level. We also added Table 1 to compare the calculated t-statistic with the critical value of the t-statistic. These procedures are necessary to ensure sample stability and should have been included in Method 301.

Several commenters provided comments on the minimum and maximum storage holding time limits specified in Section 7.0 of Method 301. Commenters recommended that either the minimum and maximum holding times be removed and that holding times should be defined by the data or that they be liberalized (*e.g.*, increase the minimum hold time from 24 hours to 48 to 72 hours). We agree with the commenters and are revising the minimum hold time to be seven days. The method will also require that the samples be analyzed again at the proposed maximum storage time or two weeks after the initial analysis.

F. Bias and Precision

We proposed to change the acceptance criteria for the bias in a proposed alternative method from ± 30 percent to ± 10 percent and concurrently to eliminate the requirement for correcting all data collected with the method. We provided that we believe that 12 pairs of results from a single source are not sufficient to allow us to establish a correction factor that can or should be applied to all future uses of the method.

One commenter stated that they did not believe that bias acceptance criteria should be changed unless uncertainties in the reference value are included in determining the significance of differences.

One commenter provided that the proposed reduction of bias from ± 30 percent to ± 10 percent is too stringent. One commenter suggested allowing a bias of ± 15 percent with no correction factors while continuing to allow a bias of ± 30 percent with the use of correction factors for bias values between 15 percent and 30 percent. The commenter provided a summary of EPA Method 301 validations of several methods to support their position.

We agree that reducing the acceptable bias to ± 10 percent may be too stringent because there may be testing situations that are so difficult that there are no methods readily available that could meet this requirement. We believe that a reasonable solution is to allow methods that have a bias greater than 10 percent if the results from these methods are corrected to account for that bias. However, we believe that we should not approve the use of methods with greater than 30 percent bias even if the user was willing to correct the results. We have changed the final method to allow a bias of ± 10 percent with no correction factors and allow a bias of ± 30 percent with the use of correction factors for bias values between 10 percent and 30 percent.

We proposed to change the acceptance criteria for method precision when using analyte spiking from ± 50 percent to ± 20 percent. In addition, we proposed to eliminate the requirement for different numbers of replicate samples depending on the method's relative precision. We also proposed to tighten the acceptance criteria for the precision of candidate alternative test methods.

One commenter stated that the proposed reduction of precision criteria from ± 50 percent to ± 20 percent is too stringent. The commenter suggested allowing a precision of ± 30 percent with no use of replicate runs and the continued allowance of a precision of ± 50 percent with the use of additional sample runs for precision values between 30 percent and 50 percent. The commenter provided a summary of EPA Method 301 validations of several methods to support their position.

Based on our evaluation of the summary provided by the commenter and their suggestion, we have changed the final method. The method will continue to require a precision of ± 20 percent when only the required three runs per test are performed. However, we have added an option to allow test methods with a precision greater than ± 20 percent, but less than ± 50 percent, provided that the user collect nine sample runs per test during any compliance testing where the method is used.

G. Limit of Detection

We proposed to replace the determination of the PLQ with a procedure to determine the LOD. The purpose of establishing a measurement limit is to ensure that a test method is appropriate for its intended use. The LOD is a better parameter for this purpose. We provided that for most environmental measurements, it appears that precision is a function of the concentration of the analyte being measured. Thus, the relative imprecision will not decrease as the quantity measured increases.

In this case, we stated that the PLQ has no meaning. Several commenters disagreed that the PLQ is a meaningless concept and that there are instances that substituting the LOD for the PLQ is not always appropriate. Some of these commenters stated that the Office of Water formed a Federal Advisory Committee Act (FACA) Committee to consider alternative approaches to similar procedures they proposed (40 CFR part 136 Appendix B) and that Method 301 should be deferred until after those discussions have concluded and that consistent application be applied across the Agency based on those discussions.

The PLQ is a limit determined by the standard deviation of an estimate of a concentration; if the standard deviation of the estimate exceeds a threshold, then that estimate is unacceptable. The LOD is a limit determined by the estimate of the concentration itself. If this estimate possesses a value that cannot be distinguished from an estimate resulting from a blank sample with a stated level of confidence, then this estimate is unacceptable. The LOD is clearly a threshold that should be used in Method 301 since an estimate that cannot be distinguished from one resulting from a blank sample is unlikely to provide meaningful results.

The PLQ does not appear to have any relevance for Method 301. There does not appear to be a good reason for a method that produces a standard deviation that exceeds an established threshold to not go through the full rigor of the bias and precision tests prescribed in Method 301. For these reasons, Method 301 retains the use of the LOD in lieu of the PLQ.

One commenter provided that the proposed LOD determination does not appear appropriate for radiochemical methods and suggested that the content of the Multi-Agency Radiological Laboratory Analytical Protocols Manual (MARLAP) be used. We agree with the commenter and have amended Method 301 to allow for the use of the MARLAP for radiochemical methods.

A few commenters requested that the calculation of the LOD be better defined and clarified in Table 4 of the method. One commenter expressed that the description of the procedures used for estimating the standard deviation at zero concentration (S_0) in Table 4 needs to be clarified.

The LOD is defined as the lowest quantity of a substance that can be distinguished from the absence of that substance (*i.e.*, blank value) with a

stated level of confidence. For example, suppose blank samples are normally distributed, and S_0 represents the standard deviation of the blank samples (*i.e.*, the standard deviation of pure "noise"). Then a sample value larger than $3S_0$ will have a probability of not being a blank of at least 99 percent if S_0 is estimated with at least 14 degrees of freedom (or at least 7 degrees of freedom if a 1-sided alternative hypothesis is assumed). If S_0 is "known", then the probability will be 99.74 percent, but this is often truncated to 99 percent.

The method for obtaining S_0 has been clarified to proceed as follows:

(1) Pick a concentration level that you think should approximate the LOD and call this level LOD_1. Prepare seven samples of a standard set at a concentration of LOD_1. Estimate the standard deviation of these seven samples, and call it S_1.

(2) Define $LOD_0 = 3S_1$.

(3) If $LOD_1 \leq 2LOD_0$, then define $S_0 = S_1$.

(4) If $LOD_1 > 2LOD_0$, then proceed as follows:

a. Prepare two additional standards at concentrations lower than LOD_1, and call these LOD_2 and LOD_3. Prepare seven samples of each of these two standards and estimate their standard deviations and call them S_2 and S_3, respectively.

b. Plot S_1, S_2, and S_3 as a function of concentration, draw a best-fit straight line through them, and extrapolate to zero concentration.

c. Define S_0 as the extrapolation of the standard deviation at zero concentration.

H. Critical Values of t for the Two-Tailed 95 Percent Confidence Limit

Two commenters provided that the values of t for the two-tailed 95 percent confidence limit are wrong since they reflected an 80 percent confidence limit and there are some apparent typesetting errors. We corrected these values to reflect the 95 percent confidence limit and eliminated the typesetting errors in the final method.

I. Paired Sampling Procedure

Two commenters pointed out several errors and expressed concerns with the methods to ascertain and test precision in Section 12.

Upon evaluation, we have decided to revise Section 12.2 in Method 301. We are deleting the comparison of the precision of the alternative method to that of the validated method. This decision was made because the paired sampling method described in it does not allow for the estimation of the within-sample standard deviation for either the alternative or validated methods.

J. Standard Deviation

One commenter expressed that the precision is a function of concentration; in other words, as the concentration level increases, so does the standard deviation of the estimate of that concentration. This could render the relative standard deviation (Eq. 301–8 in Section 10.4) meaningless.

A second commenter also expressed that the standard deviation is a function of concentration. This commenter noted that pollutant concentrations from an emission source are variable, resulting in a range of possible concentration values being measured. The commenter suggested that the appropriate procedure to compare two methods under these circumstances is to compare the regression lines of the two methods across a range of concentrations.

We agree that this could be a potentially serious concern if there is little control over the concentrations being measured. However, if there is an appropriate level of control, then the procedures given in Method 301 are sufficient. In most situations, we believe that an appropriate level of control exists. For example, consider the case where an alternative method is compared against a validated method using quadruple samples. We believe that an appropriate level of control exists if the following four conditions are met: (1) There is positive correlation between the estimates within both alternative and validated pairs in the quadruple samples, and the respective correlation coefficients are reasonably constant as a function of concentration; (2) there is positive correlation between the alternative and validated estimates in the quadruple samples, and the correlation coefficient is reasonably constant as a function of concentration; (3) the within-quadruple sample concentrations are reasonably similar; and (4) if the between-quadruple sample concentrations vary greatly, then the functional relationship between the standard deviation and concentration is reasonably similar for both the alternative and validated methods. We believe that these four conditions hold, for most cases, and an appropriate level of control exists. If one or more of these conditions is violated, then the user may request that they be allowed to compare the regression lines resulting from the alternative and validated estimates as a function of concentration as an alternative to the requirements in Method 301.

V. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). We are not promulgating any new paperwork requirements (*e.g.,* monitoring, reporting, recordkeeping) as part of this final action. This final rule amends Method 301 which may be used to validate test data or a new test method.

C. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Small entities may chose to use this regulatory option of validating their own new or alternative compliance test method, but they are not required to choose this option. Any small entity choosing to use Method 301 to validate a new or

alternative test method would likely do so because this option is less burdensome than the original method in the regulations.

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. This action imposes no enforceable duty on any State, local or Tribal governments or the private sector. 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. Any small entity that chooses to use Method 301 would likely do so because this option is less burdensome.

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 final rule simply amends Method 301 which may be used to validate test data or a new test method.

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 67429, November 9, 2000). This final rule amends Method 301 which can be used to validate a new or alternative compliance test method. It does not add any new requirements and does not affect pollutant emissions or air quality. Thus, Executive Order 13175 does not apply to this action.

Although EO 13175 does not apply to this final rule, EPA specifically solicited comment on the proposed rule from Tribal officials. No comments were received.

G. Executive Order 13045—Protection of Children From Environmental Health Risks 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 Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action involves technical standards. While EPA has identified ASTM D4855–97 as being potentially applicable, we have decided not to use it in this rulemaking. The use of this voluntary consensus standard would have been impractical as the ASTM standard is less prescriptive than Method 301 for many procedures. For example, the ASTM standard does not require the use of a t-test explicitly to test the precision of an alternative method, but instead states that a t-test or F-test should be used as appropriate. The primary difference between the ASTM standard and EPA Method 301 is that the ASTM standard addresses the testing of "materials" rather than environmental samples. Therefore, we believe the ASTM is impractical as an alternative to Method 301.

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 final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action amends a method for validating new or alternative compliance test methods. It does not change any existing rules that limit air pollution emission limits.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective May 18, 2011.

List of Subjects in 40 CFR Part 63

Environmental protection, Alternative test method, Air pollution control, Field validation, Hazardous air pollutants, Method 301.

Dated: May 10, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

Authority: 42 U.S.C. 7401, *et seq.*

■ 2. Appendix A is amended by revising Method 301 to read as follows:

Appendix A to Part 63—Test Methods

Method 301—Field Validation of Pollutant Measurement Methods From Various Waste Media

Sec.

Using Method 301

1.0 What is the purpose of Method 301?
2.0 When must I use Method 301?
3.0 What does Method 301 include?
4.0 How do I perform Method 301?

Reference Materials

5.0 What reference materials must I use?

Sampling Procedures

6.0 What sampling procedures must I use?
7.0 How do I ensure sample stability?

Bias and Precision

8.0 What are the requirements for bias?
9.0 What are the requirements for precision?
10.0 What calculations must I perform for isotopic spiking?
11.0 What calculations must I perform for comparison with a validated method if I am using quadruplet replicate sampling systems?
12.0 What calculations must I perform for analyte spiking?
13.0 How do I conduct tests at similar sources?

Optional Requirements

14.0 How do I use and conduct ruggedness testing?
15.0 How do I determine the Limit of Detection (LOD) for the alternative method?

Other Requirements and Information

16.0 How do I apply for approval to use an alternative test method?
17.0 How do I request a waiver?
18.0 Where can I find additional information?

Using Method 301

1.0 What is the purpose of Method 301?

The purpose of Method 301 is to provide a set of procedures that you, the owner or operator of an affected source subject to requirements under 40 CFR part 63 can use to validate an alternative test method to a test method required in 40 CFR part 63 or to validate a stand-alone alternative test method based on established precision and bias criteria. If you use Method 301 to validate your proposed alternative method, you must use the procedures described in this method. This method describes the minimum procedures that you must use to validate an alternative test method to meet 40 CFR part 63 compliance requirements. If you choose to propose a validation method other than Method 301, you must submit and obtain the Administrator's approval for the alternative validation method.

2.0 When must I use Method 301?

If you want to use an alternative test method to meet requirements in a subpart of 40 CFR part 63, you can use Method 301 to validate the alternative test method. You must request approval to use this alternative test method according to the procedures in Sections 16 and 63.7(f). You must receive the Administrator's written approval to use the alternative test method before you use the alternative test method to meet requirements under 40 CFR part 63. In some cases, the Administrator may decide to waive the requirement to use Method 301 for alternative test methods. Section 17 describes the requirements for obtaining a waiver.

3.0 What does Method 301 include?

3.1 *Procedures.* This method includes minimum procedures to determine and document systematic error (bias) and random error (precision) of measured concentrations from exhaust gases, wastewater, sludge, and other media. It contains procedures for ensuring sample stability if such procedures are not included in the test method. This method also includes optional procedures for ruggedness and detection limits.

3.2 *Definitions.*

Affected source means affected source as defined in 40 CFR 63.2 and in the relevant subpart under 40 CFR part 63.

Alternative test method means the sampling and analytical methodology selected for field validation using the method described in this appendix.

Paired sampling system means a sampling system capable of obtaining two replicate samples that were collected as closely as possible in sampling time and sampling location.

Quadruplet sampling system means a sampling system capable of obtaining four replicate samples that were collected as closely as possible in sampling time and sampling location.

Surrogate compound means a compound that serves as a model for the types of compounds being analyzed (*i.e.,* similar chemical structure, properties, behavior). The model can be distinguished by the method from the compounds being analyzed.

4.0 How do I perform Method 301?

First, you introduce a known concentration of an analyte or compare the alternative test method against a validated test method to determine the alternative test method's bias. Then, you collect multiple, collocated simultaneous samples to determine the alternative test method's precision. Alternatively, though it is not required, we allow validation testing over a broad range of concentrations over an extended time period to determine precision of a proposed alternative method. Sections 5.0 through 17.0 describe the procedures in detail.

Reference Materials

5.0 What reference materials must I use?

You must use reference materials (a material or substance whose one or more properties are sufficiently homogenous to the analyte) that are traceable to a national standards body (*e.g.,* National Institute of Standards and Technology (NIST)) at the level of the applicable emission limitation or standard that the subpart in 40 CFR part 63 requires. If you want to expand the applicable range of the method, you must conduct additional runs with higher and lower analyte concentrations. You must obtain information about your analyte according to the procedures in Sections 5.1 through 5.4.

5.1 *Exhaust Gas Tests Concentration.* You must get a known concentration of each analyte from an independent source such as a speciality gas manufacturer, specialty chemical company, or chemical laboratory. You must also get the manufacturer's certification for the analyte concentration and stability.

5.2 *Tests for Other Waste Media.* You must get the pure liquid components of each analyte from an independent manufacturer. The manufacturer must certify the purity and shelf life of the pure liquid components. You must dilute the pure liquid components in the same type medium as the waste from the affected source.

5.3 *Surrogate Analytes.* If you demonstrate to the Administrator's satisfaction that a surrogate compound behaves as the analyte does, then you may use surrogate compounds for highly toxic or reactive compounds. A surrogate may be an isotope or one that contains a unique element (for example, chlorine) that is not present in the source or a derivation of the toxic or reactive compound if the derivative formation is part of the method's procedure. You may use laboratory experiments or literature data to show behavioral acceptability.

5.4 *Isotopically Labeled Materials.* Isotope mixtures may contain the isotope and the natural analyte. The isotope labeled analyte concentration must be more than five times the natural concentration of the analyte.

Sampling Procedures

6.0 What sampling procedures must I use?

You may determine bias and precision by comparing against a validated test method, using isotopic sampling, or using analyte spiking (or the equivalent). Isotopic sampling can only be used for procedures requiring mass spectrometry or radiological procedures. You must collect samples according to the requirements in Table 1. You must perform the sampling according to the procedures in Sections 6.1 through 6.4.

6.1 *Isotopic Spiking.* Spike all 12 samples with the analyte at the concentration in the applicable emission limitation or standard in the subpart of 40 CFR part 63. If there is no applicable emission limitation or standard, spike at the expected level of the samples. Follow the appropriate spiking procedures in Sections 6.3.1 through 6.3.2 for the applicable waste medium.

6.2 *Analyte Spiking.* In each quadruplet set, spike half of the samples (two out of the four) with the analyte according to the applicable procedure in Section 6.3.

6.3 *Spiking Procedure.*

6.3.1 *Gaseous Analyte with Sorbent or Impinger Sampling Trains.* Sample the analyte (in the laboratory or in the field) at a concentration that is close to the concentration in the applicable emission limitation or standard in the subpart of 40 CFR Part 63 (or the expected sample concentration where there is no standard) for the time required by the method, and then sample the gas stream for an equal amount of time. The time for sampling both the analyte and gas stream should be equal; however, the time should be adjusted to avoid sorbent breakthrough. The stack gas and the gaseous analyte may be sampled at the same time. The analyte must be

introduced as close to the tip of the sampling train as possible.

6.3.2 *Gaseous Analyte with Sample Container (Bag or Canister).* Spike the sample containers after completion of each test run with an amount equal to the concentration in the applicable emission limitation or standard in the subpart of 40 CFR part 63 (or the expected sample concentration where there is no standard). The final concentration of the analyte would be approximately equal to the analyte concentration in the stack plus the applicable emission standard (corrected for spike volume). The volume amount of analyte must be less than 10 percent of the sample volume.

6.3.3 *Liquid and Solid Analyte with Sorbent or Impinger Trains.* Spike the trains with an amount equal to the concentration in the applicable emission limitation or standard in the subpart of 40 CFR part 63 (or the expected sample concentration where there is no standard) before sampling the stack gas. If possible, do the spiking in the field. If it is not possible to do the spiking in the field, you can do it in the laboratory.

6.3.4 *Liquid and Solid Analyte with Sample Container (Bag or Canister).* Spike the containers at the completion of each test run with an amount equal to the concentration in the applicable emission limitation or standard in the subpart of 40 CFR part 63 (or the expected sample concentration where there is no standard).

6.4 *Probe Placement and Arrangement for Stationary Source Stack or Duct Sampling.* To sample a stationary source as defined in 40 CFR 63.2, you must place the probe according to the procedures in this subsection. You must place the probes in the same horizontal plane.

6.4.1 *Paired Sampling Probes.* For paired sampling probes, the probe tip should be 2.5 cm from the outside edge of the other sample probe, with a pitot tube on the outside of each probe. The Administrator may approve a validation request where other paired arrangements for the pitot tube (where required) are used.

6.4.2 *Quadruplet Sampling Probes.* For quadruplet sampling probes, the tips should be in a 6.0 cm x 6.0 cm square area measured from the center line of the opening of the probe tip with a single pitot tube (where required) in the center or two pitot tubes (where required) with their location on either side of the probe tip configuration. You must propose an alternative arrangement whenever the cross-sectional area of the probe tip configuration is approximately five percent or more of the stack or duct cross-sectional area.

7.0 How do I ensure sample stability?

7.1 *Developing Storage and Analysis Procedures.* If the alternative test method includes well-established procedures supported by experimental data for sample storage and the time within which the collected samples must be analyzed, you must store the samples according to the procedures in the alternative test method. You are not required to conduct the procedures in Section 7.2 or 7.3. If the alternative test method does not include such procedures, you must propose procedures for storing and analyzing samples to ensure sample stability. At a minimum, your proposed procedures must meet the requirements in Section 7.2 or 7.3. The minimum storage time should be as soon as possible, but no longer than 72 hours after collection of the sample. The maximum storage time should be no longer than two weeks.

7.2 *Storage and Sampling Procedures for Stack Test Emissions.* You must store and analyze samples of stack test emissions according to Table 3. If you are using analyte spiking procedures, you must include equal numbers of spiked and unspiked samples.

7.3 *Storage and Sampling Procedures for Testing Other Waste Media (e.g., Soil/Sediment, Solid Waste, Water/Liquid).* You must analyze half of the replicate samples at the proposed minimum storage time and the other half at the proposed maximum storage time or within two weeks of the initial analysis to identify the effect of storage times on analyte samples. The minimum storage time should be as soon as possible, but no longer than seven days after collection of the sample.

7.4 *Sample Stability.* After you have conducted sampling and analysis according to Section 7.2 or 7.3, compare the results at the minimum and maximum storage times. Calculate the difference in the results using Equation 301–1.

$$d_i = R_{mini} - R_{maxi} \qquad \text{Eq. 301-1}$$

Where:

d_i = difference between the results of the ith sample.

R_{mini} = results from the ith sample at the minimum storage time.

R_{maxi} = results from the ith sample at the maximum storage time.

7.4.1 *Standard Deviation.* Determine the standard deviation (SD_d) of the differences (d_i's) of the paired samples using Equation 301–2.

$$SD_d = \sqrt{\frac{\sum_i^n (d_i - d_m)^2}{n-1}} \qquad \text{Eq. 301-2}$$

Where:

d_i = The difference between the results of the ith sample, $R_{mini} - R_{maxi}$.

d_m = The mean of the paired sample differences.

n = Total number of paired samples.

7.4.2 *t Test.* Test the difference in the results for statistical significance by calculating the t-statistic and determining if the mean of the differences between the initial results and the results after storage is significant at the 95 percent confidence level and n − 1 degrees of freedom. Calculate the value of the t-statistic using Equation 301–3.

$$t = \frac{|d_m|}{\frac{SD_d}{\sqrt{n}}} \qquad \text{Eq. 301-3}$$

Where:

n = The total number of paired samples.

Compare the calculated t-statistic with the critical value of the t-statistic from Table 2. If the calculated t-value is less than the critical value, the difference is not statistically significant; thus, the sampling and analysis procedure ensures stability, and you may submit a request for validation of the proposed alternative test method. If the calculated t-value is greater than the critical value, the difference is statistically significant, and you must repeat the procedures in Section 7.2 or 7.3 with new samples using shorter proposed maximum storage times.

Bias and Precision

8.0 What are the requirements for bias?

You must establish bias by comparing the results of the sampling using the alternative test method against a reference value. The bias must be no more than ± 10 percent without the use of correction factors, and no more than ± 30 percent with the use of correction factors for bias values between 10 and 30 percent for the alternative test method to be acceptable.

9.0 What are the requirements for precision?

At a minimum, you must use paired sampling systems to establish precision. If you are using analyte spiking, including isotopic samples, the precision expressed as the relative standard deviation (RSD) of the alternative test method at the level of the applicable emission limitation or standard in the subpart of 40 CFR part 63 must be less than or equal to 20 percent. For samples with a precision greater than 20 percent but less than 50

percent, a minimum of nine sample runs will be required. If you are comparing to a validated test method, the alternative test method must be at least as precise as the validated method at the level of the applicable emission limitation or standard in the subpart of 40 CFR part 63 as determined by an F test (Section 11.2.2).

10.0 What calculations must I perform for isotopic spiking?

You must analyze the bias, precision, relative standard deviation, and data acceptance for isotopic spiking tests according to the provisions in Sections 10.1 through 10.3.

10.1 *Numerical Bias.* Calculate the numerical value of the bias using the results from the analysis of the isotopically spiked field samples and the calculated value of the isotopically labeled spike according to Equation 301–4.

$$B = S_m - CS \qquad \text{Eq. 301-4}$$

Where:

B = Bias at the spike level.

S_m = Mean of the measured values of the isotopically spiked samples.

CS = Calculated value of the isotopically labeled spike.

10.2 *Standard Deviation.* Calculate the standard deviation of the S_i values according to Equation 301–5.

$$SD = \sqrt{\frac{\sum_{i}^{n}(S_i - S_m)^2}{(n-1)}} \qquad \text{Eq. 301-5}$$

Where:

S_i = Measured value of the isotopically labeled analyte in the i-th field sample,

n = Number of isotopically spiked samples, 12.

10.3 *t Test.* Test the bias for statistical significance by calculating the t-statistic using Equation 301–6. Use the standard deviation determined in Section 10.2 and the numerical bias determined in Section 10.1.

$$t = \frac{|B|}{\frac{SD}{\sqrt{n}}} \qquad \text{Eq. 301-6}$$

Compare the calculated t-value with the critical value of the two-sided t-distribution at the 95 percent confidence level and n-1 degrees of freedom. When spiking is conducted according to the procedures specified in Sections 6.2 and 6.4 as required, this critical value is 2.201 for the 11 degrees of freedom. If the calculated t-value is less than the critical value, the bias is not statistically significant, and the bias of the candidate test method is acceptable. If the calculated t-value is greater than the critical value, the bias is statistically significant, and you must evaluate the relative magnitude of the bias using Equation 301–7.

$$B_R = \left|\frac{B}{CS}\right| \times 100\% \qquad \text{Eq. 301-7}$$

Where:

B_R = Relative bias.

If the relative bias is less than or equal to ten percent, the bias of the candidate test method is acceptable and no correction factors are required. If the relative bias is greater than 10 percent but less than 30 percent, and if you correct all future data collected with the method for the magnitude of the bias, the bias of the candidate test method is acceptable. If either of the preceding two cases applies, you may continue to evaluate the method by calculating its precision. If not, the candidate method will not meet the requirements of Method 301.

10.4 *Relative Standard Deviation.* Calculate the RSD according to Equation 301–8.

$$RSD = \left(\frac{SD}{S_m}\right) x\ 100 \qquad \text{Eq. 301-8}$$

Where:

S_m = The measured mean of the isotopically labeled spiked samples.

The data and alternative test method are unacceptable if the RSD is greater than 20 percent.

11.0 What calculations must I perform for comparison with a validated method if I am using quadruplet replicate sampling systems?

If you are using quadruplet replicate sampling systems to compare an alternative test method to a validated method, then you must analyze the data according to the provisions in this section. If the data from the alternative test method fail either the bias or precision test, the data and the alternative test method are unacceptable. If the Administrator determines that the affected source has highly variable emission rates, the Administrator may require additional precision checks.

11.1 *Bias Analysis.* Test the bias for statistical significance at the 95 percent confidence level by calculating the t-statistic.

11.1.1 *Bias.* Determine the bias, which is defined as the mean of the differences between the alternative test method and the validated method (d_m). Calculate d_i according to Equation 301–9.

$$d_i = \frac{(V_{1_i} + V_{2_i})}{2} - \frac{(P_{1_i} + P_{2_i})}{2} \qquad \text{Eq. 301-9}$$

Where:

V_{1i} = First measured value with the validated method in the i-th sample.

V_{2i} = Second measured value with the validated method in the i-th sample.

P_{1i} = First measured value with the alternative test method in the i-th sample.

$_{2i}$ = Second measured value with the alternative test method in the i-th sample.

11.1.2 *Standard Deviation of the Differences.* Calculate the standard deviation of the differences, SD_d, using Equation 301–2.

11.1.3 *t Test.* Calculate the t-statistic using Equation 301–3, where n is the total number of test sample differences (d_i). For the quadruplet sampling system procedure in Section 6.1 and Table 1, n equals four. Compare the calculated t-statistic with the critical value of the t-

statistic, and determine if the bias is significant at the 95 percent confidence level. When four runs are conducted, as specified in Section 6.2 and Table 1, the critical value of the t-statistic is 3.182 for three degrees of freedom. If the calculated t-value is less than the critical value, the bias is not statistically significant and the data are acceptable. If the calculated t-value is greater than the critical value, the bias is statistically significant, and you must evaluate the relative magnitude of the bias using Equation 301–10.

$$B_R = \left|\frac{B}{VS}\right| \text{ X } 100\% \quad \text{Eq. 301-10}$$

Where:

B = Bias − mean of the d_i's.

VS = Mean measured by the validated method.

If the relative bias is less than or equal to 10 percent, the bias of the candidate test method is acceptable and no correction factors are required. If the relative bias is greater than 10 percent but less than 30 percent, and if you correct all future data collected with the method for the magnitude of the bias, the bias of the candidate test method is acceptable. If either of the preceding two cases applies, you may continue to evaluate the method by calculating its precision. If not, the candidate method will not meet the requirements of Method 301.

11.2 *Precision.* Compare the estimated variance (or standard deviation) of the alternative test method to that of the validated method. If a significant difference is determined using the F test, the alternative test method and the results are rejected. If the F test does not show a significant difference, then the alternative test method has acceptable precision. Use the value furnished with the method. Calculate the estimated variance of the validated method using Equation 301–11.

11.2.1 *Alternative Test Method Variance.* Calculate the estimated variance of the alternative test method, S_p^2, according to Equation 301–11.

$$S_p^2 = \frac{\sum_i^n d_i^2}{2n} \quad \text{Eq. 301-11}$$

Where:

d_i = The difference between the i-th pair of samples collected with the alternative test method.

n = Number of samples and the degrees of freedom.

11.2.2 *F Test.* Determine if the estimated variance of the alternative test method is greater than that of the validated method by calculating the F-value using Equation 301–12.

$$F = \frac{S_p^2}{S_v^2} \quad \text{Eq. 301-12}$$

Where:

S_p^2 = The estimated variance of the alternative method.

S_v^2 = The estimated variance of the validated method.

Compare the experimental F value with the one-sided confidence level for F. The one-sided confidence level of 95 percent for F is 6.388 when the procedure specified in Section 6.1 and Table 1 for quadruplet trains is followed. If the calculated F is outside the critical range, the difference in precision is significant, and the data and the candidate test method are unacceptable.

12.0 What calculations must I perform for analyte spiking?

You must analyze the data for analyte spike testing according to this section.

12.1 *Bias Analysis.* Test the bias for statistical significance at the 95 percent confidence level by calculating the t-statistic.

12.1.1 *Bias.* Determine the bias using the results from the analysis of the spiked field samples, the unspiked field samples, and the calculated value of the spike using Equation 301–13.

$$d_i = \frac{(S_{1_i} + S_{2_i})}{2} - \frac{(M_{1i} + M_{2_i})}{2} - CS \quad \text{Eq. 301-13}$$

Where:

S_{1i} = First measured value of the ith spiked sample.

S_{2i} = Second measured value of the ith spiked sample.

M_{1i} = First measured value of the ith unspiked sample.

M_{2i} = Second measured value of the ith unspiked sample.

CS = Calculted value of the spiked level.

12.1.2 *Standard Deviation of the Differences.* Calculate the standard deviation of the differences, SD_d, using Equation 301–2.

12.1.3 *t Test.* Calculate the t-statistic using Equation 301–3, where n is the total number of test sample differences (d_i). For the quadruplet sampling system procedure in Table 1, n equals six. Compare the calculated t-statistic with the critical value of the t-statistic, and determine if the bias is significant at the 95 percent confidence level. When six runs are conducted, as specified in Table 1, the two-sided confidence level critical value is 2.571 for the five degrees of freedom. If the relative bias is less than or equal to 10 percent with no correction factors, or the bias is greater than 10 percent but less than 30 percent with the use of correction factors, then the data are acceptable. Proceed to evaluate precision of the candidate test method.

$$B_R = \left|\frac{B}{VS}\right| \text{ X } 100\% \quad \text{Eq. 301-10}$$

Where:

B = Bias − mean of the d_i's.

VS = Mean measured by the validated method.

12.2 *Precision.* Calculate the standard deviation and the relative standard deviation of the candidate test method. The relative standard deviation of the candidate test method can be calculated using Equation 301–8.

13.0 How do I conduct tests at similar sources?

If the Administrator has approved the use of an alternative test method to a test method required in 40 CFR part 63 for an affected source, and the Administrator has approved the use of the alternative test method at your similar source according to the procedures in Section 17.1.1, you must meet the requirements in this section. You must have at least three replicate samples for each test that you conduct at the similar source. You must average the results of the samples to determine the pollutant concentration.

Optional Requirements

14.0 How do I use and conduct ruggedness testing?

If you want to use a validated test method at a concentration that is different from the concentration in the applicable emission limitation in the subpart of 40 CFR part 63 or for a source category that is different from the source category that the test method specifies, then you must conduct ruggedness testing according to the procedures in Citation 18.16 of Section 18.0 and submit a request for a waiver according to Section 17.1.1.

Ruggedness testing is a laboratory study to determine the sensitivity of a method to parameters such as sample collection rate, interferant concentration, collecting medium temperature, and sample recovery temperature. You conduct ruggedness testing

by changing several variables simultaneously instead of changing one variable at a time. For example, you can determine the effect of seven variables in eight experiments instead of one. (W.J. Youden, Statistical Manual of the Association of Official Analytical Chemists, Association of Official Analytical Chemists, Washington, DC, 1975, pp. 33–36).

15.0 How do I determine the Limit of Detection for the alternative method?

15.1 *Limit of Detection.* The Limit of Detection (LOD) is the lowest level above which you may obtain quantitative results with an acceptable degree of confidence. For this protocol, the LOD is defined as three times the standard deviation, S_o, at the blank level.

15.2 *Purpose.* The LOD will be used to establish the lower limit of the test method. If the estimated LOD is no more than twice the calculated LOD, use Procedure I in Table 4 to determine S_o. If the LOD is greater than twice the calculated LOD, use Procedure II in Table 4 to determine S_o. For radiochemical methods, use the Multi-Agency Radiological Laboratory Analytical Protocols (MARLAP) Manual (*i.e.,* use the minimum detectable concentration (MDC) and not the LOD) available at *http://www.epa.gov/radiation/docs/marlap/402-b-04-001c-20_final.pdf.*

Other Requirements and Information

16.0 How do I apply for approval to use an alternative test method?

16.1 *Submitting Requests.* You must request to use an alternative test method according to the procedures in Section 63.7(f). You may not use an alternative test method to meet any requirement under 40 CFR part 63 until the Administrator has approved your request. The request must include a field validation report containing the information in Section 16.2. The request must be submitted to the Director, Air Quality Assessment Division, U.S. Environmental Protection Agency, C304–02, Research Triangle Park, NC 27711.

16.2 *Field Validation Report.* The field validation report must contain the information in Sections 16.2.1 through 16.2.8.

16.2.1 *Regulatory objectives for the testing, including a description of the reasons for the test, applicable emission limits, and a description of the source.*

16.2.2 *Summary of the results and calculations shown in Sections 6.0 through 16, as applicable.*

16.2.3 *Analyte certification and value(s).*

16.2.4 *Discussion of laboratory evaluations.*

16.2.5 *Discussion of field sampling.*

16.2.6 *Discussion of sample preparations and analysis.*

16.2.7 *Storage times of samples (and extracts, if applicable).*

16.2.8 *Reasons for eliminating any results.*

17.0 How do I request a waiver?

17.1 *Conditions for Waivers.* If you meet one of the criteria in Sections 17.1.1 through 17.1.2, the Administrator may waive the requirement to use the procedures in this method to validate an alternative test method. In addition, if EPA currently recognizes an appropriate test method or considers the analyst's test method to be satisfactory for a particular source, the Administrator may waive the use of this protocol or may specify a less rigorous validation procedure.

17.1.1 *Similar Sources.* If the alternative test method that you want to use has been validated at another source and you can demonstrate to the Administrator's satisfaction that your affected source is similar to that source, then the Administrator may waive the requirement for you to validate the alternative test method. One procedure you may use to demonstrate the applicability of the method to your affected source is by conducting a ruggedness test as described in Section 14.0.

17.1.2 *Documented Methods.* If the bias and precision of the alternative test method that you are proposing have been demonstrated through laboratory tests or protocols different from this method, and you can demonstrate to the Administrator's satisfaction that the bias and precision apply to your application, then the Administrator may waive the requirement to use this method or to use part of this method.

17.2 *Submitting Applications for Waivers.* You must sign and submit each request for a waiver from the requirements in this method in writing. The request must be submitted to the Director, Air Quality Assessment Division, U.S. Environmental Protection Agency, C304–02, Research Triangle Park, NC 27711.

17.3 *Information Application for Waiver.* The request for a waiver must contain a thorough description of the test method, the intended application, and results of any validation or other supporting documents. The request for a waiver must contain, at a minimum, the information in Sections 17.3.1 through 17.3.4. The Administrator may request additional information if necessary to determine whether this method can be waived for a particular application.

17.3.1 *A Clearly Written Test Method.* The method should be written preferably in the format of 40 CFR part 60, Appendix A Test Methods. It must include an applicability statement, concentration range, precision, bias (accuracy), and minimum and maximum storage time in which samples must be analyzed.

17.3.2 *Summaries of previous validation tests or other supporting documents.* If a different procedure from that described in this method was used, you must submit documents substantiating the bias and precision values to the Administrator's satisfaction.

17.3.3 *Ruggedness Testing Results.* You must submit results of ruggedness testing conducted according to Section 14.0, sample stability conducted according to Section 7.0, and detection limits conducted according to Section 15.0, as applicable. For example, you would not need to submit ruggedness testing results if you will be using the method at the same concentration level as the concentration level at which it was validated.

17.3.4 *Applicability Statement and Basis for Waiver Approval.* Your discussion of the applicability statement and basis for approval of the waiver should address the following as applicable: Applicable regulation, emission standards, effluent characteristics, and process operations.

18.0 Where can I find additional information?

You can find additional information in the references in Sections 18.1 through 18.16.

18.1 Albritton, J.R., G.B. Howe, S.B. Tompkins, R.K.M. Jayanty, and C.E. Decker. 1989. Stability of Parts-Per-Million Organic Cylinder Gases and Results of Source Test Analysis Audits, Status Report No. 11. Environmental Protection Agency Contract 68–02–4125. Research Triangle Institute, Research Triangle Park, NC. September.

18.2 ASTM Standard E 1169–89 (current version), "Standard Guide for Conducting Ruggedness Tests," available from ASTM, 100 Barr Harbor Drive, West Conshohoken, PA 19428.

18.3 DeWees, W.G., P.M. Grohse, K.K. Luk, and F.E. Butler. 1989. Laboratory and Field Evaluation of a Methodology for Speciating Nickel Emissions from Stationary Sources. EPA Contract 68–02–4442. Prepared for Atmospheric Research and Environmental Assessment Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. January.

18.4 International Conference on Harmonization of Technical Requirements for the Registration of Pharmaceuticals for Human Use, ICH–Q2A, "Text on Validation of Analytical Procedures," 60 FR 11260 (March 1995).

18.5 International Conference on Harmonization of Technical Requirements for the Registration of Pharmaceuticals for Human Use, ICH–Q2b, "Validation of Analytical Procedures: Methodology," 62 FR 27464 (May 1997).

18.6 Keith, L.H., W. Crummer, J. Deegan Jr., R.A. Libby, J.K. Taylor, and G. Wentler. 1983. Principles of Environmental Analysis. American Chemical Society, Washington, DC.

18.7 Maxwell, E.A. 1974. Estimating variances from one or two measurements on each sample. Amer. Statistician 28:96–97.

18.8 Midgett, M.R. 1977. How EPA Validates NSPS Methodology. Environ. Sci. & Technol. 11(7):655–659.

18.9 Mitchell, W.J., and M.R. Midgett. 1976. Means to evaluate performance of stationary source test methods. Environ. Sci. & Technol. 10:85–88.

18.10 Plackett, R.L., and J.P. Burman. 1946. The design of optimum multifactorial experiments. Biometrika, 33:305.

18.11 Taylor, J.K. 1987. Quality Assurance of Chemical Measurements. Lewis Publishers, Inc., pp. 79–81.

18.12 U.S. Environmental Protection Agency. 1978. Quality Assurance Handbook for Air Pollution Measurement Systems: Volume III. Stationary Source Specific Methods. Publication No. EPA–600/4–77–027b. Office of Research and Development Publications, 26 West St. Clair St., Cincinnati, OH 45268.

18.13 U.S. Environmental Protection Agency. 1981. A Procedure for Establishing Traceability of Gas Mixtures to Certain

National Bureau of Standards Standard Reference Materials. Publication No. EPA–600/7–81–010. Available from the U.S. EPA, Quality Assurance Division (MD–77), Research Triangle Park, NC 27711.

18.14 U.S. Environmental Protection Agency. 1991. Protocol for The Field Validation of Emission Concentrations From Stationary Sources. Publication No. 450/4–90–015. Available from the U.S. EPA, Emission Measurement Technical Information Center, Technical Support Division (MD–14), Research Triangle Park, NC 27711.

18.15 Wernimont, G.T., "Use of Statistics to Develop and Evaluate Analytical Methods," AOAC, 1111 North 19th Street, Suite 210, Arlington, VA 22209. USA, 78–82 (1987).

18.16 Youden, W.J. Statistical techniques for collaborative tests. Statistical Manual of the Association of Official Analytical Chemists, Association of Official Analytical Chemists, Washington, DC, 1975, pp. 33–36.

TABLE 1 OF APPENDIX A—SAMPLING PROCEDURES

If you are . . .	You must collect . . .
comparing against a validated method	9 sets of replicate samples using a paired sampling system (a total of 18 samples) or 4 sets of replicate samples using a quadruplet sampling system (a total of 16 samples). In each sample set, you must use the validated test method to collect and analyze half of the samples.
using isotopic spiking (can only be used for procedures requiring mass spectrometry).	a total of 12 replicate samples. You may collect the samples either by obtaining 6 sets of paired samples or 3 sets of quadruplet samples.
using analyte spiking	a total of 24 samples using the quadruplet sampling system (a total of 6 sets of replicate samples).

TABLE 2 OF APPENDIX A—CRITICAL VALUES OF t FOR THE TWO TAILED 95 PERCENT CONFIDENCE LIMIT

Degrees of freedom	t_{95}
1	12.706
2	4.303
3	3.182
4	2.776
5	2.571
6	2.447
7	2.365
8	2.306
9	2.262
10	2.228

TABLE 3 OF APPENDIX A—STORAGE AND SAMPLING PROCEDURES FOR STACK TEST EMISSIONS

If you are . . .	With . . .	Then you must . . .
using isotopic or analyte spiking procedures	sample container (bag or canister) and impinger sampling systems.	analyze 6 of the samples within 7 days and then analyze the same 6 samples at the proposed maximum storage time or 2 weeks after the initial analysis.
	sorbent and impinger sampling systems that require extraction or digestion.	extract or digest 6 of the samples within 7 days and extract or digest 6 other samples at the proposed maximum storage time or 2 weeks after the first extraction or digestion. Analyze an aliquot of the first 6 extracts (digestates) within 7 days and proposed maximum storage times or 2 weeks after the initial analysis. This will allow analysis of extract storage impacts.
	sorbent sampling systems that require thermal desorption.	analyze 6 samples within 7 days. Analyze another set of 6 samples at the proposed maximum storage time or within 2 weeks of the initial analysis.
comparing an alternative test method against a validated test method.	sampling method that does not include sorbent and impinger sampling systems that require extraction or digestion.	analyze half of the samples (8 or 9) within 7 days and half of the samples (8 or 9) at the proposed maximum storage time or within 2 weeks of the initial analysis.
	sorbent and impinger sampling systems that require extraction or digestion.	extract or digest 6 of the samples within 7 days and extract or digest 6 other samples at the proposed maximum storage time or within 2 weeks of the first extraction or digestion. Analyze an aliquot of the first 6 extracts (digestates) within 7 days and at the proposed maximum storage times or within 2 weeks of the initial analysis. This will allow analysis of extract storage impacts.

TABLE 4 OF APPENDIX A—PROCEDURES FOR ESTIMATING S_o

If the estimated LOD (LOD_1, expected approximate LOD concentration level) is no more than twice the calculated LOD, use Procedure I as follows. Estimate the LOD (LOD_1) and prepare a test standard at this level. The test standard could consist of a dilution of the analyte described in Section 5.0.	If the estimated LOD (LOD_1, expected approximate LOD concentration level) is greater than twice the calculated LOD, use Procedure II as follows. Prepare two additional standards (LOD_2 and LOD_3) at concentration levels lower than the standard used in Procedure I (LOD_1).
Using the normal sampling and analytical procedures for the method, sample and analyze this standard at least 7 times in the laboratory.	Sample and analyze each of these standards (LOD_2 and LOD_3) at least 7 times.
Calculate the standard deviation, S_1, of the measured values	Calculate the standard deviation (S_2 and S_3) for each concentration level.
Calculate the LOD_0 (referred to as the calculated LOD) as 3 times S_1, where $S_0 = S_1$.	Plot the standard deviations of the three test standards (S_1, S_2 and S_3) as a function of concentration.
	Draw a best-fit straight line through the data points and extrapolate to zero concentration. The standard deviation at zero concentration is S_o.
	Calculate the LOD_0 (referred to as the calculated LOD) as 3 times S_o.

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0263; FRL–8865–8]

Spirotetramat; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of spirotetramat, including its metabolites and degradates, in or on multiple commodities which are identified and discussed later in this document. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 18, 2011. Objections and requests for hearings must be received on or before July 18, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0263. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Rita Kumar, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address: *kumar.rita@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.* To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods & Guidelines."

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0263 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 18, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0263, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of June 10, 2009 (74 FR 27538) (FRL–8417–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F7537) by Bayer CropScience LLC, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.641 be amended by establishing tolerances for residues of the insecticide spirotetramat, (cis-3-(2,5-dimethylphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl-ethyl carbonate]) and its metabolites BYI 08330-enol (cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]dec-3-en-2-one), BYI 08330-ketohydroxy (cis-3-(2,5-dimethylphenyl)-3-hydroxy-8-methoxy-1-azaspiro[4.5]decane-2,4-dione), BYI08330-enol-Glc (cis-3-(2,5-dimethylphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl beta-D-glucopyranoside), and BYI 08330-monohydroxy (cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]decan-2-one), calculated as spirotetramat equivalents, in or on pistachio at 0.25 parts per million (ppm); cotton, undelinted seed at 0.4 ppm; acerola, atemoya, avocado, birida, black sapote, canistel, cherimoya, custard apple, feijoa, guava, ilama, jaboticaba, longan, mamey sapote, mango, passionfruit, persimmon, pulasan, rambutan, sapodilla, soursop, Spanish lime, star apple, starfruit, sugar apple, wax jambu, and white sapote at 1.5 ppm; vegetables, legume, group 06 (except soybean) at 4 ppm; plum, prune, dried at 4.5 ppm; vegetables, foliage of legume, except soybean, subgroup 07A at 5 ppm; cotton, gin byproducts at 7 ppm; soybean at 4 ppm; soybean, forage at 9 ppm; soybean, aspirated grain fractions at 10 ppm; lychee at 12 ppm; and soybean, hay at 16 ppm and okra at 2.5 ppm. That notice referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing. A correction notice was published in the **Federal Register** on July 23, 2009 (74 FR 36487) (FRL–8425–2), and August 21, 2009 (74 FR 42302) (FRL–8427–1), to add papaya at 1.5 ppm. There were no comments received in response to the correction notice.

In the **Federal Register** of October 26, 2009 (74 FR 54999) (FRL–8794–2) (docket number EPA–HQ–OPP–2009–0735), EPA also published a notice pursuant to section 3(c)(4) of the Federal Insecticide, Rodenticide, and Fungicide Act (FIFRA) as amended, announcing receipt of an application from Bayer CropScience to register new uses for Spirotetramat Technical and three end use products (EPA Registration Numbers 264–1049, 264–1050, 264–1051, 264–1065), on cotton; soybeans; vegetable, legume, crop group 6; acerola; atemoya; avocado; birida; black sapote; canistel; cherimoya; custard apple; feijoa; guava; Ilama; jaboticaba; longan; mamey sapota; mango; papaya; passionfruit; persimmon; pulasan; rambutan; sapodilla; soursop; Spanish lime; star apple; starfruit; sugar apple; wax jambu; white sapote; lychee; okra; pistachio; and dried prune. The Agency provided 30 days for the public to comment on this notice, and a comment dated November 25, 2009 was received from the Natural Resources Defense Council (NRDC), expressing concerns about both human health and environmental effects of spirotetramat. The heading of those comments referenced the **Federal Register** citation of October 26, 2009 (FRL–8794–2) for the Notice of Receipt (NOR) under FIFRA, but the docket number for this Notice of Filing (NOF) under the FFDCA (EPA–HQ–OPP–2009–0263). Although that comment was timely submitted for purposes of the NOR, it was not timely submitted for purposes of the present NOF. Nevertheless, the Agency has responded to the human health portion of the comments, which is relevant to the present NOF. The NRDC comment and the Agency's response to the human health portion of the comment can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2009–0263.

Based upon review of the data supporting the petition, EPA has revised the tolerance expression; and also revised the proposed tolerances on most of the commodities. In addition, EPA will be establishing import only tolerances for cotton, undelinted seed, and cotton gin byproduct at this time. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.* * *"

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for spirotetramat including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with spirotetramat follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The acute, short-term, and long-term toxicity of spirotetramat is well understood. Spirotetramat technical demonstrated moderate to low acute toxicity via the oral, dermal, and inhalation routes. Spirotetramat is non-irritating to the skin, although it is an irritant to the eyes and exhibits a skin-sensitization potential in animals and humans. The thyroid and thymus glands were target organs in oral subchronic

toxicity studies in the dog; whereas, the testes-epididymides were the target organs following subchronic oral treatment of rats. Long-term toxicity studies reflected the short-term toxicological profile of spirotetramat with the thymus and thyroid as target organs following 1-year oral exposure of dogs. Chronic exposure of rats to spirotetramat also reflected the subchronic pattern of testicular toxicity. No evidence of tumor formation was found following long-term studies of rodents, and spirotetramat was also negative for mutagenicity and clastogenicity in several standard *in vivo* and *in vitro* assays.

The reproductive and developmental toxicity potential of spirotetramat was tested in rats and rabbits. In addition to testicular histopathology observed following subchronic and chronic exposure of rats to spirotetramat, male reproductive toxicity was recorded in a 2-generation reproductive toxicity study. However, development of the sexual organs of offspring (balano-preputial separation, vaginal opening) was unaffected. In an investigative study designed to explore the time of onset of testicular toxicity in rats, decreased epididymal sperm counts were noted after 10 days of exposure. Similar effects were observed after repeated dosing with the enol metabolite of spirotetramat. Developmental toxicity was not observed with spirotetramat in the absence of maternal toxicity in either the rat or rabbit.

Specific information on the studies received and the nature of the adverse effects caused by spirotetramat as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document "Spirotetramat. Human-Health Risk Assessment for Proposed Uses in/on Cotton, Legume Vegetables including Soybean (Crop Groups 6 and 7a), and Tropical Fruit"; Appendix A pp 39–47 in docket ID number EPA–HQ–OPP–2009–0263.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern (LOC) to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the LOAEL of concern are identified. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) (a = acute or c = chronic) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SPIROTETRAMAT FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children).	NOAEL = 100 milligrams/kilogram/day (mg/kg/day). UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 1.0 mg/kg/day aPAD = 1.0 mg/kg/day	Acute neurotoxicity (rat; gavage) LOAEL = 200 mg/kg/day based on clinical signs male and female (M&F) and decreased motor activity (M).
Chronic dietary (All populations)	NOAEL= 5 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.05 mg/kg/day cPAD = 0.05 mg/kg/day	Chronic toxicity (dog; dietary) LOAEL = 20 mg/kg/day based on thymus involution.
Cancer (Oral, dermal, inhalation)	Classification: "Not Likely to be Carcinogenic to Humans" based on lack of evidence of carcinogenicity in two oral rodent carcinogenicity studies.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. UF_S = use of a short-term study for long-term risk assessment. UF_{DB} = to account for the absence of data or other data deficiency. FQPA SF = Food Quality Protection Act Safety Factor.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to spirotetramat, EPA considered exposure under the petitioned-for tolerances as well as all existing spirotetramat tolerances in 40 CFR 180.641. EPA assessed dietary exposures from spirotetramat in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

Such effects were identified for spirotetramat. In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed 100 percent crop treated (PCT) and tolerance-level residues for all foods. Empirical and Dietary Exposure Evaluation Model (DEEM™) (ver. 7.81) default processing factors were used for processed commodities. Drinking water was incorporated directly in the dietary assessment using the acute concentrations for surface water generated by the First Index Reservoir Screening Tool (FIRST) model.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA conducted a conservative chronic dietary assessment assuming average field-trial residues, empirical and

DEEM™ (ver. 7.81) default processing factors, and 100 PCT. Drinking water was incorporated directly in the dietary assessment using the chronic concentrations for surface water generated by the FIRST model.

iii. *Cancer.* No evidence of carcinogenicity was seen in the cancer studies performed with spirotetramat on rats and mice, and EPA has classified spirotetramat as "not likely" to be a human carcinogen by any relevant route of exposure. Therefore, an exposure assessment to evaluate cancer risk was not conducted.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances. Tolerance-level residues and 100 PCT were assumed for all food commodities. The chronic dietary assessment assumed average field-trial residues and 100 PCT.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for spirotetramat in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of spirotetramat. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the FIRST, and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of spirotetramat for acute exposures are estimated to be 0.212 parts per billion (ppb) for surface water and 3.96×10^{-4} ppb for ground water.

For chronic exposures, non-cancer assessments are estimated to be 1.37×10^{-3} ppb for surface water and 3.96×10^{-4} ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

For acute dietary risk assessment, the water concentration value of 0.212 ppb was used to assess the contribution to drinking water.

For chronic dietary risk assessment, the water concentration of value 1.37×10^{-3} ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Spirotetramat is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found spirotetramat to share a common mechanism of toxicity with any other substances, and spirotetramat does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that spirotetramat does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There was no evidence of increased susceptibility of rat or rabbit to prenatal or postnatal exposure to spirotetramat. In the rat developmental toxicity study, toxicity to offspring was observed at the same dose as maternal toxicity, which was also the limit dose. In the developmental toxicity study in the rabbit, only maternal toxicity was observed. In both reproductive toxicity studies, toxicity to offspring (decreased body weight) was observed at the same dose as parental toxicity. Therefore, no evidence of increased susceptibility of offspring was found across four relevant toxicity studies with spirotetramat.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for spirotetramat is complete except for an immunotoxicity study and a subchronic neurotoxicity study which are required due to recent amendments to the data requirements in 40 CFR part 158. Despite the absence of these studies, EPA has reliable data showing an additional safety factor is not necessary to protect infants and children. Although the toxicology database for spirotetramat shows effects in the thymus gland, an organ of the immune system, this finding does not raise uncertainty given the lack of an immunotoxicity study. The endpoint selected for risk assessment was based on accelerated thymus involution and decreased thyroid hormone levels in the dog. Thymus involution has been demonstrated to occur in animals when the thyroid is induced to decrease hormone levels, so it is reasonable to conclude that the thymus involution in these dogs was secondary to the thyroid effects, rather than a direct effect on the immune system. The dose at which these effects were observed was chosen as a point of departure because there was some consistency of dose and effect seen across the subchronic and chronic toxicity studies. However, the effects occurred in relatively few animals and thus selection of this endpoint is considered a very protective point of departure; it is at least tenfold lower than any other potential point of departure. With respect to immunotoxicity, no immunotoxic effects were seen in rats or mice, the species in which immunotoxicity studies are conducted. Thus, the Agency does not believe that conducting a functional immunotoxicity study in any rodent species will result in a lower POD than that currently used for overall risk assessment. For this reason and because the current POD is considered extremely protective, a UFDB is not

needed to account for the lack of this study. Data regarding neurotoxicity is discussed in Unit III. D.3.ii.

ii. EPA has concluded that spirotetramat is not a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity. Although a subchronic neurotoxicity study is now required as part of the revisions to 40 CFR part 158, the existing toxicological database indicates that spirotetramat is not a neurotoxic chemical in mammals. The only clinical signs at any dose in the acute neurotoxicity study were staining of the fur or perianal region with urine and decreased motor activity. The urine staining that was identified is not considered a neurotoxic effect and was likely due to a colored metabolite that was excreted into the urine or feces or to a change in the pH of the urine due to an excreted metabolite. The decreased motor activity observed is not considered evidence of neurotoxicity because there were no effects on movement or gait and there were no confirmatory findings of neurological pathology. Thus, both of these effects are considered signs of general toxicity (malaise). Further, the effects seen in the acute neurotoxicity study are not corroborated by any other study in the database. Although brain dilation was found in one dog in the 1-year dog study, EPA concluded that this effect was most likely not caused by administration of spirotetramat given evidence showing this to be a congenital anomaly in the test species, and because there is no other evidence of brain pathology in the database. Finally, the conclusion that spirotetramat is not a neurotoxic chemical is supported by the fact that the acute, subchronic and developmental neurotoxcity studies available for structurally-related compounds (spirodiclofen and spiromesifen) do not show evidence of neurotoxicity in adults or young.

iii. There is no evidence that spirotetramat results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level or average field-trial residues. The submitted residue data for tropical fruit is not appropriate for the proposed use pattern as the trials were conducted at 2X use rate. The Agency is thus requesting that the petitioner conduct bridging studies with lychee and guava (one trial each with four samples per treatment regimen) in order to determine the relationship between residues resulting from the labeled use pattern and that used in the submitted field trials. Based on this relationship, the submitted residue data will be adjusted and the appropriate tolerances determined. As the recommended tolerances are based on exaggerated-rate field trial data, it is likely that any future adjustment of these tolerances will be to a lower level. This risk assessment is thus likely to over-estimate the dietary risk from spirotetramat residues in/on tropical fruit. Use of tolerance levels based on exaggerated application rates in a risk assessment will tend to overstate exposure even more than the overestimate usually supplied by use of the assumption of tolerance level residues. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to spirotetramat in drinking water. These assessments will not underestimate the exposure and risks posed by spirotetramat.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to spirotetramat will occupy 11% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to spirotetramat from food and water will utilize 93% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for spirotetramat.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Spirotetramat is not registered for any use patterns that would result in short-term residential exposure. Therefore, the short-term aggregate risk is the sum of the risk from exposure to spirotetramat through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Spirotetramat is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to spirotetramat through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population.* No evidence of tumor formation was found following long-term studies of rodents, and spirotetramat was also negative for mutagenicity and clastogenicity in several standard *in vivo* and *in vitro* assays. Spirotetramat has been classified as "not likely" to be a human carcinogen by any relevant route of exposure and is not expected to pose a cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to spirotetramat residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high performance liquid chromatography with tandem mass spectrometry (HPLC–MS/MS) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as

required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for spirotetramat. Canadian MRLs have been established and are harmonized with the United States.

C. Response to Comments

There were no timely comments received in response to the notice of filing. However, as described in Unit II, the NRDC did submit comments well after the close of the comment period on the notice of filing that pertain, in part, to the risk determinations made in this rulemaking. Both the comment and the Agency's response to the human health portion of the comment can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2009–0263.

In brief, NRDC challenged EPA's determination to remove the children's safety factor on two grounds. First, NRDC questioned whether EPA had accurately determined, based on several developmental studies, that the young did not demonstrate any quantitative sensitivity compared to adults. NRDC did not assert that the studies showed quantitative sensitivity but suggested that, given the wide dose spacing in the studies, if the studies had used a tighter dose spacing, they might have shown that maternal and fetal effects did not occur at the same dose. While NRDC makes an interesting theoretical point, the fact of the matter is that the best data available showed no sensitivity in the young and, more importantly, these data identify a clear NOAEL for the effects seen in the young. Thus, EPA has a reliable basis for choosing a safe dose that is protective of the safety of infants and children. A finding on the sensitivity of the young is not determinative by itself on the safety of the pesticide or on the applicability of the children's safety factor; rather, the fundamental question is whether there are reliable data on safety. Moreover, the impact of use of the wide dose spacing here compared to a narrower spacing of doses is likely to provide a larger margin of safety for infants and children. A tighter dose spacing may provide greater precision with regard to the level at which effects occur and do not occur in the maternal compared to the juvenile animals; however, to the extent these revised dose levels provide more precise information on the NOAEL, that NOAEL could only be higher (and potentially significantly higher given the wide dose spacing). Thus, the wide dose spacing may very well provide a lower POD (by overstating the NOAEL), and thus a more conservative basis, for assessing risk.

Second, NRDC argued that EPA did not adequately take into account the severity of the effects relating to the young seen in the spirotetramat database. NRDC cites malformations and skeletal defects in the rat developmental study, thyroid effects in the chronic dog study, neurotoxicity (staining of the fur with urine) in a rat study, and the potential that spirotetramat "may impair the synthesis of lipids that are necessary for the formation of cell membranes—including those of brain cells—and for hormone synthesis." EPA adequately considered each of these effects. As to the malformations and skeletal defects, EPA notes that while these effects are serious they occurred at a dose level 10,000 to 20,000 times higher than the safe dose level chosen by EPA. With regard to the thyroid effects, EPA believes that it took a very conservative approach to even treating the observed decrease in thyroid levels as an adverse effect given the absence of any corroborating signs of thyroid toxicity in the relevant studies. Notably, these studies show no decreases in thyroid weight, no thyroid histopathology, no compensatory increases in thyroid stimulating hormone (TSH), no effect on UDP-glucuronosyltransferase activity, and no clinical signs of toxicity or changes in body weight that might result from decreased thyroid output. In any event, there was a clear NOAEL for these minimal thyroid effects and EPA reduced this NOAEL by a 100X SF in deriving a safe dose for spirotetramat. Next, EPA disputes NRDC's claim that spirotetramat has neurotoxic effects. The staining of the fur seen in one study is not a neurotoxic effect but likely the result of the use of a colored metabolite in the study that was excreted in the urine. No other effects in the database could be corroborated as neurotoxic. Finally, NRDC's speculation that spirotetramat may interfere with the synthesis of lipids necessary to cell growth is not supported by the spirotetramat mammalian toxicity database. While spirotetramat does interfere with lipid biosynthesis in insects, the mammalian database shows no effects on plasma lipid parameters such as plasma triglycerides and plasma cholesterol which would be indicative of disruption of lipid biosynthesis in mammals.

D. Revisions to Petitioned-for Tolerances

Based on residue data submitted with this petition, several petitioned-for tolerances were revised. Additionally, as a result of the potential for increased dietary exposure to livestock, it was considered necessary to establish a tolerance for eggs and for meat byproducts of hog and poultry, and revise the tolerances on meat byproducts of cattle, goat, horse, and sheep. The proposed tolerance on dried prunes was not required as residues in the processed commodity are not expected to exceed the tolerance established for the raw agricultural commodity. A crop group tolerance on tropical fruits was not established because this is not a recognized crop group. Instead, tolerances on several individual tropical fruit commodities were established. Tolerances on sugar apple, atemoya, custard apple, cherimoya, ilama, soursop, and birida were not established, because field trial residue data were not submitted. A chart listing the petitioned-for tolerances and EPA recommended tolerances can be found at *http://www.regulations.gov* in document "Spirotetramat. Human-Health Risk Assessment for Proposed Uses in/on Cotton, Legume Vegetables including Soybean (Crop Groups 6 and 7a), and Tropical Fruits" at page 47 in docket ID number EPA–HQ–OPP–2009–0263.

EPA has also revised the tolerance expression in paragraphs (a)(1) and (a)(2) to clarify that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of spirotetramat not specifically mentioned; and that compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

EPA has also added a footnote to currently established tolerances for onion, bulb, subgroup 3A–07 and strawberry to indicate that currently there are no U.S. registrations for these commodities. Use on these two commodities was assessed for import tolerances only.

EPA is establishing import only tolerances for cotton, undelinted seed, and cotton gin byproducts at this time, because the use on cotton under FIFRA, 7 U.S.C. 136 *et seq.,* has not been approved. The Agency has concerns with potential hazard of toxicity to bees, and use on cotton cannot be approved

until these concerns have been addressed.

V. Conclusion

Therefore, tolerances are established for residues of spirotetramat, including its metabolites and degradates, in or on the commodities listed in the regulatory text. Compliance with the tolerance levels is to be determined by measuring only the sum of spirotetramat and its metabolites calculated as the stoichiometric equivalent of spirotetramat, in or on the commodities.

In addition, the proposed uses and the submitted data also support permanent tolerances for residues of the insecticide spirotetramat, including its metabolites and degradates, in or on the commodities listed in the regulatory text. Compliance with the tolerance levels is to be determined by measuring only the sum of spirotetramat and its metabolite, calculated as the stoichiometric equivalent of spirotetramat, in or on the commodities.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the national government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 2, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.641 is amended by revising paragraph (a) to read as follows:

§ 180.641 Spirotetramat; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide spirotetramat, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of spirotetramat (cis-3-(2,5-dimethlyphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl-ethyl carbonate) and its metabolites cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]dec-3-en-2-one, cis-3-(2,5-dimethylphenyl)-3-hydroxy-8-methoxy-1-azaspiro[4.5]decane-2,4-dione, cis-3-(2,5-dimethylphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl beta-D-glucopyranoside, and cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]decan-2-one, calculated as the stoichiometric equivalent of spirotetramat, in or on the following commodities.

Commodity	Parts per million
Acerola	2.5
Almond, hulls	9.0
Aspirated grain fractions	10.0
Avocado	0.60
Black sapote	0.60
Brassica, head and stem, subgroup 5A	2.5
Brassica, leafy, subgroup 5B	8.0
Canistel	0.60
Citrus, oil	6.0
Cotton gin byproducts[1]	10.0
Cotton, undelinted seed[1]	0.30
Feijoa	0.30
Fruit, citrus, group 10	0.60
Fruit, pome, group 11	0.70
Fruit, stone, group 12	4.5
Grape, raisin	3.0
Guava	2.5
Hop, dried cones	10.0
Jaboticaba	2.5
Longan	13.0
Lychee	13.0
Mamey sapote	0.60
Mango	0.60
Nut, tree, group 14	0.25
Okra	2.5
Onion, bulb, subgroup 3A–07[1]	0.30
Papaya	2.5
Passionfruit	2.5
Pistachio	0.25
Potato, flakes	1.6
Pulasan	13.0
Rambutan	13.0
Sapodilla	0.60

Commodity	Parts per million
Small fruit vine climbing subgroup, except fuzzy kiwifruit, subgroup 13–07F	1.3
Soybean forage	8.0
Soybean hay	16.0
Soybean seed	5.0
Spanish lime	0.60
Star apple	0.60
Starfruit	2.5
Strawberry[1]	0.40
Vegetable, cucurbit, group 9	0.30
Vegetable, foliage of legume, except soybean, subgroup 07A	7.0
Vegetable, fruiting, group 8	2.5
Vegetable, legume, group 06, except soybean	2.5
Vegetable, leafy, except brassica, group 4	9.0
Vegetable, tuberous and corm, subgroup 1C	0.60
Wax jambu	2.5
White sapote	0.60

[1] Import tolerance only. There are no U.S. registrations for cotton, onion or strawberry.

(2) Tolerances are also established for residues of the insecticide spirotetramat, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of spirotetramat (*cis*-3-(2,5-dimethlyphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl-ethyl carbonate]) and its metabolite *cis*-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]dec-3-en-2-one, calculated as the stoichiometric equivalent of spirotetramat, in or on the following commodities:

Commodity	Parts per million
Cattle, fat	0.02
Cattle, meat	0.02
Cattle, meat byproducts	0.20
Eggs	0.02
Goat, fat	0.02
Goat, meat	0.02
Goat, meat byproducts	0.20
Hog, meat byproducts	0.02
Horse, fat	0.02
Horse, meat	0.02
Horse, meat byproducts	0.20
Milk	0.01
Poultry, meat byproducts	0.02
Sheep, fat	0.02
Sheep, meat	0.02
Sheep, meat byproducts	0.20

* * * * *

[FR Doc. 2011–11937 Filed 5–17–11; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 76, No. 96
Wednesday, May 18, 2011

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27715; Directorate Identifier 2006–NM–140–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Airplanes

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

ACTION: Proposed rule; withdrawal.

SUMMARY: The FAA withdraws a second supplemental NPRM for an airworthiness directive (AD) that applies to all Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes; and Model A340–541 and A340–642 airplanes. That second supplemental NPRM proposed to revise the Airworthiness Limitations Section (ALS), for all affected airplanes, by adding new Airworthiness Limitations Items (ALIs) to incorporate service life limits for certain items and inspections to detect fatigue cracking, accidental damage or corrosion in certain structures, in accordance with the revised ALS of the Instructions for Continued Airworthiness. Since the second supplemental NPRM was issued, we have published new NPRMs to propose to mandate the most recent airworthiness limitations for Model A330–200 and –300 series airplanes; and new ADs to mandate the most recent airworthiness limitations for Model A340–200 and –300 series airplanes; and Model A340–541 and –642 airplanes. Accordingly, the proposed AD is withdrawn.

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer International Branch, ANM–116, FAA, International Branch, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with a second supplemental notice of proposed rulemaking (NPRM) for a new AD for all Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes; and Model A340–541 and A340–642 airplanes. That second supplemental NPRM was published in the **Federal Register** on June 26, 2008 (73 FR 36288). That second supplemental NPRM would have required revising the Airworthiness Limitations section (ALS), for all affected airplanes, by adding new Airworthiness Limitations Items to incorporate service life limits for certain items and inspections to detect fatigue cracking, accidental damage or corrosion in certain structures, in accordance with the revised ALS of the Instructions for Continued Airworthiness. That second supplemental NPRM was prompted by the issuance of new and more restrictive service life limits and structural inspections based on fatigue testing and in-service findings. The proposed actions were intended to detect and correct fatigue cracking, accidental damage, or corrosion in principal structural elements, and to prevent failure of certain life-limited parts, which could result in reduced structural integrity of the airplane.

Actions Since Second Supplemental NPRM Was Issued

Since the second supplemental NPRM was issued, we have published new NPRMs to propose to mandate the most recent airworthiness limitations for Model A330–200 and –300 series airplanes; and new ADs to mandate the most recent airworthiness limitations for Model A340–200 and –300 series airplanes; and Model A340–541 and –642 airplanes, as follows:

- NPRM 2010–NM–210–AD was published on March 22, 2011 (76 FR 15867) for Model A330–200 and –300 series airplanes. That NPRM proposes to revise the airplane maintenance program by incorporating "A330 Airworthiness Limitation Items," Issue 17.
- NPRM 2010–NM–211–AD was published on March 22, 2011 (76 FR 15872) for Model A330–200 and –300 series airplanes. That NPRM proposes to revise the maintenance program by incorporating Airbus A330 ALS Part 1, "Safe Life Airworthiness Limitation Items," Revision 05.
- AD 2011–04–05, Amendment 39–16605 was published on February 15, 2011 (76 FR 8612) for Model A340–200, –300, –500, and –600 series airplanes. That AD requires revising the maintenance program by incorporating Airbus A340 ALS Part 1—Safe Life Airworthiness Limitation Items, Revision 05.
- AD 2011–04–06, Amendment 39–16606 was published on February 15, 2011 (76 FR 8610) for Model A340–200, –300, –500, and –600 series airplanes. That AD requires revising the maintenance program by incorporating Airbus A340 Airworthiness Limitation Items, Issue 11.

FAA's Conclusions

Upon further consideration, we have determined that the actions required by the second supplemental NPRM are required by other ADs that were published after issuance of the second supplemental NPRM. Accordingly, the supplemental NPRM is withdrawn.

Withdrawal of the second supplemental NPRM does not preclude the FAA from issuing another related action or commit the FAA to any course of action in the future.

Regulatory Impact

Since this action only withdraws a supplemental NPRM, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

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

The Withdrawal

Accordingly, we withdraw the second supplemental NPRM, Docket No. FAA–2007–27715; Directorate Identifier 2006–NM–140–AD, which was published in the **Federal Register** on June 26, 2008 (73 FR 36288).

Issued in Renton, Washington, on May 6, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–12165 Filed 5–17–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1327; Airspace Docket No. 10–ASW–19]

Proposed Amendment of Class D Airspace; Denton, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace at Denton, TX. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures at Denton Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: 0901 UTC. Comments must be received on or before July 5, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–1327/Airspace Docket No. 10–ASW–19, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–1327/Airspace Docket No. 10–ASW–19." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by amending Class D airspace extending upward from the surface up to but not including 2,500 feet for standard instrument approach procedures at Denton Municipal Airport, Denton, TX. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9U, dated August 18, 2010 and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 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 5000 Class D Airspace.

* * * * *

ASW TX D Denton, TX [Amended]

Denton Municipal Airport, TX
(Lat. 33°12′03″ N., long. 97°11′53″ W.)

That airspace extending upward from the surface up to but not including 2,500 feet MSL within a 4-mile radius of Denton Municipal Airport, and within 1 mile each side of the 001° bearing from the airport extending from the 4-mile radius to 4.2 miles north of the airport, and within 1 mile each side of the 181° bearing from the airport extending from the 4-mile radius to 4.2 miles south of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Fort Worth, TX, on May 11, 2011.

Walter L. Tweedy,

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

[FR Doc. 2011–12101 Filed 5–17–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0046; Airspace Docket No. 11–ACE–1]

Proposed Amendment of Class E Airspace; Hannibal, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Hannibal, MO. Decommissioning of the Hannibal non-directional beacon (NDB) at Hannibal Regional Airport, Hannibal, MO, has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at Hannibal Regional Airport. This action also would change the airport name to Hannibal Regional Airport, and update the geographic coordinates.

DATES: Comments must be received on or before July 5, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0046/Airspace Docket No. 11–ACE–1, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2011–0046/Airspace Docket No. 11–ACE–1." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by modifying Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Hannibal Regional Airport, Hannibal, MO. Airspace reconfiguration is necessary due to the decommissioning of the Hannibal NDB and cancellation of the NDB approach. This action would also update the airport name from "Hannibal Municipal Airport" to "Hannibal Regional Airport" and adjust the geographic coordinates to coincide with the FAA's aeronautical database. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant

rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Hannibal, MO [Amended]

Hannibal Regional Airport, MO
(Lat. 39°43′31″ N., long. 91°26′38″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Hannibal Regional Airport.

Issued in Fort Worth, TX, on May 11, 2011.

Walter L. Tweedy,

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

[FR Doc. 2011–12124 Filed 5–17–11; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0427; Airspace Docket No. 11–AGL–7]

Proposed Amendment of Class E Airspace; Gary, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Gary, IN, to accommodate new Standard Instrument Approach Procedures (SIAP) at Gary/Chicago International Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport. This action also would update the airport name.

DATES: Comments must be received on or before July 5, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0427/Airspace Docket No. 11–AGL–7, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2011–0427/Airspace Docket No. 11–AGL–7." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd, Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Gary/Chicago International Airport, Gary, IN.

Controlled airspace is needed for the safety and management of IFR operations at the airport. Also, this action would update the airport name from Gary Regional Airport to Gary/Chicago International Airport, Gary IN.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010 and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Gary, IN [Amended]

Gary/Chicago International Airport, IN
(Lat. 41°36'59″ N., long. 87°24'46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Gary/Chicago International Airport, and within 2 miles each side of the 124° bearing from the airport extending from the 6.7-mile radius to 11.6 miles southeast of the airport.

Issued in Fort Worth, TX, on May 11, 2011.

Walter L. Tweedy,

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

[FR Doc. 2011–12126 Filed 5–17–11; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0252; Airspace Docket No. 11–ANM–5]

Proposed Modification of Class E Airspace; Newcastle, WY

Correction

In proposed rule document 2011–8743 appearing on pages 20281–20282 in the issue of Tuesday, April 12, 2011, make the following correction:

§ 71.1 [Corrected]

On page 20282, in the second column, on the 14th line from the bottom of the page, "700 feet" should read "7,000 feet".

[FR Doc. C1–2011–8743 Filed 5–17–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0047; Airspace Docket No. 11–AGL–1]

Proposed Amendment of Class E Airspace; Grand Marais, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Grand Marais, MN. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures at Grand Marais/Cook County Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: 0901 UTC. Comments must be received on or before July 5, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0047/Airspace Docket No. 11–AGL–1, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments

are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2011–0047/Airspace Docket No. 11–AGL–1." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Grand Marais/Cook County Airport, Grand Marais, MN. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010 and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Grand Marais, MN [Amended]

Grand Marais/Cook County Airport, MN
(Lat. 47°50′18″ N., long. 90°22′59″ W.)
Cook County NDB
(Lat. 47°50′24″ N., long. 90°23′08″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Grand Marais/Cook County Airport, and within 2 miles each side of the 275° bearing from the airport extending from the 6.4-mile radius to 8.3 miles west of the airport, and within 2.2 miles each side of the 104° bearing from the Cook County NDB extending from the 6.4-mile radius to 7 miles east of the airport, excluding that airspace which overlies P–204.

Issued in Fort Worth, TX, on May 11, 2011.

Walter L. Tweedy,

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

[FR Doc. 2011–12103 Filed 5–17–11; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2011–D–0102]

Draft Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: In Vitro Diagnostic Devices for Bacillus Species Detection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Class II Special Controls Guidance Document: In Vitro Diagnostic Devices for *Bacillus* spp. Detection." This draft guidance document describes means by which in vitro diagnostic devices for *Bacillus* species (spp.) detection may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register,** FDA is publishing a proposed rule to classify in vitro diagnostic devices for *Bacillus* spp. detection into class II, subject to special controls. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on this draft guidance before it begins work on the

final version of the guidance, submit either electronic or written comments on the draft guidance by August 16, 2011.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled "Class II Special Controls Guidance Document: In Vitro Diagnostic Devices for *Bacillus* spp. Detection" to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Beena Puri, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5553, Silver Spring, MD 20993–0002, 301–796–6202.

SUPPLEMENTARY INFORMATION:

I. Background

This draft special controls guidance document was developed to support the proposed classification of in vitro diagnostic devices for *Bacillus* spp. detection, a previously unclassified preamendments device, into class II (special controls). On March 7, 2002, the Microbiology Devices Panel (the Panel) recommended that in vitro diagnostic devices for *Bacillus* spp. detection be classified into class II. The Panel believed that class II with the special controls (guidance document and limitations on the distribution) would provide reasonable assurance of the safety and effectiveness of the device.

After the panel meeting, FDA found three additional in vitro diagnostic devices for *Bacillus* spp. detection to be substantially equivalent to another device within that type. This device has the same intended use as its predicate device but makes use of newer nucleic acid amplification technology (NAAT). While NAAT detection devices exhibit technological differences from the preamendments *Bacillus* spp. detection devices, FDA has determined that they are as safe and effective as, and do not raise different questions of safety and effectiveness than, their predicates. (See section 513(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(i)).)

This draft guidance document identifies the proposed classification regulation and product code and issues of safety and effectiveness that require special controls. Elsewhere in this **Federal Register**, in its publication of the proposed classification regulation, FDA is including proposed distribution limitations as another special control. FDA believes that the special controls described in the draft guidance and the proposed regulation when combined with general controls will be sufficient to provide reasonable assurance of the safety and effectiveness of these devices.

II. Significance of Special Controls Guidance Document

FDA believes that adherence to the recommendations described in this guidance document, if finalized, in addition to general controls, and the special control in the proposed rule, if finalized, will provide reasonable assurance of the safety and effectiveness of in vitro diagnostic devices for *Bacillus* spp. detection classified under § 866.3045 (21 CFR 866.3045). If classified as a class II device under § 866.3045, an in vitro diagnostic device for *Bacillus* spp. detection will need to comply with the requirement for special controls; manufacturers will need to address the issues requiring special controls as identified in the guidance document or by some other means that provides equivalent assurances of safety and effectiveness as well as comply with any additional controls specified in the classification regulation itself.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* To receive "Class II Special Controls Guidance Document: In Vitro Diagnostic Devices for *Bacillus* spp. Detection," you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1667 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120, and the collections of information in 21 CFR part 801, and 21 CFR 809.10 have been approved under OMB control number 0910–0485.

The labeling requirement listed in Section 8A, "Intended Use," is not subject to review under the PRA because it is a public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public (5 CFR 1320.3(c)(2) and 21 CFR 1040.10(g)).

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 12, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–12081 Filed 5–17–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2011–N–0103]

Microbiology Devices; Classification of In Vitro Diagnostic Device for Bacillus Species Detection

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to classify in vitro diagnostic devices for *Bacillus* species (spp). detection into

class II (special controls), in accordance with the recommendation of the Microbiology Devices Advisory Panel (the Panel). In addition, the proposed rule would establish as a special control limitations on the distribution of this device. FDA is publishing in this document the recommendations of the Panel regarding the classification of this device. After considering public comments on the proposed classification, FDA will publish a final regulation classifying this device. Elsewhere in this issue of the **Federal Register,** FDA is announcing the availability for comment of the draft guidance document that FDA proposes to designate as a special control for this device.

DATES: Submit electronic or written comments by August 16, 2011. See section IV of this document for the proposed effective date of a final rule based on the proposed rule in this document.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2011–N–0103, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2011–N–0103 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the "Request for Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beena Puri, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5553, Silver Spring, MD 20993–0002, 301–796–6202.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legal Authority

The Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (SMDA) (Pub. L. 101–629), the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Pub. L. 107–250), and the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Pub. L. 110–85), establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the FD&C Act, FDA refers to devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), as "preamendments devices." FDA classifies these devices after it: (1) Receives a recommendation from a device classification panel (an FDA advisory committee); (2) publishes the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) publishes a final regulation classifying the device. (See also section 513(d) (21 U.S.C. 360c(d)). FDA has classified most preamendments devices under these procedures.

FDA refers to devices that were not in commercial distribution before May 28, 1976, as "postamendments devices." These devices are classified automatically by statute (section 513(f)) of the FD&C Act (21 U.S.C. 360c(f)) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) FDA reclassifies the device into class I or II; (2) FDA issues an order classifying the device into class I or class II in accordance with section 513(f)(2) of the FD&C Act (21 U.S.C. 360(f)(2)), as amended by FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)), to a predicate device that does not require premarket approval. The Agency determines whether a postamendments device is substantially equivalent to a predicate device by means of premarket notification procedures described in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and 21 CFR part 807.

A person may market a preamendments device that has been classified into class III through premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) requiring premarket approval. Consistent with the FD&C Act and the regulations, FDA consulted with the Panel, regarding the classification of this device.

B. Regulatory History of In Vitro Diagnostic Devices for Bacillus Spp. Detection

After the enactment of the Medical Device Amendments of 1976, FDA undertook to identify and classify all preamendments devices, in accordance with section 513(b) of the FD&C Act (21 U.S.C. 360c(b)). However, in vitro diagnostic devices for *Bacillus* spp. detection were not identified and classified in this initial effort. FDA subsequently identified several preamendments devices for *Bacillus* spp. detection, including *Bacillus* spp. antisera conjugated with a fluorescent dye (immunofluorescent reagents) used to presumptively identify bacillus-like organisms in clinical specimens, antigens used to identify antibodies to *B. anthracis* (anti-toxin and anti-capsular) in serum, and bacteriophage used for differentiating *B. anthracis* from other *Bacillus* spp. based on susceptibility to lysis by the phage.

Consistent with the FD&C Act and the regulations, FDA held a Panel meeting on March 7, 2002, regarding the classification of the preamendments in vitro diagnostic devices for *Bacillus* spp. detection. After the Panel meeting, FDA found three additional in vitro diagnostic devices for *Bacillus* spp. detection to be substantially equivalent to another device within that type. These three devices have the same intended use as their predicate devices, but make use of newer nucleic acid amplification technology (NAAT). While they exhibit technological differences from the preamendments *Bacillus* spp. detection devices, FDA has determined that they are as safe and effective as, and do not raise different

questions of safety and effectiveness than, their predicates. (See section 513(i) of the FD&C Act (21 U.S.C. 360c(i).)

II. Panel Recommendation

During a public meeting held on March 7, 2002, the Panel made the following recommendation regarding the classification of in vitro diagnostic devices for *Bacillus* spp. detection (Ref. 1).

A. Identification

FDA is proposing the following identification based on the Panel's recommendation and the available information. An in vitro diagnostic device for *Bacillus* spp. detection is used to detect and differentiate among *Bacillus* spp. and presumptively identify *B. anthracis* (*B. anthracis*) and other *Bacillus* spp. from cultured isolates or clinical specimens as an aid in the diagnosis of anthrax and other diseases caused by *Bacillus* spp. This device may consist of *Bacillus* spp. antisera conjugated with a fluorescent dye (immunofluorescent reagents) used to presumptively identify bacillus-like organisms in clinical specimens; or bacteriophage used for differentiating *B. anthracis* from other *Bacillus* spp. based on susceptibility to lysis by the phage; or antigens used to identify antibodies to *B. anthracis* (anti-toxin and anti-capsular) in serum. Bacillus infections include anthrax (cutaneous, inhalational, or gastrointestinal) caused by *B. anthracis,* and gastrointestinal disease and non-gastrointestinal infections caused by *Bacillus cereus* (*B. cereus*).

B. Classification Recommendation

The Panel recommended that in vitro diagnostic devices for *Bacillus* spp. Detection be classified into class II. The Panel believed that class II with the special controls (special controls guidance document and distribution limitations) would provide reasonable assurance of the safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register,** FDA is announcing the availability of the guidance document that will serve as a special control for this device.

C. Summary of Reasons and Data To Support the Recommendations

At the March 7, 2002, meeting, the Panel considered information from the literature presented by FDA (Refs. 2 to 5), information presented at the meeting by representatives from the United States Army Medical Research Institute for Infectious Diseases (USAMRIID) who shared the historical perspective on their institution's use of devices for the detection of *B. anthracis* and their personal experience using these devices, and the Panel's personal knowledge and experience.

Evidence presented to the Panel addressed how the preamendments devices of this type work and some of their limitations. Bacteriophage tests are used for differentiating *B. anthracis* from other *Bacillus* spp. based on susceptibility to lysis by the phage. They have been shown to specifically lyse vegetative *B. anthracis* and not *B. cereus* strains, although the phage can fail to lyse rare strains of *B. anthracis. Bacillus* spp. antisera tests conjugated with a fluorescent dye (immunofluorescent reagents) are used to microscopically visualize specific binding with cultured bacteria. Gram positive rods with capsules that fluoresce is presumptive evidence for identification of *B. anthracis* and must be confirmed with further testing. Antigen tests are used to identify antibodies to *B. anthracis* (anti-toxin and anti-capsular) in serum. They can be used for confirmation of anthrax if the patient survives the disease, because early antibiotic treatment does not abrogate antibody expression. However, such serological testing is most useful for monitoring responses to anthrax vaccines and for epidemiological investigations.

The Panel recommended prescription use of the device, with the added restrictions that use of these devices be limited to persons with specific training or experience in the applicable testing methods, and only in facilities under the oversight of public health laboratories, so that the laboratories would coordinate and communicate with state and local public health directors and that performance of the device in the laboratory hands might be systematically collated for interagency review (including FDA).

The Panel believes that in vitro diagnostic devices for *Bacillus* spp. should be classified into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

D. Risks to Health

Based on the Panel's discussion and recommendations, and FDA's experience with these devices, we believe the following are risks to health associated with the use of the device type.

Failure of in vitro diagnostic devices for *Bacillus* spp. detection to perform as indicated or an error in interpretation of results may lead to misdiagnosis and improper patient management or inaccurate epidemiological information that may contribute to inappropriate public health responses. FDA believes that this type of device presents risks associated with a false negative test result, and a false positive test result, as explained below. In addition, there may be risks to laboratory workers resulting from handling cultures and control materials.

A false positive result may lead to a medical decision causing a patient to undergo unnecessary or ineffective treatment, as well as inaccurate epidemiological information on the presence of anthrax disease in a community. A false negative result may lead to delayed recognition by the physician of the presence or progression of disease and inaccurate epidemiological information to control and prevent additional infections. A false negative result could potentially delay diagnosis and treatment of infection caused by *B. anthracis* or other *Bacillus* spp.

Because handling the quality control organisms and those potentially present in the specimen may pose a risk to laboratory workers, use of these products and the needed laboratory control materials would be restricted to laboratories with the appropriate biosafety facilities and training.

E . Special Controls

The Panel suggested the following special controls: (1) That FDA partner with the Centers for Disease Control and Prevention (CDC), USAMRIID, and other appropriate Agencies involved in laboratory performance issues to develop practical ways to evaluate the performance of these devices; (2) that appropriate biosafety handling of the diagnostic specimens be followed; and (3) that FDA develop testing guidelines to include recommendations on specimen selection, procedures, interpretation of results, and possibly public health notification.

Based on the Panel's discussion and recommendations, FDA believes that, in addition to general controls, the special controls discussed in the following paragraphs are adequate to address the risks to health.

FDA believes that the draft guidance document entitled "Class II Special Controls Guidance Document: "In Vitro Diagnostic Devices for *Bacillus* spp. Detection" and limitations on distribution of these devices, set forth in the proposed classification regulation, will help to address the issues identified previously and provide a reasonable

assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register,** FDA is announcing the availability for comment of the draft of the guidance document that is proposed to serve as a special control for this device. The class II special controls guidance provides information on how to meet premarket (510(k)) submission requirements for the assays in the sections that discuss performance characteristics and labeling. The performance characteristics section describes studies to demonstrate appropriate performance and control against assays that may otherwise fail to perform to acceptable standards. The labeling section addresses factors such as directions for use, quality control and precautions for use and interpretation.

In addition, FDA proposes to require as a special control in the proposed classification regulation that distribution of the device be limited to laboratories with experienced personnel who have training in principles and use of microbiological culture identification methods and infectious disease diagnostics, and with appropriate biosafety equipment and containment. As noted, the Panel was concerned that these devices be used by personnel sufficiently skilled to maximize their performance and to appropriately interpret and make use of test results. FDA believes that this proposed distribution limitation will appropriately help assure the safe and effective use of these devices, and that it is consistent with the intent of the Panel in its discussion of limitations on the use of the devices and on monitoring of test results.

TABLE 1—RISKS TO HEALTH AND MITIGATION MEASURES

Identified risks	Mitigation measures
A false negative test result may lead to delay of therapy and progression of disease and epidemiological failure to promptly recognize disease in the community.	Device description—Recommended. Performance Studies—Recommended. Labeling—Recommended. Limited Distribution—Required.
A false positive test result may lead to unnecessary treatment and incorrect epidemiological information that leads to unnecessary prophylaxis and management of others.	Device description—Recommended. Performance Studies—Recommended. Labeling—Recommended. Limited Distribution—Required.
Biosafety and risks to laboratory workers handling test specimens and control materials	Labeling—Recommended. Limited Distribution—Required.

III. Proposed Classification

FDA agrees with the Panel's recommendation that in vitro diagnostic devices for *Bacillus* spp. detection should be classified into class II because special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

IV. Proposed Effective Date

FDA proposes that any final regulation based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

V. Environmental Impact

The Agency has determined that under 21 CFR 25.34(b) this classification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

A. Introduction

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action as defined by the Executive Order.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because of the minor impact expected from this proposed rule, the Agency proposes to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $135 million, using the most current (2009) Implicit Price Deflator for the Gross National Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

B. Objective

The objective of the proposed regulation is to ensure the continued safety and effectiveness of in vitro diagnostic test kits for the identification of potential *Bacillus* (*Bacillus* spp.) infections.

C. Baseline

Since the 1950s, diagnostic tests have been used to detect *Bacillus* spp., differentiate between species, and identify *B. anthracis* from culture isolates or clinical specimens. Over the 10-year period 1999 to 2009, there have been approximately 8,000 such tests (using the estimated annual testing rate), the vast majority of which were for the purposes of proficiency testing and training. No accidents have been reported associated with these tests.

There are currently five diagnostic test kits cleared from different manufacturers, as well as devices developed by CDC and Department of Defense. The CDC test kits have been distributed to approximately 114 laboratories that belong to the national LRN (Laboratory Response Network). Kits are able to test between 10 and 100 samples depending on the testing capability of the different test kits. The alternative to using in vitro diagnostic test kits to identify potential exposure to

B. anthracis is to use blood, fluid, and tissue specimens to grow cultures that may be used to identify the bacillus. This method is more time-consuming and presents risks that the disease (if present) will progress and be more difficult to treat when identified. It also means increased patient anxiety while the culture is growing, whether the patient has been exposed or not. A patient that may have contracted inhalational anthrax would be expected to have high levels of anxiety while awaiting diagnosis. The diagnostic test kits offer significant public health benefits by providing rapid diagnosis that can both save lives by identifying patients with anthrax and rapidly beginning treatment as well as avoiding unnecessary prophylactic treatments for patients that are found to not have the bacillus.

Currently most marketed diagnostic test kits have extremely high predictive values. Sensitivities of these devices (proportion of positive patients correctly identified by the test) have been tested to be over 99 percent and specificities (proportion of negative patients correctly identified by the test) approach 100 percent.

However, after the 2001 incident of inhalational anthrax exposures, there was an increased public awareness of the risk of contracting anthrax due to the media publicity that surrounded the event. Fourteen manufacturers reacted to this increased public attention by submitting inquiries to FDA about obtaining marketing clearance for additional products that would diagnose the presence of the bacillus. Two of the 14 inquiries have resulted in diagnostic products getting cleared through the Premarket Notification (510(k)) process and one manufacturer submitting an Investigational Device Exemption (IDE). The remaining manufacturers expressed interest but decided not to conduct the necessary investigations to ensure the safety and effectiveness of the test kits.

The increased level of public attention and concern towards potential inhalational anthrax exposures that result from any incident (such as in 2001) is likely to have similar responses from potential manufacturers in the future. In the absence of this proposed rule, there will continue to be ambiguity as to the specific testing criteria for the device to be cleared for marketing. In addition, FDA resources will be spent responding to these inquiries for potential products that are not destined to be marketed.

D. The Proposed Regulation

We are proposing to classify anthrax diagnostic test kits as Class II, and designate special controls. The special controls include limitations of distribution for all *Bacillus* spp. detection devices and the special controls guidance will include recommendations for the performance data, quality control information, and labeling. This guidance document will be unlikely to affect the number of laboratory tests for *Bacillus* spp. or the number of tests used for training purposes. Generally, these recommendations are already being practiced. The document is also not likely to result in any procedural changes in how laboratories handle the diagnostic test kits because we have been interacting with manufacturers individually to ensure safety and effectiveness and the guidance document is designed to clearly articulate the best current practices. The proposed rule will ensure that information provided to manufacturers and users of these diagnostic test kits is consistent and appropriate and limit distribution to laboratories that have experienced personnel and appropriate biosafety equipment.

E. Impact of the Proposed Regulation

If the proposed regulation is implemented, potential marketers of these kits would clearly know what criteria and what evidence would be needed to ensure clearance of their devices. In addition, laboratory personnel would have assurance that they were handling the test kits appropriately, thus both ensuring the predictive value of the test kits were maximized and any potential risk of exposure to pathogens due to careless handling of the test kits remain minimized. That being said, we do not expect any change from current conditions that would result from the proposed regulation. The current predictive values of the test kits are already extremely high. Of the five products currently cleared, there were no reports of false positive (specificity of 100 percent) and few reports of false negatives (estimated sensitivity of 99.6 percent combining all products). Therefore, we do not expect any change in either use of the test kits by laboratories or in the predictive value of the test kits in patients. The proposed rule will, however, provide additional levels of assurance that the test kits will provide accurate and timely diagnosis and the proper laboratory procedures will maintain the safe and effective use of the test kits.

F. Costs

The costs of the proposed rule are due to manufacturers' ensuring that product labeling will be consistent with the language suggested in the guidance document as well as likely periodic quality control testing to ensure that marketed test kits maintain levels of safety and effectiveness. The costs associated with ensuring consistent labeling are expected to be minor. The labeling recommendation is based on the labeling of the currently cleared devices and little or no change from current conditions is expected. Nevertheless, we have estimated that manufacturers may incur minor revisions to their labels in response to the new guidance after regulatory staff review and compare current labeling language and design to the language and design recommendations (including photographs or diagrams) proposed in the guidance document. To account for these reviews and any possible labeling revisions, we have estimated that typical label changes for typical medical devices or diagnostic products would cost manufacturers approximately $2,200 per label change per brand. This estimate is based on market driven label revisions and was derived from estimates for a variety of devices similar to test kits (Cost Analysis of the Labeling and Related Testing Requirements for Medical Glove Manufacturers, Eastern Research Group (ERG), 2002) and account for only simple language and design alterations. We have further estimated that changes of this sort typically occur about every 5 years in response to market changes and improvements to the specific product. The manufacturers of each of the 4 currently marketed test kits are likely to review and perhaps revise labels for a total cost of $8,800. Over an expected 5-year evaluation period (based on a typical labeling cycle), the annualized cost of reviewing and revising labels is only $1,900 (3-percent annual discount rate) or $2,100 (7-percent annual discount rate).

In addition, the draft guidance document will include a description of the quality control tests recommended to ensure the safety and effectiveness of the diagnostics. While these tests are currently used to develop marketed products, it is possible that the frequency of testing to ensure continued quality may increase as a result of the proposed rule. We have estimated that additional quality control testing may require expenditures of as much as $100 per product per year for each brand. This cost is based on a sampling of typical laboratory control tests (including ELISHA, Lowry, and other ASTM (American Society for Testing of Materials) recommended tests) for

devices (ERG, 2002). Therefore, for the duration of a 5-year evaluation period, we expect the industry may incur additional quality control testing costs of about $400 per year.

The proposed rule is designed to articulate current practices for the currently marketed test kits. However, because of this regulatory classification, it is possible that these additional activities will result in minor cost increases. We have estimated that the proposed rule could result in, at most, annualized costs of approximately $2,300 (3 percent) or $2,500 (7 percent).

G. Benefits

There are unlikely to be any direct public health benefits of the proposed rule, because the rule articulates current industry practice and does not change the expected use of the diagnostic product. However, the proposed regulation is designed to ensure continued quality of this important diagnostic tool. The *Bacillus* spp. test kit provides important public health benefits through rapid diagnosis and thus, rapid treatment of a fatal disease, or rapid identification that treatment is not necessary. The absence of this diagnostic test kit, or even a decrease in the performance of the kit, would increase the negative outcomes of any future anthrax event, including increases in potential mortalities. The proposed regulation will provide additional assurance that the current level of public health protection is maintained.

In addition, it is possible that any slight label revisions or standardization of information in the labeling, as well as an increased emphasis on laboratory training, may decrease the likelihood of potential mishandling of either the diagnostic test kits or the test medium. There is currently no way to quantify this effect because there has been no reported exposure or risk associated with these diagnostic tests or the test medium in this country. We acknowledge that it is possible that mishandling could occur in the future and it is possible that clear, consistent instructions may avoid some potential future mishandling, but cannot quantify any benefit based on this eventuality.

However, the response of potential marketers of *Bacillus* spp. test kits to the publicity that surrounded the 2001 anthrax event indicates that a potential benefit could be derived from clearly articulating the tests needed to provide sufficient data to ensure adequate safety and effectiveness of these products. By having consistent and easily available criteria, potential marketers will easily be able to ascertain whether or not to pursue market clearance. The availability of this information is expected to result in better, and perhaps fewer, potential marketing applications that may arise in response to future incidents of public inhalation anthrax exposure. Of course we hope that future events do not occur; however, there is a low level of probability that an incident could occur in the future. We have estimated the annual probability of a public inhalational anthrax incident to be approximately between 2 percent and 5 percent based on historical occurrences. We received 14 inquiries in regards to obtaining clearances which have resulted in 3 applications and 2 clearances. Using the success rate of 14 percent (2 successes from 14 inquiries), we expect a reduction of approximately 0.24 to 0.6 unsuccessful inquiries or applications each year. (Twelve unsuccessful inquiries or applications multiplied by the annual probability of an incident). The estimated effort to potential marketers of contacting FDA, obtaining advice concerning the clearance process, and preliminarily preparing a marketing application is estimated to take approximately 5 days of review, market research, and internal decisionmaking. The mean salary for employees within NAICS 325413 (In Vitro Diagnostic Substance Manufacturing) is approximately $80,000 (Census, 2007). A week of FTE (full-time employee) time would thus have an average cost to manufacturers of about $1,500. By avoiding unnecessary (and ultimately unsuccessful) inquiries for potential marketing applications, we expect the proposed rule to result in savings of between $400 and $900 per year. ($1,500 multiplied by 0.24 and 0.6 avoided inquiries each year).

In addition, FDA resources will not be spent responding to inquiries or reviewing unsuccessful applications that would not be submitted with the clear information that would be the result of the proposed rule. The average FDA full-time equivalent employee is valued at approximately $130,000, including salary, benefits, overhead, and support). Responding to inquiries concerning a potential application may consume a few hours of resources per inquiry while reviewing an application may consume as much as 2 weeks of review time. On average, we expect each avoided inquiry or application to save approximately 8 hours of FDA resources. Thus, with the clear information available as a result of the proposed rule, FDA is expected to save between $100 and $300 per year ($130,000 divided by 235 days times 0.24 and 0.6 annual inquiries avoided).

Thus, we estimate the proposed regulation will result in quantifiable benefits of avoiding unnecessary inquiries and potential applications to be between $500 and $1,200 per year. We believe that the unquantified benefits of providing an additional level of quality assurance, maintaining the predictive value of the marketed test kits, and avoiding any potential future laboratory errors cannot be estimated, but represent real benefits to the public health.

H. Alternatives to the Proposed Rule

We identified four plausible alternatives to the proposed rule.

1. Continue to regulate as an unclassified device. This alternative would not provide an assurance of safety and effectiveness and would continue the current level of inconsistent information for potential new marketers.

2. Regulate this diagnostic test as a Class I device. Because sufficient information was available to develop special controls for this device, this alternative, which would require general controls only, was not considered sufficient for the potential risks of this device.

3. Regulate this diagnostic test as a Class III device. Premarket approval and clinical data collection are not appropriate for the potential risks of this device, which are more appropriately dealt with using the proposed special controls. Classifying the test as Class III would increase the cost of marketing the devices without an increase in assurances of safety and effectiveness.

4. Regulate this diagnostic test as a Class II device with alternative special controls. The proposed guidance document is sufficient to provide assurances of safety and effectiveness. Other potential special controls were deemed to not be cost-effective and not provide additional assurances of safety and effectiveness.

I. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because of the minor costs to manufacturing entities attributable to the proposed rule, the Agency believes the proposed rule will not have a significant economic impact on a substantial number of small manufacturing entities. In addition, the proposed rule will not affect testing laboratories because we do not expect any change in current use of the diagnostic test kit.

There are currently five cleared diagnostic kits for the identification of *Bacillus* spp. marketed by five companies. These companies are classified in the In Vitro Diagnostic Substance Manufacturing Industry (NAICS 325413) by the Census of Manufacturers. This industry is typified by small entities. For this industry, the Small Business Administration classifies any establishment with 500 or fewer employees as small. The typical establishment in this industry employs only about 120 employees, so virtually every company is small. Value of shipments for this industry is approximately $50,000,000 per establishment. The expected annualized cost per affected establishment ($800) represents less than 0.002 percent of annual shipments.

Testing Laboratories (NAICS 541380) are considered small by the Small Business Administration if they generate $12,000,000 or less in annual revenue. There is no change in activity expected by this industry from the proposed rule, so we do not expect any impact on laboratories.

VII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires Agencies to "construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute." Federal law includes an express preemption provision that preempts certain state requirements "different from or in addition to" certain Federal requirements applicable to devices. 21 U.S.C. 360k; See *Medtronic* v. *Lohr* 518 U.S. 470 (1996); *Riegel* v. *Medtronic,* 552 U.S. 312 (2008). The special control regarding limited distribution set out in the proposed regulation, if finalized, would create a requirement. The other special controls, if finalized, would create "requirements" to address each identified risk to health presented by these specific medical devices under 21 U.S.C. 360k, even though product sponsors may have flexibility in how they meet those requirements. Cf. *Papike* v. *Tambrands, Inc.,* 107 F.3d 737, 740–42 (9th Cir. 1997).

VIII. Paperwork Reduction Act of 1995

FDA concludes that this proposed rule contains no new collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) is not required.

The proposed rule would establish as special control a draft guidance document that refers to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control no. 0910–0120. The collections of information in 21 CFR part 801 and 21 CFR 809.10, regarding labeling, have been approved under OMB control no. 0910–0485.

IX. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding this proposed rule. 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.

X. 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. We have verified all Web site addresses, but we are not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**.

1. Transcript of the FDA Microbiology Devices Panel meeting, March 7, 2002, at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfAdvisory/details.cfm?mtg=348.*

2. Abshire, T.G. *et al.,* "Validation of the use of gamma phage for identifying *Bacillus anthracis,*" 102nd American Society for Microbiology Annual Meeting poster #C122, 2001.

3. Brown, Eric R. and William B. Cherry, "Specific identification of *Bacillus anthracis* by means of a variant bacteriophage," vol. 96, *Journal of Infectious Disease,* p. 34, 2001.

4. Brown, Eric R. *et al.,* "Differential diagnosis of *Bacillus cereus, Bacillus anthracis* and *Bacillus cereus* var. *mycoides,*" vol. 75, *Journal of Bacteriology,* p. 499, 1957.

5. Buck C.A. *et al.,* "Phage isolated from lysogenic *Bacillus anthracis,*" vol. 85, *Journal of Bacteriology,* p. 423, 1963.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 866 be amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

1. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 866.3045 is added to subpart D to read as follows:

§ 866.3045 In vitro diagnostic device for Bacillus spp. detection.

(a) *Identification.* An in vitro diagnostic device for *Bacillus* spp. detection is used to detect and differentiate among *Bacillus* spp. and presumptively identify *Bacillus anthracis* and other *Bacillus* spp. from cultured isolates or clinical specimens as an aid in the diagnosis of anthrax and other diseases caused by *Bacillus* spp. This device may consist of *Bacillus* spp. antisera conjugated with a fluorescent dye (immunofluorescent reagents) used to presumptively identify bacillus-like organisms in clinical specimens; or bacteriophage used for differentiating *B. anthracis* from other *Bacillus* spp. based on susceptibility to lysis by the phage; or antigens used to identify antibodies to *B. anthracis* (anti-toxin and anti-capsular) in serum. Bacillus infections include anthrax (cutaneous, inhalational, or gastrointestinal) caused by *B. anthracis,* and gastrointestinal disease and non-gastrointestinal infections caused by *B. cereus.*

(b) *Classification.* Class II (special controls). The special controls are:

(1) FDA's guidance document entitled: "Class II Special Controls Guidance Document: In Vitro Diagnostic Devices for *Bacillus* spp. Detection; Guidance for Industry and FDA." See § 866.1(e) for information on obtaining this document.

(2) The distribution of these devices is limited to laboratories with experienced personnel who have training in principles and use of microbiological culture identification methods and infectious disease diagnostics, and with appropriate biosafety equipment and containment.

Dated: *May 12, 2011.*

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–12088 Filed 5–17–11; 8:45 am]

BILLING CODE 4160–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2011–10; Order No. 727]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is noticing a recently-filed Postal Service petition to initiate an informal rulemaking proceeding to consider changes in analytical principles. Proposal Two involves changes affecting cost models for evaluating competitive Negotiated Service Agreements. This notice informs the public of the filing, addresses preliminary procedural matters, and invites public comment.

DATES: *Comments are due:* June 13, 2011.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: On May 10, 2011, the Postal Service filed a petition pursuant to 39 CFR 3050.11 asking the Commission to initiate an informal rulemaking proceeding to consider changes in the analytical principles approved for use in periodic reporting.[1] Proposal Two is a set of four changes that the Postal Service first presented in its FY 2010 Annual Compliance Report (ACR) modifying the cost models that are used to evaluate Negotiated Service Agreements (NSAs) for competitive products. These cost models were included in USPS–FY10–NP27 in that docket.

The Petition notes that in its FY 2010 Annual Compliance Determination, the Commission made a preliminary determination that these four changes constitute changes to analytical principles that require prior Commission approval before being incorporated in an ACR.[2] The Postal Service notes that the purpose of its Petition is to obtain the Commission's approval of the referenced changes for use in future ACRs, even though some of the changes could be viewed as corrections to its models not requiring advance Commission approval. Petition at 1.

The four changes for which the Postal Service seeks approval are:

1. The addition of a cost avoidance for Priority mailpieces;
2. The inclusion of D-Report adjustments;[3]
3. The incorporation of the CRA adjustment for Alaska Air Priority transportation; and
4. Changes in the distribution of other costs for Parcel Select and Parcel Return Service.

In the material supporting these changes, the Postal Service asserts that including them in the NSA cost models better matches the characteristics of the mail volume for the NSAs in question. It characterizes inclusion of the D-Report and the Alaska Air adjustments as rectifying previous omissions from these models. It notes that the change in the distribution of "Other" costs for Parcel Select is made necessary by the inclusion of the D-Report adjustment.

The Postal Service explains that if the D-Report adjustment is made, it will comprise the majority of "Other" costs. Since the D-Report adjustment is computed as a cost per piece, it contends, "Other" costs should be distributed on a per-piece basis, rather than treated as proportionate to mail processing, transportation, and delivery costs. It says that for consistency, a similar adjustment should be made to the costs of Parcel Return Service. *Id.* at 4.

More detailed descriptions of the proposed changes can be found in USPS–RM2011–10/NP1, which is filed under seal.

It is ordered:

1. The Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider a Proposed Change in Analytical Principles (Proposal Two), filed May 10, 2011, is granted.
2. The Commission establishes Docket No. RM2011–10 to consider the matters raised by the Postal Service's Petition.
3. Interested persons may submit comments on Proposal Two no later than June 13, 2011.
4. The Commission will determine the need for reply comments after review of the initial comments.
5. John P. Klingenberg is appointed to serve as the Public Representative to represent the interests of the general public in this proceeding.
6. The Secretary shall arrange for publication of this notice in the **Federal Register.**

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2011–12202 Filed 5–17–11; 8:45 am]

BILLING CODE 7710–FW–P

[1] Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider a Proposed Change in Analytical Principles (Proposal Two), May 10, 2011 (Petition).

[2] *See* Docket No. ACR2010, FY 2010 Annual Compliance Determination, March 29, 2011, at 141.

[3] The D-Report is one of six reports used to develop the Cost and Revenue Analysis (CRA). In the D-Report, the Postal Service provides attributable, product-specific, and volume variable costs for each product.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0372; FRL–9307–4]

Approval and Promulgation of Air Quality Implementation Plans; California; Determination of Termination of Section 185 Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to determine that the State of California is no longer required to submit or implement section 185 fee program State Implementation Plan (SIP) revisions for the Sacramento Metro 1-hour ozone nonattainment area (Sacramento Metro Area) to satisfy anti-backsliding requirements for the 1-hour ozone standard. The Sacramento Metro Area consists of both Sacramento and Yolo counties and portions of four adjacent counties (Solano, Sutter, Placer and El Dorado). This proposed determination ("Termination Determination") is based on complete, quality-assured and certified ambient air quality monitoring data for 2007–2009, showing attainment of the 1-hour ozone National Ambient Air Quality Standard (1-hour ozone NAAQS or standard), which is due to permanent and enforceable emission reductions implemented in the area. Complete and

quality-assured data for 2010 show that the area continues in attainment for the 1-hour ozone NAAQS. EPA is also proposing to exclude from use in determining attainment exceedances of the 1-hour ozone NAAQS that occurred on three days in 2008, because the exceedances are due to exceptional events (wildfires).

DATES: Written comments must be received on or before June 17, 2011.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R09–OAR–2011–0372, by one of the following methods:

1. *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *E-mail:* John J. Kelly at *kelly.johnj@epa.gov.*
3. *Fax:* John J. Kelly, Air Planning Office (Air-2), at fax number 415–947–3579.
4. *Mail:* John J. Kelly, Air Planning Office (Air-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne, San Francisco, California 94105.
5. *Hand or Courier Delivery:* John J. Kelly, Air Planning Section (Air-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne, San Francisco, California 94105. Such deliveries are only accepted during the Docket's normal hours of operation. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R09–OAR–2011–0372. 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 the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail that you consider to be CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Office (Air-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne, San Francisco, California 94105. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection during normal business hours.

FOR FURTHER INFORMATION CONTACT: John J. Kelly, (415) 947–4151, or by e-mail at *kelly.johnj@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

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I. What actions is EPA taking?

EPA is proposing to determine that California is no longer required to submit or implement Clean Air Act (CAA or the Act) section 185 fee program SIP revisions for the Sacramento Metro 1-hour ozone nonattainment area (Sacramento Metro Area) to satisfy anti-backsliding requirements associated with the transition from the 1-hour ozone standard (1-hour standard or 1-hour) to the 1997 8-hour ozone standard (8-hour standard or 8-hour). This proposed Termination Determination is based on EPA's belief that the area is attaining the 1-hour ozone standard due to permanent and enforceable emission reductions implemented in the area. In addition, EPA proposes to exclude from use in determining the area has attained the 1-hour ozone standard certain air quality monitoring data because they meet the criteria for ozone exceptional events that are caused by wildfires. If finalized, the effect of EPA's determination that the area has attained the 1-hour ozone standard due to permanent and enforceable emission reductions would be to terminate the area's obligations with respect to section 185 fee program requirements for the 1-hour ozone standard. In a separate interim final action, published in the Rules section in today's **Federal Register**, we are deferring sanctions that would otherwise apply to the entire Sacramento Metro Area with the exception of Sacramento County, that is, the entirety of Yolo County and the Sacramento Metro Area portions of Solano, Sutter, Placer and El Dorado counties. This action addresses only the CAA section 185 requirements for the 1-hour ozone standard for the Sacramento Metro Area, and not for the 1997 8-hour ozone standard.

II. Background

The Act requires us to establish NAAQS for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare (sections 108 and 109 of the Act). In 1979, we promulgated the revised 1-hour ozone standard of 0.12 parts per million (ppm) (44 FR 8202, February 8, 1979).[1]

An area is considered to have attained the 1-hour ozone NAAQS if there are no violations of the standard, as determined in accordance with the regulation codified at 40 CFR section 50.9, based on three consecutive calendar years of complete, quality-assured and certified monitoring data. A violation occurs when the ambient ozone air quality monitoring data show greater than one (1.0) "expected number" of exceedances per year at any site in the area, when averaged over three consecutive calendar years.[2] An

[1] For ease of communication, many reports of ozone concentrations are given in parts per billion (ppb); ppb = ppm × 1000. Thus, 0.12 ppm becomes 120 ppb (or between 120 to 124 ppb, when rounding is considered).

[2] An "expected number" of exceedances is a statistical term that refers to an arithmetic average. An "expected number" of exceedances may be equivalent to the number of observed exceedances plus an increment that accounts for incomplete sampling. See, 40 CFR part 50, Appendix H.

exceedance occurs when the maximum hourly ozone concentration during any day exceeds 0.124 ppm. For more information, please see "National 1-hour primary and secondary ambient air quality standards for ozone" (40 CFR 50.9) and "Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone" (40 CFR part 50, Appendix H).

The Act, as amended in 1990, required EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on air quality monitoring data from the 1987 through 1989 period (section 107(d)(4) of the Act; 56 FR 56694, November 6, 1991). The Act further classified these areas, based on the severity of their nonattainment problem, as Marginal, Moderate, Serious, Severe, or Extreme.

The control requirements and date by which attainment of the 1-hour ozone standard was to be achieved varied with an area's classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993, while Severe and Extreme areas were subject to more stringent planning requirements and were provided more time to attain the standard.

Sacramento Metro Area's History

On November 6, 1991, EPA designated the Sacramento Metro Area as Serious nonattainment for the 1-hour ozone standard, with an attainment date no later than November 15, 1999 (56 FR 56694). The Sacramento Metro Area consists of the entirety of both Sacramento and Yolo counties and portions of four adjacent counties (El Dorado, Placer, Solano and Sutter counties) (see 40 CFR section 81.305). Sacramento County is under the jurisdiction of the Sacramento Metropolitan Air Quality Management District (SMAQMD). Yolo County and the eastern portion of Solano County comprise the Yolo-Solano Air Quality Management District. The southern portion of Sutter County is part of the Feather River Air Quality Management District. The western portion of Placer County is part of the Placer County Air Pollution Control District. Lastly, the western portion of El Dorado County is part of the El Dorado County Air Quality Management District. Under California law, each air district is responsible for adopting and implementing stationary source rules, such as the rules required under CAA section 185, while the California Air Resources Board (CARB) adopts and implements consumer products and mobile source rules. The district and state rules are submitted to EPA by CARB.

In 1995, EPA granted the State's request to reclassify the Sacramento Metro Area as Severe. 60 FR 20237 (April 25, 1995). The reclassification of the area as Severe required the State to adopt a SIP revision creating a penalty fee program under CAA section 185 that would apply if the area failed to meet the November 15, 2005 attainment date that applies to Severe 1-hour ozone areas and to submit that SIP revision to EPA by December 31, 2000 (CAA section 182(d)(3)). On September 26, 2002, SMAQMD adopted Rule 307 ("Clean Air Act Fees"). CARB submitted Rule 307 to EPA as a SIP revision for the Sacramento County portion of the area on December 12, 2002 and EPA approved Rule 307 on August 26, 2003 (68 FR 51184). The other affected air districts in the Sacramento Metro Area did not submit 1-hour section 185 SIP revisions for their portions of the nonattainment area. EPA published findings of failure to submit on January 5, 2010 (75 FR 232).[3] These findings started sanctions clocks for imposition of offset sanctions 18 months after January 5, 2010 and highway sanctions six months after the offset sanctions, pursuant to section 179 of the CAA and our regulations at 40 CFR section 52.31.

In 1997, EPA promulgated a new, more protective standard for ozone based on an 8-hour average concentration (the 1997 8-hour ozone standard). In 2004, EPA published the 1997 8-hour ozone designations and classifications and a rule governing certain facets of implementation of the 8-hour ozone standard (Phase 1 Rule) (69 FR 23858 and 69 FR 23951, respectively, April 30, 2004).

By the Sacramento Metro Area's 1-hour ozone 2005 attainment deadline, EPA had revoked the 1-hour standard and designated the area as nonattainment for the 1997 8-hour ozone NAAQS. See 40 CFR 81.305. The area's initial classification for 8-hour ozone was Serious, but EPA subsequently granted CARB's request to reclassify the area to Severe for the 8-hour ozone standard. See 75 FR 24409, May 5, 2010. On July 7, 2010, and in an update on April 13, 2011, CARB requested that EPA find that the Sacramento Metro Area had attained the 1-hour ozone standard due to permanent and enforceable emission reductions, and that EPA terminate 1-hour ozone CAA section 185 requirements for the area. See letters from James Goldstene, CARB Executive Officer, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, with enclosures, dated July 7, 2010 and April 13, 2011.

Section 185 1-Hour Ozone Anti-Backsliding Requirements

Although EPA revoked the 1-hour ozone standard (effective June 15, 2005), during the transition from the 1-hour ozone to the 8-hour ozone standard, 1-hour nonattainment areas remain subject to certain requirements based on their 1-hour ozone classification. The section 185 fee program requirement applies to any ozone nonattainment area classified as Severe or Extreme, including any area that was classified Severe or Extreme under the 1-hour ozone NAAQS as of the effective date of the area's 8-hour designation (see 40 CFR part 81).

Initially, in our rules to address the transition from the 1-hour to the 8-hour ozone standard, EPA did not include the section 185 fee penalty requirement as one of the measures necessary to meet Clean Air Act anti-backsliding requirements.[4] However, on December 23, 2006, the United States Court of Appeals for the District of Columbia Circuit determined that EPA should not have removed from its anti-backsliding requirements the application of the section 185 fee provision for Severe and Extreme nonattainment areas that failed to attain the 1-hour ozone standard by their attainment date. *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (DC Cir. 2006). In light of the Court's decision, on January 5, 2010 EPA issued guidance on the application of the section 185 1-hour anti-backsliding requirement.[5] EPA's guidance addressed, among other matters, alternative methods of satisfying the section 185 1-hour anti-backsliding requirement, and the circumstances under which EPA would determine that the obligation was terminated.

After the 1-hour ozone standard was revoked, and in accordance with anti-backsliding regulations that remain unchallenged, EPA was no longer obligated to find that an area attained by

[3] EPA's findings also addressed two other 1-hour ozone nonattainment areas in California, which are not at issue here: Southeast Desert and the Los Angeles-South Coast Air Basin.

[4] Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1, 69 FR 23951 (April 30, 2004).

[5] Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Air Division Directors, "Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-hour Ozone NAAQS," January 5, 2010. This memorandum is in the docket to this proposed action and can also be found on the Internet at: *http://www.epa.gov/groundlevelozone/pdfs/20100105185guidance.pdf.*

its 1-hour attainment date, nor to reclassify 1-hour areas under CAA Sections 181(b)(2) or 179(c) (40 CFR 51.905(e)). (69 FR 23951, April 30, 2004).

III. What is the legal rationale for this proposed termination determination?

As a result of the court decision in *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (DC Cir. 2006), states with areas classified as Severe or Extreme nonattainment for the 1-hour ozone standard at the time of the area's initial nonattainment designation for the 1997 8-hour standard are no longer categorically exempt from the anti-backsliding requirements imposed by section 185. EPA has issued guidance for states related to developing 1-hour ozone section 185 fee programs.[6] As set forth in this guidance, EPA believes that states can meet the 1-hour ozone section 185 obligation through a SIP revision containing either the fee program prescribed in section 185 of the Act, or an equivalent alternative program, as further explained below. EPA believes that an alternative program may be acceptable if EPA determines, through notice-and-comment rulemaking, that it is consistent with the principles of section 172(e) of the CAA.

Section 172(e) is an anti-backsliding provision of the CAA that requires EPA to develop regulations to ensure that controls in a nonattainment area are "no less stringent" than those that applied to the area before EPA revised a NAAQS to make it less stringent. In the Phase 1 ozone implementation rule for the 1997 ozone NAAQS published on April 30, 2004 (69 FR 23951), EPA determined that although section 172(e) does not directly apply where EPA has strengthened the NAAQS, as it did in 1997, it was reasonable to apply the same anti-backsliding principle that would apply to the relaxation of a standard for the transition from the 1-hour NAAQS to the more stringent 1997 8-hour NAAQS. As part of applying the principle in section 172(e) for purposes of the transition from the 1-hour standard to the 1997 8-hour standard, EPA can either require states to retain programs that applied for purposes of the 1-hour standard, or alternatively can allow states to adopt alternative programs, but only if such alternatives are determined through notice-and-comment rulemaking to be "no less stringent" than the mandated program.

EPA is electing to consider alternative programs to satisfy the 1-hour ozone section 185 fee program SIP revision requirement. States choosing to adopt an alternative program to the section 185 fee program must demonstrate that the alternative program is no less stringent than the otherwise applicable section 185 fee program and EPA can only approve such demonstration after notice-and-comment rulemaking.

As set forth in EPA's January 5, 2010 guidance, EPA believes that for an area that we determine is attaining either the 1-hour ozone or 1997 8-hour ozone NAAQS, based on permanent and enforceable emission reductions, the area would no longer be obligated to satisfy the section 185 anti-backsliding requirements associated with the transition from the 1-hour ozone standard to the 1997 8-hour ozone standard. In such cases, an area's existing SIP could be considered an adequate alternative program. Our reasoning follows from the fact that an area's existing SIP measures, in conjunction with other enforceable Federal measures, are adequate for the area to achieve attainment, which is the purpose of the section 185 program. The section 185 fee program is an element of an area's attainment demonstration and its objective is to bring about attainment after a failure of an area to attain by its attainment date. Thus, areas that have attained the 1-hour ozone standard, the standard for which the fee program was originally required, as a result of permanent and enforceable emission reductions, would have a SIP that is no less stringent than the SIP required under section 185. Therefore, EPA concludes that the obligation to submit a rule or to collect fees terminates once EPA determines that the area has attained the 1-hour ozone standard based on permanent and enforceable emission reductions.

There is also an additional, independent basis for EPA's approach to determining that the anti-backsliding requirements associated with section 185 have been satisfied. Although section 185 provides that fees are to continue until the area is redesignated to attainment for ozone, EPA no longer promulgates redesignations for the 1-hour ozone standard because that standard has been revoked. Therefore, relief from the 1-hour section 185 fee program requirements under the terms of the statute is an impossibility, since the conditions the statute envisioned for relieving an area of its fee program obligation no longer can exist. There is thus a gap in the statute which must be filled by EPA. We believe that under these circumstances we must exercise our discretion under *Chevron USA, Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984), to fill this gap, so as to carry out Congressional intent in the unique context of anti-backsliding requirements for a revoked standard. We believe that it is reasonable for the fee program obligation that applies for purposes of anti-backsliding to cease upon a determination, based on notice-and-comment rulemaking, that an area has attained the 1-hour ozone standard due to permanent and enforceable measures. This determination centers on the core criteria for redesignations under CAA section 107(d)(3). We believe these criteria provide reasonable assurance that the purpose of the 1-hour anti-backsliding fee program obligation has been fulfilled in the context of a regulatory regime where the area remains subject to other applicable 1-hour anti-backsliding and 8-hour nonattainment measures. Under these circumstances, retention of the fee program under the anti-backsliding rule is no longer necessary for the purpose of achieving attainment of the 8-hour standard. See EPA's January 5, 2010 guidance (footnote 5, above).

IV. What is the effect of this proposed termination determination?

If this proposed determination to terminate the section 185 fee anti-backsliding requirement for the 1-hour ozone standard is finalized, the requirement for the State of California to submit section 185 penalty fee program SIP revisions for the portions of the area for which we made findings of failure to submit, which would require major stationary sources under the Sacramento Metro Area 1-hour ozone Severe nonattainment classification to pay fees as a penalty for the area's failure to attain the 1-hour ozone standard by the area's 1-hour ozone attainment date, as well as the requirement for the Sacramento Metropolitan Air Quality Management District portion of the area to implement its 1-hour ozone section 185 fee program, would be removed.

A final Termination Determination for the 1-hour standard section 185 measures will not be rescinded based on subsequent nonattainment of the 1-hour ozone standard. After EPA has determined that an area has attained the 1-hour standard due to permanent and enforceable emission reductions, EPA believes that it would be unduly punitive, confusing, and potentially destabilizing to re-impose the years-old penalty requirements if at some point in the future the area lapses back into 1-hour nonattainment. Moreover, EPA believes that under current circumstances, it would not be in keeping with the intent of Congress. First, we note that had the area attained the 1-hour ozone standard prior to its

[6] *Id.*

attainment date, no penalties at all would have been imposed even if the area subsequently lapsed into nonattainment. Second, the statute provides that penalties for failure to attain by an area's attainment date would be terminated by redesignation of the area. Now that the 1-hour ozone standard has been revoked and EPA is no longer promulgating redesignations for that standard, relief from the 1-hour section 185 fee program requirements under the terms of the statute is an impossibility—the mechanism the statute envisioned for relief no longer exists. As EPA explains in its January 5, 2010 guidance, we have reasonably concluded in these circumstances that a determination of attainment due to permanent and enforceable emission reductions, along with the area's existing SIP and its continuing obligations to meet ever more stringent ozone standards, are a reasonable alternative means for terminating these unique anti-backsliding penalty provisions. EPA believes that, given the gap in the statute, and the intent of Congress as expressed in quite different regulatory circumstances, it would be counterproductive and in conflict with that intent for EPA's determination to merely suspend rather than permanently terminate the 1-hour anti-backsliding penalty fees. Requiring areas to remain subject to the threat of reviving stale penalty fees for an old revoked standard, when these areas and the sources subject to the penalties must now muster their resources to focus on meeting newer more stringent standards, would be at odds with the purposes of the Act and in conflict with the principle that penalty provisions should be narrowly construed. This is also true because the area is subject to a host of ongoing obligations for the 1997 8-hour ozone standard as well as the future anticipated new 8-hour ozone standard,[7] when it has already shown great improvement towards meeting the 1-hour and 1997 8-hour ozone standards.

V. What is EPA's analysis?

EPA's proposed Termination Determination is based upon EPA's belief that the area is attaining the 1-hour ozone standard due to permanent and enforceable emission reductions implemented in the area. In its January 5, 2010 guidance, EPA set forth its views as to potential rationales for terminating section 185 obligations for 1-hour ozone. This notice formally sets forth EPA's legal interpretation concerning the basis for terminating those obligations.

As explained above, EPA set forth our belief in our January 5, 2010 guidance that for an area that we determine is attaining either the 1-hour ozone or 1997 8-hour ozone NAAQS, based on permanent and enforceable emission reductions, that the area would no longer be obligated to satisfy the anti-backsliding requirements associated with the transition from the 1-hour ozone standard to the 1997 8-hour ozone standard.

a. Attainment of the 1-Hour Ozone Standard

A determination of whether an area's air quality meets the 1-hour ozone NAAQS is generally based upon the most recent three years of complete, quality-assured and certified air quality monitoring data gathered at established National Air Monitoring Stations ("NAMS") or State and Local Air Monitoring Stations ("SLAMS") in the nonattainment area and entered into the EPA's Air Quality System (AQS) database. Data from air monitors operated by state/local agencies in compliance with EPA monitoring requirements must be submitted to the AQS database. Monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, EPA relies primarily on data in its AQS database when determining the attainment status of an area. See 40 CFR 50.9; 40 CFR part 50, Appendix H; 40 CFR part 53; 40 CFR part 58, Appendices A, C, D and E. All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, Appendix H.

Under EPA regulations at 40 CFR 50.9, the 1-hour ozone standard is attained at a monitoring site when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million (235 micrograms per cubic meter) is equal to or less than 1, as determined by 40 CFR part 50, Appendix H.

EPA proposes to determine that the Sacramento Metro Area has attained the 1-hour ozone standard; that is, the number of expected exceedances at any site in the nonattainment area is not greater than one per year.[8] This proposed determination is based on three years of complete, quality-assured and certified ambient air quality monitoring data in AQS showing attainment of the 1-hour ozone standard for the 2007–2009 monitoring period, and complete, quality-assured data in AQS for 2008–2010 that show continued attainment. As explained below, in determining the area's attainment of the 1-hour ozone standard, EPA is also proposing to exclude from consideration exceedances that occurred on three days in 2008, because they are due to wildfire exceptional events.

Monitoring Network

In the Sacramento Metro Area, the agencies responsible for assuring that the area meets air quality monitoring requirements include CARB, Sacramento Metropolitan Air Quality Management District (SMAQMD), Placer County Air Pollution Control District (PCAPCD) and Yolo-Solano Air Quality Management District (YSAQMD). Both CARB and SMAQMD submit annual monitoring network plans to EPA. SMAQMD Network Plans describe the monitoring network the district operates; CARB's Network Plans describe the monitoring sites CARB operates, in addition to monitoring sites operated by smaller air districts, namely, for the Sacramento Metro Area, PCAPCD and YSAQMD. These plans discuss the status of the air monitoring network, as required under 40 CFR 58.10.

Since 2007, EPA regularly reviews these annual plans for compliance with the applicable reporting requirements in 40 CFR part 58. With respect to ozone, EPA has found that the area's network plans meet the applicable requirements under 40 CFR part 58. See EPA letters to CARB and SMAQMD approving their annual network plans for years 2007, 2009 and 2010.[9] Furthermore, we concluded in our Technical System Audit of the CARB Primary Quality Assurance Organization (PQAO),[10] conducted during Summer 2007, that the combined ambient air monitoring network operated by CARB and the local air districts in their PQAO currently meets or exceeds the requirements for the minimum number of SLAMS monitoring sites for all criteria pollutants, and that all of the monitoring sites are properly located with respect to monitoring objectives, spatial scales and other site criteria, as

[7] EPA anticipates announcing the reconsidered 8-hour ozone standard in July 2011.

[8] The average number of expected exceedances is determined by averaging the expected exceedances of the 1-hour ozone standard over a consecutive three calendar year period. See 40 CFR part 50 Appendix H.

[9] Neither CARB nor SMAQMD proposed modifications to their networks in 2008; therefore, neither agency was required to submit a network plan to EPA for approval that year.

[10] A primary quality assurance organization is responsible for a group of monitoring stations for which data quality assessments can be pooled See 40 CFR section 58.1. CARB is the lead PQAO for all the air districts in the Sacramento Metro Area.

required by 40 CFR part 58, Appendix D. See letter from Deborah Jordan, Director, Air Division, U.S. EPA Region IX, to James Goldstene, Executive Officer, CARB, transmitting "Technical System Audit of the California Environmental Protection Agency Air Resources Board: 2007," with enclosure, August 18, 2008. Also, CARB annually certifies that the data it submits to AQS are complete and quality-assured. See, *e.g.*, letter from Karen Magliano, Chief, Air Quality Data Branch, Planning and Technical Support Division, CARB, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, certifying calendar year 2009 ambient air quality data and quality assurance data, May 19, 2010.

There were 16 ozone monitoring sites located throughout the Sacramento Metro Area in calendar years 2007, 2008, 2009 and 2010.[11] Sacramento Metro AQMD operates six ozone monitors in Sacramento County: Elk Grove (southwest Sacramento County), Del Paso Manor (northeast City of Sacramento), Folsom (City of Folsom), Sacramento-Goldenland Court [12] (northwest City of Sacramento), North Highlands (north Sacramento County) and Sloughhouse Road (west Sacramento County). CARB operates six ozone monitors in the Sacramento Metro Area: Sacramento-T Street (City of Sacramento) in Sacramento County; Cool (City of Cool), Echo Summit (in the Sierra Nevada Mountains) and Placerville (City of Placerville) in El Dorado County; Roseville (City of Roseville) in Placer County; and Davis (City of Davis) in Yolo County. Placer County APCD operates two ozone monitors in the Sacramento Metro Area: Colfax (City of Colfax) and Auburn (City of Auburn). Yolo-Solano AQMD operates two ozone monitors in the Sacramento Metro Area: Vacaville (City of Vacaville) in Solano County, and Woodland (City of Woodland) in Yolo County.

All Sacramento Metro Area sites monitor ozone concentrations on a continuous basis using ultraviolet absorption monitors.[13] EPA defines specific monitoring site types and spatial scales of representativeness to characterize the nature and location of required monitors. See 40 CFR part 58, Appendix D, § 1. Table 1 below lists the site types and spatial scale for each ozone monitoring site in the Sacramento Metro Area. Due to ozone precursor source distribution and general meteorological patterns in the area, the highest ozone concentrations for the past several years have typically occurred at the Folsom and Sloughhouse Road sites.

TABLE 1—SITE TYPE AND SPATIAL SCALE [a]

Site name	Site type [b]	Spatial scale [c]
Placerville (06–017–0010)	HC, TR	RS
Echo Summit (06–017–0012)	HC, TR	RS
Cool (06–017–0020)	HC, TR	RS
Auburn (06–061–0002)	HC	US
Colfax (06–061–0004)	HC	US
Roseville (06–061–0006)	HC	US
North Highlands (06–067–0002)	RC	NS
Sacramento-Del Paso Manor (06–067–0006)	HC	NS
Sacramento-T Street (06–067–0010)	RC	US
Elk Grove (06–067–0011)	RC	NS
Folsom (06–067–0012)	HC	NS
Sacramento-Airport Road (06–067–0013)	RC	NS
Sacramento-Goldenland Court (06–067–0014)	RC	NS
Sloughhouse Rd. (06–067–5003)	RC	NS
Vacaville (06–095–3003)	HC, TR	RS
Davis (06–113–0004)	HC	US
Woodland (06–113–1003)	HC	US

[a] Source: SMAQMD's "Annual Network Plan Report" (July 2010) and CARB's "Monitoring Network Report for Small Districts in California" (July 2010).
[b] Site types are defined in 40 CFR part 58, Appendix D section 1.1.1. The site types utilized in the Sacramento Metro Area include high concentration (HC), representative concentration (RC) and pollutant transport (TR).
[c] Spatial scales are defined in 40 CFR part 58 Appendix D section 1.2. The monitoring sites in the Sacramento Metro Area are either neighborhood scale (NS), urban scale (US) or regional scale (RS) sites.

Exceptional Events

On March 22, 2007, EPA adopted a final rule, "Treatment of Data Influenced by Exceptional Events," also known as the Exceptional Events Rule (EER), to govern the review and handling of certain air quality monitoring data for which the normal planning and regulatory processes are not appropriate (72 FR 13560). Under the EER, EPA may exclude data from use in determinations of NAAQS exceedances and violations if a state demonstrates that an "exceptional event" caused the exceedance or exceedances. 40 CFR 50.1, 50.14. Before EPA can exclude data from these regulatory determinations, the state must flag the data in EPA's AQS database and, after public notice and opportunity for comment, submit a demonstration to EPA to justify the exclusion. EPA considers the demonstration and concurs or nonconcurs with the state's flag. After notice-and-comment rulemaking, EPA determines whether to

[11] Enclosure 2 of CARB's July 7, 2010 request includes a map on page 3.2 showing locations of all ozone monitors in the Sacramento Metro Area. Letter from James Goldstene, CARB Executive Officer, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, dated July 7, 2010, requesting termination of CAA section 185 requirements as they pertain to the Sacramento Metro Area. The document can be found on the Internet at: *http://www.airquality.org/notices/1hour/AttainmentReport.pdf.*

[12] The Sacramento-Airport Road site was relocated to Sacramento-Goldenland Court in August 2008.

[13] Sacramento Metro Area monitoring agencies operate Federal equivalent method (FEM) monitors for ozone, specifically, API 400 Series ultraviolet absorption monitors. See SMAQMD's "Annual Network Plan Report" (July 2010) and CARB's "Monitoring Network Report for Small Districts in California" (July 2010). These monitoring devices have an EPA designation number EQOA–0992–087. See EPA "List of Designated Reference and Equivalent Methods, page 27 (February 1, 2011), available on the Internet at: *http://www.epa.gov/ttn/amtic/criteria.html.*

exclude the data from use when making a determination of attainment.

In submittals dated September 17, 2009 and March 30, 2011, CARB provided documentation for ozone exceedances that occurred at the Folsom monitor on three days in Summer 2008 which the state had flagged as due to wildfire exceptional events. EPA reviewed the documentation and concurred with the June 23, June 27 and July 10, 2008 flags in a letter from Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, to Mary D. Nichols, Chairman, CARB, dated April 13, 2011. EPA included with the letter a document setting forth in detail the bases for EPA's concurrences. See "Review of Exceptional Events Request: Folsom, CA; 1-hour ozone; June 23, June 27 and July 10, 2008," dated April 13, 2011 (in the docket for this proposed rulemaking). For the reasons set forth in the concurrence letter and its enclosure, EPA is proposing to exclude from regulatory consideration data showing exceedances at the Folsom monitoring site on June 23, June 27 and July 10, 2008.

Monitoring Data

EPA's proposal to exclude ozone exceedances monitored at the Folsom site on June 23, June 27 and July 10, 2008, if finalized, would result in a revision of the number of exceedances (as determined by 40 CFR part 50, Appendix H and described in section II of this notice) for 2008 and, therefore, the average number of expected exceedances for the 2007–2009 period. With the exclusion of the data for these three days, the highest three-year average of expected exceedances at any site in the Sacramento Metro Area for 2007–2009 is 1.0, which shows attainment of the 1-hour ozone standard (a three-year average of expected exceedances less than or equal to 1). For more information, please see "National 1-hour primary and secondary ambient air quality standards for ozone" (40 CFR section 50.9) and "Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone" (40 CFR part 50, Appendix H). Consistent with 40 CFR part 50, Appendix H, Tables 2 and 3 set forth the 1-hour ozone data for the Sacramento Metro Area monitors that show that the area is currently attaining the 1-hour ozone NAAQS.

TABLE 2—1-HOUR OZONE DATA FOR THE SACRAMENTO METRO 1-HOUR OZONE NONATTAINMENT AREA [a]

Site (monitor ID)	Expected exceedances by year			Expected exceedances 3-yr average
	2007	2008	2009	2007–2009
Placerville (06–017–0010)	0.0	2.0	0.0	0.7
Echo Summit (06–017–0012)	0.0	0.0	0.0	0.0
Cool (06–017–0020)	0.0	2.0	0.0	0.7
Auburn (06–061–0002)	0.0	0.0	0.0	0.0
Colfax (06–061–0004)	0.0	0.0	0.0	0.0
Roseville (06–061–0006)	0.0	2.0	0.0	0.7
North Highlands (06–067–0002)	0.0	0.0	0.0	0.0
Sacramento-Del Paso Manor (06–067–0006)	1.0	0.0	0.0	0.3
Sacramento-T Street (06–067–0010)	0.0	0.0	0.0	0.0
Elk Grove (06–067–0011)	0.0	0.0	0.0	0.0
Folsom (06–067–0012)	1.0	[b] 2.0	0.0	1.0
Sacramento-Airport Road (06–067–0013)	0.0	[c] 0.0	NA	NA
Sacramento-Goldenland Court (06–067–0014)	NA	[c] 0.0	0.0	0.0
Sloughhouse Rd. (06–067–5003)	0.0	3.0	0.0	1.0
Vacaville (06–095–3003)	0.0	0.0	0.0	0.0
Davis (06–113–0004)	0.0	0.0	0.0	0.0
Woodland (06–113–1003)	0.0	0.0	0.0	0.0

Source: Quicklook Report, May 3, 2011 (in the docket to this proposed action).
[a] 40 CFR part 50, Appendix H—Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone.
[b] Data shown exclude exceedances on June 23, June 27 and July 10, 2008 due to exceptional events.
[c] The Airport Road site was relocated to the Goldenland Court site in August 2008.
NA—Data is not available.

The data in Table 2 indicate a long-term trend observed in the Sacramento Metro Area. As described in CARB's July 7, 2010 letter requesting a Termination Determination, the monitoring sites that historically experienced exceedances of the 1-hour ozone standard are the Cool, Sloughhouse, Folsom and Del Paso Manor sites. For example, in 1998 five exceedances were monitored at Cool and ten at Folsom. In 2009, by contrast, there were no exceedances at any monitor in the entire Sacramento Metro Area.

In sum, EPA believes that, if the exceedances resulting from wildfire exceptional events on three days in 2008 are excluded from consideration, the 2007–2009 ambient air monitoring data for the Sacramento Metro Area show attainment of the 1-hour ozone NAAQS. In addition, if EPA's proposal to exclude exceedances on three days due to wildfire exceptional events is finalized, the data for 2010 (complete and quality-assured but not yet certified), shown in Table 3 for the 2008–2010 monitoring period, show continued attainment. Preliminary data available for 2011 are also consistent with continued attainment.

TABLE 3—2010 1-HOUR OZONE DATA FOR THE SACRAMENTO METRO 1-HOUR OZONE NONATTAINMENT AREA SHOWING CONTINUED ATTAINMENT [a]

Site (monitor ID)	Expected exceedances by year			Expected exceedances 3-yr average
	2008	2009	2010 [b]	2008–2010 [b]
Placerville (06–017–0010)	2.0	0.0	0.0	0.7
Echo Summit (06–017–0012)	0.0	0.0	0.0	0.0
Cool (06–017–0020)	2.0	0.0	0.0	0.7
Auburn (06–061–0002)	0.0	0.0	0.0	0.0
Colfax (06–061–0004)	0.0	0.0	0.0	0.0
Roseville (06–061–0006)	2.0	0.0	0.0	0.7
North Highlands (06–067–0002)	0.0	0.0	0.0	0.0
Sacramento-Del Paso Manor (06–067–0006)	0.0	0.0	0.0	0.0
Sacramento-T Street (06–067–0010)	0.0	0.0	0.0	0.0
Elk Grove (06–067–0011)	0.0	0.0	0.0	0.0
Folsom (06–067–0012)	[c] 2.0	0.0	0.0	0.7
Sacramento-Airport Road (06–067–0013)	[d] 0.0	NA	NA	NA
Sacramento-Goldenland Court (06–067–0014)	[d] 0.0	0.0	0.0	0.0
Sloughhouse Rd. (06–067–5003)	3.0	0.0	0.0	1.0
Vacaville (06–095–3003)	0.0	0.0	0.0	0.0
Davis (06–113–0004)	0.0	0.0	0.0	0.0
Woodland (06–113–1003)	0.0	0.0	0.0	0.0

Source: Quicklook Report, May 3, 2011 (in the docket to this proposed action).
[a] 40 CFR part 50, Appendix H—Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone.
[b] Data from 2010 are complete but have not yet been certified.
[c] Data exclude exceedances on June 23, June 27 and July 10, 2008 due to exceptional events.
[d] The Airport Road site was relocated to the Goldenland Court site in August 2008.
NA—Data are not available.

b. Permanent and Enforceable Emission Reductions

EPA believes that the State has demonstrated that the observed air quality improvements in the Sacramento Metro Area with respect to the 1-hour ozone standard are due to permanent and enforceable emission reductions through the implementation of state and district emission controls contained in the SIP and not due to favorable meteorology or temporary reductions in emission rates, such as temporary adverse economic conditions. See letter and accompanying documentation (Enclosure 2, Sacramento Metropolitan Air Quality Management District 1-Hour Ozone Attainment Demonstration Request for the Sacramento Federal Ozone Nonattainment Area) from James Goldstene, CARB Executive Officer, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, dated July 7, 2010, requesting termination of CAA section 185 requirements as they pertain to the Sacramento Metro Area (July 7, 2010 request).

In 1994, California submitted a comprehensive ozone plan for all ozone nonattainment areas in California including the Sacramento Metro Area (1994 SIP), which EPA approved on January 8, 1997 (62 FR 1150). The plan provided a blueprint for attaining the 1-hour ozone standard that relied on a combination of stationary and mobile source measures by the districts, and state and Federal governments. In addition, California air districts in the Sacramento Metro Area adopted and implemented emission control rules requiring many existing sources of oxides of nitrogen (NO_X) and volatile organic compounds (VOCs) [14] to meet, at minimum, Reasonably Available Control Technology (RACT). These requirements apply to sources in categories covered by Control Technology Guidelines (CTGs) and major non-CTG sources.

Meteorology

In its July 7, 2010 request (Enclosure 2, Sacramento Metropolitan Air Quality Management District 1-Hour Ozone Attainment Demonstration Request for the Sacramento Federal Ozone Nonattainment Area), CARB provided documentation that the improvement in air quality in the Sacramento Metro Area is not due to favorable meteorology. CARB showed that the weather patterns in the last decade have not been unusually favorable. For example, looking at days equal to or over 95 degrees Fahrenheit in each of the last thirteen years (1997 to 2009) as an indicator of conditions conducive to ozone formation, the area had an annual average of 37 such "high temperature" days, while in the last four years (2006–2009), the area also had an annual average of 37 high temperature days.

Economic Activity

The State provided documentation showing that the improvement in air quality leading to 1-hour ozone attainment in the Sacramento Metro Area is not due to a temporary economic downturn. See July 7, 2010 request (Enclosure 2, Sacramento Metropolitan Air Quality Management District 1-Hour Ozone Attainment Demonstration Request for the Sacramento Federal Ozone Nonattainment Area). As an indicator of economic activity, this analysis presented information on gasoline and diesel sales in California from 2000 to 2009. Fuel sales are an indicator of economic activity, and represent an indicator of emissions trends of both VOCs and NO_X as well. The Sacramento Metro Area's emissions inventory is dominated by mobile sources. See Table 7 below and Table 4.1 of Enclosure 2 of July 7, 2010 request. Although fuel sales have decreased in the last several years, perhaps coinciding with an overall economic downturn in California and nationally, we note that the decrease has been slight and that the last year presented, 2009, still had a higher level (14.8 billion gallons of fuel sold) than the first year presented (2001, at 14.5 billion gallons). Between those years, fuel sales increased gradually to a peak

[14] NO_X and VOCs are chemical precursors to ozone.

between 2005 and 2006 (both at 15.9 billion gallons sold per year), before gradually declining.

Given that the earliest years in that ten-year period were years when the area was not attaining the 1-hour ozone standard, EPA believes that any temporary emission reductions due to the more recent economic downturn in 2008 and later are relatively small and not a significant factor in the attainment of the 1-hour standard. Therefore, we conclude that economic conditions are not a source of temporary reductions in emission rates. On the contrary, EPA believes that the steady decline of emissions of NO_X and VOCs during the same ten-year period is attributable to fleet turnover with newer vehicles having lower evaporative and tailpipe emissions, as well as greater fuel economy. Additionally, EPA notes that CARB's emissions database (*http://www.arb.ca.gov/ei/emissiondata.htm*) shows that during 2006 through 2009, the vehicle miles traveled (VMT) have increased from approximately 68 million miles per day to 72 million miles per day in the Sacramento Valley Air Basin. See CEPAM: 2009 Almanac—Population and Vehicle Trends Tool, Sacramento Valley Air Basin, Daily Vehicle Miles Traveled, All Vehicles.

Local Districts' Measures Since 1990

Since 1990, the Districts have adopted, implemented and submitted for EPA approval dozens of stationary source rules which achieve NO_X and VOC emission reductions and have thus helped reduce ozone levels. Tables 4 through 7 below summarize the local air district rules adopted since 1990 and approved into the California SIP.[15] [16]

TABLE 4—SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT RULES ADOPTED SINCE 1990 AND APPROVED INTO THE CALIFORNIA STATE IMPLEMENTATION PLAN

Rule No.	Rule	Date rule adopted by district	Date rule approved into SIP	Federal Register citation	NO_X	VOC
411	NO_X from Boilers, Process Heaters and Steam Generators	08/23/2007	5/6/2009	74 FR 20880	X	.....
412	Stationary Internal Combustion Engine	06/01/1995	4/30/1996	61 FR 18959	X	.....
413	Stationary Gas Turbines	03/24/2005	1/10/2008	73 FR 1819	X	.....
414	Natural Gas-fired Water Heater	08/01/1996	4/20/1999	64 FR 19277	X	.....
442	Architectural Coatings	09/05/1996	11/9/1998	63 FR 60214	.....	X
443	Leaks from Synthetic Organic Chemical & Polymer Manufacturing.	09/05/1996	11/9/1998	63 FR 60214	.....	X
446	Storage of Petroleum Products	11/16/1993	9/16/1994	59 FR 47544	.....	X
447	Organic Liquid Loading	04/02/1998	11/26/1999	64 FR 66393	.....	X
448	Gasoline Transfer into Stationary Storage Containers	02/02/1995	1/23/1996	61 FR 1716	.....	X
449	Transfer of Gasoline into Vehicle Fuel Tanks	09/26/2002	3/24/2003	68 FR 14156	.....	X
450	Graphic Arts	10/23/2008	4/9/2010	75 FR 18068	.....	X
452	Can Coating	09/25/2008	4/9/2010	75 FR 18068	.....	X
454	Degreasing Operations	09/25/2008	4/9/2010	75 FR 18068	.....	X
456	Aerospace Assembly and Component Coating Operations	10/23/2008	7/14/2010	75 FR 40726	.....	X
458	Large Commercial Bread Bakeries	09/05/1996	11/9/1998	63 FR 60214	.....	X
459	Automotive, Truck and Heavy Equipment Refinishing Operations.	10/02/1997	11/13/1998	63 FR 63410	.....	X
463	Wood Products Coatings	09/25/2008	4/9/2010	75 FR 18068	.....	X
464	Organic Chemical Manufacturing Operations	07/23/1998	4/19/2000	65 FR 20912	.....	X
466	Solvent Cleaning	05/23/2002	5/5/2010	75 FR 24406	.....	X

TABLE 5—EL DORADO COUNTY AIR QUALITY MANAGEMENT DISTRICT RULES ADOPTED SINCE 1990 AND APPROVED INTO THE CALIFORNIA STATE IMPLEMENTATION PLAN

Rule No.	Rule	Date rule adopted by district	Date rule approved into SIP	Federal Register citation	NO_X	VOC
215	Architectural Coatings	9/27/1994	7/18/1996	61 FR 37390	.....	X
224	Cutback Asphalt Paving Material	9/27/1994	8/21/1995	60 FR 43383	.....	X
225	Solvent Cleaning (Degreasing)	9/27/1994	8/21/1995	60 FR 43383	.....	X
229	Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters.	1/23/2001	10/10/2001	66 FR 51578	X	.....
230	Motor Vehicle & Mobile Equipment Coating	9/27/1994	4/30/1996	61 FR 18962	.....	X
231	Graphic Arts	9/27/1994	7/11/1997	62 FR 37136	.....	X
232	Biomass Boilers	9/25/2001	10/14/2003	68 FR 59121	X	.....
233	Stationary Internal Combustion Engines	6/11/2002	9/13/2002	67 FR 57960	X	.....
234	VOC RACT Rule—Sierra Pacific Industries	4/25/1995	9/12/1995	60 FR 47273	.....	X
235	Surface Preparation and Cleanup	6/27/1995	4/30/1996	61 FR 18962	.....	X
236	Adhesives	7/25/1995	7/18/1996	61 FR 37390	.....	X
237	Wood Products Coatings	6/27/1995	7/18/1996	61 FR 37390	.....	X
238	Gasoline Transfer and Dispensing	3/27/2001	8/27/2001	66 FR 44974	.....	X
239	Natural Gas-fired Residential Water Heaters	3/24/1998	3/30/1999	64 FR 15129	X	.....

[15] Feather River Air Quality Management District (FRAQMD) does not have any rules listed in the table because, since 1990, no additional FRAQMD VOC or NO_X rules have been added to the SIP. FRAQMD consists of the entirety of both Sutter and Yuba counties. Only the very southern portion of Sutter County falls within the Sacramento Metro Area, and that portion includes no major NO_X or VOC stationary sources.

[16] EPA is currently evaluating approximately 30 additional rules that have been adopted by Sacramento Metro Area air districts to control VOC and/or NO_X and that were submitted to EPA as SIP revisions. Although EPA has not yet taken action on these submitted rules, they are currently being implemented by the air districts.

TABLE 5—EL DORADO COUNTY AIR QUALITY MANAGEMENT DISTRICT RULES ADOPTED SINCE 1990 AND APPROVED INTO THE CALIFORNIA STATE IMPLEMENTATION PLAN—Continued

Rule No.	Rule	Date rule adopted by district	Date rule approved into SIP	Federal Register citation	NO_X	VOC
240	Polyester Resin Operations	2/15/2000	7/17/2001	66 FR 37154		X
244	Organic Liquid Loading and Transport Vessels	9/25/2001	7/8/2002	67 FR 45067		X
245	Valves and Flanges	3/27/2001	8/27/2001	66 FR 44974		X

TABLE 6—PLACER COUNTY AIR POLLUTION CONTROL AGENCY RULES ADOPTED SINCE 1990 AND APPROVED INTO THE CALIFORNIA STATE IMPLEMENTATION PLAN

Rule No.	Rule	Date rule adopted by district	Date rule approved into SIP	Federal Register citation	NO_X	VOC
212	Storage of Organic Liquids	6/19/1997	6/11/2009	74 FR 27714		X
213	Gasoline Transfer Into Stationary Storage Containers	10/19/1993	3/3/1997	62 FR 23365		X
214	Transfer of Gasoline Into Vehicle Fuel Tanks	10/19/1993	4/30/1997	62 FR 23365		X
215	Transfer of Gasoline Into Tank Trucks, Trailers and Railroad Tank Cars at Loading Facilities.	6/19/1997	1/31/2011	76 FR 5277		X
216	Organic Solvent Cleaning and Degreasing Operations	12/11/2003	5/5/2010	75 FR 24406		X
217	Cutback and Emulsified Asphalt Paving Materials	10/19/1993	4/30/1997	62 FR 23365		X
218	Architectural Coatings	02/09/1995	7/18/1996	61 FR 37390		X
219	Organic Solvents	10/19/1993	4/30/1997	62 FR 23365		X
223	Metal Container Coating	10/6/1994	3/23/1995	60 FR 15241		X
229	Fiberboard Manufacturing	6/28/1994	6/8/2001	66 FR 30815		X
230	Plastic Products and Materials—Paper Treating Operation	6/28/1994	12/14/1994	59 FR 64336		X
233	Biomass Boilers	10/06/1994	4/30/1996	61 FR 18959	X	
235	Adhesives	6/08/1995	7/18/1996	61 FR 37390		X
236	Wood Products Coating Operations	2/09/1995	4/30/1996	61 FR 18962		X
238	Factory Coating of Flat Wood Paneling	6/18/1995	2/12/1996	61 FR 5288		X
239	Graphic Arts Operations	2/13/1997	11/13/1998	63 FR 63410		X
244	Semiconductor Operations	2/9/1995	7/25/1996	61 FR 38571		X
250	Stationary Gas Turbines	10/17/1994	8/23/1995	60 FR 43713	X	

TABLE 7—YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT RULES ADOPTED SINCE 1990 AND APPROVED INTO THE CALIFORNIA STATE IMPLEMENTATION PLAN

Rule No.	Rule	Date rule adopted by district	Date rule approved into SIP	Federal Register citation	NO_X	VOC
2.13	Organic Solvents	5/24/1994	4/30/1996	61 FR 18962		X
2.14	Architectural Coatings	11/14/2001	1/2/2004	69 FR 34		X
2.21	Organic Liquid Storage & Transfer	9/14/2005	10/31/2006	71 FR 63694		X
2.22	Gasoline Dispensing Facilities	6/12/2002	1/23/2003	68 FR 3190		X
2.23	Fugitive Hydrocarbon	8/13/1997	11/26/1999	64 FR 66393		X
2.24	Solvent Cleaning Operations (Degreasing)	11/14/1990	12/13/1994	59 FR 64130		X
2.25	Surface Coating or Manufactured Metal Parts and Products	4/27/1994	2/12/1996	61 FR 5288		X
2.26	Motor Vehicle & Mobile Equipment Coating	11/30/1994	4/30/1996	61 FR 18962		X
2.27	Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters.	8/14/1996	6/17/1997	62 FR 32691	X	
2.28	Cutback & Emulsified Asphalt	5/25/1994	2/5/1996	61 FR 4215		X
2.29	Graphic Arts Printing Operations	5/25/1994	8/21/1998	63 FR 44792		X
2.30	Polyester Resin Operation	4/14/1999	7/21/1999	64 FR 39037		X
2.31	Surface Preparation and Cleanup	04/27/1994	4/2/1999	64 FR 15922		X
2.32	Stationary Internal Combustion Engines	10/10/2001	1/28/2002	67 FR 3816	X	X
2.33	Adhesives Operation	3/12/2003	3/22/2004	69 FR 13234		X
2.34	Stationary Gas Turbines	7/13/1994	9/3/1998	63 FR 46892	X	
2.35	Pharmaceutical Manufacturing Operations	11/30/1994	2/24/1997	62 FR 8172		X
2.37	Natural Gas-Fired Water Heaters and Small Boilers	4/8/2009	5/10/2010	75 FR 25778	X	
2.42	Nitric Acid Production	5/13/2009	5/10/2010	75 FR 25778	X	

California State Measures

Source categories for which CARB has primary responsibility for reducing emissions in California include most new and existing on- and off-road engines and vehicles, motor vehicle fuels, and consumer products. In addition, California has unique authority under CAA section 209 (subject to a waiver by EPA) to adopt and implement new emission standards for many categories of on-road vehicles and engines, and new and in-use off-road vehicles and engines. California has been a leader in the development of

some of the most stringent control measures nationwide for on-road and off-road mobile sources and the fuels that power them. These measures have helped reduce ozone levels in the Sacramento Metro Area and throughout the state.

CARB's 2007 State Strategy provides a recent summary of the measures adopted and implemented by the state. See "Air Resources Board's Proposed State Strategy for California's 2007 State Implementation Plan," release date: April 26, 2007. From 1994 to 2006, the state has taken more than 45 rulemaking actions which have achieved significant emission reductions needed for the state's nonattainment areas such as the Sacramento Metro Area. See 2007 State Strategy, p. 38.[17] These measures include new emission standards and in-use requirements and have resulted in significant reductions in VOC and NO_X emissions from categories such as passenger cars, trucks, buses, motorcycles, locomotives, recreational boats, lawn and garden equipment and consumer products. EPA has generally approved all of the State's measures that are not subject to the CAA section 209 waiver process. See EPA's proposed approval of the San Joaquin Valley 1-hour ozone plan at 74 FR 33933, 33938 (July 14, 2009) and final approval at 75 FR 10420 (March 8, 2010). See also, EPA's proposed partial approval/partial disapproval of the San Joaquin Valley PM2.5 plan at 75 FR 74518, 74526–7 (November 30, 2010) and EPA's proposed partial approval/partial disapproval of the South Coast PM2.5 plan at 75 FR 71294, 71302–3 (November 22, 2010).

Federal Measures

Finally, in addition to the local district and state rules discussed above, the Sacramento Metro Area has also benefited from Federal mobile source measures such as emissions standards for new locomotive Tier 1 and Tier 2 engines, nationwide heavy-duty on-highway trucks, and new emission standards for pre-empted farm and construction equipment.

Summary/Conclusion

Based on the above discussion, EPA believes that the progress made to reduce emissions in the Sacramento Metro Area during the 1990–2009 timeframe resulting in achieving attainment of the 1-hour ozone standard is from permanent and enforceable measures which achieved significant reductions as summarized in Table 8 below:

TABLE 8—SUMMARY OF EMISSIONS FOR THE SACRAMENTO METRO 1-HOUR OZONE NONATTAINMENT AREA

[Tons per day]

	1990 VOC	2008 VOC	1990 NO_X	2008 NO_X
Stationary	39	22	22	15
Area-wide	34	28	4	3
On-road	140	45	148	95
Other mobile	49	41	69	53
Total	262	136	242	167

Source: Letter from James Goldstene, CARB Executive Officer, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, dated July 7, 2010, Table 4.1 of Enclosure 2, "1-Hour Ozone Attainment Determination Request for the Sacramento Federal Ozone Nonattainment Area," April 26, 2010, prepared by: Sacramento Metropolitan Air Quality Management District.

The emission reduction trends shown in Table 8 are not only expected to be maintained at current levels, but are expected to continue in the next several decades, in spite of increasing population in the area, due to the continued replacement of older vehicles and engines with newer units subject to more stringent California and Federal emission control requirements. The exception is that there is projected to be a slight (1% annually) growth in VOC emissions starting in 2020, as activity growth overcomes emission reductions. See Letter from James Goldstene, CARB Executive Officer, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, dated July 7, 2010, Section 4.2 of Enclosure 2, "1-Hour Ozone Attainment Determination Request for the Sacramento Federal Ozone Nonattainment Area," April 26, 2010, prepared by: Sacramento Metropolitan Air Quality Management District.

EPA believes the preceding discussion demonstrates that permanent and enforceable emission reduction measures adopted and implemented by the state have been effective in reaching attainment of the 1-hour ozone standard, and that the improvement in the Sacramento Metro Area's air quality is due to permanent and enforceable emission reductions.

VI. Proposed Actions

EPA is proposing to make a determination to terminate the 1-hour ozone section 185 penalty fee requirement (Termination Determination) for the Sacramento Metro Area. Our proposed determination is based on our finding that the Sacramento Metro Area is attaining the 1-hour ozone NAAQS due to permanent and enforceable reductions in emissions. In proposing this determination, EPA is also proposing to exclude 1-hour ozone NAAQS exceedances that occurred at the Folsom monitor on three days in 2008 because they were caused by wildfire exceptional events. For the reasons set forth in this notice, EPA's proposed 1-hour ozone section 185 Termination Determination is based on EPA's determination that the area has attained and continues to attain the 1-hour ozone standard due to permanent and enforceable emission reductions.

VII. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment and a determination of termination of the CAA section 185 penalty fee requirements based on attainment of the 1-hour ozone standard due to permanent and enforceable emission reductions, and would, if finalized, result in the termination of the section 185 fee requirements for the 1-hour standard, and would not impose any

[17] This document can be found on the Internet at: *http://arb.ca.gov/planning/sip/2007sip/apr07draft/sipback.pdf.*

additional requirements. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to the 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 Clean Air Act; 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401, *et seq.*

Dated: May 9, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–12063 Filed 5–17–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2009–0809; FRL–9307–6]

Approval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards; Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve and conditionally approve the State Implementation Plan (SIP) submission from the State of Colorado to demonstrate that the SIP meets the requirements of Sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on July 18, 1997. Section 110(a)(1) of the CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet the requirements of the "infrastructure elements" of section 110(a)(2). The State of Colorado submitted a certification of their infrastructure SIP for the 1997 ozone NAAQS, dated January 7, 2008 which was determined to be complete on March 27, 2008 (73 FR 16205).

EPA does not propose to act on the State's January 7, 2008 submission to meet the requirements of section 110(a)(2)(D)(i) of the CAA, relating to interstate transport of air pollution, for the 1997 ozone NAAQS. EPA approved the State's interstate transport SIP submission at 75 FR 31306, 75 FR 71029, and 76 FR 22036.

DATES: Written comments must be received on or before June 17, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2009–0809, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: dolan.kathy@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2009–0809. 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 additional instructions on submitting comments, go to Section I, General Information, of the **SUPPLEMENTARY INFORMATION** section of this document.

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 Program, Environmental

Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. 303–312–6142, *dolan.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

Table of Contents

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I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting Confidential Business Information (CBI).* Do not submit 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 on 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 and organize your comments;

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; and,

Make sure to submit your comments by the comment period deadline identified.

II. Background

On July 18, 1997, EPA promulgated new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Section 110(a)(2) provides basic requirements for SIPs, including emissions inventories, monitoring, and modeling, to assure attainment and maintenance of the standards. These requirements are set out in several "infrastructure elements," listed in section 110(a)(2).

Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, and the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS. In a guidance issued on October 2, 2007, EPA noted that, to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only to certify that fact via a letter to EPA.[1]

On March 27, 2008, EPA published a final rule entitled, "Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS" (73 FR 16205). In the rule, EPA made a finding for each state that it had submitted or had failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. In particular, EPA found that Colorado had submitted a complete SIP to meet these requirements.

III. What infrastructure elements are required under sections 110(a)(1) and (2)?

Section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements, such as modeling, monitoring, and emissions inventories, that are designed to assure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D)(ii): Interstate and international pollution.
- 110(a)(2)(E): Adequate resources and authority.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency powers.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials; public notification; and prevention of significant deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

A detailed discussion of each of these elements is contained in the next section.

Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section

[1] Memorandum from William T. Harnett, Director, Air Quality Policy Division, "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" (Oct. 2, 2007).

110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (i) Section 110(a)(2)(C) to the extent it refers to permit programs (known as "nonattainment new source review (NSR)") required under part D, and (ii) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I).

This action also does not address the "interstate transport" requirements of element 110(a)(2)(D)(i). EPA approved portions of the State's 110(a)(2)(D)(i) interstate transport SIP for the 1997 ozone NAAQS in separate actions (75 FR 31306; 75 FR 71029; 76 FR 22036), and has proposed approval of the remaining portion to meet the requirement of 110(a)(2)(D)(i) regarding interference with measures to prevent significant deterioration (76 FR 21835).

IV. How did Colorado address the infrastructure elements of sections 110(a)(1) and (2)?

1. *Emission limits and other control measures:* Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.

a. *Colorado's Response to this requirement:* Enforceable emission limits and control measures are detailed in the various Colorado Air Quality Control Commission (AQCC) regulations for all sources of criteria pollutants as well as hazardous air pollutants, volatile organic compounds (VOCs), chlorofluorocarbons (CFCs), smoke and odors. A summary of the regulations is found below under section 110(a)(2)(C).

b. *EPA analysis:* Colorado's SIP meets the requirements of CAA Section 110(a)(2)(A), subject to the following clarifications. First, EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by the submission deadline of section 110(a)(1). Nevertheless, Colorado has included some SIP provisions originally submitted in response to part D requirements in its certification for the infrastructure requirements of section 110(a)(1) and (2). For the purposes of this action, EPA is reviewing any rules originally submitted in response to part D requirements solely for the purposes of determining whether they support a finding that the State has met the basic infrastructure requirements of section 110(a)(2). For example, in response to the requirement to have enforceable emission limitations under section 110(a)(2)(A), Colorado cited to rules in Regulation Number 7 that were submitted to meet the reasonably available control technology (RACT) requirements of part D. EPA is here approving those rules as meeting the requirement to have enforceable emission limitations on ozone precursors; any judgment about whether those emission limitations discharge the State's obligation to impose RACT under part D was or will be made separately, in an action reviewing those rules pursuant to the requirements of part D.

Second, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. A number of States have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109, Nov. 24, 1987), and the Agency 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.

Finally, in this action, EPA is also not proposing to approve or disapprove any existing state provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. A number of states have SSM provisions which are contrary to the CAA and existing EPA guidance [2] and the Agency 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.

2. *Ambient air quality monitoring/data system:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.

a. *Colorado's response to this requirement:* The provisions for episodic monitoring, data compilation and reporting, public availability of information, and annual network reviews are found in the statewide monitoring SIP which was approved by EPA on 7/9/80 (45 FR 46073) and 8/11/80 (45 FR 53147). The State has since revised the monitoring SIP to include all new federal requirements. The revised SIP includes a commitment to operate a particulate monitoring network in accordance with EPA regulations (40 CFR Part 58.20 and Appendices A through G). The AQCC adopted monitoring SIP revisions on 3/18/93. The Colorado Air Pollution Control Division periodically submits a Quality Management Plan and a Quality Assurance Project Plan to EPA Region 8. These plans cover procedures to monitor, analyze, and report data to an EPA central database. As such the State of Colorado has an approved monitoring SIP, a plan and authority for monitoring, and the ability to properly handle all related data.

b. *EPA analysis:* Colorado's air monitoring programs and data systems meet the requirements of CAA Section 110(a)(2)(B) for the 1997 ozone NAAQS. The Colorado 2010 Annual Monitoring Network Plan (AMNP) was approved by EPA Region 8 on August 26, 2010.

3. *Program for enforcement of control measures:* Section 110(a)(2)(C) requires SIPs to include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D.

a. *Colorado's response to this requirement:* Colorado has an approved SIP regulating the construction and modification of stationary sources as necessary to assure that the NAAQS are achieved (Colorado Air Quality Control Commission Regulation 3), including a permit program as required in Parts C and D of the federal CAA. Colorado has an approved SIP which provides for the enforcement of the control measures required by CAA Section llO (a)(2)(C).

Many of the Colorado AQCC Regulations address in some manner the programs for enforcement of control measures. Some of these AQCC regulations and other relevant Colorado-

[2] Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, Memorandum to EPA Air Division Directors, "State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown." (Sept. 20, 1999).

specific programs that are in the SIP are described below:

• Regulation 1, "Particulates, Smokes, Carbon Monoxide, and Sulfur Dioxides"—Regulation 1 sets forth emissions limitations, equipment requirements, and work practices (abatement and control measures) intended to control the emissions of particulates, smoke and sulfur oxides from new and existing stationary sources. Control measures specified in this regulation are designed to limit emissions into the atmosphere and thereby minimize the ambient concentrations of particulates and sulfur dioxides.

• Regulation 3, "Air Pollution Emission Notices—Permits"—Regulation 3 provides for a procedural permitting program and requires air pollution sources to file Air Pollution Emissions Notices (APENs). The regulation also requires that new or modified sources of air pollution with certain exemptions-obtain preconstruction permits.

• Regulation 4, "Woodburning Controls"—Regulation 4 requires new stove and fireplace inserts meet the federal certification requirements in specified areas of Colorado.

• Regulation 7, "Volatile Organic Compounds Control"—Regulation 7 controls the emissions of volatile organic compounds, primarily in the Denver-metro area. It sets standards and mandates controls for specific types of volatile organic compound sources.

• Regulation 10, "Transportation Conformity"—Regulation 10 defines the criteria the Colorado Air Quality Control Commission uses to evaluate the consistency between state air quality standards/objectives, and transportation planning and major construction activities across the State, as defined in state implementation plans.

• Regulation 11, "Motor Vehicle Inspection"—Regulation 11 requires automobile emission inspection and maintenance programs to be implemented in specified areas of the State for gasoline-powered on-road vehicles. These programs apply to businesses, industry, and the general public. In addition, the State's Automobile Inspection and Readjustment (AIR) program's purpose is to reduce motor vehicle-related pollution through the inspection and emissions-related repair of automobiles. The program, as defined in Regulation 11, works in specific areas of the State and requires motor vehicles to meet emission standards through periodic maintenance and/or repair.

• Regulation 13, "Oxygenated Fuels"—Regulation 13 addresses the issue of motor vehicle related pollution and requires the use of oxygenated fuels in gasoline-powered motor vehicles in Colorado's Automobile Inspection and Readjustment program.

• Regulation 16, "Street Sanding and Sweeping"—Regulation 16 sets specification standards for street sanding material and street sweeping practices in the Automobile Inspection and Readjustment program area and Denver-metro particulate attainment/maintenance area.

b. *EPA analysis:* To generally meet the requirements of section 110(a)(2)(C), the State is required to have SIP-approved prevention of significant deterioration (PSD), nonattainment New Source Review (NSR), and minor NSR permitting programs adequate to implement the 1997 8-hour ozone NAAQS. As explained above, in this action EPA is not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D of the Act. Also, in this action, EPA is not proposing to approve or disapprove any state rules with regard to NSR Reform requirements. EPA will act on SIP submittals that are made for purposes of addressing NSR Reform through a separate rulemaking process. In this action, EPA is evaluating the State's PSD program as required by part C of the Act, and the State's minor NSR program as required by 110(a)(2)(C).

Colorado has a SIP-approved PSD program that meets the general requirements of part C of the Act (51 FR 31125). Below, EPA considers requirements for the PSD program specific to the 1997 ozone NAAQS, but first considers the effects of recent rules regulating greenhouse gases on Colorado's PSD program.

Greenhouse Gas Regulation

EPA notes a potential inconsistency between Colorado's January 7, 2008 infrastructure SIP certification and EPA's recently promulgated rule, "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans" ("PSD SIP Narrowing Rule"), 75 FR 82536 (Dec. 30, 2010). In the PSD SIP Narrowing Rule, EPA withdrew its previous approval of Colorado's PSD program to the extent that it applied PSD permitting to greenhouse gas (GHG) emissions increases from GHG-emitting sources below thresholds set in EPA's June 3, 2010 "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" ("Tailoring Rule"), 75 FR 31514. EPA withdrew its approval on the basis that the State lacked sufficient resources to issue PSD permits to such sources at the statutory thresholds in effect in the previously-approved PSD program. After the PSD SIP Narrowing Rule, the portion of Colorado's PSD SIP from which EPA withdrew its approval had the status of having been submitted to EPA but not yet acted upon. In its January 7, 2008 certification, Colorado relied on its PSD program as approved at that date—which was before December 30, 2010, the effective date of the PSD SIP Narrowing Rule—to satisfy the requirements of infrastructure element 110(a)(2)(C). Given EPA's basis for the PSD SIP Narrowing Rule, EPA proposes approval of the Colorado infrastructure SIP for infrastructure element (C) if either the State clarifies (or modifies) its certification to make clear that the State relies only on the portion of the PSD program that remains approved after the PSD SIP Narrowing Rule issued on December 30, 2010, and for which the State has sufficient resources to implement, or the State acts to withdraw from EPA consideration the remaining portion of its PSD program submission that would have applied PSD permitting to GHG sources below the Tailoring Rule thresholds. In the alternative, if Colorado does not take either action, EPA proposes to disapprove the infrastructure SIP to the extent it incorporates that portion of the previously-approved PSD program from which EPA withdrew its approval in the PSD SIP Narrowing Rule, which is the portion which would have applied PSD permitting requirements to GHG emissions increases from GHG-emitting sources below the Tailoring Rule thresholds. Such disapproval, if finalized, would not result in a need for Colorado to resubmit a SIP revision, sanctions, or a federal implementation plan (FIP).

Regulation of Ozone Precursors

In order for the State's SIP-approved PSD program to satisfy the requirements of section 110(a)(2)(C) for the 1997 ozone NAAQS, the program must properly regulate ozone precursors. On November 29, 2005, EPA promulgated the phase 2 implementation rule for the 1997 ozone NAAQS (Phase 2 Rule), which includes requirements for PSD programs to treat nitrogen oxides (NO_X) as a precursor for ozone (72 FR 71612). On August 1, 2007, the State submitted to EPA revisions to AQCC Regulation No. 3, Part D (PSD) which incorporate EPA's Phase 2 Rule. On April 19, 2011, EPA proposed approval of the portions of the August 1, 2007 revisions which adopt language treating NO_X as a precursor for ozone (76 FR 21835). We

anticipate finalizing the approval of the portions in the April 19, 2011 proposal that satisfy the requirements of the Phase 2 Rule before finalizing approval of Colorado's infrastructure SIP. Contingent on that approval, Colorado's PSD program meets the requirements of section 110(a)(2)(C) for the 1997 ozone NAAQS.

Minor New Source Review

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act, which regulates emissions of ozone and its precursors. On April 30, 1981, EPA approved the State's minor NSR program for incorporation into the SIP, and there was at the time no objection to the provisions of this program (46 FR 24180). Since then, the State and EPA have relied on the approved minor NSR program to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS.

In this action, EPA is proposing to approve Colorado's infrastructure SIP for the 1997 ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. A number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

4. *Interstate transport:* Section 110(a)(2)(D)(i) requires SIPs to contain adequate provisions prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other state, with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality or to protect visibility.

a. *Colorado's response to this requirement:* An Interstate Transport SIP revision was approved by the AQCC on February 15, 2007 that demonstrates pollutants from Colorado, including ozone and $PM_{2.5,}$ do not contribute to a NAAQS problem in neighboring states. The SIP revision utilized both monitoring data and modeling to show that neither ozone nor particulate matter originating in Colorado contributes to NAAQS problems outside of Colorado. The SIP revision will be forwarded to EPA after review and approval from the Colorado Legislature and the Governor's Office.

Specific issues of interstate transport are addressed within Colorado Regulation 3, "Air Pollution Emission Notices." Regulation 3, Part B, Section IV.C.4 requires the Colorado Air Pollution Control Division to notify any state that may be affected by emissions from that source or from a modification to that source as related to the prevention of significant deterioration. Colorado also has a regulation requiring installation of Best Achievable Retrofit Technology (BART) on stationary sources if visibility impairment in any Class I Area is reasonably attributed to such stationary source (Colorado Air Quality Control Commission Regulation 3, Part B.XI.D).

The AQCC has a directive regarding interstate transport of pollutants that prohibits Colorado sources from causing a violation of the NAAQS in a neighboring state with reciprocal provisions as found in the AQCC Common Provisions, Part 2, Section A (5CCR 1001–2).

b. *EPA Analysis:* Colorado did not submit its interstate transport SIP to meet the requirements of section 110(a)(2)(D)(i) with the January 7, 2008 Infrastructure SIP. Colorado has since submitted an interstate transport SIP and revisions to EPA for the 1997 ozone NAAQS. EPA approved portions of the State's 110(a)(2)(D)(i) interstate transport SIP for the 1997 ozone NAAQS in separate actions (75 FR 31306; 75 FR 71029; 76 FR 22036), and has proposed approval of the remaining portion to meet the requirement of 110(a)(2)(D)(i)(II) regarding interference with measures to prevent significant deterioration (76 FR 21835). EPA is taking no action relevant to section 110(a)(2)(D)(i) in this proposal.

5. *Interstate and international transport provisions:* Section 110(a)(2)(D)(ii) requires that each SIP shall contain adequate provisions insuring compliance with applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement).

a. *Colorado's response to this requirement:* Colorado did not specifically address this requirement, but rather addressed 110(a)(2)(D) as a whole. See Colorado's response to requirement 110(a)(2)(D)(i), in particular the State's citation of Regulation 3, Part B, Section IV.C.4.

b. *EPA Analysis:* Section 126(a) requires notification to affected, nearby states of major proposed new (or modified) sources. Sections 126(b) and (c) pertain to petitions by affected states to the Administrator regarding sources violating the "interstate transport" provisions of section 110(a)(2)(D)(i). Section 115 similarly pertains to international transport of air pollution.

Colorado meets the requirement of section 126(a) through AQCC Regulation No. 3 Part B, Section IV.C.4. This provision requires notification to states whose lands may be affected by the construction or modification of a stationary source. In addition to satisfying the requirements of 40 CFR 51.166(q)(2)(iv), the provision meets the requirements of section 126(a). Final approval of the AQCC Regulation No. 3 Part B, Section IV.C.4 became effective February 20, 1997 (62 FR 2910).[3]

Colorado has no pending obligations under sections 126(c) or 115(b); therefore, Colorado's SIP currently meets the requirements of those sections. The SIP therefore meets the requirements of 110(a)(2)(D)(ii) for the 1997 ozone NAAQS.

6. *Adequate resources and authority:* Section 110(a)(2)(E) requires states to provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof), (ii) requires that the state comply with the requirements respecting state boards under section 128, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

[3] Colorado has since renumbered AQCC Regulation Number 3, Part B.

a. *Colorado's response to this requirement:*

Personnel, Funding, and Authority

There are no state or federal provisions prohibiting the implementation of any provision of the Colorado SIP. In general, Colorado provides the necessary assurances that funding, personnel, and authority exist and that the State of Colorado has responsibility for implementing local provisions. All of the regulatory provisions in the SIP were adopted by the AQCC pursuant to authority delegated to it by statute. The AQCC's general authority to adopt the rules and regulations necessary to implement the SIP is set out in the Colorado Air Pollution Prevention and Control Act Section 25–7–105 of the Colorado Revised Statutes (C.R.S.). The general authority for the Air Pollution Control Division to administer and enforce the program is set out at 25–7–111, C.R.S. Additional authority to regulate air pollution and implement provisions in the SIP is set out elsewhere in the Colorado Air Pollution Prevention and Control Act, Article 7 of Title 25. In addition, the AQCC and the Division have the authority delegated to them in Sections 42–4–301 to 42–4–316, C.R.S. (concerning motor vehicle emissions) and 42–4–414 (concerning emissions from diesel-powered vehicles).

The AQCC's authority includes the authority to regulate particulate emissions, regardless of size (C.R.S. Section 25–7–109 (2)(b)).

The Colorado Air Pollution Control Division has staff and an annual budget to operate its six programs (Stationary Sources, Mobile Sources, Indoor Air, Technical Services, Planning and Policy, Administrative Services). The Division employs 154 people and has a budget of $16.5 million for fiscal year 2006–2007.

Of the total budget, 21 percent was derived from federal grants, 38 percent from mobile source fees, and 41 percent from stationary source fees.

State Boards

Section 128 of the CAA indicates Colorado's SIP must contain requirements that anybody that approves permits or enforcement orders under the CAA must have a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders.

The Commission's Air Quality Commission Procedural Rules section 1.11.0 state that "The Commission shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to permits or enforcement orders under this article or under the federal act. The members of the Commission shall disclose any potential conflicts of interest that arise during their terms of membership to the other Commissioners in a public meeting of the Commission."

Relationships With Other Agencies Responsible for Carrying Out State Activities

The Colorado Air Pollution Control Division contracts with local governments in two distinct ways:

1. Colorado grants monies to local health departments to endow them as agents of the State to provide inspections of some local stationary sources, asbestos abatement jobs, and CFC sources. Some local health departments also operate gaseous and particulate monitors under contract for the state. These efforts must comply with federal and state regulations.

2. Colorado grants monies to local governments to help pay for their support of SIP elements via public and private partnerships, education and informational campaigns. Most of these agencies create their own work plan that consists of programs they feel will help enhance air quality in their communities in accordance with general SIP directives.

Colorado has adopted specific regulations for local attainment/maintenance areas to assure these areas meet requirements of the SIP. These regulations include The Colorado Air Quality Control Commission SIP-specific regulations, 5 CCR 1001–20. These regulations provide the necessary authority for the Colorado Air Pollution Control Division to adequately enforce the provisions of the SIP elements in local attainment/maintenance areas.

b. *EPA Analysis:* Colorado's SIP meets the requirements of section 110(a)(2)(E) for the 1997 ozone NAAQS. The State cites the Colorado Revised Statutes, specifically Air Pollution Prevention and Control Act Sections 25–7–105, 25–7–111, 42–4–301 to 42–4–316, 42–4–414 and Article 7 of Title 25 to demonstrate that the APCD and AQCC have adequate authority to carry out Colorado's SIP obligations with respect to the 1997 ozone NAAQS and revise its SIP as necessary. The State receives sections 103 and 105 grant funds through its Performance Partnership Grant along with required state matching funds to provide funding necessary to carry out Colorado's SIP requirements. Finally, section IV of Colorado's Common Provisions contains requirements for members of the AQCC to disclose potential conflicts of interest.

7. *Stationary source monitoring system:* Section 110(a)(2)(F) requires (i) 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, (ii) period reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the Act, which reports shall be available at reasonable times for public inspection.

a. *Colorado's response to this requirement:* Colorado AQCC Regulations 1, 3, and 6 address the issue of stationary source monitoring. Colorado Regulation 1 sets forth emission limitations, equipment requirements and work practices (abatement and control measures) intended to control the emissions of particulates, smoke, and sulfur dioxides from new and existing stationary sources. Colorado Regulation 3 requires stationary sources to report their emissions on a regular basis through APENs. This air pollutant inventory program is described in the Colorado Pollution Prevention and Control Act Section 25–7–114.1 (C.R.S.) and in Colorado Regulation 3, Part I.VIII that allows for monitoring and record keeping of air pollutants. Colorado Regulation 6 sets standards for performance of new stationary sources in the state and establishes monitoring system requirements.

The Colorado Air Pollution Control Division may require owners and operators of stationary air pollution sources to install, maintain, and use instrumentation to monitor and record emission data as a basis for periodic reports to the Division under the Colorado AQCC Common Provisions.

b. *EPA Analysis:* The regulations cited by Colorado, including APEN reporting requirements and requirements in Regulation No. 8. I.VIII, meet the requirements of section 110(a)(2)(F) for the 1997 ozone NAAQS.

8. *Emergency powers:* Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

a. *Colorado's response to this requirement:* The SIP includes contingency plans to implement emergency powers similar to Section

303 of the CAA. Such contingency plans, called Denver Emergency Episode Plans, address ozone, particulate matter, and carbon monoxide. The Colorado Pollution Prevention and Control Act Sections 25–7–112 and 25–7–113, which have various sections similar to 42 U.S.C. 7603, generally describe Colorado's authority regarding Emergency Episodes. For example, 25–7–112 (2) provides the Colorado Air Pollution Control Division with authority to implement the Emergency Plan through the Governor of Colorado issuing an order in regard to emergency power.

b. *EPA analysis:* Colorado Pollution Prevention and Control Act Sections 25–7–112 and 25–7–113 provide APCD with general emergency authority comparable to that in section 303 of the Act. In addition, the Denver Emergency Episode Plan, applicable to the Denver metropolitan area, satisfies the requirements of 40 CFR part 51, subpart H (See 74 FR 47888). The SIP therefore meets the requirements of 110(a)(2)(G) for the 1997 ozone NAAQS.

9. *Future SIP revisions:* Section 110(a)(2)(H) requires that SIPs provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph 110(a)(3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under this Act.

a. *Colorado's response to this requirement:* The State of Colorado has the ability and authority to address and revise the SIP due to changes in the NAAQS or due to findings of inadequacies.

The Colorado AQCC has the authority and the duty to adopt and revise a State Implementation Plan as necessary to comply with the federal requirements. Colorado Air Pollution Prevention and Control Act Section 25–7–105(1)(a)(I) (C.R.S.) directs the Colorado Air Quality Control Commission to promulgate rules and regulations as related to a comprehensive SIP which will assure attainment and maintenance of the NAAQS and which will prevent significant deterioration of air quality in the State of Colorado.

Colorado Air Pollution Prevention and Control Act Section 25–7–109 (C.R.S.) also gives the Colorado Air Quality Control Commission the authority to promulgate emission control regulations.

b. *EPA analysis:* Colorado's statutory provision at Colorado Air Pollution Prevention and Control Act Section 25–7–105(1)(a)(I) gives the AQCC sufficient authority to meet the requirements of 110(a)(2)(H).

10. *Nonattainment Area Plan or Plan Revision under Part D:* Section 110(a)(2)(I) requires that a SIP or SIP revision for an area designated as a nonattainment area must meet the applicable requirements of Part D of this subchapter (relating to nonattainment areas).

a. *EPA analysis for Section 110(a)(2)(I):* As noted above, the specific nonattainment area plan requirements of Section 110(a)(2)(I) are subject to the timing requirement of section 172, not the timing requirement of section 110(a)(1). This element is therefore not applicable to this action. EPA will take action on part D attainment plans through a separate process.

11. *Consultation with government officials, public notification, PSD and visibility protection:* Section 110(a)(2)(J) requires that each SIP meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to prevention of significant deterioration of air quality and visibility protection).

a. *Colorado's response to this requirement:* Engineering and meteorological consultation is provided by the State to local agencies. The State assists local agencies in planning air management programs for their respective areas. Colorado holds public meetings and hearings on all SIP revisions in accordance with the AQCC Procedural Rules. Public comment is solicited and accepted at Colorado AQCC meetings and hearings. Colorado's Transportation Conformity Rule, Regulation 10, specifies consultation procedures for SIP revisions in Section IV.F.

Also, as part of the State of Colorado's Visibility SIP, the Colorado Air Pollution Control Division consults with the Federal Land Managers as necessary and required.

b. *EPA Analysis:* The State has demonstrated that it has the authority and rules in place to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land to which the SIP applies, consistent with the requirements of CAA section 121. Furthermore, EPA previously approved Colorado's SIP submission to meet the requirements of CAA section 127 (45 FR 53147, Aug. 11, 1980).

Colorado's SIP regulations for its PSD program were federally-approved and made part of the SIP on September 2, 1986 (51 FR 31125). EPA has further evaluated the State's SIP-approved PSD program in this proposed action in section IV.3, element 110(a)(2)(C).

Finally, with regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the act. 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. In conclusion, the Colorado SIP meets the requirements of section 110(a)(2)(J) for the 1997 ozone NAAQS.

12. *Air quality and modeling/data:* Section 110(a)(2)(K) requires that each SIP provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a NAAQS, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

a. *Colorado's response to this requirement:* Colorado has the authority and resources to model for criteria pollutants. Air quality modeling is done for SIP revisions and for transportation conformity. Colorado Regulation 3 (Air Pollution Emissions Notices, Construction Permits and Fees, Operating Permits, and Prevention of Significant Deterioration) requires stationary sources to predict the effect of air pollutants in attainment areas. Regulation 3 also details the State of Colorado's program regarding permitting as related to air quality modeling and data handling in predicting the effect of emissions of a pollutant with an established NAAQS. Regulatory requirements for Air Quality Related Values as related to modeling are described within Colorado Regulation 3, Part B subsection X and XI. A permit modification for purposes of the acid rain portion of a permit shall be governed by regulations promulgated under Title IV of the federal act, found in 40 CFR part 72 as described under Colorado Regulation 3, Part C, subsection X.K.

The Modeling, Meteorology, and Emission Inventory Unit within the Colorado Air Pollution Control Division performs and reviews air quality impact analyses for a variety of programs, including SIP revisions, transportation conformity determinations, stationary source permitting, environmental impact statements, and hazardous waste site studies. The analyses include modeling, meteorological analysis, and emission inventory development for mobile sources and area stationary sources such as woodburning. The Unit also performs air quality forecasting for the Denver-area High Pollution Season, open burning, and for special air quality studies. Additional information regarding these programs and authority is provided below. Some of these programs are found in the SIP. For example, both Colorado AQCC Regulation 4 (Woodburning) and the Denver PM_{10} SIP address State air quality modeling programs.

PSD and Increment Consumption: Colorado's PSD program includes a requirement that the State periodically assess the adequacy of its plan to prevent significant deterioration of air quality. This is presented in Regulation 3, Part B, Section VII. In addition, Regulation 3, Part A, Section VIII "Technical Modeling and Monitoring Requirements" states that all estimates of ambient concentrations required under Regulation 3 shall be based on the applicable air quality models, data bases, and other requirements generally approved by EPA and specifically approved by the Division.

SIP development: Modeling is performed in the development and revision of SIPs, as needed, to ensure that specific areas of the state will maintain compliance with the NAAQS in light of development and increased population and traffic.

Permits: The primary Colorado regulation for air quality permits is Colorado AQCC Regulation No.3. Certain new/modified air pollution sources are subject to the regulatory modeling requirements in Regulation 3. Regulation 3, Part A, subsection VIII describes Colorado's technical modeling and monitoring requirements. Modeling is often required to obtain a construction permit. While modeling is not required to obtain an operating permit, it may be required if the operating permit is modified (in Regulation 3, Part C, subsection X–Minor Permit Modification Procedures). Operating permits may also be subject to modeling if the application is for a combined construction/operating permit (in Regulation 3, Part C, subsection III.C.12.d).

b. *EPA Analysis:* Colorado's SIP meets the requirements of CAA Section 110(a)(2)(K) for the 1997 ozone NAAQS. In particular, Colorado's Regulation 3 Part A.VIII requires estimates of ambient air concentrations be based on applicable air quality models approved by EPA. Final approval for Regulation 3 Part A.VIII became effective February 20, 1997 (62 FR 2910). As a result, the SIP provides for such air quality modeling as the Administrator has prescribed.

13. *Permitting fees:* Section 110(a)(2)(L) requires SIPs to require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

a. *Colorado's response to this requirement:* The State of Colorado requires the owner or operator of a major stationary source to pay the Colorado Air Pollution Control Division any fee necessary to cover the reasonable costs of reviewing and acting upon any permit applications. The collection of fees is described in Colorado AQCC Regulation 3. Specifically, Regulation 3, Part A.VI describes how each applicant required to obtain a permit must pay a fee, including the cost of permit review and relevant actions. Also, stationary source owners or operators must pay an annual fee based on total emissions. The funds are used by the State to administer programs for the control of air pollution from stationary sources.

b. *EPA analysis:* Colorado's approved title V operating permit program meets the requirements of CAA section 111(a)(2)(L) for the 1997 ozone NAAQS. Final approval of the title V operating permit program became effective October 16, 2000 (65 FR 49919). Interim approval of Colorado's title V operating permit program became effective February 23, 1995 (60 FR 4563). As discussed in the proposed interim approval of the title V program (59 FR 52123, Oct. 14, 1994), the State demonstrated that the fees collected were sufficient to administer the program.

14. *Consultation/participation by affected local entities:* Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

a. *Colorado's response to this requirement:* Colorado AQCC Regulation 10, "Transportation Conformity," defines the criteria the Colorado AQCC uses for transportation conformity determination to develop SIP revisions in non-attainment areas.

Colorado AQCC Regulation 3 also provides for consultation and participation by local entities. Local governments receive notice and have the opportunity to comment on and participate in construction permit review procedures and operating permit application procedures.

The Colorado AQCC holds a public hearing before adopting any regulatory revisions to the SIP. Local political subdivisions may participate in the hearing.

b. *EPA Analysis:* Colorado's submittal meets the requirements of CAA Section 110(a)(2)(M) for the 1997 ozone NAAQS.

V. What action is EPA taking?

In this action, EPA is proposing to approve in full the following section 110(a)(2) infrastructure elements for Colorado for the 1997 ozone NAAQS: (A), (B), (D)(ii), (E), (F), (G), (H), (J), (K), (L), (M). EPA proposes to approve the section 110(a)(2)(C) infrastructure element in full for the 1997 ozone NAAQS in the event that Colorado takes one of the actions described in the discussion of that element. In the alternative, EPA proposes to disapprove the section 110(a)(2)(C) element to the extent described and to otherwise approve this element. EPA is taking no action on infrastructure elements (D)(i) and (I) for the 1997 ozone NAAQS.

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 Act and applicable Federal regulations (42 U.S.C 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting Federal requirements and disapproves other state law because it does not meet Federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

• Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 10, 2011.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. 2011–12213 Filed 5–17–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 110427267–1267–01]

RIN 0648–BB04

Endangered and Threatened Species: Designation of a Nonessential Experimental Population for Middle Columbia River Steelhead Above the Pelton Round Butte Hydroelectric Project in the Deschutes River Basin, Oregon

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

ACTION: Proposed rule; notice of availability.

SUMMARY: We, the National Marine Fisheries Service (NMFS), propose to designate the Middle Columbia River (MCR) steelhead (*Oncorhynchus mykiss*), recently reintroduced into the upper Deschutes River basin in central Oregon, as a nonessential experimental population (NEP) under the Endangered Species Act (ESA). This NEP designation would expire 12 years after the first generation of adults return to the NEP area. A draft environmental assessment (EA) has been prepared on this proposed action and is available for comment (see **ADDRESSES** and INSTRUCTIONS section below).

DATES: To allow us adequate time to consider your comments on this proposed rule, they must be received no later than July 18, 2011. If you would like to request a public hearing, we must receive your request in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section, by July 5, 2011. Comments on the EA must be received by July 18, 2011.

ADDRESSES: You may submit comments on the proposed rule by any of the following methods:

• *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Submit written comments to Assistant Regional Administrator, Hydropower Division, Northwest Region, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232.

• *Fax:* (503) 231–2318.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. We will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

You may access a copy of the draft EA by one of the following:

• Visit NMFS' Northwest Region Web site at *http://www.nwr.noaa.gov.*

• Call 503.736.4741 and request to have a CD or hard copy mailed to you.

• Obtain a CD or hard copy by visiting NMFS' Portland office at 1201 NE Lloyd Blvd, Suite 1100, Portland, OR 97232.

You may submit comments on the draft EA by one of the following methods:

• *E-mail: expopEA.nwr@noaa.gov.*

• *Mail:* Submit written comments to Hydropower Division, FERC and Water Diversions Branch, NMFS, 1201 NE. Lloyd Blvd., Portland, OR 97232.

Please see the draft EA for additional information regarding commenting on that document.

FOR FURTHER INFORMATION CONTACT: Scott Carlon, NMFS, 1201 NE Lloyd Blvd., Portland, OR 97232 (503–231–2379), or Marta Nammack, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

SUPPLEMENTARY INFORMATION:

Context

On March 25, 1999, NMFS listed the Middle Columbia River (MCR) steelhead distinct population segment (DPS) as threatened under the Endangered Species Act (ESA) (16 U.S.C. 1531–1544) (64 FR 14517). The MCR steelhead DPS range covers approximately 35,000 square miles (90,650 sq km) of the Columbia plateau of eastern Oregon and eastern Washington. The Deschutes River in central Oregon is one of six major river basins supporting steelhead in this DPS. Since 1968, the Pelton Round Butte Hydroelectric Project (Pelton Round Butte) on the Deschutes River has blocked steelhead from accessing nearly 200 miles (322 km) of historical spawning and rearing habitat.

In this rulemaking, we are proposing to designate as an experimental population the MCR steelhead currently being reintroduced to the upper Deschutes River basin. This reintroduction is a requirement of the new hydropower license for the Pelton Round Butte Hydroelectric Project in

Oregon, and thus will continue regardless of whether we designate the steelhead population in the upper Deschutes River basin as experimental. The licensees, Portland General Electric Company and the Confederated Tribes of the Warm Springs Reservation of Oregon, are conducting the reintroduction program in cooperation with the State of Oregon, NMFS, the U.S. Forest Service, the U.S. Fish and Wildlife Service, U.S. Bureau of Land Management, Jefferson and Deschutes Counties, Oregon, and 10 other stakeholder groups. This reintroduction is one of many recovery actions being implemented by NMFS, Federal and state agencies, and other partners throughout the threatened species' historical range. While passage and reintroduction are occurring under the authority of the Federal Power Act, we would be designating the reintroduced steelhead as a NEP, and providing special protective measures for the NEP, under the authority of the ESA. The purpose of this proposed designation is to temporarily lift certain ESA liability and consultation requirements to allow time to develop conservation measures to support the reintroduction effort in the Upper Deschutes River basin. The conservation measures would benefit from information gained during the early stages of the reintroduction effort to focus the conservation measures on the areas needing support.

The specific stock chosen to initiate steelhead reintroduction is from the Round Butte Hatchery. After the new license was issued in June 2005 and reintroduction planning was largely completed, we included the Round Butte Hatchery steelhead stock as part of the threatened group of steelhead (71 FR 834; January 5, 2007).

We are proposing to have the NEP designation set by this action expire after three successive generations of steelhead have been passed over Round Butte Dam. Specifically, the NEP designation would expire 12 years after the first generation of adults return to the NEP area. Some local landowners and one municipality are working to develop a Habitat Conservation Plan (HCP) for certain activities that may impact steelhead reintroduced above Round Butte Dam. This HCP is likely to be completed sooner than the proposed expiration date for the NEP designation. However, the HCP covers only a subset of the activities and area impacted by the reintroduction. Thus, other local entities may consider developing conservation measures to address potential ESA liability. We expect that the fixed-duration NEP designation will incentivize local landowners and municipalities to develop such conservation measures in a timely manner, since full ESA protections will once again apply to the steelhead after the experimental population designation expires. In addition, we expect that information developed during the NEP designation period will help inform conservation measures, either as they are being developed or through adaptive management mechanisms.

The proposed NEP would occur in portions of Deschutes, Jefferson, and Crook Counties, Oregon. The geographic boundaries of the NEP would extend upstream from Round Butte Dam on the Deschutes River to Big Falls (river mile 132, or kilometer 212) and all accessible reaches of its tributary, Whychus Creek; on the Crooked River from its confluence with the Deschutes River upstream to Bowman Dam (river mile 70, or rkm 113) and all accessible tributaries between these points; and on the Metolius River from its confluence with the Deschutes River upstream to all accessible areas. While this area is part of its historical range, it is outside the current range of the Middle Columbia River steelhead DPS. The DPS boundary is located at the Reregulating Dam, the furthest downstream dam of the Pelton Round Butte Hydroelectric Project, on the Deschutes River downstream of the NEP area.

Section 10(j) of the Endangered Species Act (16 U.S.C.S. 1539(j)) allows the Secretary of Commerce (Secretary) to authorize the release of an experimental population of an endangered or threatened species outside the current range of such species if the Secretary determines that such release will further the conservation of such species. The Secretary may designate an experimental population when, and at such times as, the population is wholly separate geographically from nonexperimental populations. In this action, NMFS proposes to designate an experimental population that is geographically separate from the non-experimental ESA-listed MCR steelhead population, due to the dams that block access for the species to the area where the species is being reintroduced. The MCR steelhead will only be considered experimental when they are above the Round Butte Dam. The proposed designation will further the conservation of the species because it will build support for the reintroduction effort among local landowners, incentivize those landowners and municipalities to complete conservation measures within the set time-period, and ensure that the conservation measures are informed by information gathered during the NEP designation, i.e., the first three generations of returning adults. We will provide notice in the **Federal Register** when the NEP designation is set to expire.

Public Comment Procedures

We would like the final rule to be as effective and accurate as possible, and the final EA to evaluate the potential issues and reasonable range of alternatives. Therefore, we invite the public, tribal and government agencies, the scientific community, environmental groups, industry, local landowners, and all other interested parties to provide comments on the proposed rule and EA. We request that you keep your comments relevant to the proposed experimental population designation, bearing in mind that the reintroduction is required by the Pelton Round Butte hydropower license. Your comments should be as specific as possible, provide suggested changes, explain the basis for them, and include supporting information where appropriate.

Prior to issuing a final rule, we will consider the comments and supporting materials we receive. The final rule may differ from the proposed rule based on this information and other considerations.

We are interested in all public comments, and have specific questions we are interested in hearing public comments on:

(1) Use of a specific expiration date: We chose to state up front that the designation would expire at a certain time to encourage completion of conservation measures rather than leaving their development more open ended. Other experimental population designations indicate that the designation may be removed for certain reasons, but do not include a specific expiration date in the designation. Please comment on the use of an expiration date.

(2) Twelve-year time frame: We propose that the NEP designation expire 12 years after the first generation of adults return to the NEP area, in part because useful information will be gained during that timeframe because this 12-year period should allow three generations of the reintroduced steelhead to return. Three generations allows for consideration of variability between generations, including the year-to-year variability in environmental conditions, so is expected to provide useful information for developing and tailoring conservation measures. After this time, we will know where adults are spawning and young are rearing, and

whether there are certain needs of the steelhead in specific areas that can be addressed through conservation measures. If the HCP or other conservation measures are completed prior to the 12-year expiration, information from the NEP designation could nevertheless be used to inform those measures through adaptive management mechanisms.

As indicated, the time limit is also designed to incentivize completion of conservation measures—both in the HCP and otherwise. For the HCP, however, a 12-year limit could reduce the incentive to complete the HCP on its current projected timeframe, which is less than 12 years. Yet, if we used a shorter time-frame, the quality of information from the NEP would be significantly diminished.

Please comment on the use of 12 years as a fixed time period for the NEP designation.

(3) The extent to which the experimental population would be affected by current or future Federal, state, or private actions within or adjacent to the experimental population area.

(4) Current programs within the experimental population area that protect fish or aquatic habitats.

(5) Any necessary management restrictions, protective measures, or other management measures that we have not considered.

Background

The Deschutes River basin above the Pelton Round Butte Hydroelectric Project was once home to native runs of summer steelhead, Chinook salmon, sockeye salmon, and Pacific lamprey. Before hydroelectric and irrigation development, steelhead used the Deschutes River up to Big Falls, Whychus Creek (a Deschutes River tributary above the Pelton Round Butte Hydroelectric Project), and the Crooked River watershed. Within the Crooked River watershed, steelhead were documented in McKay, Ochoco, Horseheaven, Newsome, Drake, Twelvemile, and Beaver Creeks, and the North Fork Crooked River (Nehlsen, 1995). The completion of Ochoco Dam east of Prineville in 1920 blocked steelhead access into most of the Ochoco Creek watershed, and the completion of Bowman Dam on the Crooked River in 1961 stopped fish passage into the upper Crooked River watershed. On the Deschutes River, the Pelton and Reregulating Dams were completed in 1958. Even though these dams had fish passage, steelhead numbers in the upper Deschutes River basin, though still significant, had declined by that time (Nehlsen, 1995). Available information suggests peak annual escapements in the 1950s were at least 1,600 adult summer steelhead and 800–900 (Montgomery, 1955) adult spring Chinook salmon (with perhaps twice this number harvested downstream). After completion of Round Butte Dam (the most upstream dam) in 1964, fish passage decreased dramatically, and, by 1968, was abandoned in favor of a hatchery program to mitigate for lost passage and habitat. The runs could not be sustained primarily because deceptive surface currents confused smolts attempting to migrate seaward through Lake Billy Chinook, the project's upper-most reservoir. Most of the smolts failed to find their way from the head of the reservoir downstream to a fish collector installed at Round Butte Dam (Korn *et al.,* 1967). As a result of this decline, and following a comprehensive study of west coast steelhead, we subsequently listed the MCR as a DPS (64 FR 14517, March 25, 1999).

There has long been an interest in reestablishing anadromous fish runs in the upper Deschutes River subbasin. This interest strengthened in recent years as technological innovations advanced and hydrodynamic modeling suggested that surface currents could be altered to favor the downstream passage of smolts. The relicensing of the Pelton Round Butte Project provided the opportunity to implement these innovations in order to attempt to reestablish anadromous fish runs upstream.

The Federal Energy Regulatory Commission issued a new license for the Pelton Round Butte Project (project number P–2030) on June 21, 2005, to Portland General Electric Company (PGE) and the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWSRO), who are joint licensees (Licensees). The license requires fish passage over the Pelton Round Butte Project and incorporates the terms of a Settlement Agreement entered into by the Licensees and 20 other parties. The license establishes a Fish Committee, which is made up of the Licensees, NMFS, Oregon Department of Fish and Wildlife (ODFW), the US Fish and Wildlife Service (FWS), and other agencies and entities. Details regarding the responsibilities of the Licensees with respect to fish passage and reintroduction are in the Fish Passage Plan, included as Exhibit D to the Settlement Agreement. These responsibilities include fish passage improvements at the Pelton Round Butte Project, a wide variety of test and verification studies, and longer term monitoring efforts. The license includes a schedule for meeting those obligations.

Because the Pelton Round Butte Hydroelectric Project does not provide volitional passage, the central element of the Fish Passage Plan is a Selective Water Withdrawal structure now in place and operating at Round Butte Dam to improve water quality in the lower Deschutes River, create currents in the reservoir that should help guide smolts to an associated fish screening and collection facility, and provide downstream passage for juveniles. It is currently envisioned that returning adult steelhead in the experimental population will be collected below the Reregulating Dam and transported for release above Round Butte Dam. This new facility will protect fish in Lake Billy Chinook from being entrained into turbines, and is the centerpiece of a multi-faceted effort to reestablish runs of steelhead that have been absent from the upper basin for more than 42 years. Recognizing the fish reintroduction opportunity, the Oregon Fish and Wildlife Commission adopted Oregon Administrative Rules in December 2003 that direct ODFW to restore anadromous fish, including MCR summer steelhead, into portions of their historical range upstream from the Pelton Round Butte Project. Specific areas targeted for reintroduction include the Deschutes River from Round Butte Dam upstream to Big Falls, Whychus Creek, and the Crooked River and tributaries upstream to Bowman and Ochoco Dams. The Metolius River was not targeted for steelhead reintroduction as it is believed that this subbasin is better suited to resident steelhead (i.e., rainbow trout or redband trout).

Individuals that are used to establish an experimental population may come from a donor population, provided their removal will not create adverse impacts upon the parent population, and provided appropriate permits are issued in accordance with our regulations (50 CFR 222.301) prior to removal. In this case, the donor steelhead are from a captive bred population, which is propagated to mitigate for lost fisheries due to failed fish passage after the Pelton Round Butte Project was originally constructed. The hatchery fish being used for the reintroduction are excess stock. In addition, it is possible that some wild adult stock could also be released into the NEP area before the designation expires.

Statutory and Regulatory Framework

Congress made significant changes to the ESA in 1982, including the addition

of section 10(j), which provides for the designation of reintroduced populations of listed species as "experimental populations." Previously, we had authority to reintroduce populations into unoccupied portions of a listed species' historical range. However, local citizens often opposed these reintroductions because they were concerned about potential liability for harming these animals, and the placement of restrictions and prohibitions on Federal and private activities. Under section 10(j) of the ESA, the Secretary can authorize the release of an "experimental" population outside the species' current range, but within its historical range, where: (1) The experimental population is geographically separate from the non-experimental population; and (2) the designation will further the conservation of the listed species. The determination of whether experimental populations are "essential" or "nonessential" to the continued existence of the species must be based on the best scientific and commercial data available.

The ESA provides that species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the consultation requirements of section 7. Section 9 of the ESA prohibits the take of an endangered species. The term "take" is defined by the ESA as "to harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct." 15 U.S.C. 1532(19). Section 7 of the ESA provides procedures for Federal interagency cooperation and consultation to conserve federally listed species, ensure the survival and help in recovery of these species, and to protect designated critical habitat necessary for the listed species' survival. It also mandates that all Federal agencies determine how to use their existing authorities to further the purposes of the ESA to aid in recovering listed species. It also states that Federal agencies will, in consultation with NMFS, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species, or result in the destruction or adverse modification of designated critical habitat. Section 7 of the ESA does not apply to activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

For the purposes of section 7 of the ESA, section 10(j) requires that we treat NEPs as a species proposed to be listed, unless they are located within a National Wildlife Refuge or National Park, in which case they are treated as threatened, and section 7 consultation requirements apply. When NEPs are located outside a National Wildlife Refuge or National Park, only two provisions of section 7 apply—section 7(a)(1) and section 7(a)(4). In these instances, NEP designations provide additional flexibility in developing conservation and management measures, because they allow NMFS to work with the action agency early to develop conservation measures, instead of analyzing an already well-developed proposed action provided by the agency in the framework of a section 7(a)(2) consultation. Additionally, for populations of listed species that are designated as nonessential, section 7(a)(4) of the ESA only requires that other agencies confer (rather than consult) with NMFS on actions that are likely to jeopardize the continued existence of a species proposed to be listed. These conferences are advisory in nature, and their findings do not restrict agencies from carrying out, funding, or authorizing activities.

Section 10(j) of the ESA (16 U.S.C. 1539(j)) also provides the Secretary of Commerce with authority to designate populations of listed species as experimental, and includes criteria for the designation. Experimental population designations must be done through a rulemaking that identifies the population, and state whether the population is essential or nonessential to the continued existence of the species. For purposes of section 9 of the ESA, a population designated as experimental is treated as threatened regardless of the species' designation elsewhere in its range. Through section 4(d) of the ESA, a threatened designation allows the Services greater discretion in devising management programs and special regulations for such a population. Section 4(d) of the ESA allows us to adopt regulations necessary to provide for the conservation of a threatened species. MCR steelhead are currently included in NMFS' 4(d) rule that imposes section 9 take liability for threatened anadromous fish, at 50 CFR 203. Through this rulemaking, we propose to use our authority under section 4(d) to create a different set of protective regulations, specific to the experimental steelhead population above Round Butte Dam. In effect, we would be modifying the current 4(d) rule as it applies to MCR steelhead. For this nonessential experimental population only, we would allow take if the take is incidental to a lawful activity, such as agricultural activities.

The FWS has regulations for experimental population designation, 50 CFR 17 subpart H, that provide definitions, considerations in finding that the designation would further the conservation of the species, and information to be included in the designation. These regulations state that, in making the determination that the designation would further the conservation of the species, the Secretary must consider the effect of taking the eggs or young from another population, the likelihood that the experimental population will become established, the effect the designation would have on the species' overall recovery, and the extent to which the experimental population would be affected by activities in the area. A regulation designating the experimental population must include: A clear means to identify the experimental population; a finding based on the best available science indicating whether the population is essential to the continued existence of the species; management restrictions, protective measures, or other management concerns; and a periodic review of the success of the release and its effect on the conservation and recovery of the species. The FWS regulations also state that any experimental population shall be treated as threatened for purposes of establishing protective regulations under ESA section 4(d), and the protective regulations for the experimental population will contain applicable prohibitions and exceptions for that population.

While we do not have regulations regarding designation of experimental populations, many of the considerations in FWS's regulation are generally applicable to this designation. Where applicable, we will include the same considerations in our decision regarding designation, and provide that rationale in the preamble. These considerations are in addition to the statutory requirements that are also explained in the preamble.

Biological Information

"Steelhead" is the name commonly applied to the anadromous (migratory) form of the biological species *O. mykiss.* The common names of the non-anadromous, or resident, form are rainbow trout and redband trout. The species *O. mykiss* exhibits perhaps the most complex suite of life history traits of any species of Pacific salmonid. These fish can be anadromous or freshwater residents, and under some circumstances yield offspring of the opposite form. Steelhead can spawn more than once, whereas all other *Oncorhynchus* except cutthroat trout (*O. clarki*) spawn once and then die.

When we originally listed the MCR steelhead as threatened on March 25, 1999 (64 FR 14517), it was classified as an evolutionarily significant unit (ESU) of salmonids that included both the anadromous and resident forms, but not hatchery fish. Since then, we revised our species determinations for West Coast steelhead under the ESA, delineating anadromous, steelhead-only distinct population segments (DPS). We listed the MCR steelhead DPS as threatened on January 5, 2006 (71 FR 834). Rainbow trout and redband trout are not listed under the ESA, and are under the jurisdiction of the states unless they are listed, when they come under the jurisdiction of the FWS. We published a final Critical Habitat designation for MCR steelhead on September 2, 2005, with an effective date of January 2, 2006 (70 FR 52630).

As noted previously, the MCR steelhead DPS extends over an area of about 35,000 square miles (90,650 square km) in the Columbia plateau of eastern Washington and eastern Oregon. The DPS includes all naturally spawned populations of steelhead in drainages upstream of the Wind River, Washington, and the Hood River, Oregon (exclusive), up to, and including, the Yakima River, Washington, excluding steelhead from the Snake River Basin (64 FR 14517, March 24, 1999; 71 FR 834, January 5, 2006). Major drainages that support steelhead in this DPS are the Deschutes, John Day, Umatilla, Walla Walla, Yakima, and Klickitat river systems. Most of the region is privately owned (64 percent), with the remaining area under Federal (23 percent), tribal (10 percent), and state (3 percent) ownership. Most of the landscape consists of rangeland and timberland, with significant concentrations of dryland agriculture in parts of the range. Irrigated agriculture and urban development are generally concentrated in valley bottoms. Human populations in these regions are growing.

Steelhead produced in seven artificial propagation programs are considered part of the DPS, and were given a listing status of threatened in 2006 (71 FR 834, January 5, 2006). These programs are the Touchet River Endemic Summer Steelhead Program, the Yakima River Kelt Reconditioning Program (in Satus Creek, Toppenish Creek, Naches River, and Upper Yakima River), and the Umatilla River and Deschutes River steelhead hatchery programs.

Within the range of West Coast steelhead, spawning migrations occur throughout the year, with seasonal peaks of activity. The runs are usually named for the season in which the peak occurs. Most steelhead can be categorized as one of two run types, based on their sexual maturity when they re-enter freshwater and how far they go to spawn. In the Pacific Northwest, summer steelhead enter freshwater between May and October, and require several months to mature before spawning; winter steelhead enter freshwater between November and April with well-developed gonads and spawn shortly thereafter. Summer steelhead usually spawn farther upstream than winter steelhead (Withler, 1966; Roelofs, 1983; Behnke, 1992).

The steelhead that occur in the Deschutes Basin are summer run. Spawning occurs from late winter through spring, and juveniles typically rear in freshwater for 2 years (may range 1–4 years) before migrating to the Pacific Ocean. About half of the adults return after 1 year in the ocean and the other half returns after 2 years.

Throughout much of its historical range, the decline of steelhead has been attributed to habitat degradation and fragmentation, the blockage of migratory corridors, poor water quality, angler harvest, entrainment (the incidental withdrawal of fish and other aquatic organisms in water diverted out-of-stream for various purposes) into diversion channels and dams, and introduced nonnative species. Specific land and water management activities that may negatively impact steelhead populations and habitat, if not implemented in accordance with best management practices, include the operation of dams and other diversion structures, forest management practices, livestock grazing, agriculture, agricultural diversions, road construction and maintenance, mining, and urban and rural development.

Factors Affecting Listing Middle Columbia River Steelhead as Threatened

Section 4(a)(1) of the ESA and NMFS implementing regulations (50 CFR part 424) establish procedures for listing species as threatened or endangered. According to this direction, the Secretary must determine if a species is endangered or threatened based on any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence (Busby *et al.,* 1996; NMFS, 1999).

In our initial determination to list the MCR steelhead species, we found that all five section 4(a)(1) factors had played a role in the decline of the West Coast salmon and steelhead ESUs. These factors may or may not still be limiting recovery in the future when we reevaluate the status of the species to determine whether the protections of the ESA are no longer warranted and the species may be delisted. Findings leading to the listing of West Coast salmon and steelhead, including MCR steelhead, include:

(1) *The present or threatened destruction, modification, or curtailment of its habitat or range:* Salmon and steelhead have experienced declines in abundance over the past several decades as a result of loss, damage, or change to their natural environment. Water diversions, forestry, agriculture, mining, and urbanization have eliminated, degraded, simplified, and fragmented habitat. Hydroelectric development on the mainstem Columbia River modified natural flow regimes and impaired fish passage. Tributary obstructions also restrict or block salmon and steelhead access to historical habitats.

(2) *Overutilization of the steelhead and salmon for commercial, recreational, scientific, or educational purposes:* Overfishing in the early days of European settlement led to the depletion of many salmonid stocks before extensive modifications and degradation of natural habitats, and exploitation rates following the degradation of many aquatic and riparian ecosystems were higher than many populations could sustain. Today, steelhead harvest continues on the Columbia River, tributaries, and Pacific Ocean; however, fishery impacts have declined significantly because of changes in fishery management.

(3) *Disease or predation:* Introductions of non-native species and habitat modifications have resulted in increased predator populations in numerous rivers. Predators on adult and juvenile steelhead include seabirds, such as Caspian terns, walleye and California sea lions.

(4) *Inadequacy of existing regulatory mechanisms:* Various Federal, state, county, and tribal regulatory mechanisms are in place to reduce habitat loss and degradation caused by human use and development. Many of these mechanisms have been improved over the years to slow the habitat degradation and destruction. Protective efforts directed toward addressing the many factors that adversely impact MCR steelhead and habitat—water quality and quantity, safe migration, riparian vegetation, food, predation dynamics and complex stream channels, and floodplain connectivity—will aid in improving these factors.

(5) *Other natural or human-made factors affecting its continued existence:* Variability in ocean and freshwater conditions can have profound impacts on the productivity of salmonid populations and, at different times, have exacerbated or mitigated the problems associated with degraded and altered riverine and estuarine habitats.

Relationship of the Proposed Experimental Population to Recovery Efforts

The 2009 Middle Columbia River Steelhead Recovery Plan has the overarching aim of removing the steelhead DPS from the threatened and endangered species list. The suite of strategies and actions proposed in the Plan will protect and improve ecosystem functions and restore normative ecological processes to levels that support recovery of MCR steelhead populations. The strategies and actions were developed by planning teams comprised of natural resource specialists for the Fifteenmile, Deschutes, John Day, Umatilla, and Walla Walla watersheds. The actions reflect direction identified in regional and local plans, recent modeling and research findings, and local expert input provided by the planning team members. Together, these strategies and actions call for maintaining high quality habitats and their productive capacity, improving ecosystem processes and habitats that are impaired but are currently important to productive capacity, and restoring habitat through passive and active measures.

Recovery criteria specific to the Deschutes include eight kinds of tributary habitat conservation measures that could mitigate for adverse impacts. We organized the habitat actions and associated information for each population by the conservation measures, or habitat strategies:

(1) Protect and conserve natural ecological functions that support the viability of populations and their primary life history strategies throughout their life cycle;

(2) Restore passage and connectivity to habitats blocked or impaired by artificial barriers and maintain properly functioning passage and connectivity;

(3) Maintain and restore floodplain connectivity and function;

(4) Restore degraded and maintain properly functioning channel structure and complexity;

(5) Restore riparian condition and large woody debris recruitment and maintain properly functioning conditions;

(6) Restore natural hydrograph to provide sufficient flow during critical periods;

(7) Improve degraded water quality and maintain unimpaired water quality; and

(8) Restore degraded and maintain properly functioning upland processes to minimize unnatural rates of erosion and runoff.

The recovery scenario described in the MCR steelhead recovery plan (NMFS, 2009) states that the Deschutes Eastside and Westside populations should reach a viable status. The Westside population existed historically in Whychus Creek and the upper Deschutes River below Big Falls. The Eastside population, as determined by the Interior Columbia Technical Recovery Team, did not extend above Pelton Round Butte historically. The Plan recognizes that successful reintroduction of MCR steelhead and their natural production above the Pelton Round Butte Project could contribute substantially to recovery in two ways, by: (1) restoring production from the Whychus Creek drainage, part of the historical Westside Deschutes population that currently is limited to major tributaries below the Pelton Round Butte Project; and (2) reestablishing production in the Crooked River drainage, identified by the Interior Columbia Technical Recovery Team as a separate extirpated historical population. If successful, these reintroductions and restoration of natural production could contribute substantially to population status and therefore to the viability of the MCR steelhead DPS.

The MCR steelhead recovery plan also includes an ambitious restoration and protection program for currently accessible habitats in tributaries below the Pelton Round Butte Project. As a result, it is possible that the Westside Deschutes population could reach minimum viability levels without access to habitat above the Pelton Round Butte Project if there is an increase in actions aimed at further improving natural production from accessible habitats below the project. Furthermore, the Mid-Columbia Recovery Plan recognizes that a future delisting decision for the DPS should consider not only the specific biological criteria incorporated into the current plan, but also the general principles underlying those criteria, advances in risk assessment, management actions in place to address threats, and considerations for the status of all of the components in the DPS. Therefore, while the reintroduction program furthers recovery, it is one of many measures to assist achieving this goal.

Does the proposed designation further the conservation of the species?

Under ESA section 10(j), the Secretary may designate listed species as experimental if doing so furthers the conservation of the species. The proposed designation of MCR steelhead is expected to promote development of conservation measures well-tailored to supporting reintroduction because we will have 12 years, or three steelhead generations, of data to use as the foundation for conservation measures. Three generations should account for the variable environmental conditions (both ocean and freshwater) the NEP will experience and give a solid basis for knowing what kinds of conservation measures will provide strong support for the reintroduction effort. For example, once we know the main spawning areas after collecting this information from three generations of spawning adults, we can craft conservation measures to protect those areas. Conservation measures that are completed before the expiration date likely would include an adaptive management component that would allow us to modify these measures based on this information. In addition, the expiration date adds another conservation aspect to the designation by encouraging development and completion of the conservation measures before expiration of the NEP designation (although with respect to the HCP it may create a disincentive for completing the HCP on its current trajectory, which is less than 12 years).

We weighed these benefits against any potential harm caused by this designation. There is potential harm associated with the reduced section 9 protections during the time period of the designation. However, we do not expect changes to current conditions to significantly increase harm to steelhead during the NEP period. In weighing the benefits of developing sound conservation measures in a time certain versus the potential for roughly the same amount of loss as there is now, the benefits of developing and implementing the conservation measures outweigh the loss of some individual fish. Therefore, on balance, the designation of the population as experimental would further the conservation of the species.

Is the proposed experimental population essential or nonessential?

Under ESA section 10(j)(2)(B), the Secretary must "identify the [proposed] population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species." 15 U.S.C. 1539(j)(2)(B). First, we considered the importance of the experimental population to recovery of MCR steelhead generally. While the reintroduction effort is a significant recovery effort, it is not the only one and not the key to whether recovery can be achieved for this steelhead DPS. Successful implementation of

restoration efforts across all major population groups in the DPS could reduce risks and improve viability even absent reintroduction above Pelton Round Butte Dam.

Another factor we considered is that the steelhead used for this reintroduction effort will be surplus hatchery stock. The hatchery program exists to mitigate for lost MCR steelhead upstream habitat, but the steelhead used in the reintroduction program are excess hatchery fish and are beyond what is needed for the mitigation. Furthermore, MCR steelhead have a very wide range in the Columbia Plateau, and are found in numerous rivers. The potential loss of some of the excess hatchery fish being used for the reintroduction effort will not appreciably reduce the likelihood of survival and recovery for this DPS. Therefore, this experimental population will be designated as nonessential because there are sufficient numbers of other fish from this population throughout a wide geographic range, and these fish are excess hatchery stock that are not needed for other purposes.

Location of Proposed NEP

ESA section 10(j) requires that the experimental population be designated only when, and at such times, as it is geographically separate from nonexperimental populations of the same species. On a very basic level, the NEP geographic area includes all waters that could support steelhead above Round Butte Dam. The NEP area covered by this action would include portions of the Deschutes River basin above Round Butte Dam, which is the most upstream development of the three-dam Pelton Round Butte Hydroelectric Project. Specifically, the NEP area includes the Deschutes River from Big Falls (river mile 132 or river kilometer 212) downstream to Round Butte Dam; the Whychus Creek subbasin; the Metolius River subbasin; and the Crooked River subbasin from Bowman Dam downstream (including the Ochoco and McKay Creek watersheds) to its point of confluence with the Deschutes River.

Accordingly, Round Butte Dam serves as the line of demarcation between the experimental population and the rest of the steelhead population. This geographic boundary is clearly defined by the presence of Round Butte Dam, with all steelhead above the dam being part of the experimental population and all steelhead below the dam not part of the experimental population. This approach to providing a clear geographic separation recognizes that anadromous fish migrate and mingle during the migration. The steelhead will be experimental when, and at such times as, they are above Round Butte Dam, and not experimental when they are downstream of the dam.

The nearest steelhead population to the NEP area is found in the Deschutes River below Round Butte Dam. The geographic boundary of the current steelhead DPS does not include the area above Round Butte Dam. Other steelhead populations near the NEP area include fish in the following tributaries of the lower Columbia River: The Lewis River, entering the lower Columbia at river mile (RM) 84 (river km 135), the Willamette River at RM 101(river km 163), and the Hood River at RM 165 (river km 366). Because anadromous populations of steelhead migrate to the Pacific Ocean and return to their natal streams to spawn, experimental population fish will commingle with nonexperimental population fish in the lower Deschutes and Columbia Rivers, and individuals from the experimental population may stray into any of the lower Columbia River tributaries or into Deschutes River tributaries below the Pelton Round Butte Project and spawn. Steelhead found outside of the NEP boundary but known to be part of the hatchery stock used for the reintroduction will also be considered nonexperimental.

The Round Butte Dam provides an absolute boundary to nonexperimental population fish returning to spawn. All juvenile steelhead smolts leaving the NEP boundary are collected at Round Butte Dam and each fish is given the same unique mark so that when they return to the Pelton fish trap as adults, trap operators can readily distinguish between experimental population and nonexperimental population fish. Only adult steelhead from the experimental population will be released above Round Butte Dam; therefore, the NEP is geographically separate from other steelhead populations because of the Pelton Round Butte Project.

Lastly, the steelhead reintroduction plan calls for using wild spawners from lower Deschutes River tributaries at some point in the reintroduction effort. Use of non-hatchery fish in the reintroduction will largely depend on the availability of wild spawners and the successful performance of the fish passage program at the Pelton Round Butte Project. We will consider any non-hatchery steelhead used for reintroduction above Round Butte Dam to be part of the experimental population once released into the NEP area.

In summary, the section 10(j) requirement that the experimental designation be limited to such times as the population is geographically separate is met here because the NEP area is outside the range of the currently existing DPS, and is clearly defined by Round Butte Dam, which is impassable to steelhead. It includes all streams above Round Butte Dam capable of supporting steelhead. All steelhead above the dam are in the experimental population, and all steelhead below the dam are not part of the experimental population.

Time Frame for NEP Designation

We are proposing an expiration date for the NEP designation because we want to provide an incentive for private land owners and local government entities to complete conservation measures in a certain time frame, while providing time to gather useful information on the reintroduction effort. This information will be used in the development of the conservation measures so they will be able to support the reintroduction program.

We are proposing a time frame of 12 years from the time when the first NEP adults return to the NEP area. This time is not definite now because we do not yet know exactly when the first adult steelhead will be passed above the dams to the NEP area. Adult passage will depend on meeting criteria established in the steelhead and spring Chinook Reintroduction Plan (ODFW and CTWSRO, 2008). On average, one generation of steelhead is about 4 years (2 years freshwater rearing, 1 year in the ocean, and roughly 9–11 months for adult migration, holding, and spawning), so three generations will be 12 years. We recognize that variations in freshwater rearing and ocean growth will occur (i.e., longer freshwater rearing and ocean growth time).

The proposed timeframe reflects our view that it will be useful to have information on three generations of steelhead to understand how well the reintroduction program is working and how best to craft conservation measures to support the program. As we discussed in the section on whether the designation will further the conservation of the species, the time frame of three generations allows an adequate amount of data to be collected on the reintroduction program, and time for this information to be used as the basis of conservation measures tailored toward supporting this reintroduction. This amount of information will allow all parties, private and governmental, to work together to develop conservation measures that are specifically focused on addressing needs of steelhead in the Upper Deschutes River basin. For conservation measures completed before

expiration of the designation, such as potentially the HCP currently being developed, an adaptive management component could address the need to potentially modify the measures based on this information. This component will maximize the benefit of the conservation measures and strengthen the reintroduction program, and will result in a strong program for this recovery measure.

Without an expiration date, development and completion of conservation measures may continue for a longer time. In general, twelve years is a reasonable amount of time to complete development of conservation measures because there is still a lot of information needed, and the issues are complex and involve many parties. That said, the HCP could be completed before the NEP designation expires. We would like to strongly encourage development and implementation of conservation measures that will support the reintroduction, and this expiration date is meant to provide that encouragement while also ensuring that the measures are based on good information.

Management Considerations and Protective Measures

The aquatic resources in the NEP area are managed by the U.S. Forest Service, Bureau of Land Management, Bureau of Reclamation, the State of Oregon, municipalities, and private landowners. Multiple-use management of these waters would continue under the NEP designation. We do not expect that continuing these agricultural, recreational, municipal, and other activities by private landowners within and near the NEP area will cause significant harm to MCR steelhead; the reintroduction effort has begun and the juvenile survival rates suggest that the activities in the area are not a limiting factor. The main factors we relied on in considering appropriate management measures are: (1) A significant number of upstream irrigators are developing or already implementing certain conservation measures; (2) Federal agencies have already consulted under section 7 of the ESA and are implementing actions that do not cause jeopardy and minimize incidental take; (3) fish used for the reintroduction will be excess hatchery fish, and loss of some of them will not harm survival and recovery of the steelhead; and (4) enough steelhead are already surviving to provide information necessary for the initial stages of the reintroduction program. These factors all lead to the conclusion that, for a 12-year period, the reintroduction effort can continue successfully while allowing some take of the steelhead in the experimental population because enough fish will survive to support reintroduction. Therefore, for the time period of the designation, incidental take, as provided in the next paragraph, will not harm the recovery program.

Incidental Take: Although MCR steelhead are already covered by a NMFS 4(d) rule at 50 CFR 203, this action would modify that protection if it is implemented. In this proposed rule, under the authority of ESA section 4(d), incidental take of steelhead within the experimental population area would be allowed, provided that the take is unintentional, not due to negligent conduct, or is consistent with State fishing regulations that have been coordinated with NMFS. As recreational fishing for species other than steelhead is popular within the NEP area, we expect some incidental take of steelhead from this activity but, as long as it is incidental to the recreational fishery, and in compliance with ODFW fishing regulations and Tribal regulations on land managed by the Confederated Tribes of the Warm Springs Reservation of Oregon, such take will not be a violation of the ESA.

Monitoring and Evaluation

As a requirement under its Federal license to operate the Pelton Round Butte Project, the Licensees will monitor over the 50-year term of the license. Some of this monitoring relates directly to the MCR steelhead reintroduction program. The licensees will collect data to gauge long-term progress of the reintroduction program and to provide information for decision-making and adaptive management for directing the reintroduction program. Fish passage, fish biology, aquatic habitat, and hatchery operations will be the primary focus of the monitoring (PGE and CTWSRO, 2004; ODFW and CTWSRO, 2008).

Fish passage monitoring will focus on addressing a variety of issues important to successful reintroduction. These issues consist of measuring fish passage efficiency, including smolt reservoir passage, collection efficiency at the fish collection facility, smolt injury and mortality rates, adult collection, and adult reservoir passage to spawning areas. Passive integrated transponder tags and radio tags will be used to evaluate and monitor fish passage effectiveness. Biological evaluation and monitoring will concentrate on adult escapement and spawning success, competition with resident species, predation, disease transfer, smolt production, harvest, and sustainability of natural runs. Habitat monitoring will focus on long-term trends in the productive capacity of the reintroduction area (e.g., habitat availability, habitat effectiveness, riparian condition) and natural production (the number, size, productivity, and life history diversity) of steelhead in the NEP area above Round Butte Dam.

Monitoring at the fish hatchery will focus on multiple issues important to the quality of fish collected and produced for use in the reintroduction program. ODFW will be primarily responsible for monitoring hatchery operations. This will consist mainly of broodstock selection; disease history and treatment; pre-release performance such as survival, growth, and fish health by life stage; the numerical production advantage provided by the hatchery program relative to natural production; and success of the hatchery program in meeting conservation program objectives.

While this monitoring is being conducted for purposes of making the reintroduction effort successful, we will use the information to also determine if the experimental population designation is causing any harm to MCR steelhead and their habitat, and then, based on this and other available information, determine if the designation needs to be removed before the expiration date. There is no need for additional monitoring because this effort will provide all the information necessary.

Findings

Based on the best available scientific information, the designation of MCR steelhead above the Pelton Round Butte Project as a NEP will further the conservation of the species because it will encourage private landowners and all levels of government to work together to develop conservation measures, which in turn will support recovery efforts. The geographic area is well-defined as all parts of the three rivers capable of supporting steelhead above the Pelton Round Butte dams. This population is nonessential because it is made up of excess hatchery stock that are not necessary for the survival and recovery of the species, and because there are sufficient MCR steelhead populations elsewhere such that this NEP is not essential to the DPS. The expiration date for the designation is appropriate because it will encourage completion of conservation measures based on site-specific scientific information, within the time frame provided in the rule.

Information Quality Act and Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review pursuant to the Information Quality Act (Section 515 of Pub. L. 106–554). The Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664). The Bulletin established minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation with regard to certain types of information disseminated by the Federal Government. The peer review requirements of the OMB Bulletin apply to influential or highly influential scientific information disseminated on or after June 16, 2005. There are no documents supporting this proposed rule that meet this criteria.

Classification

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in E.O. 12866, OMB has determined this proposed rule is not a significant rulemaking action.

If enacted, this proposed rule would not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. Federal agencies most interested in this rulemaking are the U.S. Forest Service, Bureau of Land Management, and Bureau of Reclamation. Because of the substantial regulatory relief provided by the NEP designation, we believe the reestablishment of steelhead in the areas described would not conflict with existing human activities or hinder public utilization of the area.

This proposed rule also would not materially affect entitlements, grants, user fees, or loan programs, or the rights and obligations of their recipients. Because there are no expected impacts or restrictions to existing human uses as a result of this proposed rule, no entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients are expected to occur.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 801 *et seq.*), whenever a Federal 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 that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The Chief Counsel for Regulation certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities.

If this proposal is adopted, the small businesses in the upper Deschutes River basin that could be affected include those involved in agriculture, ranching, fishing, recreation and tourism, because their activities have the potential to affect steelhead and their habitat. The proposed rule would likely be beneficial to the small entities listed here, however, and there will likely be no adverse economic impact on these entities, because the rule would relieve a restriction on these small businesses by removing potential ESA liability for them during the time frame of the NEP designation.

Section 7(a)(4) requires Federal agencies to confer (rather than consult) with us on actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. The proposed rule would relieve a restriction on Federal actions by removing the ESA section 7(a)(2) consultation requirement for Federal action agencies. The designation of steelhead as an experimental population within the upper Deschutes River basin would likely not affect the use of Federal lands because there would be no requirement to consult under ESA section 7(a)(2) to make a jeopardy or adverse modification determination.

This proposed rule will relieve an ESA regulatory restriction and will not impose any new or additional economic or regulatory restrictions upon States, non-Federal entities, or members of the public due to the presence of steelhead. Therefore, this rulemaking will have no significant economic impact on a substantial number of small entities because it is not expected to have any significant adverse impacts to recreation, agriculture, or any development activities, and may have a beneficial effect on small entities. For these reasons, an initial regulatory flexibility analysis is not required, and none has been prepared.

Takings (E.O. 12630)

In accordance with E.O. 12630, the proposed rule does not have significant takings implications. A takings implication assessment is not required because this proposed rule: (1) Would not effectively compel a property owner to have the government physically invade their property, and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This proposed rule would substantially advance a legitimate government interest (conservation and recovery of a listed fish species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This proposed rule does not include any new collections of information that require approval by OMB under the Paperwork Reduction Act.

National Environmental Policy Act

In compliance with all provisions of the National Environmental Policy Act of 1969 (NEPA), we have analyzed the impact on the human environment and considered a reasonable range of alternatives for this proposed rule. We have prepared a draft EA on this proposed action and have made it available for public inspection (see **ADDRESSES** section). All appropriate NEPA documents will be finalized before this rule is finalized.

Government-to-Government Relationship With Tribes

E.O. 13175, Consultation and Coordination with Indian Tribal Governments, outlines the responsibilities of the Federal Government in matters affecting tribal interests. If we issue a regulation with tribal implications (defined as having a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of

power and responsibilities between the Federal Government and Indian tribes), we must consult with those governments, or the Federal Government must provide funds necessary to pay direct compliance costs incurred by tribal governments.

About 28 percent of the acreage included in the NEP area is owned and managed by the CTWSRO. We have invited (letter dated September 21, 2010, from William Stelle, Regional Administrator, NMFS, to Stanley Smith, Chairman, CTWSRO) the CTWSRO to discuss the proposed rule at its convenience should it choose to have a government-to-government consultation. To date, NMFS has not received a request for formal government to government consultation. Additionally, the CTWSRO is involved in the reintroduction as one of the licensees and as a member of the fish committee that is involved in the reintroduction program.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking any action that promulgates or is expected to lead to the promulgation of a final rule or regulation that (1) is a significant regulatory action under E.O. 12866 and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy.

This proposed rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of all references cited in this proposed rule is available upon request from National Marine Fisheries Service office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports.

Dated: May 11, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, we propose to amend part 223, subpart B of chapter 1, title 50 of the Code of Federal Regulations, as set forth below.

PART 223—[AMENDED]

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

223.211–223.300 [Reserved]

2. Add reserved §§ 223.211 through 223.300.

3. Add part 223.301 to read as follows:

§ 223.301 Special rules—marine and anadromous fishes.

(a) Middle Columbia River steelhead (*Oncorhynchus mykiss*).

(1) The Middle Columbia River steelhead populations identified in paragraph (a)(4) of this section are nonessential, experimental populations.

(2) *Take of this species that is allowed in the nonessential, experimental population area.* (i) Taking of Middle Columbia River steelhead that is otherwise prohibited by paragraph (a)(3) of this section and 50 CFR 223.203(a) is allowed within the nonessential, experimental population geographic area, provided that the taking is unintentional, not due to negligent conduct, and incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Examples of otherwise lawful activities include recreation, agriculture, forestry, municipal usage, and other, similar activities, which are carried out in accordance with Federal, State, and local laws and regulations.

(ii) Any person with a valid permit issued by NMFS and a valid permit issued by the Oregon Department of Fish and Wildlife may take steelhead in the nonessential, experimental population area for educational purposes, scientific purposes, and the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the ESA.

(3) *Take of this species that is not allowed in the nonessential, experimental population area.* (i) Except as expressly allowed in paragraph (a)(2) of this section, the taking of Middle Columbia River steelhead is prohibited within the nonessential, experimental population geographic area, as provided in 50 CFR 223.203(a).

(ii) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, Middle Columbia River steelhead taken in violation of this paragraph (a)(3)(ii) and 50 CFR 223.203(a).

(4) All reintroduction sites are within the probable historical range of Middle Columbia River steelhead and are as follows:

(i) *Middle Columbia River Steelhead.* Upper Deschutes River basin upstream of Round Butte Dam, including tributaries Whychus Creek, Crooked River and Metolius River. More specifically, the Deschutes River from Big Falls (river mile 132) downstream to Round Butte Dam; the Whychus Creek subbasin; the Metolius River subbasin; and the Crooked River subbasin from Bowman Dam downstream (including the Ochoco and McKay Creek watersheds) to its point of confluence with the Deschutes River.

(ii) Round Butte Dam is the downstream terminus of this nonessential experimental population. The powerhouse intakes are fully screened, so except for rare spill events due to high flows, neither adult nor juvenile fish can volitionally leave the nonessential experimental population area, effectively isolating them from the nonexperimental population below the Pelton Round Butte Hydroelectric Project. All juvenile steelhead emigrating from the nonessential experimental population area are collected at Round Butte Dam and given a unique mark before being transported to the lower Deschutes River for release. Once released below the Round Butte Dam, these fish will be outside the nonessential experimental population area and thus considered part of the nonexperimental population. Only returning adult steelhead that originated from the nonessential experimental population area (identified by a unique mark) will be released in the nonessential experimental population area.

(5) *Review and evaluation of effectiveness of nonessential experimental population designation.* As a requirement under its Federal license to operate the Pelton Round Butte Hydroelectric Project, Portland General Electric Company and the Confederated Tribes of the Warm Springs Reservation of Oregon will conduct monitoring over the 50-year term of the license. This monitoring will include collecting information on the reintroduction program that NMFS will use in evaluating the effectiveness of the

nonessential experimental population designation.

(6) *Time frame for NEP designation.* After three successive generations of adult steelhead have passed upstream above Round Butte Dam, this nonessential, experimental population designation will no longer be in effect. The time frame for three generations (12 years) will begin the first year adult fish from the experimental population are released above Round Butte Dam. This release will occur according to the criteria provided in the steelhead and spring Chinook Reintroduction Plan (ODFW and CTWSRO, 2008).

(b) [Reserved]

[FR Doc. 2011–12236 Filed 5–17–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 96

Wednesday, May 18, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–LS–11–0035]

Grain Market News Reports; Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this Notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB) for an extension of the currently approved information collection used to compile and generate grain market news reports.

DATES: Comments must be received by July 18, 2011.

ADDRESSES: Comments should be submitted electronically at *http://www.regulations.gov.* Comments may also be submitted to Mike Lynch, Chief, Livestock and Grain Market News Branch, Livestock and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture; STOP 0252; 1400 Independence Avenue, SW.; Room 2619–S; Washington, DC 20250–0252. All comments should reference docket number AMS–LS–11–0035 and note the date and page number of this issue of the **Federal Register**.

Submitted comments will be available for public inspection at *http://www.regulations.gov* or at the above address during regular business hours. Comments submitted in response to this Notice will be included in the records and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Lynch, Chief, Livestock and Grain Market News Branch, AMS, USDA, by telephone at (202) 720–6231, or e-mail at: *Michael.Lynch@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Grain Market News Reports.

OMB Number: 0581–0005.

Expiration Date of Approval: 11–30–2011.

Type of Request: Extension of a currently approved information collection.

Abstract: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621—1627) directs and authorizes the collection and dissemination of marketing information, including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income, and to bring about a balance between production and utilization.

The grain industry has requested that USDA continue to issue market news reports on grain. These reports are compiled by AMS on a voluntary basis in cooperation with the grain and feed industry. Market news reporting must be timely, accurate, and continuous if it is to be useful to producers, processors, and other stakeholders. Industry traders can use market news information to make marketing decisions on when and where to buy and sell. For example, a producer could compare prices being paid at local, terminal, or export elevators to determine which location will provide the best return. Some traders might choose to chart prices over a period of time in order to determine the most advantageous day of the week to buy or sell, or to determine the most favorable season. In addition, the reports are used by other Government agencies to evaluate market conditions and calculate price levels, such as USDA's Farm Service Agency that administers the Farmer-owned Reserve Program. Economists at most major agricultural colleges and universities use the grain and feed market news reports to make short and long-term market projections. Also, the Government is a large purchaser of grain and related products. A system to monitor the collection and reporting of data is crucial to ensuring fair and equitable prices are paid.

The information must be collected, compiled, and disseminated by an impartial third party, in a manner which protects the confidentiality of the reporting entity. AMS is in the best position to provide this service.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .0333 hours per response.

Respondents: Business or other for-profit entities, individuals or households, farms, and the Federal Government.

Estimated Number of Respondents: 160.

Estimated Number of Responses: 1,680.

Estimated Number of Responses per Respondent: 11.

Estimated Total Annual Burden on Respondents: 56 hours.

Comments are invited on: (1) 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) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this document will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 12, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–12142 Filed 5–17–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FV–11–0015]

Child Nutrition (CN) Labeling Program; Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this document announces the Agricultural Marketing Service's (AMS) intention to request approval, from the Office of Management and Budget, for an extension of and revision to the currently approved information collection for the Child Nutrition Labeling Program.

DATES: Comments on this document must be received by July 18, 2011 to be assured of consideration.

ADDRESSES: Contact Gwendolyn Holcomb, Business Development and Quality Assurance Section, Processed Product Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue, SW., Washington, DC 20250–0247, telephone: (202) 720–9939 and Fax: (202) 690–3824; or Internet: *http://www.regulations.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Child Nutrition Labeling Program.

OMB Number: 0581–0261 .

Expiration Date of Approval: 3 years from approval.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Child Nutrition (CN) Labeling Program is a voluntary technical assistance service to aid schools and institutions participating in the National School Lunch Program (NSLP), School Breakfast Program (SBP), Child and Adult Care Food Program (CACFP), and Summer Food Service Program (SFSP) in determining the contribution a commercial product makes toward the food-based meal pattern requirements of these programs. (See Appendix C to 7 CFR parts 210, 220, 225, and 226 for more information on this program). The existence of a CN label on a product assures schools and other Child Nutrition Program operators that the product contributes to the meal pattern requirements as printed on the label. However, there is no Federal requirement that commercial products must have a CN label statement in order to be included in meals served by schools and institutions. AMS officially opened the CN Labeling Program Operations Office on January 19, 2010.

To participate in the Child Nutrition Labeling Program, a manufacturer submits a label application to AMS for evaluation. AMS reviews the product formulation to determine the contribution a serving of the product makes toward the food-based meal pattern requirements. The application form submitted to AMS is the same application form that a manufacturer submits to USDA's Food Safety and Inspection Service (FSIS) Labeling and Program Delivery Division for review of meat and poultry labels. Participation in the CN Labeling Program is voluntary and manufacturers who wish to place a CN label on their products must comply with CN Labeling Program requirements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Manufacturers who produce food for the school foodservice.

Estimated Number of Respondents: 110.

Estimated Total Annual Responses: 2530.

Estimated Number of Responses per Respondent: 23.

Estimated Total Annual Burden on Respondents: 632.50 hours.

Comments are invited on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Gwendolyn Holcomb, Business Development and Quality Assurance Section, Processed Product Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue, SW., Washington, DC 20250–0247, telephone: (202) 720–9939 and Fax: (202) 690–3824; or Internet: *http://www.regulations.gov*. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this document will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 11, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–12141 Filed 5–17–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2011–0011]

Notice of Request for a New Information Collection (Food Safety Education Campaign—Tracking Survey)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request a new information collection for a tracking survey associated with the upcoming Food Safety Education Campaign.

FSIS is giving the public 30 days to respond instead of the normal 60 days because of the need to expeditiously conduct the tracking survey so that the Food Safety Education Campaign will be able to begin in July as planned.

DATES: Comments on this notice must be received on or before June 17, 2011.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 2–2175, George Washington Carver Center, 5601 Sunnyside Avenue, Mailstop 5272, Beltsville, MD 20705–5272.

Instructions: All items submitted by mail or electronic mail must include the

Agency name and docket number FSIS–2011–0011. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 6065, South Building, Washington, DC 20250, (202) 720–0345.

SUPPLEMENTARY INFORMATION: *Title:* Food Safety Education Campaign—Tracking Survey.

Type of Request: New information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C., *et seq.*). FSIS protects the public by verifying that meat, poultry, and egg products are safe, wholesome, not adulterated, and correctly labeled and packaged. FSIS, in partnership with the Ad Council, the Food and Drug Administration, and the Centers for Disease Control and Prevention, has developed a new national public service advertising campaign to educate the public about the importance of safe food handling and how to reduce the risks associated with foodborne illness. FSIS is seeking approval of an information collection to help evaluate the impact of the campaign. The collection will take the form of a survey of members of the target audience, and will help gauge awareness of the advertising, attitudes regarding safe food preparation, and self-reported prevention behaviors. The survey will be fielded once prior to launch of materials, and then again 9–12 months following launch to monitor any shifts over time.

After receiving a briefing on foodborne illness and USDA priorities for the public education campaign, the Ad Council and JWT conducted an audit of existing research and statistics surrounding the issue and prevention behaviors. Following this review, the Ad Council and JWT conducted consumer research to better understand perceptions of foodborne illness and safe food handling behaviors held by the target audience. These research sessions were conducted with OMB approval in November 2010. Next, the Ad Council and JWT developed a communications strategy based on research findings that clearly articulates the proposed approach to communications.

JWT then developed creative concepts—scripts, graphical treatments, *etc.*—that stem directly from the communications strategy. These concepts were qualitatively tested with members of the target audience in March. Finally, before the release of the advertising campaign in July, the Ad Council, on behalf of FSIS, will conduct a tracking study to monitor awareness of the campaign as well as any changes in perceptions of foodborne illness and reported safe food handling behaviors.

The campaign targets parents, ages 20 to 40, who are caregivers for children between the ages of 4 and 12. Parents have been identified as the target audience because they are most likely to be preparing food for themselves and others, and they have an incentive to listen to food safety messages and adopt or change their behaviors as a result.

The survey will be administered using a national random digit dial phone methodology in both English and Spanish. Each respondent will answer questions about their attitudes about food safety, their awareness of the risks of foodborne illness, their own efficacy with regard to preventing foodborne illness, and their own use of safe food-handling practices. The public service announcements (PSAs) will also be described to respondents in order to gauge recognition of the ads in market.

Once the post-wave survey is fielded 9–12 months after the benchmark survey, the Ad Council will compare results to identify any shifts in attitudes, awareness, or behaviors that occurred while the PSAs were in market.

FSIS has made the following estimates based upon an information collection assessment:

Estimate of Burden: FSIS estimates that it will take respondents an average of 15 minutes per year and non-respondents an average of 2 minutes per year to respond.

Respondents: Consumers.

Estimated No. of Respondents: 7,200.

Estimated No. of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 500 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence, SW., Room 6065, South Building, Washington, DC 20250, (202) 720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, 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 collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

USDA Nondiscrimination Statement

The United States. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices_Index/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the *FSIS Constituent Update,*

which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Update* is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The *Update* also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on: May 16, 2011.

Alfred V. Almanza,

Administrator.

[FR Doc. 2011–12304 Filed 5–16–11; 4:15 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to vote on project proposals and to discuss a project monitoring field visit.

DATES: The meeting will be held on May 26, 2011 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Pine Room, 1135 Lincoln Street, Red Bluff, CA. Written comments may be submitted as described under Supplementary Information.

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 825 N. Humboldt Ave., Willows, CA 95988. Please call ahead to (530) 934–1269 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave, Willows, CA 95988. (530) 934–1269; E–MAIL *rjero@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed **FOR FURTHER INFORMATION.**

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Chairman's Perspective, (5) DFO's comments & updates, (6) Project Voting, (7) Discuss Monitoring Trip, (8) Next Agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by May 23, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave, Willows, CA 95988 or by e-mail to *rjero@fs.fed.us* or via facsimile to 530–934–1212.

Dated: May 10, 2011.

Eduardo Olmedo,

Grindstone District Ranger,

[FR Doc. 2011–12025 Filed 5–17–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ouachita-Ozark Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ouachita-Ozark Resource Advisory Committee will meet in Waldron, Arkansas. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to discuss general information, review proposals, review updates on current or completed Title II projects, and to set next meeting agenda.

DATES: The meeting will be held on June 9, 2011, beginning at 6 p.m. and ending at approximately 9 p.m. Alternate meeting dates will be June 14 and June 16 in case of postponement due to weather, lack of committee quorum, or other unforeseen circumstances,. Please call 501–321–5202 prior to June 9th to determine if the meeting has been postponed.

ADDRESSES: The meeting will be held at the Scott County Courthouse, 190 W 1st Street, Waldron, Arkansas.

Written comments should be sent to: Caroline Mitchell, Committee Coordinator, USDA, Ouachita National Forest, P.O. Box 1270, Hot Springs, AR 71902. Comments may also be sent via e-mail to *carolinemitchell@fs.fed.us* or via facsimile to 501–321–5399.

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 100 Reserve Street, Hot Springs, AR 71901. Visitors are encouraged to call ahead to 501–321–5202 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Caroline Mitchell, Committee Coordinator, USDA, Ouachita National Forest, P.O. Box 1270, Hot Springs, AR 71902. (501–321–5318). 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. Committee discussion is limited to Forest Service staff, Committee members, and elected officials. However, persons who wish to bring

matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Individuals wishing to speak or propose agenda items must send their names and proposals to Bill Pell, DFO, P.O. Box 1270, Hot Springs, AR 71902.

Dated: May 12, 2011.

Bill Pell,

Designated Federal Official.

[FR Doc. 2011–12195 Filed 5–17–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Suspend the Agricultural Labor Survey and Farm Labor Reports

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of suspension of data collection and publication.

SUMMARY: This notice announces the intention of the National Agricultural Statistics Service (NASS) to suspend a currently approved information collection, the Agricultural Labor Survey, and its associated publication.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Labor Survey.

OMB Control Number: 0535–0109.

Expiration Date of Approval: November 30, 2012.

Type of Request: To suspend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production, disposition, and prices. The Agricultural Labor Survey provides quarterly statistics on the number of agricultural workers, hours worked, and wage rates. Number of workers and hours worked are used to estimate agricultural productivity; wage rates are used in the administration of the H–2A Program and for setting Adverse Effect Wage Rates. Survey data are also used to carry out provisions of the Agricultural Adjustment Act.

NASS will suspend this information collection as of May 18, 2011 due to budget constraints. NASS will not publish the April Farm Labor report due for release on Thursday, May 19, 2011. The Farm Labor reports for July, and October 2011 will also not be published unless there is a change in the anticipated budget shortfall.

Authority: These data were collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: There will be no further public reporting burden for this quarterly collection of information.

Signed at Washington, DC, April 3, 2011.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2011–12255 Filed 5–17–11; 8:45 am]

BILLING CODE 3410–20–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 12 p.m. (EDT) on Wednesday, June 1, 2011, at Commission headquarters, 624 9th Street, NW., 5th floor conference room, Washington, DC 20425. The purpose of the meeting is for project planning.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days of the meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 624 9th Street, NW., Suite 740, Washington, DC 20425. They may also be faxed to (202) 376–7548, or e-mailed to *ero@usccr.gov.* Persons who desire additional information should contact the Eastern Regional Office at (202) 376–7533.

Records generated from this this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Eastern Regional Office at the above e-mail or street address.

Deaf or hearing-impaired persons who will attend the meeting(s) and require the services of a sign language interpreter should contact the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, on May 13, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–12175 Filed 5–17–11; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; 2011 Business R&D and Innovation Survey

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before July 18, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Richard Hough, U.S. Census Bureau, MCD HQ–7K150A, 4600 Silver Hill Rd., Suitland, MD 20746, (301) 763–4823 (or via the Internet at *richard.s.hough@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau, with support from the National Science Foundation (NSF), plans to conduct the Business R&D and Innovation Survey (BRDIS) for the 2011 survey year. The BRDIS

provides the only comprehensive data on R&D expense covering all domestic non-farm businesses and detailed expenses by type and industry.

The Census Bureau has conducted the Survey of Industrial Research and Development (SIRD) since 1957, collecting primarily financial information on the systematic work companies were undertaking with the goal of discovering new knowledge or using existing knowledge to develop new or improved goods and services. More recently, prompted by recommendations from the 2005 Committee on National Statistics (CNSTAT) Report, *Measuring Research and Development Expenditures in the U.S. Economy,* the NSF and Census Bureau began a full-scale redesign of the SIRD. The goal of the redesign was to produce high-quality; relevant data on R&D in the business sector that took into account the changing reality of R&D and innovation.

An inter-agency team evaluated the need for different types of data as well as the availability of those data within company records. This evaluation resulted in the fielding of the 2008 BRDIS as a full scale pilot survey. The team used the results of the pilot to make improvements for the 2009/2010 BRDIS cycles. The 2011 BRDIS will continue to collect the following types of information:

- R&D expense based on accounting standards.
- Worldwide R&D of domestic companies.
- Business segment detail.
- R&D related capital expenditures.
- Detailed data about the R&D workforce.
- R&D strategy and data on the potential impact of R&D on the market.
- R&D directed to application areas of particular national interest.
- Data measuring innovation, intellectual property protection activities and technology transfer.

The BRDIS utilizes a booklet instrument that facilitates the obtaining of information from various contacts within each company that have the best understanding of the concepts and definitions being presented as well as access to the information necessary to provide the most accurate response. The sections of the booklet have been defined by grouping questions based on subject matter areas within the company and currently include: A company information section that includes detailed innovation questions; a financial section focused on company R&D expenses; a human resources section; an R&D strategy and management section; an IP and technology transfer section; and a section focused on R&D that is funded or paid for by third parties. A Web instrument is also available to the companies. The Web instrument incorporates the use of Excel spreadsheets that are provided to facilitate the electronic collection of information within the companies. Companies have the capability to download the spreadsheets from the Census Bureau's Web site; the Census Bureau also provides a spreadsheet that is programmed to consolidate the information for the companies so the company can simply upload this information into the Web instrument.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms and a Web-based collection. Companies will be asked to respond within 60 days of the initial mail out.

III. Data

OMB Control Number: 0607–0912.

Form Number: BRDI–1 & BRDI–1A. You can obtain information on the proposed content at this Web site: *http://www.census.gov/mcd/clearance.*

Type of Review: Regular submission.

Affected Public: All for-profit, public or private, non-farm companies with 5 or more employees.

Estimated Number of Respondents:

BRDI–1—(Long Form) 3,000
BRDI–1A—(Short Form) 40,000
Total 43,000

Estimated Time per Response:

BRDI–1—(Long Form) 14.3 hrs
BRDI–1A—(Short Form) 2.2 hrs

Estimated Total Annual Burden Hours: 130,900.

Estimated Total Annual Cost: The estimated cost to the respondents is $4,243,778.

Respondents Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. Section 182, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 12, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–12136 Filed 5–17–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–891]

Hand Trucks and Certain Parts Thereof From the People's Republic of China; Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 18, 2011.

FOR FURTHER INFORMATION CONTACT: Scott Hoefke or Fred Baker, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–4947 or (202) 482–2924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 2011, the Department of Commerce (Department) published in the **Federal Register** the preliminary results of the 2008–2009 administrative review of the antidumping duty order on hand trucks and certain parts thereof from the People's Republic of China. *See Hand Trucks and Certain Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part,* 76 FR 2648 (January 14, 2011) (*Preliminary Results*). The current deadline for the final results of this review is May 14, 2011.

Extension of Time Limits for Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires that the Department complete the final results of an administrative review within 120 days after the date on which notice of the preliminary results was published in the **Federal Register**. However, if it is not practicable to

complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to a maximum of 180 days after the publication date of the preliminary results.

The Department finds that it is not practicable to complete the final results of this review within the original time frame because the Department continues to require additional time to analyze issues raised in recent case and rebuttal briefs. Thus, the Department finds it is not practicable to complete this review within the original time limit (*i.e.,* May 14, 2011). Accordingly, the Department is extending the time limit for completion of the final results of this administrative review by 30 days (*i.e.,* until June 13, 2011), in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

This extension is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: May 10, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–12237 Filed 5–17–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Zhangzhou Long Mountain Foods Co., Ltd. (Long Mountain), the Department of Commerce (the Department) initiated a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) covering the period of review February 1, 2010, through January 31, 2011. *See Certain Preserved Mushrooms From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review,* 76 FR 17836 (March 31, 2011) (*Initiation Notice*). On April 26, 2011, Long Mountain withdrew its request for a new shipper review. Accordingly, the Department is rescinding the new shipper review with respect to Long Mountain.

DATES: *Effective Date:* May 18, 2011.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6312 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 2011, the Department received a timely request from Long Mountain in accordance with section 751(a)(2)(b)(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(b)(1) for a new shipper review of the antidumping duty order on certain preserved mushrooms from the PRC. On March 31, 2011, the Department found that the request for a new shipper review of Long Mountain met all of the regulatory requirements set forth in 19 CFR 351.214(b)(2) and initiated the requested antidumping duty new shipper review. *See Initiation Notice.* On April 26, 2011, Long Mountain submitted a letter to the Department in which it stated that it was withdrawing its new shipper review request and requesting that the Department terminate the new shipper review. *See* letter from Long Mountain entitled "Certain Preserved Mushrooms from China; Long Mountain—Withdrawal from New Shipper Review," dated April 26, 2011.

Rescission of New Shipper Review

Section 351.214(f)(1) of the Department's regulations provides that the Department may rescind a new shipper review if the party that requested the review withdraws its request for review within 60 days of the date of publication of the notice of initiation of the requested review. Long Mountain withdrew its request for a new shipper review 26 days after the date of publication of the notice of initiation of the requested review.

Based upon the above, the Department is rescinding the new shipper review of the antidumping duty order on certain preserved mushrooms from the PRC with respect to Long Mountain.

As the Department is rescinding the new shipper review of Long Mountain, it is not calculating a company-specific rate for Long Mountain. Long Mountain will remain part of the PRC-wide entity.

Assessment

Long Mountain remains under review as part of the PRC entity in the ongoing administrative review covering the 2010–2011 POR. *See Initiation of Antidumping Duty Administrative Reviews, Requests for Revocation in Part, and Deferral of Administrative Review,* 76 FR 17825 (March 31, 2011). Therefore, the Department will not order liquidation of entries for Long Mountain. The Department intends to issue liquidation instructions for the PRC entity, which will cover any entries by Long Mountain, 15 days after publication of the final results of the ongoing administrative review covering the 2010–2011 POR.

Cash Deposit

The Department will notify U.S. Customs and Border Protection (CBP) that bonding is no longer permitted to fulfill security requirements for subject merchandise produced and exported by Long Mountain that is entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the **Federal Register**. The Department will notify CBP that a cash deposit of 198.63 percent should be collected for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice, by Long Mountain.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this rescission and notice in accordance with section 777(i) of the Act and 19 CFR 351.214(f)(3).

Dated: May 11, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–12235 Filed 5–17–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA445

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Council to convene public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a Web based meeting of the Socioeconomic Panel.

DATES: The webinar meeting will convene at 10 a.m. eastern time on Wednesday, June 1, 2011 and is expected to end at 12 p.m.

ADDRESSES: The webinar will be accessible via Internet. Please go to the Gulf of Mexico Fishery Management Council's Web site at *http://www.gulfcouncil.org* for instructions.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, Florida 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Assane Diagne, Economist; Gulf of Mexico Fishery Management Council; telephone: 813–348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene its Socioeconomic Panel (SEP) to review the annual catch limit and annual catch target control rules and discuss the generic annual catch limits/accountability measures amendment.

Copies of the agenda and other related materials can be obtained by calling 813–348–1630.

Although other non-emergency issues not on the agenda may come before the Socioeconomic Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (M–SFCMA), those issues may not be the subject of formal action during this meeting. Actions of the SEP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the M–SFCMA, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This webinar is accessible to people with disabilities. For assistance with any of our webinars contact Kathy Pereira at the Council (see **ADDRESSES**) at least five working days prior to the webinar.

Dated: May 13, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–12234 Filed 5–17–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW30

Takes of Marine Mammals Incidental to Specified Activities; Pile-Driving and Renovation Operations on the Trinidad Pier by the Cher-Ae Heights Indian Community for the Trinidad Rancheria in Trinidad, CA

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the Cher-Ae Heights Indian Community of the Trinidad Rancheria (Trinidad Rancheria) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by Level B harassment, incidental to pile-driving and renovation operations for the Trinidad Pier Reconstruction Project in Trinidad, California. NMFS has reviewed the application, including all supporting documents, and determined that it is adequate and complete. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to the Trinidad Rancheria to incidentally harass, by Level B harassment only, three species of marine mammals during the specified activities.

DATES: Comments and information must be received no later than June 17, 2011.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing e-mail comments is *ITP.Goldstein@noaa.gov.* NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice, including the IHA application and Biological Assessment (BA), may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–713–2289, ext. 172.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(D) of the MMPA (16 U.S.C. 1361(a)(5)(D)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals for periods not more than one year by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization to take small numbers of marine mammals by harassment shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth to achieve the least practicable adverse impact. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the

species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as "any act of pursuit, torment, or annoyance which (I) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]." 16 U.S.C. 1362(18).

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a publication in the **Federal Register** and other relevant media proposed authorizations for the incidental harassment of marine mammals. The publication of the proposed authorization initiates a 30-day public comment period. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On November 3, 2009, NMFS received a letter from the Trinidad Rancheria, requesting an IHA. A revised IHA application was submitted on July 23, 2010. The requested IHA would authorize the take, by Level B (behavioral) harassment, of small numbers of Pacific harbor seals (*Phoca hispida richardsi*), California sea lions (*Zalophus californianus*), and Eastern Pacific gray whales (*Eschrictius robustus*) incidental to pile-driving and renovation operations on the Trinidad Pier. The Trinidad Pier has served the Trinidad Community for decades and continues to be one of the marine economic generators for the area. This project will not only address the structural deficiencies of the aged pier, but will completely remove the presence of creosote and other wood preservatives from Trinidad Bay and eliminate non-point source run-off with the construction of the new pier. The pile-driving and renovation operation are proposed to take place during August, 2011 to January, 2012 in Trinidad, California. Additional information on the Trinidad Pier Reconstruction Project is contained in the application and Biological Assessment (BA), which is available upon request (see **ADDRESSES**).

Description of the Proposed Specified Activities

The Trinidad Pier, located on Trinidad Bay, is an antiquated structure that requires reconstruction in order to maintain public safety and to redress certain environmental deficiencies in the existing structure. The 165 m (540 ft) long pier is located on tidelands granted by the State of California to the City of Trinidad and leased by the Trinidad Rancheria. The project area consists of the pier (0.31 acres) and a nearby staging area (0.53 acres). The existing pier was constructed in 1946 to serve commercial fishing and recreational uses. Since that time the creosote-treated wood piles which support the pier, as well as the wood decking, have deteriorated and are proposed to be replaced by cast-in-steel-shell (CISS) concrete piles and pre-cast concrete decking, respectively. This will improve the safety of the pier. Existing utilities which will require replacement include electrical, water, sewer, and phone. Additional dock amenities that will be replaced including lighting, railing, four hoists, three sheds, a saltwater intake pipe used by Humboldt State University's (HSU) Telonicher Marine Laboratory, and a water quality sonde utilized by the Center for Integrative Coastal Observation, Research, and Education. The proposed construction schedule is from August 1, 2011 to May 1, 2012, however the pile-driving and removal activities will occur from August 1, 2011 to January 31, 2012.

Background

The Trinidad Pier is the northernmost oceanfront pier in California and has been used for commercial and recreational purposes over the last 50 years. Trinidad harbor and pier serve a fleet of commercial winter crab fishermen and year-round water angling for salmon, and nearshore/finfish species. Trinidad Pier was first built by Bob Hallmark in 1946. Since that time only minor maintenance activities have occurred on the pier. Today, Trinidad's economy is based on fishing and tourism and the pier supports these activities. The pier also provides educational opportunities by accommodating HSU's Telonicher Marine Lab's saltwater intake pipe, and the California Center of Integrated Technology's (CICORE) water quality sonde.

Currently, the Trinidad Rancheria plays an important role in the economic development of the Trinidad area through three main business enterprises, one of which is the Seascape Restaurant and the pier. The Cher-Ae Heights Indian Community of the Trinidad Rancheria is a Federally-recognized Tribe composed of descendants of the Yurok, Weott, and Tolowa peoples. In 1906, the Trinidad Rancheria was established by a U.S. congressional enactment, and a congressional action authorized the purchase of small tracts of land for landless homeless California Indians. In 1908, through this Federal authority, 60 acres of land was purchased on Trinidad Bay to establish the Trinidad Rancheria. In 1917, the Secretary of the Interior formally approved the Trinidad Rancheria as a Federally Recognized Tribe.

The community began developing in the 1950's. In January, 2000, the Trinidad Rancheria purchased the Trinidad Pier, harbor facilities, and the Seascape Restaurant. The Trinidad Rancheria leases a total area of 14 acres in Trinidad Bay from the City of Trinidad. The Trinidad Rancheria currently operates the pier, and upland improvements including a boat launch ramp and the Seascape Restaurant. Funds for permitting and designs of the pier were granted to the Trinidad Rancheria by the California State Coastal Conservancy.

The purpose of the Trinidad Pier Reconstruction Project is to correct the structural deficiencies of the pier and improve pier utilities and safety for the benefit of the public, and indirectly improve the water quality conditions and provide additional habitat for the biological community in the ASBS. Currently, it is difficult to ensure the continued safety of the pier due to excessive deterioration of the creosote-treated Douglas fir piles and the pressure treated decking.

Pier Construction Overview

Summary plans for the pier and staging area are presented in Appendix A of the IHA application. Pier improvements are proposed to replace at a one-to-one ratio, approximately 1,254 m^2 (13,500 ft^2) of the pre-cast concrete decking. In addition, the project includes installation of 115 concrete piles (and removal of 205 piles) including batter and moorage piles (45.7 cm or 18 inches [in] in diameter), four hoists, standard lights, guardrail, and dock utility pipes including water, power, and telephone. A new stormwater collection system will also be incorporated into the reconstructed pier design. The new cast-in-steel-shell (CISS) concrete piles will be separated at 1.5 m (5 ft) intervals along 7.6 m (25 ft) long concrete bents. A total of 22 bents separated 7.6 m (25 ft) apart shall be used. The decking of the new pier

will be constructed of pre-cast 6.1 m (20 ft) long concrete sections. The new pier will be 164.6 m (540 ft) long and 7.3 to 7.9 m (24 to 26 ft) wide, corresponding to the existing footprint.

A pile bent will be installed at the existing elevation of the lower deck to provide access to the existing floating dock. The existing stairs to the lower deck will be replaced with a ramp that is ADA compliant. The decking of the pier will be constructed at an elevation of 6.4 m (21 ft) above Mean Lower Low Water (MLLW). The top of the decking will be concrete poured to create a slope for drainage and to incorporate a pattern and a color into the concrete surface in order to provide an aesthetically pleasing appearance. An open guardrail, 1.1 m (3.5 ft) in height shall be constructed of tubular galvanized steel rail bars (approximately 1.9 cm [¾ in] diameter) uniform in shape throughout the length of pier. Lighting will be installed in the decking (and railing in the landing area) along the length of the pier and will be focused and directed to minimize lighting of any surfaces other than the pier deck.

Currently there are four hoists on the pier. Three of the hoists are used to load and unload crab pots from the pier and the fourth hoist located at the end of the pier is suited to load and unload skiffs. The hoists are approximately 30 years old and may have had the Yale motors replaced since the time they were installed. The hoists shall be re-installed at points corresponding to their current location and their current duties. All design specifications shall conform to the Uniform Building Code.

Pier Demolition Methods

Removal of the existing pier and construction of the new pier shall occur simultaneously. Construction shall begin from the north (shore) end of the pier. All pier utilities and structures shall first be removed. Utilities to be removed include water, electrical, power and phone lines, temporary bathroom, ladders, and pier railing. Structures to be removed include four hoists, two wood sheds, HSU's 20 horse-power (hp) (14.9 kiloWatt [kW]) pump and saltwater intake pipes, CICORE's water quality sonde, and a concrete bench. Then the existing pressure treated decking, joists, and bent beams shall be removed and transported by truck to the upland staging area for temporary storage.

All existing piles located in the section of pier being worked on (active construction area) will then be removed by vibratory extraction, unless some are broken in the process. Vibratory extraction is a common method for removing both steel and timber piling. The vibratory hammer is a large mechanical device mostly constructed of steel that is suspended from a crane by a cable. The vibratory hammer is deployed from the derrick and positioned on the top of the pile. The pile will be unseated from the sediment by engaging the hammer and slowly lifting up on the hammer with the aid of the crane. Once unseated, the crane will continue to raise the hammer and pull the pile from the sediment. When the bottom of the pile reaches the mudline, the vibratory hammer will be disengaged. A choker cable connected to the crane will be attached to the pile, and the pile will be lifted from the water and placed upland. This process will be repeated for the remaining piling. Extracted piling will be stored upland, at the staging area, until the piles are transferred for upland disposal. Each such extraction will require approximately 40 minutes (min) of vibratory hammer operation, with up to five piles extracted per day (a total of 3.3 hours per day). Operation of the vibratory hammer is the primary activity within the pier demolition group of activities that is likely to affect marine mammals by potentially exposing them to both in-air (*i.e.,* airborne or sub-aerial) and underwater noise.

Douglas-fir pilings are prone to breaking at the mudline. In some cases, removal with a vibratory hammer is not possible because the pile will break apart due to the vibration. Broken or damaged piling can be removed by wrapping the individual pile with a cable and pulling it directly from the sediment with a crane. If the pile breaks between the waterline and the mudline it will be removed by water jetting.

A floating oil containment boom surrounding the work area will be deployed during creosote-treated timber pile removal. The boom will also collect any floating debris. Oil-absorbent materials will be deployed if a visible sheen is observed. The boom will remain in place until all oily material and floating debris has been collected. Used oil-absorbent materials will be disposed at an approved upland disposal site. The contractor shall also follow Best Management Practices (BMPs): NS–14—Material Over Water, NS–15—Demolition Adjacent to Water, and WM–4—Spill Prevention and Control listed in the CASQA Handbook.

The existing Douglas-fir piles are creosote treated. The depth of creosote penetration into the piles varies from 0.6 to 5.1 cm (0.25 to 2 in). Creosote is composed of a mixture of chemicals that are potentially toxic to fish, other marine organisms, and humans. Polycyclic aromatic hydrocarbons (PAH), phenols and cresols are the major chemicals in creosote that can cause harmful health effects to marine biota. The replacement of the creosote treated piles with cast-in-steel-shell (CISS) concrete piles is expected to eliminate potential contamination of the water column by PAH, phenols and cresols from the existing treated wood piles.

All removed piles shall be temporarily stored at the upland staging areas until all demolition activities are complete (approximately 6 months). Following the cessation of demolition activities, the creosote treated piles will be transported by the Contractor to Anderson Landfill in Shasta County. This landfill is approved to accept construction demolition, wood wastes, and non-hazardous/non-designated sediment.

The pressure treated 2x4 in Douglas-fir decking will also be stored at the staging area until demolition is complete. The partially pressure treated decking and railing may be reused and will be kept by the Trinidad Rancheria for potential future use.

Pile Installation

Design—Two 45.7 cm (18 in) diameter battered piles, which are designed to resist lateral load, will be located on each side of the pier at 12:1 slopes. Three vertical piles, which are designed to support 50 tons of vertical loads, will be located between the battered piles separated 1.5 m (5 ft) apart.

Overview—New piles will be installed initially from shore and then, as construction proceeds, from the reconstructed dock. Following removal of each existing pile, steel casings will be vibrated (using a vibratory hammer) to a depth of approximately 0.8 m (2.5 ft) above the top elevation of the proposed pile (7.6 to 10.7 m [25 to 35 ft] below the mudline). The steel shell of 1.9 cm (¾ in) thickness shall extend from above the water surface to below the upper layer of sediment, which consists of sand, into the harder sediment, which consists mostly of weathered shale and sandstone. The steel shell will be coated with polymer to protect the casings for corrosion. The steel shell will be coasted with polymer to protect the casings from corrosion. The steel shell shall be used to auger the holes and will then be cleaned and concrete poured using a tremie to seal the area below the shell. The shell will then be dewatered and a steel rebar cage installed prior to pouring concrete to fill the shell. These steps are described in further detail below.

Pile Excavation—Following installation of the steel casing, each hole will be augered to the required pile depth of 7.6 to 10.7 m (25 to 35 ft) below the mudline. An auger drill shall be used to excavate the sediment and rock from the steel shell. Geotechnical studies (Taber, 2007) indicate that the material encountered in the test borings can be excavated using typical heavy duty foundation drilling equipment. Driving the new piles and augering the holes are the primary activities within the pile installation group of activities most likely to result in incidental harassment of marine mammals by potentially exposing them to underwater and in-air noise.

Steel casing member of 1.9 cm (¾ in) thickness shall be used to form the CISS concrete foundation columns in underwater locations. In this technique, inner and outer casings are partially imbedded in the ground submerged in the water and in concentric relationship with one another. The annulus formed between the inner and outer casings is filled with water and cuttings, while the inner casing is drilled to the required depth, and the sediment is removed from the core of inner steel casing. Following removal of the core, the outer casing is left in place as the new pile shell.

The sediment and cuttings excavated shall be temporarily stockpiled in 50 gallon drums (or another authorized sealed waterproof container) at the staging area until all excavations are complete and then transferred for upland disposal at the Anderson Landfill or another approved upland sediment disposal site.

The existing piles extend to approximately 6.1 m (20 ft) below the mudline. Each one of the existing 0.3 m (1 ft) diameter pile has displaced 0.4 m^3 (15.7 ft^3) of sediment. There are approximately 205 wood piles to be removed. The total amount of sediment displaced by the existing piles is approximately 91.7 m^3 (3,238.4 ft^3). Each of the proposed CISS piles requires the displacement of approximately 1.5 m^3 (53 ft^3) of sediment. There are 115 CISS piles to install. A total of approximately 172 m^3 (6,074 ft^3) of sediment would have to be removed in order to auger 115 holes to a depth of 9.1 m (30 ft) below the mudline. It is estimated that 7.6 to 76.5 m^3 (268.4 to 2,701.5 ft^3) would have to be removed during pile installation. Many new holes will be augered in the location of existing piles where they overlap. As a result, less sediment will be required to be removed than would be required for the construction of a new pier, however, the exact location and penetration of the old piles is not recorded and will be determined during reconstruction activities. Therefore, a range of quantity of material to be removed is specified. Existing holes created by old wood piles removed and that do not overlap with the location of holes augered for the new piles will collapse and naturally fill with adjacent sediment.

Most of the sediment excavated is expected to be in the form of cuttings if the hole is augered and/or drilled at a location of exiting piles. Sediment removed from the inner core during augering shall be mostly dry due to the compression created in the core during augering. Approximately fifty 50-gallon drums will be used to store the cuttings and sediment prior to disposal upland. The contractor shall implement BMPs WM–3—Stockpile Management, WM–4—Spill Prevention and Control, and WM–10—Liquid Waste Management listed in the CASQA Handbook (see handbook for detail).

Concrete Seal Installation—A tremie (*i.e.,* a steel pipe) will be used to seal the bottom 0.9 m (3 ft) of the hole below the bottom of the steel shell and above the ground. Before the tremie seal is poured, the inside walls of the pile will be cleaned by brushing or using a similar method of removing any adhering soil or debris in order to improve the effectiveness of the seal. A "cleaning bucket" or similar apparatus will be used to clean the bottom of the excavation of loose or disrupted material.

The tremie is a steel pipe long enough to pass through the water to the required depth of placement. The pipe is initially plugged until placed at the bottom of the holes in order to exclude water and to retain the concrete, which will be poured. The plug is then forced out and concrete flows out of the pipe to its place in the form without passing through the water column. Concrete is supplied at the top of the pipe at a rate sufficient to keep the pipe continually filled. The flow of concrete in the pipe is controlled by adjusting the depth of embedment of the lower end of the pipe in the deposited concrete. The upper end may have a funnel shape or a hopper, which facilitates feeding concrete to the tremie. Each concrete seal is expected to cure within 24 to 48 hours.

Dewatering Methodology—After the tremie seal has been poured, the water will be pumped out of the steel shells, which will act as a cofferdam. Pumping within the excavation at the various footings may be required to maintain a dewatered work area.

The contractor shall test the pH of the water in each casing one day following pouring of the tremie seal to insure that the pH of the water did not change from the ambient pH. The water shall then be pumped into 50-gallon drums and transported to the staging area for discharge through percolation to eliminate solids. Should the pH of the water change from ambient pH, then the contractor shall haul the water to the Eureka Wastewater Treatment Plant for treatment prior to discharge. The contractor is expected to dewater a volume of approximately 450 gallons (1,720 L) each day during pile installation. For the installation of 115 piles, approximately 49,500 gallons (197,800 L) will be dewatered and discharged at the appropriate location at the staging area. Percolation rates will be verified prior to discharge of the ocean water at the designated location at the staging area, but are not expected to be prohibitive due to the sandy texture of the soil. The Contractor shall implement BMP WM–10 Liquid Waste Management as listed in the CASQA Handbook. Liquid waste management procedures and practices are used to prevent discharge of pollutants to the storm drain system or to watercourses as a result of the creation, collection, and disposal of non-hazardous liquid wastes. WM–10 provides procedures for containing liquid waste, capturing liquid waste, disposing liquid waste, and inspection and maintenance.

Completion—Following dewatering of the steel shells, steel rebar cages shall be inserted into each shell. Ready-mix concrete placed into the drilled piers shall be conveyed in a manner to prevent separation or loss of materials. The cement-mixer truck containing the concrete shall be located on land adjacent to the north end of the pier. The concrete shall be pumped to the borings through a pipe (at least 0.9 cm [¾ in] thick) that will span the length of the pier. When pouring concrete into the hole, in no case shall the concrete be allowed to freefall more than 1.5 m (5 ft). Poured concrete will be dry within at least 24 hours and completely cured within 30 days.

A concrete washout station shall be located in the staging area at the designated location. The contractor shall implement BMP, WM–8—Concrete Waste Management, as listed in the CASQA Handbook to prevent discharge of liquid or solid waste.

Pier Deck Construction

Following the installation of the concrete piles, pre-cast concrete bent caps measuring 7.6 m (25 ft)—long shall be installed on top of each row of pilings. The concrete bents act to

distribute the load between the piles and support the pier.

Pre-cast 6.1 m (20 ft)—long concrete sections shall be used for the decking. An additional layer of concrete shall be poured following installation of the precast sections. The layer of concrete will allow the decking of the pier to be sloped to the west for drainage purposes and to create an aesthetically pleasing decking. The surface of the decking will be colored and contain an earth tone pattern to match the surrounding environment.

Utilities

Utilities located on the pier will require location during construction and replacement following construction of the pier footings and decking. Utilities include:

Power: A 2 in PG&E power line that is currently attached to the west side of the pier and PG&E electrical boxes located along the west side of the pier.

Sewer: Currently there are no sewer pipes on the pier. Visitors to the pier are served by a temporary restroom located on the south side of the pier. No direct sewer discharge is allowed in the ASBS.

New utilities installed include water, phone, and electrical. New pier utilities will be constructed along the east and west side of the pier and will be enclosed within concrete utility trenches. Water pipes shall be routed along both sides of the pier to several locations along the pier. Phone lines shall be routed along the west side of the pier. All electrical switches will be located in one central box towards the west end of the pier by the loading and unloading landings location.

Lighting installed along the pier shall be designed to improve visibility and safety. The proposed lighting will be embedded in the decking and railing of the pier to minimize light pollution from the pier. Lighting shall be designed to minimize light pollution by preventing the light from going beyond the horizontal plane at which the fixture is directed. Currently, there are lighting poles on the pier. The proposed lighting on the pier will be embedded on the west and east side of the decking separated approximately 7.6 m (25 ft) throughout the length of the pier. The lighting fixtures will have cages for protection matching the color of the railing. In addition, on the south side of the pier, lighting will be installed in the railing to provide lighting for the working area on the deck of the pier.

Fish cleaning does not occur at the pier. This activity was formerly pursued by recreational users and was discontinued in 2006 due to water quality concerns.

Drainage

There is currently no runoff collection system on the pier. Runoff drains from the existing pier directly into the ASBS. A storm water outfall for the City of Trinidad is located near the base of the pier.

The pier decking shall be sloped to the west in order to direct runoff from the pier to the stormwater collection pipe. The runoff shall be routed along the west side of the pier and conveyed by gravity to a new upland manhole and storm chamber containing treatment media. All stormwater will be infiltrated within the storm chamber; there will be no discharge from the system. See Appendix C, drawings C–5 to C–8 of the IHA application, for details of the conveyance and treatment system. The pier-deck construction, utility replacement, and drainage improvements are not anticipated to result in significant effects to marine mammals.

BMPs

Pier Demolition Methods

- Waters shall be protected from incidental discharge of debris by providing a protective cover directly under the pier and above the water to capture any incidental loss of demolition or construction debris.
- A floating oil containment boom surrounding the work area will be used during the creosote-treated timber pile removal. The boom will also collect any floating debris. Oil-absorbent materials will be employed if a visible sheen is observed. The boom will remain in place until all oily material and floating debris has been collected and sheens have dissipated. Used oil-absorbent materials will be disposed at an approved upland disposal site.
- All removed piles shall be temporarily stored at the upland staging areas until all demolition activities are complete (approximately 6 months).
- Following the cessation of demolition activities, the creosote treated piles will be transported by the Contractor to an upland landfill approved to accept such materials.
- The pressure treated 2×4 in Douglas-fir decking will also be stored in the staging area until demolition is complete. The partially pressure treated decking and railing may be reused and will be kept by the Trinidad Rancheria for further use.
- The contractor shall also follow BMPs: NS–14—Material Over Water, NS–15—Demolition adjacent to Water, and WM–4—Spill Prevention and Control listed in the CASQA Handbook.

Pile Installation

- The sediment and cuttings excavated shall be temporarily stockpiled in 50 gallon (189 L) drums (or another authorized sealed waterproof container) at the staging area until all excavations are complete and then transferred for upland disposal at the Anderson Landfill or another approved upland sediment disposal site.
- The contractor shall implement BMPs WM–3—Stockpile Management, WM–4—Spill Prevention and Control, and WM–10—Liquid Waste Management listed in the CASQA Handbook.
- The contractor shall test the pH of the water in each casing one day following pouring of the tremie seal to insure that the pH of the water did not change by more than 0.2 units from the ambient pH. The water shall then be pumped into 50-gallon drums and transported to the staging areas for discharge through percolation to eliminate solids. Should the pH of the water change from ambient pH, then the contractor shall haul the water to the Eureka Wastewater Treatment Plant for treatment prior to discharge.
- The contractor shall implement BMP WM–10 Liquid Waste Management as listed in the CASQA Handbook. Liquid waste management procedures and practices are used to prevent discharge of pollutants to the storm drain system or to watercourses as a result of the creation, collection, and disposal of non-hazardous liquid wastes. WM–10 provides procedures for containing liquid waste, capturing liquid waste, disposing liquid waste, and inspection and maintenance.
- A concrete washout station shall be located in the staging area at the designated location. The contractor shall implement BMP, WM–8—Concrete Waste Management, as listed in the CASQA Handbook to prevent discharge of liquid or solid waste.

Pier Construction:

- No concrete washing or water from concrete will be allowed to flow into the ASBS and no concrete will be poured within flowing water.
- Waters shall be protected from incidental discharge of debris by providing a protective cover directly under the pier and above the water to capture any incidental loss of demolition or construction debris.

Utilities

- Lighting will be embedded in the decking and railing of the pier to minimize light pollution from the pier. Lighting shall be designed to minimize light pollution by preventing the light

from going beyond the horizontal plain at which the fixture is directed so the light is directed upwards.

Drainage

• The pier decking shall be sloped to the west in order to direct runoff from the pier to the stormwater collection pipe. The runoff shall be routed along the west side of the pier and conveyed by gravity to a new upland manhole and storm chamber containing treatment media. Drainage from the storm chamber shall not be conveyed to Trinidad Bay, but will entirely be infiltrated within the storm chamber. See Appendix A, drawings C–5 to C–8, for details.

Construction Timing and Sequencing

• Noise-generating construction activities, including augering, pile removal, pile placement, and concrete pumping, will only be allowed from 7 a.m. to 7 p.m. These hours shall be further restricted as necessary in order for protected species observers (PSOs) to perform required observations.

Project Benefits:

The existing pier has pole lighting that illuminates the water surface; the proposed pier has lighting designed to avoid such illumination. The existing pier has dark wood and over 200 piles. The proposed pier, with 205 piles to be removed and 115 piles to be installed and a white concrete construction, will result in less shading of nearshore habitat. The project may have benefits to environmental resources other than marine mammals. This notice describes in detail BMPs that will be implemented for the proposed project. The BMPs are focused almost exclusively on protecting water quality, and while they may have ancillary benefits to some marine resources such as Essential Fish Habitat (EFH), they are not intended to serve as monitoring and mitigation measures for adverse effects to marine mammals. The only exception might be the ability to further modify noise timing restrictions to allow Protected Species Observers (PSOs) to perform their duties.

Additional details regarding the proposed pile-driving and renovation operations for the Trinidad Pier Reconstruction Project can be found in the Trinidad Rancheria's IHA application and BA, as well as the U.S. Army Corps of Engineers (ACOE) Environmental Assessment (EA). The IHA application, BA, and ACOE EA can also be found online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

Proposed Dates, Duration, and Specific Geographic Area

The Trinidad Pier Reconstruction Project is located in the city of Trinidad, California, Humboldt County, at Township 8N, Range 1W, Section 26 (41.05597° North, 124.14741° West) (see Figure 2–1 of the BA). The proposed construction schedule is from August 1, 2011 to May 1, 2012, with noise and activity effects requiring an IHA, occurring from August 1, 2011 through January 31, 2012.

Trinidad Bay is a commercial port located between Humboldt Bay and Crescent City. The bay contains numerous vessel moorings which include permanent commercial vessel anchors as well 100 moorings that are placed for recreational vessel owners (Donahue, 2007). The uplands have residential, commercial and recreational land use classifications. The Trinidad Pier parcel was owned by the State of California, but was granted to the City of Trinidad which leases the tidelands to the Cher-Ae Heights Indian Community of the Trinidad Rancheria. The parcels to be used for the staging area are owned by Trinidad Rancheria, the City of Trinidad, and the U.S. Coast Guard.

Trinidad Bay is a shallow, open bay about 0.8 km (0.5 mi) deep (in the southwest-northeast direction) and 1.6 km (1 mi) wide (in the northwest-southeast direction). Figure 1 of the IHA application shows the whole bay. Generally the bay shelves at a moderate slope to about 9.1 m (30 ft) depth and then flattens out, with most of the outer bay between 9.1 to 15.2 m (30 to 50 ft) deep. Substrates in the bay include rock, cobble, gravel and sand. The floor of the bay is irregular with some areas of submerged rock. The project area comprises the 0.31 acre pier over marine habitats and a staging area (the gravel parking lot located west of the pier) covering 0.53 acres of upland area.

Construction Timing and Sequencing

The project is expected to be completed within nine months (approximately six months of loud noise-producing activities). Reconstruction of the pier is proposed to commence on August 1, 2011 and terminate on May 1, 2012. Excluding weekends and holidays, a total of 217 working days will be available for work during this period. During the winter months (November to March) severe weather conditions are expected to occur periodically at the project site. The contractor may have to halt the work during pile installation due to strong winds, large swells, and/or heavy precipitation. Construction during the remainder of the year should not be impeded by large swells, but may be halted due to strong winds or precipitation; however, Trinidad Harbor is a sheltered area and does not often experience severe weather that would preclude the proposed work. The contractor will work five days per week from 7 a.m. to 7 p.m. Should severe weather conditions cause delays in the construction schedule, the contractor will work up to seven days per week as needed to ensure completion by May 1, 2012.

Removal of all existing piles and decking and construction of the new pier will occur simultaneously. The existing decking and piles will be removed and new piles installed from the reconstructed pier. Pile bents will be separated 7.6 m (25 ft) apart. Following the installation of two successive pile bents, a new precast concrete deck section shall be installed. The contractor shall continue in this manner from the north end (shore) to south end (water terminus) of the existing pier.

The contractor is expected to spend approximately six months (August through January) on pile removal and installation and the remaining three months (February through April) on deck and utilities reconstruction. It is estimated that each boring can be lined with a pile and excavated within six to eight hours. Pouring of the concrete seals is expected to take approximately two hours for each pile. The contractor is expected to remove an existing pile and install one new steel shell and pour a concrete seal each day, with a total of six to eight hours required for the process (*i.e.,* 115 piles to be placed [one per day] during 115 days of work or 23 weeks of five days each). The final pour of the concrete piles is expected to take approximately two hours to fill the steel shells and is expected to cure within one week.

It is expected that reconstruction of one row of piles and bents will take one week. Piles and bents will be installed over a discontinuous period of approximately 23 weeks. A new pre-cast concrete section of decking will be installed following the installation of two successive rows of piles and associated bents. The last three months will be used for pouring of the top layer of the decking and utilities construction.

Proposed Action Area

The action area is defined as all areas directly or indirectly affected by the proposed action. Direct effects of the action are potentially detectable in all lands and aquatic areas within the project area, including the staging area.

The project would also directly affect 7.9 m (26 ft) of the Trinidad Bay shoreline.

In-air (*i.e.,* sub-aerial) and underwater sound effects would be the most laterally extensive effects of the proposed action and thus demarcate the limits of the action area. Assuming that underwater sound attenuates at a rate of −4.5 dB re 1 μPa (rms) for each doubling of distance, underwater sound from pile-driving (detailed in Section 6 of the BA) would elevate noise above 120 dB (rms) up to 800 m (2,625 ft) (the Port of Anchorage measured 168 dB re 1 μPa [rms] at a distance of 20 m from a pile, application of the practical spreading model with 4.5 dB attenuation for doubling of distance yields 120 dB [rms] at 800 m) seaward in all areas on a line-of-sight to the pier (Illingworth & Rodkin, 2008). The rationale for use of 120 dB (rms) as a metric is detailed in Section 6.6.1 of the BA, but also has a practical value because 120 dB (rms) is the lowest threshold currently used to detect underwater sound effects to any of the animals discussed in this analysis. Actual ambient underwater sound levels are probably quite variable in response to sound sources such as wave action and fishing vessel traffic. The assumptions regarding in-air and underwater noise in the IHA application, BA, and in this notice are generally regarded as extremely conservative.

In-air (or sub-aerial) sound would be generated by equipment used during construction; the loudest source of such sound would be vibratory pile-driving, which generates a sound intensity of approximately 104 dB at 15.2 m (50 ft) (FHWA, 2006). Assuming an ambient background noise level of 59 dB, typical of residential neighborhoods, and a sound attenuation rate of 7.5 dB (rms) for each doubling of distance, the action area for aerial sound would extend 975.4 m (3,200 ft) in an unobstructed landward direction from the dock. The action area would extend farther in a seaward direction, because aerial sound attenuates with distance more slowly over water and also because ambient noise levels are potentially quieter in that direction. Assuming an attenuation rate of 6 dB (rms) for each doubling of distance and an ambient marine noise background of 50 dB, the action area for above-water effects would extend 7.7 km (4.8 mi) seaward from the pier.

The seaward attenuation rate assumes no environmental damping or attenuation and thus is produced by a simple inversion square law. The landward attenuation rate assumes a low level of environmental damping due to non-forest vegetation, structures, topography, *etc.* and corresponds to the rate recommended by WSDOT (2006) for terrestrial in-air in non-forest environments. The 59 dB and 50 dB estimates are based on EPA (1971), a standard source of data on typical background sound levels (in dBA) for various environments. These typical levels were revised upwards by approximately 3 dB because the dBA curve down-weights sound intensity at the lower frequencies typical of vibratory pile-driving noise, which is the principal source of noise considered in demarcation of an action area for the proposed action. Thus the 59 dB and 50 dB values represent unweighted estimates of background sound levels.

The IHA application and BA provides a detailed explanation of the Trinidad Pier Reconstruction Project location as well as project implementation.

Description of Marine Mammals and Habitat Affected in the Activity Area

One cetacean species and two species of pinnipeds are known to or could occur in the proposed Trinidad Bay action area and off the Pacific coastline (see Table 1 below). Eastern Pacific gray whales, California sea lions, and Pacific harbor seals are likely to be found within the proposed activity area. Steller sea lions and transient killer whales could potentially be found in small numbers within the activity area, but authorization for "take" by incidental harassment is not requested for Steller sea lions and transient killer whales due to their rarity and the feasibility of avoiding impacts to these species by pausing work in the event that they are detected, as detailed in the Marine Mammal Monitoring Plan. NMFS, based on the best available science, agrees that transient killer whales and Steller sea lions are not likely to be present in the proposed action area during implementation of the specified activities and are thus unlikely to be exposed to effects of the specified activities. NMFS does not expect incidental take of these marine mammal species. The potential presence of Steller sea lions is detailed in Section 5.6 of the Trinidad Rancheria's BA. The potential presence of gray whales, killer whales, harbor seals, and California sea lions is detailed in Appendix C of the IHA application.

A variety of other marine mammals have on occasion been reported from the coastal waters of northern California. These include bottlenose dolphins, harbor porpoises, northern elephant seals, northern fur seals, and sea otters. However, none of these species has been reported to occur in the proposed action area, and in particular none were mentioned by the regional NMFS specialist in the identification of species to be addressed in the IHA application. The sea otter is managed under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS) and is not considered further in this analysis. The USFWS has informed the U.S. Army Corps of Engineers that a Section 7 consultation is not necessary for any of their jurisdictional species, including sea otters. Table 1 below outlines the cetacean and pinnipeds species, their habitat, and conservation status in the general region of the proposed project area.

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Table 1. The habitat and conservation status of marine mammals inhabiting the general region of the proposed action area in the Pacific Ocean off the U.S. west coast.

Species	Habitat	ESA[1]	MMPA[2]
Mysticetes			
Gray whale (Eschrictius robustus)	Coastal and shelf	DL – Eastern Pacific stock (or population) EN – Western Pacific stock (or population)	NC – Eastern Pacific stock (or population) D – Western Pacific stock (or population)
Odontocetes			
Killer whale (Orcinus orca)	Widely distributed	NL	D – Southern Resident and AT1 Transient populations
Bottlenose dolphin (Tursiops truncatus)	Offshore, inshore, coastal, estuaries	NL	NC
Harbor porpoise (Phocoena phocoena)	Coastal and inland waters	NL	NC
Pinnipeds			
Pacific harbor seal (Phoca hispida richardsi)	Coastal	NL	NC
Northern elephant seal (Mirounga angustirostris)	Coastal, pelagic when migrating	NL	NC
California sea lion (Zalophus californianus)	Coastal, shelf	NL	NC
Steller sea lion (Eumetopias jubatus)	Coastal, shelf	T	D
Northen fur seal (Callorhinus ursinus)	Pelagic, offshore	NL	D – Pribilof Island/Eastern Pacific population

[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, NL = Not listed, DL = Delisted

2U.S. Marine Mammal Protection Act: D = Depleted, NC = Not classified

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Pacific Harbor Seal

Harbor seals are widely distributed in the North Atlantic and North Pacific. The subspecies in the eastern North Pacific Ocean inhabits near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. These seals do not make extensive pelagic migrations, but do travel 300 to 500 km (186 to 311 mi) on occasion to find food or suitable breeding areas (Herder, 1986; D. Hanan unpublished data). Previous assessments of the status of harbor seals have recognized three stocks along the west coast of the continental U.S.: (1) California, (2) Oregon and Washington outer coast waters, and (3) inland waters of Washington. In California, approximately 400 to 600 harbor seal

haul-out sites are distributed along the mainland and on offshore islands, including intertidal sandbars, rocky shores, and beaches (Hanan, 1996; Lowery *et al.,* 2005).

Goley *et al.* (2007) detailed harbor seal abundance at varied sites in Humboldt County, including the haul-out at Indian Beach, which generally refers to beaches in Trinidad Bay. Seals haul-out on rocks and at small beaches at many locations that are widely dispersed within Trinidad Bay; the closes such haul-out is 70 m (229.7 ft) from the pier, while the most distant are over 1 km (0.6 mi) away near the south end of Trinidad Bay (Goley, pers. comm.). Seals haul-out at rocks in Trinidad Bay regularly throughout the year, so harbor seals approaching or departing these haul-outs would be subject to underwater and in-air noise from pile-driving and thus, potential behavioral modification.

Table 7 in Goley *et al.* (2007) lists the sighting rates for harbor seals during nine years of monthly observations at Trinidad Bay. A sighting rate of zero occurred only three times in a total of 62 observations, and the average number of animals observed per month ranged from a low of 25 in November to a maximum of 67 in July. On four occasions, over 120 seals were counted at the haul-out. The average sighting rate during the period when pile removal and placement would occur, in the months from August through January, was approximately 37 seals per monthly observation. In contrast, the average detection rate in the months of February through July was 50.7 seals per monthly observation. In practice, seals can usually be seen and/or heard vocalizing from the existing pier (Goley, pers. comm.).

No data were collected on how much time the seals spend in the water near the haul-out. Goley *et al.* (2007) note that they "are typically less abundant during the winter months as seals tend to spend more time foraging at sea during this time. Seals are more abundant in the area in spring and summer. During this time both males and females increase their use of nearshore habitat for hauling-out and feeding" (Thompson *et al.,* 1994; Coltman *et al.,* 1997; Van Parijs *et al.,* 1997; Baechler *et al.,* 2002). From early March to June harbor seals in Trinidad Bay bear and rear pups, and in June and July the seals molt; both activities tie them closely to land and correlate to intensive use of available haul-outs. The Trinidad Bay harbor seal population, which consists of approximately 200 seals, shows very little interchange with the nearby Humboldt Bay population (Goley, pers. comm.). Goley observed Humboldt Bay seals show high site fidelity for sandy beach haul-outs, whereas the Trinidad Bay and Patrick's Point seals have corresponding fidelity for rocky haul-outs (Goley, pers. comm.). However, there is also a much larger population over 1,000 seals at Patrick's Point, a few miles to the north. It is not known whether seals move back and forth between the Trinidad Bay and Patrick's Point populations. If not, the Trinidad Bay seals are highly dependent upon available haul-outs in Trinidad Bay (Goley, pers. comm.).

Palmer's Point is a specific geographical feature within the Patrick's Point headland area. Seals also haul-out at other rocks in the area. Dr. Dawn Goley has stated that it is unknown whether there is interchange between the Patrick's Point and Trinidad Bay seals. Data that would allow a conclusive determination on this point, such as genetic or radio/acoustic tracking studies, have not been gathered. However, Goley *et al.* (2007) do state that "harbor seals exhibit high site fidelity, utilizing one to two haul-out sites within their range (Sullivan, 1980; Pitcher *et al.,* 1981; Stewart *et al.,* 1994), rarely traveling more than 25 to 50 km (15.5 to 31.1 mi) from these haul-outs (Brown and Mate, 1983; Suryan and Harvey, 1998). Movements between and the use of alternate haul-out sites has been attributed to the use of alternative foraging areas near their new haul-out site (Thompson *et al.,* 1996b; Lowry *et al.,* 2001) and the seasonal use of certain haul-out sites for pupping and molting (Herder, 1986; Thompson *et al.,* 1989)." Based on the fact that the Palmer's Point and Trinidad Bay haul-outs are close to each other (9 km [5.6 mi]) compared to the foraging areas used by harbor seals, and that the Patrick's Point area is home to approximately 1,000 harbor seals (Goley, pers. comm.), a far larger grouping than the one found at Trinidad Bay, and given that observations of harbor seals at Trinidad Bay go through strong seasonal fluctuations, it is not appropriate to dismiss a hypothesis that there is interchange between the two areas. If the seals do seasonally vacate Trinidad Bay for alternative foraging grounds, then Patrick's Point is their most likely alternative haul-out.

At the beginning of the construction period, in August, the average number of harbor seals observed at the haul-out is 63.5 (based on one observation of 121 animals and three observations of 33 to 52 animals). At this time, it is highly probable that harbor seals use this haul-out frequently for essential activities such as rearing pups and molting. After August and September, use of the haul-out by seals declines greatly (average of 30.3, 25.2, 32.5 and 27.6 animals recorded in September, October, November, December and January, respectively), and most foraging occurs in offshore areas unaffected by pile-driving noise. While harbor seals may be present and use the haul-out in Trinidad Bay at any time of the year, Goley *et al.* (2007) states that harbor seals "are typically less abundant during the winter months as seals tend to spend more time foraging at sea during this time."

A complete count of all harbor seals in California is impossible because some are always away from the haul-out sites. A complete pup count (as is done for other pinnipeds in California) is also not possible because harbor seals are precocious, with pups entering the water almost immediately after birth. Based on the most recent harbor seal counts (2004 and 2005) and including a revised correction factor, the estimated population of harbor seals in California is 34,233 (Carretta *et al.,* 2005), with an estimated minimum population of 31,600 for the California stock of harbor seals. Counts of harbor seals in California showed a rapid increase from approximately 1972 to 1990, but since 1990 there has been no net population growth along the mainland or the Channel Islands. Though no formal determination of Optimal Sustainable Population (OSP) has been made, the decrease in the growth rate may indicate that the population is approaching its environmental carrying capacity. The harbor seal is not listed under the ESA and the California stock is not considered depleted under the MMPA.

California Sea Lion

The U.S. stock of California sea lions extends from the U.S. Mexico border north into Canada. Breeding areas of the sea lion are on islands located in southern California, western Baja California, and the Gulf of California and they primarily use the central California area to feed during the non-breeding season. California sea lions, although abundant in northern California waters, have seldom been recorded in Trinidad Bay during the surveys reported by Goley *et al.* (2007), but no records were kept of whether they were seldom observed in water or on haul-outs. This may be due to the presence of a large and active harbor seal population there.

The entire population cannot be counted because all age and sex classes are never ashore at the same time. In lieu of counting all sea lions, pups are counted during the breeding season

(because this is the only age class that is ashore in its entirety), and the numbers of births is estimated from the pup count. The size of the population is then estimated from the number of births and the proportion of pups in the population. Population estimates for the U.S. stock of California sea lions, range from a minimum of 141,842 to an average of 238,000 animals. The California sea lion is not listed under the ESA and the U.S. stock is not considered depleted under the MMPA.

Eastern Pacific Gray Whale

There are two recognized stocks of gray whales in the North Pacific, the Eastern North Pacific stock (or population), which lives along the west coast of North America, and the Western North Pacific or "Korean" stock (or population), which lives along the coast of eastern Asia (Rice, 1981; Rice *et al.,* 1984; Swartz *et al.,* 2006). Most of the Eastern Pacific stock spends the summer feeding in the northern and western Bering and Chukchi Seas (Rice and Wolman, 1971; Berzin, 1984; Nerini, 1984). However, gray whales have been reported feeding in the summer in waters near Kodiak Island, Southeast Alaska, British Columbia, Washington, Oregon, and California (Rice and Wolman, 1971; Darling, 1984; Nerini, 1984; Rice *et al.,* 1984; Moore *et al.,* 2007). Each fall, the whales migrate south along the coast of North America from Alaska to Baja California in Mexico (Rice and Wolman, 1971), most of them starting in November or December (Rugh *et al.,* 2001). The Eastern Pacific stock winters mainly along the west coast of Baja California, using certain shallow, nearly landlocked lagoons and bays, and calves are born from early January to mid-February (Rice *et al.,* 1981), often seen on the migrations well north of Mexico (Shelden *et al.,* 2004). The northbound migration generally begins in mid-February and continues through May (Rice *et al.,* 1981, 1984; Poole, 1984a), with cows and newborn calves migrating northward primarily between March and June along the U.S. West Coast.

Goley *et al.* (2007) lists the sighting rates for gray whales during eight years of monthly observations at Trinidad Bay. Sighting rates varied from 0 to 1.38 whales per hour of observation time. The average detection rate during the period when pile removal and placement would occur, in months from August through January, was 0.21 whales per hour of observation time. In contrast, the average detection rate in the months of February through July was 0.48 whales per hour. The majority of these detections were within 2 km (1.2 mi) of the shorelines. Visibility conditions seldom allow detection of whales at greater distances.

The population size of the Eastern Pacific gray whale stock has been increasing over the past several decades. Based on the most recent abundance estimates, the minimum population for this stock is 17,752 animals. As of 1994, the Eastern Pacific stock of gray whales is no longer listed as endangered under the ESA and is not considered depleted under the MMPA. The Western Pacific stock of gray whales is listed as endangered under the ESA and is considered depleted under the MMPA.

Steller Sea Lions

Steller sea lions range along the North Pacific rim from northern Japan to California (Loughlin *et al.,* 1984), with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands, respectively. The species is not known to migrate, but individuals disperse widely outside of the breeding season (late May to early July), thus potentially intermixing with animals from other areas. Despite the wide-ranging movements of juveniles and adult males in particular, exchange between rookeries by breeding adult females and males (other than between adjoining rookeries) appears low, although males have a higher tendency to disperse than females (NMFS, 1995; Trujillo *et al.,* 2004; Hoffman *et al.,* 2006). A northward shift in the overall breeding distribution has occurred, with a contraction of the range in southern California and new rookeries established in southeastern Alaska (Pitcher *et al.,* 2007).

The eastern stock of Steller sea lions breeds on rookeries located in southeast Alaska, British Columbia, Oregon, and California; there are no rookeries located in Washington. Counts of pups on rookeries conducted near the end of the birthing season are nearly complete counts of pup production. Using the most recent 2002 to 2005 pup counts available by region from aerial surveys across the range of the eastern stock, the total population of the eastern stock of Steller sea lions is estimated to be within the range of 45,095 to 55,832 (NMFS, 2009).

Steller sea lions are migratory and appear to be most abundant in Humboldt County area during spring and fall. The nearest documented haul-out site for Steller sea lions is Blank Rock, situated approximately 1 km (0.6 mi) due west of the Trinidad Pier, on the opposite side of Trinidad Head (see Figure 2 of IHA application). Surveys have documented absence of Steller sea lions at this haul-out between the months of October through April, and very few have been observed in the months of August and September (Sullivan, 1980). Furthermore, when leaving haul-outs, sea lions generally travel seaward to forage in deeper waters where their prey is more abundant (NMFS, 2008). Steller sea lions have not been documented within Trinidad Bay over eight years of surveys conducted at the site (Goley, pers. comm.). The areas surrounding the project site could be used by non-breeding adults and juveniles and by sea lions after the breeding season (NMFS, 2006). The applicant has not requested authorization for incidental take of Steller sea lions. Based on its assessment of the occurrence, distribution, and behavioral patterns of the Steller sea lion, NMFS does not expect that the proposed specified activities are likely to result in incidental take of the species.

Killer Whales

Killer whales have been observed in all oceans and seas of the world (Leather wood and Dahlheim, 1978). Although reported from tropical and offshore waters, killer whales prefer the colder waters of both hemispheres, with greatest abundances found within 800 km (497.1 mi) of major continents (Mitchell, 1975). Along the west coast of North America, killer whales occur along the entire Alaska coast (Braham and Dahlheim, 1982), in British Columbia and Washington inland waterways (Bigg *et al.,* 1990), and along the outer coasts of Washington, Oregon, and California (Green *et al.,* 1992; Barlow, 1995, 1997; Forney *et al.,* 1995). Seasonal and year-round occurrence has been noted for killer whales through Alaska (Braham and Dahlheim, 1982) and in the intracoastal waterways of British Columbia and Washington State, where pods have been labeled as 'resident,' 'transient,' and 'offshore' (Bigg *et al.,* 1990; Ford *et al.,* 1994) based on aspects of morphology, ecology, genetics, and behavior (Ford and Fisher, 1982; Baird and Stacey, 1988; Baird *et al.,* 1992; Hoelzel *et al.,* 1998). Movements of killer whales between the waters of Southeast Alaska and central California have been documented (Goley and Straley, 1994).

Based on data regarding association patterns, acoustics, movements, genetic differences and potential fishery interactions, five killer whale stocks are recognized within the Pacific U.S. Exclusive Economic Zone: (1) The Eastern North Pacific Northern Resident stock—occurring from British Columbia through Alaska, (2) the Eastern North Pacific Southern Resident stock—

occurring mainly within the inland waters of Washing State and British Columbia, but also in coastal waters from British Columbia through California, (3) the Eastern North Pacific Transient stock—occurring from Alaska through California, (4) the Eastern North Pacific Offshore stock—occurring from Southeast Alaska though California, and (5) the Hawaiian stock (NMFS, 2000, 2004).

Killer whales are rare visitors to Trinidad Bay, but there is currently a very high awareness of their potential presence due to an incident in May, 2008, when a transient killer whale was observed to take a seal on the beach at Trinidad Bay (Driscoll, 2008). The applicant has not requested authorization for incidental take of killer whales. Based on its assessment of data regarding the distribution, migratory patterns and occurrence of transient killer whales, NMFS does not expect that the proposed specified activities are likely to result in incidental take of the species.

Further information on the biology and local distribution of these marine mammal species and others in the region can be found in the Trinidad Rancheria's application and BA, which is available upon request (see **ADDRESSES**), and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: *http://www.nmfs.noaa.gov/pr/species/.*

Potential Effects of Activities on Marine Mammals

The Trinidad Rancheria requests authorization for Level B harassment of three species of marine mammals (*i.e.,* Pacific harbor seals, Eastern Pacific gray whales, and California sea lions) incidental to the use of heavy equipment and its propagation of underwater and in-air noise various acoustic mechanisms associated with the Trinidad Pier Reconstruction Project and the proposed specified activities discussed above. Marine mammals potentially occurring in Trinidad Harbor include Pacific harbor seals, Eastern Pacific gray whales, California sea lions, Steller sea lions, and killer whales (transient). Killer whale and Steller sea lion observations in the specific geographic area, as noted, are very rare (less than one per year) and thus not likely to be affected by the proposed action. But the gray whale and California sea lion are observed occasionally, and harbor seals are seldom absent from the harbor, and thus considered likely to be exposed to sound associated with the Trinidad Pier Reconstruction Project.

Current NMFS practice, regarding exposure of marine mammals to high-level underwater sounds is that cetaceans and pinnipeds exposed to impulsive sounds of at or above 180 and 190 dB (rms) or above, respectively, have the potential to be injured (*i.e.,* Level A harassment). NMFS considers the potential for behavioral (Level B) harassment to occur when marine mammals are exposed to sounds below injury thresholds but at or above the 160 dB (rms) threshold for impulse sounds (*e.g.,* impact pile-driving) and the 120 dB (rms) threshold for continuous noise (*e.g.,* vibratory pile-driving). No impact pile-driving is planned for the proposed activity in Trinidad Bay. Current NMFS practice, regarding exposure of marine mammals to high-level in-air sounds, as a threshold for potential Level B harassment, is at or above 90 dB re 20 μPa for harbor seals and at or above 100 dB re 20 μPa for all other pinniped species (Lawson *et al.,* 2002; Southall *et al.,* 2007).

The acoustic mechanisms involved entail in-air and underwater non-impulsive noise caused by the activities of vibratory pile removal, auger operation, and vibratory pile placement. Anticipated peak underwater noise levels may exceed the 120 dB (rms) threshold for Level B harassment for continuous noise sources, but are not anticipated to exceed the 180 and 190 dB (rms) Level A harassment thresholds for cetaceans and pinnipeds, respectively. Expected in-air noise levels are anticipated to result in elevated sound intensities within 152.4 m (500 ft) of the proposed construction activities involving vibratory pile-driving and augering. No other mechanisms are expected to affect marine mammal use of the area. The debris containment boom, for instance, would not affect any haul-out and would not entail noise, and activity in the water materially different from normal vessel operations at the pier, to which the animals are already habituated.

Underwater Noise

Background—When a pile is vibrated, the vibration propagates through the pile and radiates sound into the water and the substrate as well as the air. Sound pressure pulse as a function of time is referred to as the waveform. The peak pressure is the highest absolute value of the measured waveform, and can be negative or positive pressure peak (see Table 1 of the IHA application for definitions of terms used in this analysis). The rms level is determined by analyzing the waveform and computing the average of the squared pressures over the time that comprise that portion of the waveform containing 90 percent of the sound energy (Richardson *et al.,* 1995; Illingworth and Rodkin, 2008). This rms term is described as rms 90 percent in this document. In this analysis, underwater peak pressures and rms sound pressure levels are expressed in decibels (dB) re 1 μPa. The total sound energy in an impulse accumulates over the duration of that impulse.

Baseline Underwater Noise Level—Currently, no data are available describing baseline levels of underwater sound in Trinidad Bay. Sound dissipates more rapidly in shallow waters and over soft bottoms (*i.e.,* sand). Much of Trinidad Bay is characterized by its shallow depth (30 to 50 ft), flat bottom, and floor substrate of rock, cobble, gravel, sand, and irregularly submerged rock in some areas, thereby making it a poor acoustic environment. Currents, tides, waves, winds, commercial and recreational vessels, and in-air noise may further increase background sound levels near the proposed action area. Relevant index information can be derived from underwater sound baselines in other areas. The quietest waters in the oceans of the world are at Sea State Zero, 90 dB (rms) at 100 Hz (National Research Council, 2003; Guedel, 1992). Underwater sound levels in Elliott Bay near Seattle, Washington, representative of an area receiving moderately heavy vessel traffic, are about 130 dB (rms) (WSDOT, 2006). In Lake Pend Oreille, Idaho, an area which, like Trinidad Bay, receives moderate to heavy traffic from smaller vessels, underwater sound levels of 140 dB (rms) are reached on summer weekends, dropping to 120 dB (rms) during quiet mid-week periods (Cummings, 1987). Since Trinidad Bay receives daily, year-round use by a variety of recreational and fishing vessels, a background underwater sound estimate of 120 dB (rms) is a conservative estimator for daytime underwater noise levels, and was used to calculate the action area for the proposed action. The rationale for using the background estimate of 120 dB (rms) is based upon comparison with inland or protected marine waters (Puget Sound in Washington, and Lake Coeur d'Alene in Idaho) that are not subject to the severity of wave and storm activity that can occur in the Trinidad Bay area. It is likely that intermittent directional sound sources of higher intensity constitute a part of the normal acoustic background, to which seals in the area are habituated. Assuming that such intermittent background sound sources

may be twice as loud as the regionally averaged rms background sound level of 120 dB, then seals are unlikely to show a behavioral response to any sounds quieter than 126 dB (rms). A sound that is as loud as or below ambient/background levels is likely not discernable to marine mammals and therefore, is not likely to have the potential to harass a marine mammal.

Noise Thresholds—There has been extensive effort directed towards the establishment of underwater sound thresholds for marine life. Various criteria for marine mammals have been established through precedent. Current NMFS practice regarding exposure of marine mammals to high-level sounds is that cetaceans and pinnipeds exposed to impulsive sounds of 180 and 190 dB (rms) or above, respectively, have the potential to be injured (*i.e.,* Level A harassment). NMFS considers the potential for Level B harassment (behavioral) to occur when marine mammals are exposed to sounds below injury thresholds, but at or above 160 dB (rms) for impulse sounds and/or above 120 dB (rms) for continuous noise (*e.g.,* vibratory pile-driving). As noted above, current NMFS practice, regarding exposure of marine mammals to high-level in-air sounds, as a potential threshold for Level B harassment, is at or above 90 dB re 20 μPa for harbor seals and at or above 100 dB re 20 μPa for all other pinniped species. Since, as noted above, background sound levels in Trinidad Bay are anticipated to frequently exceed the 120 dB (rms) threshold, this analysis evaluates potential effects relative to a background of 126 dB (rms).

Anticipated Extent of Underwater Project Noise

Pile-Driving—There are several sources of measurement data for piles that have been driven with a vibratory hammer. Illingworth and Rodkin (2008) collected data at several different projects with pile sizes ranging from 33 to 183 cm (13 to 72 in). The most representative data from these measurements would be from the Ten Mile River Bridge Replacement Project and the Port of Anchorage Marine Terminal Redevelopment Project. At Ten Mile, 96 cm (30 in) CISS piles were measured in cofferdams filled with water in the Ten Mile River at 33 ft (m) and 330 ft (m) from the piles. The sound level in the water channel ranged from less than 150 to 166 dB (rms). Levels generally increase gradually with increasing pile size. These sound levels are, therefore considered a conservative (credible worst case) estimate of the expected levels given that the size of the piles proposed for this project are smaller in diameter (45.7 cm or 18 in) than the piles measured at Ten Mile.

Illingworth and Rodkin (2008) gathered data at the Port of Anchorage (POA) during the vibratory driving of steel H piles. These data, and data gathered by others, were used as the basis for the Environmental Assessment that was prepared by NMFS for the issuance of an IHA at the POA. These data were summarized in this IHA. The POA IHA concluded that average sound levels of vibratory pile-driving sounds would be approximately 162 dB re 1 μPa at a distance of 20 m (65.6 ft). Furthermore, for vibratory pile-driving, the 120 dB level would be exceeded out to about 800.1 m (2,625 ft) from the vibratory hammer.

A selection of additional projects using vibratory hammers was made from the "Compendium of Pile-Driving Sound Data" (Illingworth and Rodkin, 2007). This includes all projects in the compendium that used a vibratory hammer to drive steel pipe piles or H-piles. Data from these projects, and the two project named above are summarized in Table 2 of the IHA application.

TABLE 2—SOUND LEVEL DATA

Project	Distance (m and ft)	Pile type	Water depth	dB re 1 μPa (rms)
10 Mile	10 m (33 ft)	76.2 cm (30 in) steel pipe	Not stated	166.
10 Mile	100.6 m (330 ft)	76.2 cm (30 in) steel pipe	Not stated	Less than 150.
Port of Anchorage	20.1 m (66 ft)	H-pile	Not stated	162.
San Rafael Canal	10 m (33 ft)	25.4 cm (10 in) H-pile	2.1 m (7 ft)	147.
San Rafael Canal	20.1 m (66 ft)	25.4 cm (10 in) H-pile	2.1 m (7 ft)	137.
Mad River Slough	10 m (33 ft)	33 cm (13 in) steel pipe	4.9 m (16 ft)	154 to 156.
Richmond Inner Harbor	10 m (33 ft)	1.8 m (6 ft) steel pipe	Not stated	167 to 180.
Richmond Inner Harbor	29.9 m (98 ft)	1.8 m (6 ft) steel pipe	Not stated	160.
Stockton Wastewater Crossing.	10 m (33 ft)	0.9 m (3 ft) steel pipe	Not stated	168 to 175.
Stockton Wastewater Crossing.	20.1 (66 ft)	0.9 m (3 ft) steel pipe	Not stated	166.
San Rafael Sea Wall	10 m (33 ft)	25.4 cm (10 in) H-pile	2.1 m (7 ft)	147.
San Rafael Sea Wall	20.1 m (66 ft)	25.4 cm (10 in) H-pile	2.1 m (7 ft)	137.

Source: Illingworth and Rodkin (2007, 2008).

Based on these data, the results for 76.2 cm to 0.9 m (30 in to 3 ft) steel pipe driven in water would appear to constitute a conservative representation of the potential effects of driving 45.7 cm (18 in) steel pipe at the Trinidad Pier. Those indicate an rms level of 166 to 175 dB at 10 m (33 ft) from the pile. Calculations in this analysis assume the high end of this range. For this analysis, close to the pile, it is assumed that there would be a 4.5 dB (rms) decrease for every doubling of the distance (practical spreading loss model). Isopleth distances base on this inference are presented in Table 3 of Trinidad Rancheria's IHA application. Figure 1 of the IHA application shows both the area of effect and the relative exposure risk based on the presence of shielding features (headlands and sea stacks). Under no circumstances would the Level A harassment (injury) threshold for cetaceans or pinnipeds by exceeded, but the specified activities would likely exceed the Level B harassment threshold, which also corresponds to background sound level in the area, throughout Trinidad Harbor. Shielding by headlands flanking the harbor would, however, prevent acoustic impacts to waters outside the harbor that are not on a line-of-sight to the sound source. This effect is shown in Figure 1 of the IHA application.

Noise Levels from Augering—An auger is a device used for moving material or liquid by means of a rotating helical shaft into the earth. An attempt

was made to measure the noise from augering out the 76.2 cm (30 in) piles at the Ten Mile Bridge Replacement Project. The levels were below the peak director of the equipment, 160 dB peak, and so measurements were stopped. Augering is expected to generate noise levels at or below the lower end of this range (Illingworth and Rodkin, 2008). Using the uniform "practical spreading model" transmission loss rate of 4.5 dB (rms) per doubling of distance, background sound levels would exceed the Level B harassment threshold at distances of less than 2.4 km (1.5 mi) (see Table 4 and Table 3 of the IHA application).

TABLE 3—PREDICTED DISTANCES TO ACOUSTIC THRESHOLD LEVELS FOR THE TRINIDAD PIER RECONSTRUCTION PROJECT

Construction activity	Distance from activity to isopleths			
	190 dB (rms)	180 dB (rms)	160 dB (rms)	126 dB (rms)
45.7 cm (18 in) Pile Vibratory Installation	0.9 m (3 ft)	4.9 m (16 ft)	101.5 m (333 ft)	23.3 km (14.5 mi).
Augering	0 m (0 ft)	0.3 m (1 ft)	10.1 m (33 ft)	2.4 km (1.5 mi).
Wood Pile Removal	0 m (0 ft)	0.9 m (3 ft)	21.6 m (71 ft)	5 km (3.1 mi).

Noise Levels from Removal of Wood Piles—Removal of the existing wood piles would be accomplished with the use of a vibratory hammer. Typically the noise levels for installing and removing a pile are approximately the same when a vibratory hammer is used. The noise generated by installing wood piles is generally lower than steel shell piles. Illingworth and Rodkin (2007, 2008) have had only one opportunity to measure the installation of woodpiles and this was with a 1,360.8 kg (3,000 lb) impact hammer. The levels measured at a distance of 10 m (32.8 ft) were as follows: 172 to 182 dB peak, 163 to 168 dB (rms). For a comparable CISS pile, using a 1,360.8 kg (3,000 lb) drop hammer, the levels measured were 188 to 192 dB peak, 172 to 177 dB (rms). The noise generated during the installation of the wood pile was approximately 10 dB lower than the CISS piles. Following this logic, the sound produced when removing the wood piles would be about 10 dB lower than when installing the CISS piles.

Levels of 180 dB (rms) and 190 dB (rms) are expected to occur in the water at very small distances as a result of pile removal (see Table 4). Peak sound pressures would not be expected to exceed 190 dB in water. The average sound level of vibratory woodpile removal would be approximately 152 dB (rms) at a distance of 20.1 m (66 ft). Using the uniform practical spreading loss model transmission loss rate of 4.5 dB (rms) per doubling of distance, the Level B harassment threshold distance would be 5 km (3.1 miles) (see Table 3 in the IHA application).

Potential for Biological Effects—Based on the foregoing analysis, the proposed action could result in underwater acoustic effects to marine mammals. The injury thresholds for pinnipeds and cetaceans would not be attained, but the acoustic background level in the area, 126 dB (rms) would be attained during use of the vibratory pile driver (for wood piling removal and for CISS pile placement), and during augering of the CISS pile placements. Effects distances for these activities are shown in Table 3 of the IHA application, and range up to 23.3 km (14.5 mi). The duration of exposure varies between activities.

TABLE 4—NOISE GENERATING ACTIVITIES

Construction activity	Number of piles	Time per pile	Duration of activity	Number of days when activity occurs	126 dB (rms) isopleth distance
45.7 cm (18 in) pile vibratory installation	115	0:15	28:45	58	23.3 km (14.5 mi).
Augering	115	1:00	115:00	58	2.4 km (1.5 mi).
Wood pile removal	205	0:40	136:40	58	5 km (3.1 mi).

Pile installation would occur for approximately 30 min (up to two piles would be driven each day at up to 15 min drive time per pile) on each of 58 days (see Table 4 above and Table 4 of the IHA application), resulting in sound levels exceeding the behavioral effect threshold within 23.3 km (14.5 mi) of the activity.

Pile removal is a quieter activity performed for a longer time: approximately 136:67 hours distributed evenly over 58 days, or about 2.5 hours on each day when the activity occurs. Sound levels would exceed the behavioral effect threshold within 5 km (3.1 mi) of the activity.

Augering the least-noisy activity, is estimated to require 1 hour for each of 115 piles with activity occurring on each of 58 days evenly distributed during a 180 day period, or about 2.0 hours on each day when the activity occurs. Sound levels would exceed the behavioral effect threshold within 2.4 km (1.5 mi) of the activity.

These activities could be performed on the same day, but are expected to normally occur on consecutive days, with a cycle of pile removal—pile installation—augering—grouting occurring as each of 25 successive bents is placed.

As shown in Figures 1 and 2 of the IHA application, Trinidad Bay is protected from waves coming from the north and west, but open to coastline on the south. The coast extending to the south, and the rocky headland to the west of the pier, would shield waters from the acoustic effects described above except within the bay itself. These topographic considerations result in a situation such that underwater noise-generating activities would produce elevated underwater sound within most of the bay itself, but would have a minor effect on underwater sound levels outside the bay.

Seals outside of Trinidad Harbor and more than 1.6 to 3.2 km (1 to 2 mi) offshore are likely already exposed to and habituated to loud machinery noise in the form of deep-draft vessel traffic along the coast; such vessels may produce noise levels of the order of 170 to 180 dB (rms) at 10 m and thus have areas of effect comparable to the 23.3 km (14.5 mi) radius of effect calculated for vibratory pile-driving noise. In this context, the 23.3 km (14.5 mi) radius of effect is likely unrealistic, just as it is likely unrealistic to think that these seals alter their behavior in response to the passage of a large vessel 23.3 km (14.5 mi) away. Behavioral considerations suggest that the seals would be able to determine that a noise source does not constitute a threat if it is more than a couple of miles away, and the sound levels involved are not high enough to result in injury (Level A harassment). Nonetheless, these data suggest that pile-driving may affect seal behavior throughout Trinidad harbor, *i.e.,* within approximately 1.6 km (1 mi) of the proposed activity. The nature of that effect is unpredictable, but logical responses on the part of the seals include tolerance (noise levels would not be loud enough to induce temporary threshold shift in harbor seals), or avoidance by using haul-outs or by foraging outside the harbor.

With regard to noises other than pile-driving (*i.e.,* pile removal, augering, and construction noise), estimation of biological effects depends on the characteristics of the noise and the behavior of the seals. The noise is qualitatively similar to that produced by the engines of fishing vessels or the operations of winches, noises to which the seals are habituated and which they in fact regard as an acoustic indicator signaling good foraging opportunities near the pier. There are no data about the magnitude of this acoustic indicator, but the noise produced by the fishing vessel engines entering or leaving the harbor is likely not less than 150 dB (rms) at 10 m, though it will be quieter as vessels "throttle back" near the pier. This level (150 dB [rms]) is the same as the estimated noise level from augering, and 15 dB less than the estimated noise level from pile removal. In this context, behavioral responses due to augering are not likely, except that initially seals might approach the work area in anticipation of foraging opportunities. Such behavior would likely cease once the seals learned the difference between the sound auger and that of a fishing vessel. Behavioral responses in the form of avoidance due to pile removal might occur within a distance of about 50 m (164 ft) from the proposed activity, but the area so affected constitutes a small fraction of Trinidad Harbor and has no haul-outs; thus very few seals would be expected to be affected.

In-Air Noise—The principal source of in-air noise would be the vibratory pile driver used to extract old wood piles and to place the new CISS piles. Laughlin (2010) has recently reported unweighted sound measurements from vibratory pile drivers used to place steel piles at two projects involving dock renovation for the Washington State Ferries. In both projects, noise levels were measured in terms of the 5 min average continuous sound level (Leq). Frequency-domain spectra for the maximum sound level (Lmax) were also measured. The Leq measurements in this case were equivalent to the unweighted rms sound level, measured over a 5 min period.

At the Wahkiakum County Ferry Terminal, one measurement station was used to take measurements of the vibratory placement (APE hammer) of one 45.7 cm (18 in) steel in-water pile, the same size that would be placed during the Trinidad Pier renovation. At the Keystone Ferry Dock renovation, four measurement stations were used to take measurements of the vibratory placement (APE hammer) of one 76.2 cm (30 in) steel in-water pile. At both sites, piles were placed in alluvial sediments, whereas the Trinidad Pier piles would be placed in pre-bored holes in sandstone. Results from the Wahkiakum and Keystone piles (Laughlin, 2010) are shown in Table 5 of the IHA application.

Based on these data (Laughlin, 2010), in-air noise production during pile-driving at the Trinidad Pier will likely be between 87.5 and 96.5 dB re 20 μPa unweighted at 50 ft. For the purpose of the analysis presented below, it is assumed that in-air noise from vibratory pile-driving would produce 96 dB (rms) unweighted. This noise would be produced during both pile removal and pile placement activities. The augering equipment produces slightly less noise, 92 dB (rms) unweighted (WSDOT, 2006). All other power equipment that would be used as part of the proposed action (*e.g.,* trucks, pumps, compressors) produces at least 10 dB less noise and thus has much less potential to affect wildlife in the area.

In contrast, background noise levels near the Trinidad Pier are already elevated due to normal pier activities. Marine mammals at Trinidad Bay haul-outs are presumably habituated to the daily coming and going of fishing and recreational vessels, and to existing activities at the pier such as operation of the hoists and the loading and unloading of commercial crab boats. These activities may occur at any time of the day and may produce noise levels up to approximately 82 to 86 dB (unweighted) at 15.2 m (50 ft) for periods of up to several hours at a time. Accordingly 82 dB (unweighted) is chosen as the background level for noise near the pier.

Effects on Pacific Harbor Seals—In-air sound attenuates at the rate of approximately 5 dB/km for a frequency of 1 kHz, air temperature of 10° C (50° F), and relative humidity of 80 percent (Kaye and Laby, 2010). These conditions approximate winter weather in Trinidad. Under these conditions, the noise of the vibratory pile-driver would attenuate to approximately 82 dB at approximately 2.8 km (1.7 mi) from the pier. Attenuation, which is proportional to frequency, would be reduced at lower frequencies, and would be much greater at higher frequencies. Attenuation would also be greater at locations where headlands or sea stacks interfere with sound transmission, as shown in Figure 1 of the IHA application. Accordingly, the sounds produced by pile extraction, augering, and pile replacement would exceed background levels within almost all of Trinidad Harbor.

Driving of CISS piles would occur for a total of approximately 0.5 hours per day on each of 58 days within a 180 day period (August 1 to January 31, 2010) (see Table 4 of the IHA application). Pile-driving would occur during daylight hours, at which time harbor seals would be periodically coming to or leaving from haul-outs, and possibly foraging within the radius of effect around the pile-driving activity. Harbor seals haul-out on rocks and at small beaches at many locations that are widely dispersed within Trinidad Bay; the closest such haul-out is 70 m (229.7 ft) from the pier, while the most distant is over 1 km (0.6 mi) away near the south end of Trinidad Bay.

Behavioral effects could result to all seals that were in the water within the area of effect during the portion of the day when piles were being driven (typically two piles per day). For instance, if seals spent 10 percent of the day in the water within the radius of effect, and assuming that the number of seals present that day was approximately 37 (as discussed above in the context of data presented by Goley *et al.* [2007]), then about 3.66 seals would be affected by each of two pile drives. Because the drives occurred during different parts of the day, different seals would likely be affected, resulting in a total impact on that day to seven or eight seals.

The 10 percent estimate given above for the time seals spend within the radius of effect is a representative figure for the purposes of illustration. There are no data available on relative seal use of the haul-outs in Trinidad Bay, versus their use of waters in Trinidad Bay, versus their use of waters or haul-outs elsewhere. The radius of effect is only a small fraction of Trinidad Bay, and only a fraction of the rocks that comprise the Indian Beach haul-out described in Goley *et al.* (2007) are within that radius of effect. However, it is known that during winter months (when the proposed construction is scheduled to occur), seal use of the haul-outs in Trinidad Bay likely declines because the seals spend a larger fraction of their time at sea, foraging in offshore waters (Goley, 2007). Figure 1 of the IHA application shows that topographic shielding by headlands blocks a large area of offshore habitat from potential underwater construction noise effects.

Impacts attributable to pile removal would be similar to those of pile-driving, but pile removal would occur for a total of approximately 2.5 hours per day on each of 58 days (see Table 4 of the IHA application). Subject to the same assumptions as described above, but this time with the activity being performed on an average of 3.5 piles per day, about 3.66 seals would be affected by each of 3.5 pile removal events for a total daily impact to 13 seals.

Impacts attributable to augering would also be similar, but augering would occur for a total of approximately two hours per day on each of 58 days. Subject to the same assumptions as described above, but this time with the activity being performed on an average of two piles per day, about seven or eight seals would be affected by each of two augering events for a total daily impact to seven or eight seals. These numbers would vary if more or fewer seals were present in the area of effect, and if seals spent more or less of their time in the water rather than on the haul-out.

Although harbor seals could also be affected by in-air noise and activity associated with construction at the pier, seals at Trinidad Bay haul-outs are presumably habituated to human activity to some extent due to the daily coming and going of fishing and recreational vessels, and to existing activities at the pier such as operation of the hoists and the loading and unloading of commercial crab boats. These activities may occur at any time of the day and may produce noise levels up to approximately 82 dB at 15.2 m (50 ft) for periods of up to several hours at a time. The operation of loud equipment, including the vibratory pile-driving rig and the auger, are above and outside of the range of normal activity at the pier and have the potential to could cause seals to leave a haul-out in Trinidad Bay. This would constitute Level B harassment (behavioral). To date, such behavior by harbor seals has not been documented in Trinidad Bay in response to current levels of in-air noise and activity in the harbor, but does have the potential to occur. On the contrary, seals have been documented often approaching the pier during normal fishing boat activities in anticipation of feeding opportunities associated with the unloading of fish and shellfish. This circumstance suggests seal habituation to existing noise levels encountered near the pier.

Based on these examples it appears likely that few harbor seals at haul-outs would show a behavioral response to noise at the pier, particularly in view of their existing habituation to noise activities at the pier. The great majority of haul-out locations in Trinidad Bay are at least 304.8 m (1,000 ft) from the pier, but one minor haul-out is 70.1 m (230 ft) from the pier (Goley, pers. comm.). In view of the relatively large area that would be affected by elevated in-air noise, it appears probable that some seals could show a behavioral response, despite their habituation to current levels of human-generated noise; incidental take by this mechanism may amount to an average of one seal harassed per day, when the activities of pile removal, augering, or pile placement are occurring (in addition to the seals harassed by underwater noise).

Harbor seal presence in the activity area is perennial, with daily presence of an average of approximately 37 seals at a nearby haul-out during the months when the activity would occur. The fraction of these seals that would be in the activity area is difficult to estimate. Traditionally the seals have regarded the pier as a prime foraging area due to the recreational fishing activity and the unloading of fishing boats that occur there. During the construction period, however, these activities would cease, and it is plausible that the seals would modify their foraging behavior accordingly. Based on the analysis in the IHA application and here in this notice, seals would be affected once per day on each of 116 days when pile-driving or augering occurred, 13 seals would be affected per day on each of 58 days when pile removal occurred, and one seal would be affected by in-air sound on each of 174 days when pile removal, installation, or augering occurred. The potentially affected seals include adults of both sexes. Goley *et al.* (2007) states that the seals are year-round residents; that they are non-migratory, dispersing from a centralized location to forage; and that they exhibit high site fidelity, utilizing one to two haul-out sites within their range and rarely traveling more than 25 to 50 km (15.5 to 31.1mi) from these haul-outs. The winter population of seals in Trinidad Bay seems to consist mostly of resident seals (Goley *et al.,* 2007), so it is likely that most seals in the population would be affected more than once over the course of the proposed construction period. It is therefore possible that some measure of adaptation or habituation would occur on the part of the seals, whereby they would tolerate elevated noise levels and/or utilize haul-outs relatively distant from construction activities. There are a large but inventoried number of haul-outs within Trinidad Bay, so such a strategy is possible, but it is difficult to predict whether the seals would show such a response.

Project scheduling avoids sensitive life history phases of harbor seals. Project activities producing underwater noise would commence in August. This is after the end of the annual molt, which normally occurs in June and July. Project activities producing underwater noise are scheduled to terminate at the end of January, which is a full month before female seals begin to seek sites suitable for pupping.

Effects on California Sea Lions—California sea lions, although abundant in northern California waters, have seldom been recorded in Trinidad Bay (i.e, there is little published information or data with which to determine how they use Trinidad Bay). There low abundance in the area may be due to the presence of a large and active harbor seal population there, which likely competes with the sea lions for foraging resources. Any sea lions that did visit the action area during construction activities would be subject to the same type of impacts described above for harbor seals. Observed use of the area by California sea lions amounts to less than one percent of the number of harbor seals (Goley, pers. comm.); assuming a one percent utilization rate, total impacts to California sea lions amount to one percent of the effects of harbor seals, described above.

There is a possibility of behavioral effects related to project acoustic impacts, in the event of California sea lion presence in the activity area. Based on an interview with Dr. Dawn Goley (pers. comm.), California sea lions have been seen in the activity area, albeit

infrequently, and there are no quantitative estimates of the frequency of their occurrence. Assuming that they are present with one percent of the frequency of harbor seals, it is possible California sea lions might be subject to behavioral harassment up to one percent of the levels described for harbor seals. The potentially affected sea lions include adults of both sexes

Effects on Eastern Pacific Gray Whales—Goley *et al.* (2007) list the sighting rates for gray whales during eight years of monthly observations at Trinidad Bay. Sighting rates varied from 0 to 1.38 whales per hour of observation time. The average detection rate during the period when pile removal and placement would occur, in the months from August through January, was 0.21 whales per hour of observation time. In contrast, the average detection rate in the months of February through July was 0.48 whales per hour. The majority of these detections were within 2 km (1.2 mi) of the shoreline (Goley *et al.,* 2007). These data suggest that the effect rate for gray whales would be approximately 0.21 whales per hour. Since vibratory pile-driving of CISS piles would occur for a total of approximately 28.75 hours (115 piles at 15 min drive time apiece; see Table 4 of the IHA application), vibratory pile-driving activities would be expected to affect $0.21 \times 28.75 = 6.04$ or approximately six gray whales.

Acoustic effects would be expected to result from pile removal, which is a quieter activity performed for a longer time. Approximately 205 piles will be removed, with 40 min of vibratory pile driver noise for each pile, resulting in a total exposure of 136.67 hours (see Table 4 of the IHA application). Thus this activity would be expected to affect $6.04 \times 136.7/28.75 = 28.7$ or approximately 29 gray whales.

Acoustic effects would also be expected to result from pile augering, which is an even quieter activity. There will be 115 holes augered, with one hour of noise for each hole, resulting in a total exposure of 115 hours (see Table 4 of the IHA application). Thus, this activity would be expected to affect $6.04 \times 115/28.75 = 24.2$ or approximately 24 gray whales. No mechanism other than underwater sound generation is expected to affect gray whales in the action area.

The most likely number of gray whales that would be taken is 59. Based on the low detection rate of 0.21 whales per hour (Goley *et al.,* 2007), most of these take events would likely be independent. Based on past observations of gray whales in the harbor (Goley *et al.,* 2007), most of these takes events would likely be independent. Based on past observations of gray whales in the harbor (Goley *et al.,* 2007), whales would likely be adults of both sexes.

The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the "Proposed Mitigation" and "Proposed Monitoring and Reporting" sections) which, as noted are designed to effect the least practicable adverse impact on affected marine mammal species or stocks.

Possible Effects of Activities on Marine Mammal Habitat

The anticipated adverse impacts upon habitat consist of temporary changes to water quality and the acoustic environment, as detailed in the IHA application and Appendix B of the BA. These changes are minor, temporary, and limited duration to the period of construction. No restoration is needed because, as detailed in Section 6.1.6 of the BA, the project would have a net beneficial effect on habitat in the activity area by removing an existing source of stormwater discharge and creosote-treated wood. No aspect of the proposed project is anticipated to have any permanent effect on the location of seal and sea lion haul-outs in the area, and no permanent change in seal or sea lion use of haul-outs and related habitat features is anticipated to occur as a result of the proposed project.

The temporary impacts on water quality and acoustic environment and the beneficial long-term effects are not expected to have any permanent effects on the populations of marine mammals occurring in Trinidad Bay. The area of habitat affected is small and the effects are temporary, thus there is no reason to expect any significant reduction in habitat available for foraging and other habitat uses.

Although artificial, the pier functions as a habitat feature. There would probably be a temporary cessation of seal activity in the immediate vicinity of the pier. It is not clear at this time how this would affect seal behavior. The fishing vessels that normally use the pier during the months when construction would occur have two options; they can either transfer their cargoes to smaller vessels capable of landing at the existing boat ramp (which is on the east side of the rocky headland just east of the pier, a few hundred feet away), or they can make temporary use of pier facilities approximately 32.2 km (20 mi) to the south, in Eureka. Vessels opting to travel to Eureka would likely represent a lost foraging opportunity for seals using Trinidad Bay.

NMFS anticipates that the action will result in no impacts to marine mammal habitat beyond rendering the areas immediately around the Trinidad Pier less desirable during pile-driving and pier renovation operations as the impacts will be localized. Impacts to marine mammal, invertebrate, and fish species are not expected to be detrimental.

Proposed Mitigation

In order to issue an Incidental Take Authorization under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

The activity proposed by the applicant includes a variety of measures calculated to minimize potential impacts on marine mammals, including:

- Timing the activity to occur during seasonal lows in marine mammal use of the activity area;
- Limiting activity to the hours of daylight (approximately 7 a.m. to 7 p.m., with noise generating activities only authorized from one-half hour after sunrise until one-half hour before sunset);
- Use of a vibratory hammer to minimalize the noise of piling and removal and installation; and
- Use of trained PSOs to detect, document, and minimize impacts (*i.e.,* start-up procedures [short periods of driver use with intervening pauses of comparable duration, performed two or three times, before beginning continuous driver use], possible shut-down of noise-generating operations [turning off the vibratory driver or auger so that in-air and/or underwater sounds associated with construction no longer exceed levels that are potentially harmful to marine mammals]) to marine mammals, as detailed in the Marine Mammal Monitoring Plan (see Appendix C of the IHA application) and in paragraphs (1)–(8) of the monitoring and reporting provisions below.

Timing Constraints for Underwater Noise

To minimize noise impacts on marine mammals and fish, underwater construction activities shall be limited to the period when the species of concern will be least likely to be in the

project area. The construction window for underwater construction activities shall be August 1, 2011 to May 1, 2012. Avoiding periods when marine mammals are in the action area is another mitigation measure to protect marine mammals from pile-driving and renovation operations.

Implementation Assurance: Provide NMFS advance notification of the start dates and end dates of underwater construction activities.

More information regarding the Trinidad Rancheria's monitoring and mitigation measures, as well as research conducted, (*i.e.,* noise study for potential impacts to marine mammals and fish; potential impacts to historical, archeological and human remains; potential impacts to water quality during reconstruction activities; potential impacts to substrate and water quality during tremie concrete seal pouring; and potential temporary impacts to public access to the pier during construction operations) for the Trinidad Pier Reconstruction Project can be found in Appendix B of the IHA application. NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. NMFS's evaluation of potential measures included consideration of the following factors in relation in one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned;

Based on NMFS's evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implanting regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Consistent with NMFS procedures, the following marine mammal monitoring and reporting shall be performed for the proposed action:

(1) A NMFS-approved or -qualified Protected Species Observer (PSO) shall attend the project site one hour prior until one hour after construction activities cease each day throughout the construction window.

(2) The PSO shall be approved by NMFS prior to reconstruction operations.

(3) The PSO shall search for marine mammals within behavioral harassment threshold areas as identified within the acoustic effect thresholds in Section 6 of Trinidad Rancheria's IHA application. The area observed shall depend upon the type of underwater sound being produced (*e.g.,* pile extraction, augering, or pile installation). No practicable technology exists to allow for monitoring beyond the visual range at which seals and sea lions can be detected using binoculars (approximately 0.8 km [0.5 mi]), depending on visibility and sea state. The estimated maximum distance at which PSOs will be able to visually detect gray whales is about 1.6 km (1 mi).

(4) The PSO shall be present on the pier during pile-extraction, pile-driving and augering to observe for the presence of marine mammals in the vicinity of the proposed specified activity. All such activity will occur during daylight hours (*i.e.,* 30 min after sunrise and 30 min before sunset). If inclement weather limits visibility within the area of effect, the PSO will perform visual scans to the extent conditions allow, but activity will be stopped at any time that the observer cannot clearly see the water surface out to a distance of at least 30.5 m (100 ft) from the proposed activity. In conditions of good visibility, PSOs will likely be able to detect pinnipeds out to a range of approximately 0.8 km (0.5 mi) from the pier, and to detect whales out to a range of approximately 1.6 km (1.0 mi) from the pier. Animals at greater distances likely would not be detected.

(5) Visibility is a limiting factor during much of the winter in Trinidad Bay. As discussed in the BA, shut-downs during times of fog could well result in prolonging the construction period into the beginning of the pupping season for harbor seals. The estimated distances for Level A harassment do not exceed 4.9 m (16 ft) from the activity. The proposed activities could shut-down if visibility is so poor that seals cannot be detected when they are at risk of injury (*i.e.,* if visibility precludes observation of the area within 30.5 m [100 ft] of the pier). During the 30 min prior to the start of noise-generating activities and the quiet periods between individual noise-generating activities, auditory monitoring may be highly effective for detecting gray whales, but probably less effective for harbor seals and California sea lions.

(6) The PSO will also perform auditory monitoring, and will report any auditory evidence of marine mammal activity. Auditory detection will be based only on the use of the human ear (without technological assistance). Auditory monitoring is effective for detecting the presence of gray whales in close proximity to the proposed action area (*e.g.,* blows, splashes, *etc.*). Close proximity varied depending on how loud the sound produced by the gray whale is, and on the in-air transmission loss rate. Auditory monitoring prior to the start of the noise-generating activity occurs in the absence of masking noise and thus helps to ensure that the auditory monitoring is effective. Auditory monitoring is only likely more effective than visual monitoring under conditions of low visibility (*i.e.,* fog) since work would only occur during daylight hours), at which times the transmission loss rate is very low. Note that there will also be many quiet periods between individual noisy activities, during which whales can be detected. Most of the work day is spent in preparing for a few noisy intervals. Auditory monitoring is less effective for detecting the presence of pinnipeds.

(7) The PSO will scan the area of effect for at least 30 min continuously prior to any episode of pile-driving to determine whether marine mammals are present, and will continue to scan the area during the period of pile-driving. The scan will continue for at least 30 min after each in-water work episode has ceased. The scan will involve two visual "sweeps" of the area using the naked eye and binoculars. Typically, the sweep would be conducted slowly as follows: one sweep going from left to right and the other returning from right to left. The length of time it takes to do the sweep will depend on the amount of area that needs to be covered, weather conditions, and the time it takes the monitor to thoroughly survey the area.

(8) Pile-driving will not be curtailed if the only marine mammals detected within the area of effect (*i.e.,* Level B

harassment zones) are harbor seals. The area of effect varies depending on the proposed activity undertaken (*i.e.,* pile removal, augering, pile placement). Since the proposed activities would produce sound levels that have the unlikely potential to result in Level A harassment (due to the very small radii of effect), a measure such as a shut-down may be unnecessary, but it would be appropriate for the Trinidad Rancheria to shut-down and consult with NMFS if measurements indicate that any activities attain sound levels that reach the Level A harassment threshold. If any other marine mammals besides harbor seals are observed within the area of effect, pile-driving will not commence. If a marine mammal swims into the area of effect during pile-driving, the PSO will identify the animal and, if it is not a harbor seal, will notify the Project Engineer who will notify the Contractor, and pile-driving will stop (*i.e.,* shut-down). If the animal has been observed to leave the area of effect, or 15 min have passed since the last observation of the animal, pile-driving will proceed. Visual observation of the area of effect is limited to the area that can be practicably observable for animals to be detected, which is approximately 0.8 km (0.5 mi) for pinnipeds and 1.6 km (1 mi) for gray whales.

(9) Whenever a construction halt is called due to marine mammals presence in the area, the Project Engineer (or their representative) shall immediately notify the designated NMFS representative.

(10) If marine mammals are sighted by the PSO within the acoustic thresholds areas, the PSO shall record the number of marine mammals within the area of effect and the duration of their presence while the noise-generating activity is occurring. The PSO will also note whether the marine mammals appeared to respond to the noise and if so, the nature of that response. The PSO shall record the following information: Date and time of initial sighting, tidal stage, weather, conditions, Beaufort sea state, species, behavior (activity, group cohesiveness, direction and speed of travel, *etc.*), number, group composition, distance to sound source, number of animals impacted, construction activities occurring at time of sighting, and monitoring and mitigation measures implemented (or not implemented). The observations will be reported to NMFS in a letter report to be submitted on each Monday, describing the previous week's observations.

(11) A final report will be submitted summarizing all in-water construction activities and marine mammal monitoring during the time of the authorization, and any long term impacts from the project.

A written log of dates and times of monitoring activity will be kept. The log shall report the following information:

- Time of observer arrival on site;
- Time of the commencement of underwater noise generating activities, and description of the activities (*e.g.,* pile removal, augering, or pile installation);
- Distances to all marine mammals relative to the sound source;
- For harbor seal observations, notes on seal behavior during noise-generating activity, as described above, and on the number and distribution of seals observed in the project vicinity;
- For observations of all marine mammals other than harbor seals, the time and duration of each animal's presence in the project vicinity; the number of animals observed; the behavior of each animal, including any response to noise-generating activities; whether activities were halted in response to the animal's presence; and whether, and if so, the time of NMFS notification;
- Time of the cessation of underwater noise generating activities; and
- Time of observer departure from site.

All monitoring data collected during construction will be included in the biological monitoring notes to be submitted weekly be electronic mail. Monthly summary reports will be submitted to NMFS. A final report summarizing the construction monitoring and any general trends observed will also be submitted to NMFS within 30 days after monitoring has ended during the period of pier construction.

Underwater Noise Monitoring

Underwater noise monitoring and reporting shall be performed consistent with conditions of Coastal Development Permit 1–07–046. Those conditions are here summarized:

Prior to commencement of demolition and construction authorized by coastal development permit No. 1–07–046, the applicant shall submit a Hydroacoustic Monitoring Plan, containing all supporting information and analysis deemed necessary by the Executive Director for the Executive Director's review and approval. Prior to submitting the plan, to the Executive Director, the applicant shall also submit copies of the Plan to the reviewing marine biologists of the California Department of Fish & Game and the NMFS for their review and consideration.

At a minimum, the Plan shall:

(1) Establish the field locations of hydroacoustic monitoring stations that will be used to document the extent of the hydroacoustic hazard footprint during vibratory extrication or placement of piles or rotary augering activities, and provisions to adjust the location of the acoustic monitoring stations based on data acquired during monitoring, to ensure that the sound pressure field is adequately characterized;

(2) Describe the method of hydroacoustic monitoring necessary to assess the actual conformance of the proposed vibratory extrication or placement of piles or rotary augering with the dual metric exposure criteria in the vicinity of the vibratory extrication or placement of piles or rotary augering locations on a real-time basis, including relevant details such as the number, location, distances, and depths of hydrophones and associated monitoring equipment.

(3) Include provisions to continuously record noise generated by the vibratory extrication or placement of piles or rotary augering in a manner that enables continuous and peak sound pressure and other measures of sound energy per strike, or other information required by the Executive Director in the consultation with marine biologists of the California Department of Fish & Game and NMFS, as well as provisions to supply all monitoring data that is recorded, regardless of whether the data is deemed "representative" or "valid" by the monitor (accompanying estimates of data significance, confounding factors, *etc.* may be supplied by the acoustician where deemed applicable). The permit also specifies reporting protocols, to be developed in cooperation with and approved by representatives of the California Coastal Commission, the California Department of Fish & Game, and NMFS.

The Trinidad Rancheria would notify NMFS Headquarters and the NMFS Southwest Regional Office prior to initiation of the pier reconstruction activities. A draft final report must be submitted to NMFS within 90 days after the conclusion of the Trinidad Pier Reconstruction Project. The report would include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA, including dates and times of operations, and all marine mammal sightings (dates, times, locations, species, behavioral observations [activity, group cohesiveness, direction and speed of travel, *etc.*], tidal stage, weather conditions, sea state, activities, associated pier reconstruction activities). A final report must be

submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report would be considered to be the final report.

While the proposed IHA would not authorize injury, serious injury, or mortality (*i.e.,* Level A harassment), should the applicant, contractor, monitor or any other individual associated with the pier reconstruction project observe an injured or dead marine mammal, the incident (regardless of cause) will be reported to NMFS as soon as practicable. The report should include species or description of animal, condition of animal, location, time first found, observed behaviors (if alive) and photo or video, if available.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: "Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

Based on the information in the "Anticipated Extent of Underwater Project Noise" section, incidental harassment of Pacific harbor seals, California sea lions, and Eastern Pacific gray whales is anticipated to occur for the following reasons:

(1) Surveys have demonstrated that harbor seals are almost always present within the area that would be affected by underwater sound. Thus, it is not possible to avoid affecting harbor seals at an exposure level below the Level B harassment threshold. Potential effects to harbor seals have been minimized by constructing during a period when sensitive life history stages (pupping and molting) do not occur, and by using construction methods that generate the lowest practicable levels of underwater sound.

(2) California sea lions are found among the harbor seals, at about one percent of the harbor seal abundance; thus there is a substantial risk of incidentally affecting California sea lions at the same times and by the same mechanisms at an exposure level above the Level B harassment threshold that harbor seals are affected.

(3) Gray whales have a high likelihood of occurring in Trinidad Bay during the proposed construction period. They may not be detected by PSOs if they occur near the outer limits of the area of Level B harassment impact zone.

(4) The area has a high incidence of harbor fog, which complicates successful detection of animals when they enter waters where they may be exposed to sound levels in excess of the Level B harassment threshold. Dense fog is a common occurrence in this area in all seasons of the year. In 2008, for instance, the NOAA weather station in nearby Eureka reported 63 days of fog with visibility less than 0.4 km (0.25 mi), and 176 cloudy days. Local anecdotal reports indicate that the incidence of fog is much higher on the harbor waters than on the adjacent uplands. Attempting to only perform underwater sound generating activities during periods of high visibility is therefore impracticable, as it would greatly prolong the time required for construction. For this reason it is possible that marine mammals may enter waters where they may be exposed to sound levels in excess of the Level B harassment threshold without being detected by PSOs. This is why the Marine Mammal Monitoring Plan (see Appendix C of the IHA application) provides for work stoppage when visibility is less than 30.5 m (100 ft), and provides for auditory detection (for both cetacean and pinniped monitoring) in conditions of reduced visibility and assumes that any auditory direction represents an animal that is within the area with sound levels in excess of the Level B harassment threshold.

Incidental take estimates are based on estimates of use of Trinidad Bay by various species as reported by Goley (2007 and pers. comm.). All activities generating underwater sound exceed background sound levels through Trinidad Bay.

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Table 6. Summary of the noise production and anticipated incidental take by Level B harassment for the Trinidad Rancheria's proposed action generating in-air and underwater noise.

Variable	Wood Pile Removal		Augering		Vibratory Pile Installation	
	Underwater Noise	In-Air Noise	Underwater Noise	In-Air Noise	Underwater Noise	In-Air Noise
Sound Amplitude	156.5 dB (rms) at 10.1 m (33 ft)	104 dB at 50 ft	150 dB (rms) at 15.2 m (50 ft)	94 dB at 50 ft	175 dB (rms) at 10.1 m (33 ft)	104 dB at 50 ft
Sound Duration Per Day (hours)	2.5		2		0.5	
Activity Frequency Per Day	2		3.5		2	
Number of Days*	58		58		58	
Total Hours of Exposure	145		116		29	
Incidental Take of Harbor Seals Per Day	13	1	7 or 8	1	7 or 8	1
Incidental Take of Harbor Seals Total	754	58	435	58	435	58
Incidental Take of California Sea Lions Total	7.5	0.6	4.4	0.6	4.4	0.6
Incidental Take of Gray Whales	28.7	0	28.7	0	6.04	0
Note: *No two activities would be performed on any given day.						

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Encouraging and Coordinating Research

Existing knowledge gaps regarding the Trinidad Bay harbor seals were identified in discussions with Dr. Dawn Goley, professor, HSU. Dr. Goley noted that the timing and movements of the Trinidad Bay harbor seals are not well understood, and could be better understood by radio tracking studies of a representative group of seals. Dr. Goley also noted the uncertain relationship between Trinidad Bay and Patrick's Point seals, and noted that the radio tracking study might help to elucidate that relationship.

Negligible Impact and Small Numbers Analysis and Determination

The Secretary, in accordance with paragraph 101(a)(5)(D) of the MMPA, shall authorize the take of small numbers of marine mammal incidental to specified activities other than commercial fishing within a specific geographic region if, among other things, determines that the authorized incidental take will have a "negligible impact" on species or stocks affected by the authorization. NMFS implementing regulations codified at 50 CFR 216.103 states that "negligible impact is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Based on the analysis contained herein, including the supporting documents upon which it relies, of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS, on behalf of the Secretary, preliminarily finds that the Trinidad Rancheria would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the pile-driving and renovation operations would have a negligible impact on the affected species or stocks of marine mammals. As a basis for its small numbers determination, NMFS evaluated the number of individuals taken by Level B harassment relative to the size of the stock or population. The number of potential Level B incidental harassment takings is estimated to be small (*i.e.,* 1,798 harbor seals [5.7 percent], 21 California sea lions [0.02 percent], and 65 gray whales [0.4 percent]), less than a few percent of any of the estimated populations sizes based on data in this notice, and has been mitigated to the lowest level practicable through the incorporation of the monitoring and mitigation measures mentioned previously in this document.

The activity is not expected to result in injury (Level A harassment), serious injury, or death, or alteration of reproductive behaviors, and the potentially affected species would be subjected only to temporary and minor behavioral impacts. Project scheduling avoids sensitive life history phases for harbor seals. Project activities producing underwater noise would commence in August. This is after the end of the annual molt, which normally occurs in June and July. Project activities producing underwater noise are scheduled to terminate at the end of January, which is a full month before female seals commence to seek sites suitable for pupping. It is possible that severe winter storms or other unforeseen events could delay the conclusion of activities producing underwater noise, but the scheduled one month buffer between underwater construction and the start of pupping-related activity provides assurance that a reasonable level of project delays could occur without adverse consequences for the harbor seals.

In making a negligible impact determination NMFS evaluated factors such as: no anticipated injury, serious injury, or mortality; the number, nature, intensity and duration of harassment (all relatively limited); the low probability that take will likely result in effects to annual rates of recruitment or survival; the context in which take occurs (*i.e.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data); the status of stock or species of marine mammal(s) (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to size of the population); impacts on habitat affecting rates of recruitment or survival; and the effectiveness of monitoring and mitigation measures; in making a negligible impact determination.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There is no subsistence hunting for marine mammals in the waters off of the coast of California that implicates MMPA Section 101(a)(5)(D) and thus no potential for an unmitigable adverse effect on the availability of marine mammals for subsistence.

Endangered Species Act (ESA)

On July 13, 2009, NMFS Southwest Regional Office (SWRO) received the U.S. Army Corps of Engineers (ACOE) July 9, 2009, letter and Biological Assessment (BA), requesting initiation of informal consultation on the issuance of a Clean Water Act Section 404 permit to the Trinidad Rancheria to allow in-water work associated with the proposed action. The BA and informal consultation request were submitted for compliance with Section 7(a)(2) of the ESA, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations (50 CFR 402). On October 27, 2009, NMFS SWRO issued a Letter of Concurrence, concurring with the ACOE's determination that the proposed action is not likely to adversely affect Federally threatened Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*), California Coastal (CC) Chinook salmon (*Oncorhynchus tshawytscha*), and Northern California (NC) steelhead (*Oncorhynchus mykiss*). On November 30, 2009, the NMFS SWRO issued a separate letter assessing project effects relative to marine mammals protected under the Federal ESA. NMFS's letter concurred with the ACOE's determination that the proposed action may affect, but is not likely to adversely affect the Federally threatened Steller sea lion. The USFWS has informed the ACOE that a Section 7 consultation is not necessary for any of their jurisdictional species (*i.e.,* no listed species are likely to be adversely affected).

National Environmental Policy Act (NEPA)

The U.S. Army Corps of Engineers (ACOE), San Francisco District has prepared a permit evaluation and decision document that constitutes an Environmental Assessment (EA), Statement of Findings, and review and compliance determination for the proposed action, which analyzed the project's purpose and need, alternatives, affected environment, and environmental effects for the proposed action. NMFS has reviewed the ACOE EA for consistency with the regulations published by the Council of Environmental Quality (CEQ) and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, and will conduct a separate NEPA analysis to evaluate the effects of authorizing the proposed take of marine mammals prior to making a final determination on the issuance of the IHA. A copy of the ACOE EA is available upon request (see **ADDRESSES**). This notice, and referenced documents, including the BA, ACOE EA, and IHA application provide the environmental issues and information relevant to the construction activities as well as those specific to NMFS's issuance of the IHA. NMFS will review that information and any public comment provided in response to this notice when conducting its environmental review under NEPA and determining whether or not to issue a FONSI.

Essential Fish Habitat (EFH)

The ACOE requested consultation on EFH, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Pub. L. 104–267,

16 U.S.C 1801 *et seq.*) and its implementing regulations 50 CFR 600.920(a). The ACOE determined that the proposed action would adversely affect EFH for species managed under the Pacific Coast Salmon, Pacific Coast Groundfish, and Coastal Pelagics Fishery Management Plans. NMFS SWRO determined that the proposed action would adversely affect EFH for species managed under the Pacific Coast Salmon, Pacific Coast Groundfish, and Coastal Pelagics Fishery Management Plans. Habitat will be lost during removal of wooden pilings; however, NMFS expected recolonization of the new pilings within a year. NMFS believes the proposed action has been designed to minimize and reduce the magnitude of potential effects during implementation of the proposed action. Therefore, NMFS provides no additional conservation recommendations. In addition, NMFS expects EFH will improve in the vicinity of the pier due to the following:

(1) Removal and replacement of creosote-treated wooden piles with CISS concrete pilings;

(2) A stormwater collection and treatment system where all stormwater will be collected and routed by gravity feed to an upland treatment cell that will provide detention, settling, and active filtering prior to complete infiltration;

(3) Reduced artificial lighting effects; and

(4) The HSU marine lab water intake associated with the pier will be fitted with NMFS-approved screens, minimizing the risk of entrainment of small prey fish species.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the Trinidad Rancheria for the harassment of small numbers (based on populations of the species and stock) of three species of marine mammals incidental to specified activities related to renovation of the Trinidad Pier, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed project and NMFS' preliminary determination of issuing an IHA (see **ADDRESSES**). Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 11, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–12067 Filed 5–17–11; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0026, Gross Collection of Exchange-Set Margins for Omnibus Accounts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to gross collection of Exchange-Set margins for Omnibus Accounts.

DATES: Comments must be submitted on or before July 18, 2011.

ADDRESSES: You may submit comments, identified by OMB Control Number 3038–0026, by any of the following methods:

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Mark Bretscher, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 525 W. Monroe, Suite 1100, Chicago, IL 60661.

Federal eRulemaking Portal: http://www.regulations.gov/search/index.jsp. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Mark Bretscher, (312) 596–0529; FAX (312) 596–0711; e-mail: *mbretscher@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Gross Collection of Exchange-Set Margins for Omnibus Accounts, OMB Control Number 3038–0026—Extension

Commission Regulation 1.58 requires that FCMs margin omnibus accounts on a gross, rather than a net, basis. The regulation provides that the carrying FCM need not collect margin for positions traded by a person through an omnibus account in excess of the amount that would be required if the same person, instead of trading through an omnibus account, maintained its own account with the carrying FCM.

The Commission estimates the burden of this collection of information as follows:

- *Estimated number of respondents:* 125.
- *Reports annually by each respondent:* 4.
- *Total annual responses:* 500.
- *Estimated average number of hours per response:* .08.
- *Annual reporting burden:* 40.

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of written records maintained in the last three years. Although the burden varies, such records may involve analytical work and analysis, as well as multiple levels of review.

Dated: May 12, 2011.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2011–12185 Filed 5–17–11; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Performance of Certain Functions by National Futures Association With Respect to Commodity Pool Operators

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and Order.

SUMMARY: The Commodity Futures Trading Commission (Commission) is authorizing the National Futures Association (NFA) to process: (1) Claims of exemption from certain Part 4 requirements for commodity pool operators (CPOs) with respect to pools whose units are listed and traded on a national securities exchange (Commodity ETFs); and (2) notices of exemption from registration as a CPO filed by independent directors or trustees of Commodity ETFs. Further, the Commission is authorizing NFA to maintain and serve as the official custodian of certain Commission records.

DATES: *Effective Date:* June 17, 2011.

FOR FURTHER INFORMATION CONTACT: Christopher W. Cummings, Special Counsel, Division of Clearing and Intermediary Oversight, or Barbara S. Gold, Associate Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, *telephone number:* (202) 418–5450; *facsimile number:* (202) 418–5528; and *electronic mail: ccummings@cftc.gov*, or *bgold@cftc.gov,* respectively.

I. Authority and Background

In a separate document published elsewhere in today's **Federal Register**, the Commission is announcing adoption of new Regulation 4.12(c), which makes available to the CPOs of Commodity ETFs relief from certain disclosure, reporting and recordkeeping requirements, and new Regulation 4.13(a)(5), which makes available relief from the requirement to register as a CPO for certain independent directors and trustees of Commodity ETFs.[1] Relief under each of the new regulations must be claimed by the filing of specified notices and in the case of Regulation 4.13(a)(5), certain additional statements. These filings are similar to filings currently made with NFA by CPOs seeking to claim relief under other provisions of Regulation 4.13.[2]

Section 8a(10) of the Commodity Exchange Act[3] (Act) provides that the Commission may authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provision of law, in accordance with rules adopted by such person and submitted to the Commission for approval or, if applicable, for review pursuant to Section 17(j) of the Act[4] and subject to the provisions of the Act applicable to registrations granted by the Commission. Section 17(*o*)(1) of the Act[5] provides that the Commission may require NFA to perform Commission registration functions in accordance with the Act and NFA rules. In this regard, the Commission notes that NFA has confirmed its willingness to perform certain functions that would otherwise be performed by the Commission.[6]

Upon consideration, the Commission has determined to authorize NFA, 90 days following publication of this Notice and Order in the **Federal Register**, to perform the following functions: (1) To process[7] notices of claim under Regulation 4.12(c) for exemption from certain Part 4 requirements; (2) to process notices of exemption pursuant to Rule 4.13(a)(5) from registration as a CPO; and (3) to maintain and to serve as the official custodian of records for such notices of claim for exemption. As discussed below, these functions involve exemption from certain disclosure, reporting and recordkeeping requirements for CPOs, and exemption from CPO registration for certain persons. This action is consistent with other action the Commission has taken with respect to delegating to NFA various responsibilities under Part 4 of the Commission's regulations.[8]

A. Exemption From Certain Part 4 Requirements for CPOs of Commodity ETFs

Regulation 4.12(c) makes available an exemption from certain disclosure, reporting and reporting requirements for registered CPOs of Commodity ETFs. To perfect the exemption, Regulation 4.12(d) requires eligible CPOs to file a notice of claim for exemption with NFA. By this Order, NFA is authorized to process claims for exemption filed by CPOs who meet the requirements set forth in Regulation 4.12(c).

B. Exemption From Registration as a CPO for Independent Directors or Trustees

Regulation 4.13(a)(5) makes available an exemption from CPO registration where a person is a director or trustee of a commodity pool solely to comply with the requirements under section 10A of the Securities Exchange Act of 1934, as amended, and any Securities and Exchange Commission rules and exchange listing requirements adopted pursuant thereto, that the pool have an audit committee comprised exclusively of independent directors or trustees. To perfect the exemption, Regulation 4.13(b) requires eligible persons to file a notice of exemption with NFA. By this Order, NFA is authorized to process claims for exemption filed by persons who meet the requirements set forth in Regulation 4.13(a)(5).

C. Recordkeeping Requirements

By prior orders, the Commission has authorized NFA to maintain various other Commission registration records and has certified NFA as the official custodian of such records for this agency.[9] The Commission has now determined, in accordance with its authority under Section 8a(10) of the Act, to authorize NFA to maintain and to serve as the official custodian of records for the claims required for the exemptions provided by Regulations 4.12(c) and 4.13(a)(5).

In maintaining the Commission's records pursuant to this Order, NFA shall be subject to all other requirements

[1] In the **Federal Register** release proposing new Regulations 4.12(c) and 4.13(a)(5), the Commission explained the origins and use of the term "Commodity ETF". 75 FR 54794, at 54795 (Sep. 9, 2010).

[2] 17 CFR 4.13 (2010). Commission regulations referred to herein may be accessed through the Commission's Web site at *http://www.cftc.gov*.

[3] 7 U.S.C. 12a(10) (2006). The Act also may be accessed through the Commission's Web site.

[4] 7 U.S.C. 21(j) (2006).

[5] 7 U.S.C. 21(*o*)(1) (2006).

[6] Letter from Robert K. Wilmouth, President of NFA, to Brooksley Born, Chairperson of the Commission, dated June 20, 1997.

[7] As used in this Notice and Order, the term "process" generally refers to the review of a notice for compliance with applicable requirements and, where necessary, advising the CPO of any deficiency related thereto.

[8] *See, e.g.,* 62 FR 52088 (Oct. 6, 1997), whereby the Commission delegated to NFA the authority to process various filings made under Part 4.

[9] *See, e.g.,* 75 FR 55310 (Sep. 10, 2010); 70 FR 2621 (Jan. 14, 2005); and 68 FR 12684 (Mar. 17, 2003).

and obligations imposed upon it by the Commission in existing or future Orders or regulations. In this regard, NFA shall also implement such additional procedures (or modify existing procedures) as are acceptable to the Commission and as are necessary: to ensure the security and integrity of the records in NFA's custody; to facilitate prompt access to those records by the Commission and its staff, particularly as described in other Commission Orders or regulations; to facilitate disclosure of public or nonpublic information in those records when permitted by Commission Orders or regulations and to keep logs as required by the Commission concerning disclosure of nonpublic information; and otherwise to safeguard the confidentiality of the records consistent with Section 8 of the Act and the Commission's regulations issued thereunder.

II. Conclusion and Order

The Commission has determined, in accordance with the provisions of Sections 8a(10) and 17(*o*)(1) of the Act, to authorize NFA to perform the following functions:

(1) To process notices of claim under Regulation 4.12(c) for exemption from compliance with certain Part 4 requirements, filed under Regulation 4.12(d) by the registered CPOs of Commodity ETFs;

(2) To process notices of exemption pursuant to Regulation 4.13(a)(5) from registration as a CPO, filed under Regulation 4.13(b) by independent directors or trustees of Commodity ETFs; and

(3) To maintain and to serve as the official custodian of records for the notices required by the regulations listed above.

NFA shall perform these functions in accordance with the standards established by the Act and Commission Orders and regulations promulgated thereunder, particularly Part 4 of the regulations and Commission Orders issued thereunder, and shall provide the Commission with such summaries and periodic reports as the Commission may determine are necessary for effective oversight of the functions delegated hereby.

These determinations are based upon the Congressional intent expressed in Sections 8a(10) and 17(*o*) of the Act that the Commission have the authority to delegate to NFA any portion of the Commission's registration responsibilities under the Act for purposes of carrying out these responsibilities in the most efficient and cost-effective manner.[10]

This Order does not, however, authorize NFA to render "no-action" positions, exemptions or interpretations with respect to applicable CPO disclosure, reporting, recordkeeping and registration requirements.

Nothing in this Order or in Section 8a(10) or 17(*o*) of the Act shall affect the Commission's authority to review NFA's performance of Commission functions listed in items (1) through (3) of Section II of this Order.

NFA is authorized to perform all functions specified herein until such time as the Commission orders otherwise. Nothing in this Order shall prevent the Commission from exercising the authority delegated herein. NFA may submit to the Commission for decision any specific matters that have been delegated to it, and Commission staff will be available to discuss with NFA staff issues relating to the implementation of this Order. Nothing in this Order affects the applicability of any previous Orders issued by the Commission concerning Part 4.

III. Cost-Benefit Analysis

Section 15(a) of the Act[11] requires the Commission to consider the costs and benefits of its actions before promulgating regulations under the Act or issuing certain orders. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a regulation or order, or to determine whether the benefits of the regulation or order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further 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 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 rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act.

Summary of proposed requirements. The Order would delegate to NFA the responsibility to process notices submitted by persons seeking to claim exemption under new provisions of Regulations 4.12 and 4.13, and to maintain and serve as the official custodian of those notices.

Costs. With respect to costs, the Commission has determined that there will be no costs to members of the public or persons subject to Commission regulation. Any costs to NFA will be insignificant, inasmuch as NFA is already responsible for performing the same processing functions with respect to existing provisions of the same regulations, and it has procedures in place to readily accommodate the notices to be submitted with respect to Regulations 4.12(c) and 4.13(a)(5).

Benefits. With respect to benefits, the Commission has determined that persons claiming exemption under new Regulations 4.12(c) and 4.13(a)(5) will be able to use the same procedure that is currently used for the other exemptive provisions of Part 4, and the Commission will not be required to devote any resources to performing functions that NFA is already performing.

Issued in Washington, DC, on May 5, 2011 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2011–11554 Filed 5–17–11; 8:45 am]

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[10] *See also,* Section 125 of the Commodity Futures Modernization Act of 2000, Public Law 106–554, 114 Stat. 2763, enacted December 21, 2000, which directed the Commission to report to Congress identifying, among other things, "the regulatory functions the Commission currently performs that can be delegated to a registered futures association."

[11] 7 U.S.C. 19(a) (2006).

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting Notice

The White House Council for Community Solutions gives notice of their following meeting:

DATE AND TIME: Friday, June 3, 2011, 8:30 a.m.–11:30 a.m. Eastern Daylight Time.

PLACE: The Council will meet in the Eisenhower Executive Office Building. This meeting will be streamed live for public viewing and a link will be available on the council's Web site: *http://www.serve.gov/communitysolutions.*

PUBLIC COMMENT: The public is invited to submit publicly available comments through the Council's Web site. To send statements to the Council, please send written statements to the Council's electronic mailbox at *WhiteHouseCouncil@cns.gov.* The

public can also follow the Council's work by visiting its Web site: *http://www.serve.gov/communitysolutions.*

STATUS: Open.

MATTERS TO BE CONSIDERED: The purpose of this meeting is to review what the Council has learned through its outreach and other efforts about the following: (1) Effective cross-sector collaborative initiatives and what makes them best practices, and (2) issues facing young Americans who are neither in school nor in the workplace and promising solutions to address this challenge.

CONTACT PERSON FOR MORE INFORMATION: Leslie Boissiere, Executive Director, White House Council for Community Solutions, Corporation for National and Community Service, 10th Floor, Room 10911, 1201 New York Avenue, NW., Washington, DC 20525. Phone (202) 606–3910. Fax (202) 606–3464. E-mail: *lboissiere@cns.gov.*

Dated: May 16, 2011.

Leslie Boissiere,

Executive Director.

[FR Doc. 2011–12368 Filed 5–16–11; 4:15 pm]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOCKET ID DOD–2011–OS–0055]

Defense Logistics Agency Revised Regulation 1000.22, Environmental Considerations in Defense Logistics Agency Actions

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice of Availability (NOA) of Revised Defense Logistics Agency Regulation.

SUMMARY: The Defense Logistics Agency (DLA) announces the availability of the Revised Defense Logistics Agency Regulation (DLAR) 1000.22. The revised regulation will implement the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality (CEQ) in the Code of Federal Regulations (CFR) (40 CFR parts 1500–1508) and all CEQ guidance documents and implementing instructions by establishing DLA policy and responsibilities for the early integration of environmental considerations into planning and decision-making. This revised DLAR supersedes DLAR 1000.22, June 1, 1981, and DLA Instruction (DLAI) 4103, Environmental Considerations in DLA Actions Abroad, effective October 18, 2004.

DATES: The public comment period will end June 17, 2011. Comments received by the end of the comment period will be considered when preparing the final version of the documents.

ADDRESSES: You may submit comments, identified by DOCKET ID: DOD–2011–OS–0055, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Phil.Dawson@dla.mil.* Include DOCKET ID: DOD–2011–OS–0055 in the subject line of the message.
- *Fax:* 703–767–5268.
- *Mail:* Mr. Phillip R. Dawson, Defense Logistics Agency, DLA Installation Support, Environmental Management, Room 2639, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221.
- *Hand Delivery/Courier:* Mr. Phillip R. Dawson, Defense Logistics Agency, DLA Installation Support, Environmental Management, Room 2639, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip R. Dawson at (703) 767–6303 during normal business hours Monday through Friday, from 8 a.m. to 4:30 p.m.

SUPPLEMENTARY INFORMATION: Please see the proposed Revised Regulation DLAR 1000.22 at *http://www.dla.mil/dlaps/fedreg/DraftDLAR1000–22(4–28–11).doc* and Categorical Exclusions Technical Support Document at *http://www.dla.mil/dlaps/fedreg/DLA_CATEX(3–17–2011).doc* which are housed on the Defense Logistics Agency Issuance Program website, DLA Publishing System (DLAPS).

Dated: May 13, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–12227 Filed 5–17–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0056]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on June 17, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 11, 2011, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 13, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DoDEA 28

SYSTEM NAME:

Department of Defense Education Activity Summer Workshop Application.

SYSTEM LOCATION:

Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense Education Activity (DoDEA) teachers, principals, assistant principals, instructional systems specialists, and area and district superintendents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of first name, last name, Social Security Number (SSN), renewal transportation agreement (is a yes or no answer on application whether employee will be on renewal transportation TDY orders to determine what orders need to be issued), name of area, name of district, name of school or organization, identification numbers assigned to each school and office facility, grade level, subjects taught, years with DoDEA, contact personal e-mail address, contact person, and contact phone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2164, Department of Defense Domestic Dependent Elementary and Secondary Schools; 20 U.S.C. 921–932, Overseas Defense Dependents Education; DoD Directive 1342.20, Department of Defense Education Activity; and E.O. 9397(SSN), as amended.

PURPOSE(S):

This online tool helps the staff members at all four levels (school, district, area, and headquarters) apply for educational workshops and allows the approving authorities to review accepted applications.

The Summer Workshop Application serves as a system to track and account for course application, approval, and registration, summer/recess appointment pay, and is used for the issuance of temporary duty travel orders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosure generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as routine use pursuant to 5 U.S.C. 55a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices also apply to this system.

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Files are retrieved by first name, and/or last name and identification numbers assigned to each school and office facility in DoDEA.

SAFEGUARDS:

Records are maintained in a secure facility. Physical entry is restricted by the use of locks and is accessible only to authorized personnel with appropriate badges. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Common Access Card and pin are required to access computerized data.

RETENTION AND DISPOSAL:

Records are maintained for five years (5) or five (5) years after completion of specified program (whichever is sooner) and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Professional Development Branch, Education Division, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, Virginia 22203–1635.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquires to the Privacy Act Officer, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, Virginia 22203–1635.

Request should contain the educator's full official name and signed in ink. Former employees must also include dates and places of employment.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquires to the DoDEA Freedom of Information Act Requester Service Center, 4040 North Fairfax Drive, Arlington, VA 22302–1635.

Requests should contain the applicant's full name and signed in ink. Former employees must also include dates and places of employment.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is provided by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–12228 Filed 5–17–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (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 reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The 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: Interested persons are invited to submit comments on or before July 18, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Information

Management and Privacy Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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 the respondents, including through the use of information technology.

Dated: May 13, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New Collection.

Title of Collection: Evaluation of the Individuals with Disabilities Education Act (IDEA) Technical Assistance and Dissemination (TA&D) Program.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Government, State Education Agencies, Local Education Agencies.

Total Estimated Number of Annual Responses: 1,035.

Total Estimated Number of Annual Burden Hours: 1,028.

Abstract: This data collection will focus on gathering relevant information on the Technical Assistance and Dissemination Program from program grantees and from officials at State Education Agencies (SEAs) and Part C lead agencies. This data collection will include two activities. The first activity will be a TA&D Program Grantee Questionnaire/Interview, which will yield detailed descriptive information of TA&D Program grantees' activities concerning the topic areas addressed by TA&D Program grantees, the practices and outcomes in particular on which grantees are focused, as well as the technical assistance products and services provided by the TA&D Program grantees and to whom they provide them. The second activity will be a state survey, which will provide information concerning the needs that SEAs and Part C lead agencies have for technical assistance to support the implementation of IDEA and support improvement of child outcomes, and the technical assistance services and products that have been accessed or received by selected staff at the state level from Office of Special Education Programs TA&D Program centers and their satisfaction with those services and products.

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 4615. 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 *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–12243 Filed 5–17–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, May 26, 2011, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee 37830, Conference Call Number: 1–866–659–1011, access code 3634371#.

FOR FURTHER INFORMATION CONTACT: Patricia J. Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–2347 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The purpose of the meeting is to consider a recommendation to DOE–EM on the Fiscal Year 2013 DOE–Oak Ridge EM Budget Request Prioritization.

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Patricia J. Halsey in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Patricia J. Halsey at the address or telephone number listed above. Requests must be received prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days prior to the meeting date due to the board needing to discuss and vote on this time-sensitive recommendation.

Minutes: Minutes will be available by writing or calling Patricia J. Halsey at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC, on May 13, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–12188 Filed 5–17–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Hydrogen and Fuel Cell Technical Advisory Committee (HTAC)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: The Hydrogen and Fuel Cell Technical Advisory Committee (HTAC) was established under section 807 of the Energy Policy Act of 2005 (EPACT), Public Law 109–58; 119 Stat. 849. The Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770, requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

DATES: Tuesday, June 14, 2011, 1 p.m.–6:30 p.m.; Wednesday, June 15, 2011, 8:30 a.m.–2 p.m.

ADDRESSES: Marriott Rochester Airport Hotel, 1890 Ridge Road West, Rochester, New York.

FOR FURTHER INFORMATION CONTACT: Send questions/comments to the following e-mail address: *HTAC@nrel.gov* or check the Web site at: *hydrogen.energy.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide advice, information, and recommendations to the Secretary on the program authorized by title VIII of EPACT.

Tentative Agenda: (Subject to change; updates will be posted on *http://hydrogen.energy.gov* and copies of the final agenda will available the date of the meeting).

- DOE Program Updates
- Industry Presentations
- HTAC Subcommittee Overviews
- Fuel Cell Users Group
- State Initiatives
- Open Discussion

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the meeting of HTAC and to make oral statements during the specified period for public comment. The public comment period will take place between 1 p.m. and 1:15 p.m. on June 14, 2011. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, e-mail *HTAC@nrel.gov* at least 5 business days before the meeting. Please indicate if you will be attending the meeting, whether you want to make an oral statement, and what organization you represent (if appropriate). Members of the public will be heard in the order in which they sign up for the public comment period. Oral comments should be limited to two minutes in length. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the committee will make every effort to hear the views of all interested parties and to facilitate the orderly conduct of business. If you would like to file a written statement with the committee, you may do so either by submitting a hard copy at the meeting or by submitting an electronic copy by e-mail to: *HTAC@nrel.gov.*

Minutes: The minutes of the meeting will be available for public review at *http://hydrogen.energy.gov.*

Issued at Washington, DC, on May 13, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–12193 Filed 5–17–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–73–001]

Commission Information Collection Activities (FERC–73); Comment Request; Submitted for OMB Review

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the Federal Register (76 FR 12090, 2/24/2011) requesting public comments. FERC received one comment on the FERC–73 and has made this notation in its submission to OMB and provides a summary of the comment and a response below.

DATES: Comments on the collection of information are due by June 17, 2011.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0019 for reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC11–73–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide.asp.* To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC11–73–001.

Users interested in receiving automatic notification of activity in FERC Docket Number IC11–73 may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp.* All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form No. 73 "Oil Pipelines Service Life Data" (OMB No. 1902–0019) is used by the Commission to implement the statutory provisions of sections 306 and 402 of the Department of Energy Organization Act, 42 U.S.C. 7155 and 7172, and Executive Order No. 12009, 42 FR 46277 (September 13, 1977). The Commission has authority over interstate oil pipelines as stated in the Interstate Commerce Act, 49 U.S.C. 6501 *et al.* As part of the information necessary for the subsequent investigation and review of an oil pipeline company's proposed depreciation rates, the pipeline companies are required to provide

service life data as part of their data submissions if the proposed depreciation rates are based on the remaining physical life calculations. This service life data is submitted on FERC Form No. 73.

The data submitted are used by the Commission to assist in the selection of appropriate service lives and book depreciation rates. Book depreciation rates are used by oil pipeline companies to compute the depreciation portion of their operating expense which is a component of their cost of service which in turn is used to determine the transportation rate to assess customers. FERC staff's recommended book depreciation rates become legally binding when issued by Commission order. These rates remain in effect until a subsequent review is requested and the outcome indicates that a modification is justified. The Commission implements these filings in 18 CFR parts 347 and 357.

Public Comment and FERC Response

The Commission received one comment from the Bureau of Economic Analysis (BEA). In that comment, BEA strongly supported the continued collection of data through the FERC Form No. 73. Their support stems from reliance on this data collection for key components of its economic statistics. Specifically, BEA uses the information on the service lives for petroleum pipeline companies to validate the lives in BEA's depreciation rates for petroleum pipelines. Moreover, these rates help BEA derive economic depreciation or consumption of fixed capital as part of the National Income and Product Accounts work BEA does.

In response, the FERC intends to work with BEA should there be a need to make any changes to this data collection.

Action: The Commission is requesting a three-year approval of the collection of data with no changes to the information that is collected on Form 73. This is a mandatory information collection requirement.

Burden Statement: Public reporting burden for this collection is estimated as follows:

Data collection	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)
FERC Form 73	3	1	40	120 hours

The estimated total cost to respondents is $8,214 [120 hours/2,080 hours [1] per year, times $142,372 [2] equals $8,214]. The cost per respondent annually is $2,738.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Dated: May 11, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–12120 Filed 5–17–11; 8:45 am]

BILLING CODE 6717–01–P

[1] Number of hours an employee works each year.

[2] Average annual salary per employee (including benefits and overhead).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1707–001; ER10–3302–001.

Applicants: Hess Corporation, Stuyvesant Energy L.L.C.

Description: Notice of Change in Status of Hess Corporation, *et. al.*

Filed Date: 05/12/2011.

Accession Number: 20110512–5030.

Comment Date: 5 p.m. Eastern Time on Thursday, June 02, 2011.

Docket Numbers: ER11–1850–001; ER11–1847–001; ER11–1846–001; ER11–1848–000; ER11–2598–004.

Applicants: Direct Energy Business, LLC, Direct Energy Marketing Inc., Direct Energy Services, LLC, Energy America, LLC, Gateway Energy Services Corporation.

Description: Direct Energy Business, LLC, et al. Notice of Non-Material Change in Status.

Filed Date: 05/11/2011.

Accession Number: 20110511–5199.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 01, 2011.

Docket Numbers: ER11–2424–004.

Applicants: Pinetree Power-Tamworth, Inc.

Description: Pinetree Power-Tamworth, Inc. submits tariff filing per 35.17(b): Pinetree Power-Tamworth, Inc.—Refiling of Tariff to be effective 12/31/9998.

Filed Date: 05/11/2011.

Accession Number: 20110511–5181.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 01, 2011.

Docket Numbers: ER11–2955–001.

Applicants: Louisville Gas and Electric Company.

Description: Louisville Gas and Electric Company submits tariff filing per 35: 05_12_11 Att O Compliance Filing to be effective 4/26/2011.

Filed Date: 05/12/2011.

Accession Number: 20110512–5042.

Comment Date: 5 p.m. Eastern Time on Thursday, June 02, 2011.

Docket Numbers: ER11–3294–001.

Applicants: Sempra Generation.

Description: Sempra Generation submits tariff filing per 35.17(b): Amendment to Sempra Generation FERC MBR Tariff Revision to be effective 5/10/2011.

Filed Date: 05/11/2011.

Accession Number: 20110511–5124.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 01, 2011.

Docket Numbers: ER11–3296–001.

Applicants: Mesquite Power, LLC.

Description: Mesquite Power, LLC submits tariff filing per 35.17(b): Amendment to Mesquite Power FERC MBR Tariff Revision to be effective 5/10/2011.

Filed Date: 05/11/2011.

Accession Number: 20110511–5127.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 01, 2011.

Docket Numbers: ER11–3297–001.

Applicants: Termoelectrica U.S., LLC.

Description: Termoelectrica U.S., LLC submits tariff filing per 35.17(b): Amendment to Termoelectrica US FERC MBR Tariff Revision to be effective 5/10/2011.

Filed Date: 05/11/2011.

Accession Number: 20110511–5128.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 01, 2011.

Docket Numbers: ER11–3548–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue Position V3–058 & V3–059 ?Original Service Agreement No. 2864 to be effective 4/11/2011.

Filed Date: 05/11/2011.

Accession Number: 20110511–5176.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 01, 2011.

Docket Numbers: ER11–3549–000.

Applicants: GenOn Potrero, LLC.

Description: GenOn Potrero, LLC submits tariff filing per 35.15: Notice of Cancellation to be effective 5/12/2011.

Filed Date: 05/11/2011.

Accession Number: 20110511–5180.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 01, 2011.

Docket Numbers: ER11–3550–000.

Applicants: Northern States Power Company (Wisconsin).

Description: Northern States Power Company (Wisconsin)'s 2010 Formula Rate Charges for Post-Retirement Benefits Other than Pensions.

Filed Date: 05/12/2011.

Accession Number: 20110512–5051.

Comment Date: 5 p.m. Eastern Time on Thursday, June 02, 2011.

Docket Numbers: ER11–3551–000.

Applicants: Glacial Energy of New York.

Description: Glacial Energy of New York submits tariff filing per 35.12: Glacial Energy of New York Market-Based Rates to be effective 5/13/2011.

Filed Date: 05/12/2011.

Accession Number: 20110512–5054.

Comment Date: 5 p.m. Eastern Time on Thursday, June 02, 2011.

Docket Numbers: ER11–3552–000.

Applicants: Glacial Energy of New England, Inc.

Description: Glacial Energy of New England, Inc. submits tariff filing per 35.12: Glacial Energy of New England, Inc. Market-Based Rate to be effective 5/13/2011.

Filed Date: 05/12/2011.

Accession Number: 20110512–5055.

Comment Date: 5 p.m. Eastern Time on Thursday, June 02, 2011.

Docket Numbers: ER11–3553–000.

Applicants: Glacial Energy of New Jersey, Inc.

Description: Glacial Energy of New Jersey, Inc. submits tariff filing per 35.12: Glacial Energy of New Jersey, Inc. Market-Based Rate Tariff to be effective 5/13/2011.

Filed Date: 05/12/2011.

Accession Number: 20110512–5056.

Comment Date: 5 p.m. Eastern Time on Thursday, June 02, 2011.

Docket Numbers: ER11–3554–000.

Applicants: Glacial Energy of California, Inc.

Description: Glacial Energy of California, Inc. submits tariff filing per 35.12: Glacial Energy of California, Inc. Market-Based Rate Tariff to be effective 5/13/2011.

Filed Date: 05/12/2011.

Accession Number: 20110512–5057.

Comment Date: 5 p.m. Eastern Time on Thursday, June 02, 2011.

Docket Numbers: ER11–3555–000.

Applicants: Glacial Energy of Illinois, Inc.

Description: Glacial Energy of Illinois, Inc. submits tariff filing per 35.12: Glacial Energy of Illinois, Inc. Market-Based Rate Tariff to be effective 5/13/2011.

Filed Date: 05/12/2011.

Accession Number: 20110512–5058.

Comment Date: 5 p.m. Eastern Time on Thursday, June 02, 2011.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM11–3–000.

Applicants: Xcel Energy Services Inc., Northern States Power Company, a Minnesota, Northern States Power Company, a Wisconsin.

Description: Application to Terminate Mandatory PURPA Purchase Obligation of Northern States Power Company, a Minnesota corporation and Northern States Power Company, a Wisconsin corporation.

Filed Date: 05/12/2011.

Accession Number: 20110512–5049.

Comment Date: 5 p.m. Eastern Time on Thursday, June 09, 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: May 12, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–12220 Filed 5–17–11; 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 rate filings:

Docket Numbers: ER11–2999–002.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits tariff filing per 35: Attachment C compliance filing to make images viewable in E–Tariff Viewer to be effective 4/1/2011.

Filed Date: 05/11/2011.

Accession Number: 20110511–5105.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 01, 2011.

Docket Numbers: ER11–3432–001.

Applicants: Torofino Physical Trading LLC.

Description: Torofino Physical Trading LLC submits tariff filing per 35.17(b): FERC Electric Tariff No.1 to be effective 6/24/2011.

Filed Date: 05/11/2011.

Accession Number: 20110511–5019.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 01, 2011.

Docket Numbers: ER11–3544–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.15: Notice of Cancellation of Letter Agreement AV Solar Ranch One Project to be effective 12/21/2010.

Filed Date: 05/11/2011.

Accession Number: 20110511–5000.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 01, 2011.

Docket Numbers: ER11–3545–000.

Applicants: Cincinnati Bell Energy LLC.

Description: Cincinnati Bell Energy LLC submits tariff filing per 35.13(a)(2)(iii: Cincinnati Bell Energy LLC to be effective 4/15/2011.

Filed Date: 05/11/2011.

Accession Number: 20110511–5029.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 01, 2011.

Docket Numbers: ER11–3546–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue No. W3–057; Original Service Agreement No. 2859 to be effective 4/11/2011.

Filed Date: 05/11/2011.

Accession Number: 20110511–5040.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 01, 2011.

Docket Numbers: ER11–3547–000.

Applicants: RG Steel Sparrows Point LLC.

Description: RG Steel Sparrows Point LLC submits tariff filing per 35.12: RG Steel MBRA ETariff Baseline Filing to be effective 5/11/2011.

Filed Date: 05/11/2011.

Accession Number: 20110511–5100.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 01, 2011.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF11–261–000.

Applicants: North Carolina State University.

Description: Form 556—Notice of self-certification of qualifying cogeneration facility status of Jacobs Engineering Group.

Filed Date: 05/11/2011.

Accession Number: 20110511–5016.

Comment Date: None Applicable.

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: May 12, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–12219 Filed 5–17–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–59–000]

Northwest Pipeline, GP; Notice of Availability of the Environmental Assessment for the Proposed Molalla Capacity Replacement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Molalla Capacity Replacement Project (Project) proposed by Northwest Pipeline GP (Northwest) in the above-referenced docket. Northwest requests authorization to abandon, construct, and operate certain natural gas pipeline facilities along its existing 2436 Camas/Eugene pipeline system in Marion and Clackamas Counties, Oregon.

The EA assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA). The FERC staff concludes that approval of the Project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Northwest proposes to construct, modify, and operate below and aboveground facilities along their existing Camas to Eugene pipeline system. Specifically, Northwest proposes to retire in-place approximately 15 miles of 16-inch-diameter pipeline and associated minor aboveground facilities; and to install approximately 7.8 miles of 20-inch-diameter pipeline loop and the necessary appurtenant facilities.

The EA has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site at *http://www.ferc.gov* using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at:

Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that the FERC receives your comments in Washington, DC on or before June 13, 2011.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (CP11–59–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. An *eComment* is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP11–59). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Dated: May 11, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–12117 Filed 5–17–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–68–000]

Equitrans, L.P.; Notice of Availability of the Environmental Assessment for the Proposed Sunrise Pipeline Project

The staff of the Federal Energy Regulatory Commission (Commission or FERC) has prepared this environmental assessment (EA) for the Sunrise Pipeline Project proposed by Equitrans, L.P.

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

(Equitrans) in the above referenced docket. This Project expands Equitrans' natural gas pipeline system in Pennsylvania and West Virginia in order to increase the natural gas delivery capacity to the northeast region of the United States by approximately 313,560 dekatherms per day and improve the reliability of its existing system.

The EA assesses the potential environmental effects of the Project construction and operation in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA). The FERC staff concludes that approval of the Project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed Sunrise Pipeline Project includes the following facilities in Greene County, Pennsylvania and Wetzel County, West Virginia:

- Approximately 44.4 miles of new pipeline varying from 16-inch to 24-inch-diameter, 2.6 miles of replacement pipeline, and retesting and uprating of 4.8 miles of pipeline;
- One new compressor station in Jefferson Township, Greene County, Pennsylvania;
- Aboveground facilities consisting of 5 interconnect sites (meter stations), 12 mainline block valves, 4 pig [1] launchers/receivers, 2 over-pipeline protection facilities, and 1 side tap valve setting; and
- Temporary and permanent access roads and temporary storage and contractor yards.

The EA has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site at *http://www.ferc.gov* using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Regulatory Energy Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state and local government agencies; elected officials; environmental and public interest groups; Native American tribes; local libraries and newspapers; intervenors to the FERC's proceedings; and affected landowners, potentially affected landowners, and other interested individuals and groups.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that we receive your comments in Washington, DC on or before June 10, 2011.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number CP11–68–000 with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. An *eComment* is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* With eFiling you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "*eRegister.*" You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or,

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214) .[2] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, then on "General Search" and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP11–68). Be sure you have selected an appropriate date range. For assistance, please contact FERC online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Date: May 11, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–12118 Filed 5–17–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL11–40–000; QF03–140–001]

Roquette America, Inc.; Notice of Filing

Take notice that on May 9, 2011, pursuant to section 292.205(c) of the Federal Energy Regulatory Commission's (Commission) regulations implementing the Public Utility Regulatory Policies Act of 1978, as amended (PURPA), 18 CFR 292.205(c) (2010), Roquette America, Inc. (Roquette) filed a request for waiver of the operating and efficiency standards for a topping-cycle cogeneration facility located in Keokuk, Iowa (Facility). Roquette states that the waiver being requested is for calendar years 2010 and 2011 due to an unexpected equipment outage at the facility.

[1] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

[2] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion of filing comments electronically.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 31, 2011.

Dated: May 11, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–12119 Filed 5–17–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR11–8–000]

Flint Hills Resources Alaska, LLC; Notice of Petition for Declaratory Order

Take notice that on May 3, 2011, in accordance with Rule 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (18 CFR 385.207(a)(2)(2010)), Flint Hills Resources Alaska, LLC (Flint Hills) filed a petition for an order declaring that an as-yet unfiled, but anticipated, revision to the tariffs and documents governing transportation of crude oil on the Trans Alaskan Pipeline System (TAPS) is unjust, unreasonable and unduly discriminatory and therefore, unlawful.

Flint Hills states that the anticipated revision would impose a minimum temperature requirement of 105 degrees F for residual crude oil that Flint Hills returns to TAPS after the oil has been shipped 300 miles from Prudhoe Bay to Flint Hills' North Pole Refinery, where the crude oil is received at 40 degrees F, refined into products, with the residual stream returned to TAPS for resumption of its transportation to Valdez, Alaska.

Any person desiring to intervene or to protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 25, 2011.

Dated: May 11, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–12129 Filed 5–17–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14110–000]

Black Canyon Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 14, 2011, Black Canyon Hydro, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Black Canyon Hydroelectric Project (project) to be located on the North Fork of the Snoqualmie River, near North Bend, King County, Washington. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An approximately 35-foot-wide, 7-foot-tall inflatable dam; (2) a 90-foot-wide, 7-foot-tall diversion intake structure; (3) a 9-foot-wide, 7-foot-tall fish ladder; (4) a 7,300-foot-long, 12-foot-diameter penstock; (5) a 60-foot-long, 100-foot-wide metal powerhouse with two Francis turbine units, one rated at 16-megawatts (MW), the other rated at 9 MW; (6) a 150-foot-long, 40-foot-wide tailrace; (7) a 0.75-mile extension of the existing logging road; (8) a 4.2-mile-long, 115-kilovolt (kV) transmission line; and (9) appurtenant facilities. The estimated annual generation of the project would be 90,000 megawatt-hours.

Applicant Contact: Mr. Chris Spens, Licensing Manager, Black Canyon Hydro, LLC, 3633 Alderwood Avenue, Bellingham, Washington 98225; phone: (360) 738–9999.

FERC Contact: Kelly Wolcott; phone: (202) 502–6480.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14110–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: May 11, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–12116 Filed 5–17–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Desert Southwest Customer Service Region-Rate Order No. WAPA–152

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order Temporarily Extending Network Integration Transmission Service (NITS).

SUMMARY: This action is to temporarily extend the existing NITS formula rates for the Parker-Davis Project (P–DP), and the Pacific Northwest/Pacific Southwest Intertie Project (Intertie) and Ancillary Services Rates for Western Area Lower Colorado (WALC) Balancing Authority through September 30, 2013. The existing NITS and Ancillary Services formula rates expire on June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Darrick Moe, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2522, e-mail *moe@wapa.gov,* or Mr. Jack Murray, Rates Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2442, e-mail *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION: By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

The existing formula rates, approved under Rate Order No. WAPA–127 [1] became effective on July 1, 2006, and were approved through June 30, 2011. The existing rate formula methodology collects annual revenue sufficient to recover annual expenses, including interest and capital requirements, thus ensuring repayment of the project costs within the cost recovery criteria set forth in DOE Order RA 6120.2. Western also made the decision that the Desert Southwest and Rocky Mountain Regional Offices would work together in an attempt to make their Ancillary Service rate formulas consistent to the extent possible as a result of the operations consolidation of the two Regions. As a result, pursuant to 10 CFR 903.23(b), Western is temporarily extending the existing NITS formula rates for P–DP and Intertie, and WALC Ancillary Services formula rates, through September 30, 2013, unless the rate schedules are superseded prior to that date. This extension will provide the time Western needs to complete the informal and formal processes associated with the new rate formulas.

DOE regulations at 10 CFR 903.23(b) do not require Western to provide for a consultation and comment period or hold public information and comment forums. Following review of Western's proposal with DOE, I hereby approve Rate Order No. WAPA–152, which temporarily extends the existing NITS and Ancillary Services rate schedules PD–NTS2, INT–NTS2 and DSW–SD2, DSW–RS2, DSW–FR2, DSW–EI2, DSW–SPR2, DSW–SUR2 through September 30, 2013.

Dated: May 6, 2011.

Daniel B. Poneman,

Deputy Secretary.

Department of Energy Deputy Secretary

[Rate Order No. WAPA–152]

In the Matter of: Western Area Power Administration, Rate Extension for Desert Southwest Region Network Integration Transmission Service and WALC Ancillary Services Formula Rates.

Order Confirming and Approving a Temporary Extension of the Network Integration Transmission Service and Ancillary Services Formula Rates

Section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152) transferred to and vested in the Deputy Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated (1) the authority to develop power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). This rate extension is issued pursuant to the Delegation Order and DOE rate extension procedures at 10 CFR 903.23(b).

Background

Under Rate Order No. WAPA–127 the existing formula rates were approved for

[1] FERC confirmed and approved Rate Order No. WAPA–127 on November 21, 2006, in Docket No. EF06–5191–000. See *United States Department of Energy, Western Area Power Administration,* 117 FERC ¶ 62,172 (2006).

5 years effective July 1, 2006, through September 30, 2011. On June 30, 2011, the Network Integration Transmission Service (NITS) and Ancillary Services Rate Schedules will expire. Western is temporarily extending the NITS and Ancillary Services formula rates and rate schedules through September 30, 2013.

Discussion

Western is temporarily extending the existing P–DP and Intertie NITS and Ancillary Services formula rates for Western Area Lower Colorado (WALC) Balancing Authority pursuant to 10 CFR 903.23(b). The existing rate formula methodologies collect annual revenue sufficient to recover annual expenses (including interest) and capital requirements, thus ensuring repayment of the projects costs within the cost recovery criteria set forth in DOE Order RA 6120.2. Western has made the decision that the Desert Southwest and Rocky Mountain Region Regional Offices would work together in an attempt to make their Ancillary Services rate formulas consistent to the extent possible as a result of the operations consolidation of the two regions. Western is providing for this extension to allow for the evaluation of new rate requirements for Ancillary Services mandated under Western's Open Access Transmission Tariff and FERC Order No. 890 and adjustments to the formula rates. For these reasons, Western is temporarily extending the existing rate schedules PD–NTS2, INT–NTS2 and DSW–SD2, DSW–RS2, DSW–FR2, DSW–EI2, DSW–SPR2, DSW–SUR2 for NITS and Ancillary Services through September 30, 2013.

DOE regulations at 10 CFR 903.23(b) do not require Western to provide for a consultation and comment period or hold public information and comment forums and no such consultation and comment period or forums were provided for or held.

Order

In view of the above and under the authority delegated to me, I hereby extend for a period effective July 1, 2011, through September 30, 2013, the existing rate schedules PD–NTS2, INT–NTS2 and DSW–SD2, DSW–RS2, DSW–FR2, DSW–EI2, DSW–SPR2, DSW–SUR2 for NITS and WALC Ancillary Services.

Dated: May 6, 2011.

Daniel B. Poneman,

Deputy Secretary.

[FR Doc. 2011–12189 Filed 5–17–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0176; FRL–9307–9]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reformulated Gasoline and Conventional Gasoline: Requirements for Refiners, Oxygenate Blenders, and Importers of Gasoline; Requirements for Parties in the Gasoline Distribution Network

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on October 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 18, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0176 by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket EPA–HQ–OAR–2007–0176, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West building. 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–2007–0176. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *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: Jose Solar, Office of Transportation and Air Quality, Mail Code: 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9027; fax number: 202–343–2801; e-mail address: *Solar.Jose@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–207–176 which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC 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 Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in

the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are Refiners, Oxygenate Blenders, and Importers of Gasoline; Parties in the Gasoline Distribution Network.

Title: Reformulated Gasoline and Conventional Gasoline: Requirements for Refiners, Oxygenate Blenders, and Importers of Gasoline; Requirements for Parties in the Gasoline Distribution Network.

ICR numbers: EPA ICR No. 1591.25, OMB Control No. 2060–0277.

ICR status: This ICR is currently scheduled to expire on 10/31/11. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Gasoline combustion is the major source of air pollution in most urban areas. In the 1990 amendments to the Clean Air Act (Act), section 211(k), Congress required that gasoline dispensed in nine areas with severe air quality problems, and areas that opt-in, be reformulated to reduce toxic and ozone-forming emissions. Congress also required that, in the process of producing reformulated gasoline (RFG), dirty components removed in the reformulation process not be "dumped" into the remainder of the country's gasoline, known as conventional gasoline (CG). The Environmental Protection Agency (EPA) promulgated regulations at 40 CFR part 80, subpart D—Reformulated Gasoline, subpart E—Anti-Dumping, and subpart F—Attest Engagements, implementing the statutory requirements, which include standards for RFG (80.41) and CG (80.101). The regulations also contain reporting and recordkeeping requirements for the production, importation, transport and storage of gasoline, in order to demonstrate compliance and facilitate compliance and enforcement. The program is run by the Office of Transportation and Air Quality, Office of Air and Radiation. Enforcement is done by the Air Enforcement Division, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance. This program excludes California, which has separate requirements for gasoline.

The United States has an annual gasoline consumption of about 133 billion gallons, of which about 30% is RFG. In 2009 EPA received reports from 255 refineries, 60 importer facilities/facility groups, 44 oxygenate blending facilities, 21 independent laboratory facilities, and the RFG Survey Association, Inc. under this program.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1 hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 3,968.

Frequency of response: Quarterly, Annually, on Occasion.

Estimated total average number of responses for each respondent: 100 to 130.

Estimated total annual burden hours: 126,931 hours.

Estimated total annual costs: $38,675,442, which includes $24,713,032 in annualized capital, or O&M costs.

Are there changes in the estimates from the last approval?

There is a slight decrease in the total burden hours due to a change in reporting regulations. There is an increase in the total burden cost due to update in labor salaries.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to

announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: May 12, 2011.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 2011–12210 Filed 5–17–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2010–0757; FRL–9307–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Confidential Financial Disclosure Form 3110.48 for Special Government Employees (SGE) Serving on Federal Advisory Committees at the Environmental Protection Agency (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 17, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OA–2010–0757, to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28227T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Vicki Ellis, Office of Federal Advisory Committee Management and Outreach, Mail Code 1601M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–1203; fax number: 202–564–8129; e-mail address: *ellis.vicki@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 24, 2010, 75 FR 71687, EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OA–2010–0757, which is available for online viewing at w*ww.regulations.gov,* or in person viewing at the Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Environmental Information Docket is 202–566–9744.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Confidential Financial Disclosure Form 3110.48 for Special Government Employees (SGE) Serving on Federal Advisory Committees at the Environmental Protection Agency (Renewal).

ICR numbers: EPA ICR No. 2260.04, OMB Control No. 2090–0029.

ICR Status: This ICR is scheduled to expire on 5/31/2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The purpose of this information collection is to assist the United States Environmental Protection Agency (EPA or the Agency) in selecting Federal advisory committee members who will be appointed as Special Government Employees (SGEs), mostly to EPA's scientific and technical committees. To select SGE members as efficiently and cost effectively as possible, the Agency needs to evaluate potential conflicts of interest before a candidate is hired as an SGE and appointed as a member to a committee by EPA's Administrator or Deputy Administrator. Agency officials developed the "Confidential Financial Disclosure Form for Special Government Employees serving on Federal Advisory Committees at the U.S. Environmental Protection Agency," also referred to as Form 3110–48, for greater inclusion of information to discover any potential conflicts of interest as recommended by the Government Accountability Office.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average one hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

• *Respondents/Affected Entities:* Entities potentially affected by this action are approximately 300 candidates

for membership as Special Government Employees (SGEs) on EPA Federal Advisory Committees.

- *Estimated Number of Respondents:* 257.
- *Frequency of Response:* Annual.
- *Estimated Total Annual Hour Burden:* 257.
- *Estimated Total Annual Cost:* $27,139. There is no capital investment or maintenance and operational costs.

Changes in the Estimates: The burden estimates have been changed to reflect an increase of respondent costs to complete the form to cover the next three years. There is no increase of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

Dated: May 12, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–12209 Filed 5–17–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0904; FRL–9307–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Transition Program for Equipment Manufacturers (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 17, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–0904, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nydia Yanira Reyes-Morales, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 6403J, Washington, DC 20460; telephone number: 202–343–9264; fax number: 202–343–2804; e-mail address: *reyes-morales.nydia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 14, 2010 (75 FR 63171), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–2007–0904, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC 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 Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Transition Program for Equipment Manufacturers (Renewal).

ICR numbers: EPA ICR No. 1826.05, OMB Control No. 2060–0369.

ICR Status: This ICR is scheduled to expire on May 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: When EPA establishes new regulations with tighter engine emission standards, engine manufacturers often need to change the design of their engines to achieve the required emissions reductions. Consequently, original equipment manufacturers (OEMs) may also need to redesign their products to accommodate these engine design changes. Sometimes, OEMs have trouble making the necessary adjustments by the effective date of the regulations. In an effort to provide OEMs with some flexibility in complying with the regulations, EPA created the Transition Program for Equipment Manufacturers (TPEM). Under this program, OEMs are allowed to delay compliance with the new standards for up to seven years as long as they comply with certain limitations. Participation in the program is voluntary. Participating OEMs and engine manufacturers who provide the noncompliant engines are required to keep records and submit reports of their activities under the program.

The information is collected for compliance purposes by the Engine Programs Group, Certification and Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation. Confidentiality of proprietary information is granted in accordance with the Freedom of Information Act, EPA regulations at 40 CFR 2, and class determinations issued by EPA's Office of General Counsel.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 51 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the

existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by these actions are manufacturers of compression-ignition engines and equipment.

Estimated Number of Respondents: 405.

Frequency of Response: Annually and on occasion.

Estimated Total Annual Hour Burden: 40,090.

Estimated Total Annual Cost: $4,086,455, includes $1,061,650 O&M costs.

Changes in the Estimates: There is an increase of 31,543 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. Total burden has increased significantly due to a sharp increase in the estimated number of participants. Tighter Tier 4 standards have resulted in engine manufacturers not being able to provide their customers with compliant engines in time for the effective date of the new regulations. This has meant that equipment manufacturers who did not previously participate in TPEM now need the program to reach the gap between the effective date of the regulations and the date when compliant engines are ready. A significant number of participants will also be added when the small Si program starts in 2011. EPA expects at least 150 new participants from that industry alone.

Dated: May 12, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–12217 Filed 5–17–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0037; FRL–8869–8]

Federal Plan for Certification of Applicators of Restricted Use Pesticides Within Indian Country; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing its intention to implement a Federal program to certify applicators of restricted use pesticides in Indian country. The program will be administered by EPA. EPA is soliciting comments on EPA's intent to implement a Federal certification program in Indian country where no other EPA-approved or EPA-implemented plan applies and on its *Proposed Federal Plan for Certification of Applicators of Restricted Use Pesticides within Indian Country* (Plan). A separate proposal and public comment period for a Federal certification plan to address use of restricted use pesticides in Region 8 Indian country was recently published in the **Federal Register** on April 20, 2011.

DATES: Comments must be received on or before July 5, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0037, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket EPA–HQ–OPP–2011–0037. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Nicole Zinn, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–7076; e-mail address: *zinn.nicole@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This notice applies to individuals and businesses who are seeking certification to apply restricted use pesticides (RUPs) as defined by EPA in Indian country where no EPA-approved plan or EPA-implemented plan applies. This action may, however, be of interest to those involved in agriculture and anyone involved with the distribution and application of pesticides for agricultural purposes. Others involved with pesticides in a non-agricultural setting may also be affected. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions

regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through 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:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. 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.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

In addition to the sources listed in this unit, you may obtain copies of the Plan, other related documents, or additional information by contacting Nicole Zinn at the address listed under **FOR FURTHER INFORMATION CONTACT**.

II. What action is the agency taking?

EPA is announcing its intention to implement a Federal program to certify applicators of restricted use pesticides (RUPs) in Indian country and seeks public comment. This Federal certification Plan describes the process by which EPA will implement a program for the certification of applicators of RUPs in Indian country based upon the certification requirements enumerated at 40 CFR part 171. The Plan, in its entirety, is included in the docket.

III. Introduction

A. What is the background for this plan?

Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, 7 U.S.C. 136 *et seq.,* the Administrator of EPA has the authority to classify all registered pesticide uses as either "restricted use" or "general use." Under FIFRA, pesticides (or the particular use or uses of a pesticide) that may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, including injury to the applicator, shall be classified for "restricted use." Section 3(d)(1)(C), 7 U.S.C. 136a(d)(1)(C). If the classification is made because of hazards to the applicator, the pesticide may only be applied by or under the direct supervision of a certified applicator. 7 U.S.C. 136a(d)(1)(C)(i), 136j(a)(2)(F). If the classification is made because of potential unreasonable adverse effects on the environment, the pesticide may only be applied by or under the direct supervision of a certified applicator or subject to such other restrictions as the Administrator may provide by regulation. 7 U.S.C. 136a(d)(1)(C)(ii), 136j(a)(2)(F). To be certified, an individual must be determined to be competent with respect to the use and handling of pesticides covered by the certification. 7 U.S.C 136i(a).

It was the intent of Congress that persons desiring to use restricted use pesticides should be able to obtain certification under programs approved by EPA, as reflected in sections 11 and 23 of FIFRA. 7 U.S.C. 136i, 136u. The regulations addressing Tribal and State development and submission of certification plans to EPA are contained at 40 CFR part 171. It is EPA's position that Tribal and State plans are generally best suited to the needs of that particular Tribe or State and its citizens. Tribes and States, however, are not required to develop their own plans. Where EPA has not approved a State or Tribal certification plan, the Agency is authorized to implement an EPA plan for the Federal certification of applicators of restricted use pesticides pursuant to sections 11 and 23 of FIFRA. 7 U.S.C. 136i, 136u; 40 CFR 171.11.

EPA has drafted a Plan for those areas of Indian country where no other EPA-approved or EPA-implemented plan applies. A separate proposal and public comment period for a Federal certification plan to address use of restricted use pesticides in Region 8 Indian country was recently published in the **Federal Register** on April 20, 2011 (76 FR 22096; FRL–8855–8).

B. What is the statutory authority for this plan?

The plan will be implemented under the authority of section 11(a)(1) of FIFRA, as amended by the Food Quality Protection Act of August 3, 1996, and regulations in 40 CFR 171.11. Additional enforcement authorities are found in sections 8, 9, 13, 14, and 23 of FIFRA.

C. Summary of the Plan

1. *Applicability.* EPA intends to implement this Federal certification plan in "Indian country," as defined in 18 U.S.C. 1151, where no other EPA-approved or EPA-implemented plan applies. "Indian country" is defined in 18 U.S.C. 1151 as:

> (a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;
>
> (b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and
>
> (c) All Indian allotments, the Indian titles to which have been extinguished, including rights-of-way running through the same.

Consistent with the statutory definition of Indian country, as well as Federal case law interpreting this statutory language, EPA treats lands held by the Federal government in trust for Indian Tribes that exist outside of formal reservations as informal reservations and, thus, as Indian country. For a list of Federally recognized Tribes as of October 2010, see the **Federal Register** (October 1, 2010; 75 FR 60810), available at: *http://www.bia.gov/idc/groups/vxraca/documents/text/idc011463.pdf.*

There are two types of applicators of restricted use pesticides: Private and commercial. A "private applicator" is defined as:

> A certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing an agricultural commodity on property owned or rented by the applicator or the applicator's employer or (if applied

without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person. 7 U.S.C. 136(e)(2).

A "commercial applicator" is defined as:

An applicator (whether or not the applicator is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as set forth in the definition of a private applicator. 7 U.S.C. 136(e)(3).

This Plan applies to both commercial and private applicators.

2. *Provisions of Plan.*—i. *Why is EPA developing a Plan?* The Plan will allow the certification of applicators and legal use of RUPs in those parts of Indian country where there are currently no mechanisms in place for such certification and use. RUPs cannot be legally used in Indian country unless EPA has explicitly approved a mechanism of certification for such an area. To date, EPA has not approved any state plan for the certification of applicators of restricted use pesticides in any area of Indian country. There are very few areas of Indian country for which there are approved non-Federal plans and only one area that is currently covered under a Federal plan.

ii. *To whom will the Plan apply?* The Plan will only apply to persons who intend to apply RUPs in Indian country excluding the areas of Indian country that are currently covered by another EPA-approved or EPA-implemented plan. Tribes may continue to pursue options available under 40 CFR 171.10 for their areas of Indian country, including seeking EPA approval of Tribal plans for such areas under 40 CFR 171.10(a)(2) or utilizing a state's certification program under 40 CFR 171.10(a)(1). An option implemented under 40 CFR 171.10 would replace this Federal plan for the relevant area of Indian country. For a list of Federally recognized Tribes as of October 2010, see the **Federal Register** available at: *http://www.bia.gov/idc/groups/xraca/documents/text/idc011463.pdf.* In the event that the Federal applicator certification regulations at 40 CFR 171.11 are revised, EPA will revisit the Plan to determine if modification of this Plan is necessary.

iii. *Certification procedures.* To become certified to use RUPs in Indian country, applicators must submit an application form to the EPA Regional Office that covers the Indian country where they wish to apply RUPs as well as proof of the valid Federal, state, or Tribal certification upon which their Federal certification will be based. The Form is available at *http://www.regulations.gov* under docket identification number EPA–HQ–OPP–2010–0723.

EPA is proposing that the certification on which the Federal certificate will be based must be from a state or Tribe with a contiguous boundary to the area of Indian country. EPA believes that this provision provides greater assurance that the applicator has the competency to apply RUPs on the contiguous area of Indian country. An exception will be included that the EPA Region has discretion to allow Federal certification under the plan based on a valid certification from another nearby state or Tribe.

Under 40 CFR 171.11(e), a Federal certificate expires 2 years after the date of issuance for commercial applicators and 3 years for private applicators, or until the expiration date of the original Federal, state, or Tribal certificate, whichever occurs first. A proposed rule is currently under development that will allow a Federal certification based on a valid Federal, state or Tribal certification, to expire when the original certificate expires, unless the certificate is suspended or revoked. If this amendment is finalized, the Agency will utilize the expiration date of the original valid certification.

Where EPA, as opposed to a Tribe or a state, implements a certification program, both FIFRA and the regulations require that EPA offer private applicators an option to be certified without taking an examination. See 7 U.S.C. 136i(a)(1), 40 CFR 171.11(d)(1). Therefore, in lieu of submitting proof of a valid Federal, state, or Tribal certification, private applicators also have the option of showing documentation that they have physically attended and completed an approved training course and self-study evaluation. Federal certification under this option is valid for four years from the date of issuance, unless suspended or revoked.

iv. *Commercial applicator categories.* EPA proposes to recognize the categories authorized in the original certificate, and commercial applicators will be authorized to apply RUPs in Indian country for uses covered in their underlying Federal, state or Tribal certificate. EPA is considering language that would generally exclude categories for sodium cyanide capsules used with ejector devices for livestock predator control and for sodium fluoroacetate used in livestock protection collars. Under this Plan, a Federal certificate would only include the sodium cyanide capsules and sodium fluoroacetate livestock protection collars categories if the relevant Indian Tribe for the area of Indian country at issue obtains its own registration for this product and conducts its own monitoring and supervision.

v. *Implementation.* EPA will administer routine maintenance activities associated with implementation of this Plan and will conduct inspections and take enforcement actions as appropriate. States, Tribes, and other Federal agencies that issued a certification upon which the Federal certification is based are not approved or authorized by EPA to assure compliance in Indian country with the Federal certification provided by this Plan. As with all cases where a non-Federal official uses Federal credentials to conduct inspections, when a Tribal inspector conducts an inspection under Federal credentials under a cooperative agreement with EPA, violations would be referred to EPA for enforcement action, as appropriate.

EPA may, if appropriate, deny, modify, suspend, or revoke the Federal certificate under this Plan. The applicant or Federal certificate holder has the right to request a hearing if EPA decides to modify, suspend, or revoke the Federal certificate. If EPA decides to deny, revoke, suspend or modify a Federal certificate, EPA will notify the agency that issued the original certificate upon which the Federal certificate was based.

If the Federal, state, or Tribal certificate upon which the Federal certificate is based is suspended, modified, or revoked, EPA will begin procedures to suspend, modify or revoke the Federal certification.

EPA will allow, during the 6 month period after publication of the final Plan, applicators to apply RUPs under the Plan in Indian country only for the categories for which they already have a valid state, Tribal or Federal certificate [1] if they submit a complete application to the appropriate EPA Region showing proof of a valid state, Tribal, or Federal certification.[2]

Beginning 6 months after publication of the final Plan, applicators who are covered under this Plan and have not received a written Federal certification from the appropriate EPA Region are

[1] Please see Section IX of the Plan and Unit III.C.2.d of this notice for commercial applicator categories recognized under the Plan, as there are proposed exceptions for sodium cyanide capsules used with ejector devices and sodium fluoroacetate used in livestock protection collars.

[2] Although predicated in part on the applicator's existing valid certification, any use permitted under this Plan is allowed and will be enforced only under Federal authority.

prohibited from applying RUPs in the Indian country of that Region.

IV. Specific Comments Are Sought

EPA is seeking comment on the entire Plan but would specifically like comments on the following issues:

1. *Notification to Tribes.* The Tribal Pesticide Program Council (TPPC) has requested that a notification provision be included in the Plan. This provision would require that applicators of RUPs notify the relevant Tribe before each RUP application that is made in Indian country. The Agency has questions as to whether this approach can be practically implemented without causing undue burden to applicators, the Tribes and the Agency.

We are interested in obtaining comment regarding the relative value of this approach as an actual requirement. On the one hand, requiring notification to Tribes prior to application could provide Tribes some benefit in knowing where and when RUP applications occur. EPA is concerned, however, that requiring notifications may impose resource burdens on Tribes to receive and review such notifications. The TPPC suggested a possibility that EPA could receive these notifications and post them publically for Tribes to access. However, EPA is not likely to have the capacity or resources to receive these notifications. EPA also notes that Tribes wishing to receive prior notification may wish to consider including relevant notification requirements under Tribal law. The Plan notes that applicators certified under the Plan are responsible for complying with any applicable Tribal requirements.

One alternative approach being considered is that EPA could post a list of Federal certifications issued under this Plan. As a matter of convenience, EPA could arrange the list geographically by state or by EPA Region such that certifications issued for all Indian country located in a particular state or EPA Region would be grouped together. This approach would provide EPA and Tribes easy access to the list of applicators who may legally apply RUPs within Indian country. EPA would like to know if this option would be useful to Tribes.

Another approach being considered is to have the Tribes provide a contact person to a website so that applicators would know who to contact to learn of any applicable Tribal requirements for a particular Tribe. Would this option be useful for Tribes? Would it be burdensome?

2. *Private applicator certification.* Under FIFRA section 11(a)(1), for Federal certification plans, EPA must offer a no-test option for private applicators. For more background, see Unit III.C. 2. (c) of this document. EPA proposes that private applicators who wish to obtain Federal certification under the no-test provision submit documentation of physical attendance and completion of an EPA-approved training and self-study evaluation. Are there any other suggestions to assure private applicator competence in the absence of passing a certification exam?

3. *Option to not participate in the Plan.* Some Tribes have indicated that they would prefer that the plan include an option for Tribes to not participate in the Plan (e.g., an "opt-out provision"). EPA has not proposed an opt-out provision in the Plan for several reasons. First, EPA believes that Tribes not wanting to participate in this Plan may still develop their own Tribal certification plan or pursue other available mechanisms under 40 CFR 171.10. Further, Tribes concerned about the application of RUPs in their Indian country may have the option of adopting additional restrictions on such applications through Tribal codes, laws, regulation or other applicable Tribal requirements. Additionally, EPA has not generally provided opt-out provisions for other actions under FIFRA. Other reasons EPA did not include an opt-out provision include:

- An opt-out approach does not allow EPA to adequately address the equity, safety and enforcement issues that occur in the absence of this Plan.
- There are resource and implementation burdens on Tribes, applicators and EPA that such a provision would impose.
- An opt-out provision presents communication difficulties to the regulated community, and thus makes compliance more difficult.

Please share your thoughts on this issue.

V. Consultation With Tribal Governments

In the absence of an EPA-approved certification program in areas of Indian county, EPA, consistent with its statutory authorities and the Federal government's trust responsibility to Federally-recognized Tribes, has worked with the Tribes, on a government-to-government basis, to appropriately develop a certification program that will help ensure the protection of human health and the environment in Indian country. EPA consulted with the Tribes on November 29 and December 13, 2010 to ensure development of a Federal plan that effectively meets their needs and those of restricted use pesticide applicators in Indian country.

During the consultations, several issues were discussed, such as the desire for notification to Tribes prior to RUP use, assuring the competency of private applicators, and the possibility of an opt-out provision in the Plan. EPA is specifically seeking comment on these issues as described in the previous section. Additional concerns were raised that we respect Tribal sovereignty, not require unfunded mandates, and provide adequate enforcement to assure RUPs are used legally and safely. EPA believes that the proposed Plan addresses all of these concerns.

In addition to the consultations dedicated specifically to this Plan, EPA has also worked closely with the Tribal Pesticide Program Council while developing this Plan.

EPA drafted the Federal plan in consultation with the Tribes consistent with, among other things, the following policies, orders and guidance: EPA Policy for the Administration of Environmental Programs on Indian Reservations, November 8, 1984; Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy, January 17, 2001; Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000 which was reaffirmed by Presidential memorandum, Tribal Consultation, November 5, 2009; and the Proposed EPA Policy on Consultation and Coordination with Indian Tribes, June 9, 2010.[3]

VI. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C.3501 *et seq.*), the information collection activities described in this document and the revised Information Collection Request (ICR), OMB Control No. 2070–0029, are currently going through the renewal/amendment process and will be reviewed by the Office of Management and Budget. As part of this process, EPA is proposing to implement a revised form designed specifically for pesticide applicators who wish to be certified in Indian country. EPA estimates the paperwork burden associated with completing this form to be 10 minutes per response. Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes

[3] The draft policy was published in the **Federal Register** for comment on December 15, 2010.

of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The information collection activities and the form are included in a separate public docket. See *http://www.regulations.gov,* docket identification number EPA–HQ–OPP–2010–0723.

List of Subjects

Environmental protection, Education, Pests and pesticides.

Dated: May 11, 2011.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2011–12226 Filed 5–17–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0909; FRL–8873–4]

Pesticide Reregistration Performance Measures and Goals; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of March 2, 2011, concerning the Agency's progress in meeting its performance measures and goals for pesticide reregistration during fiscal years 2009 and 2010. This document is being issued to correct two typographical errors.

FOR FURTHER INFORMATION CONTACT: Carol P. Stangel, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8007; e-mail address: *stangel.carol@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0909. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What does this correction do?

The preamble in FR Doc. 2011–4649, published in the **Federal Register** of March 2, 2011 (76 FR 11456) (FRL–8859–4), is corrected as follows:

1. On page 11458, Table 1, second column, first entry, correct "697" to read "679."

2. On page 11459, Table 1, second column, second entry, correct "1,214" to read "1,196."

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 5, 2011.

William L. Jordan,

Acting Director, Office of Pesticide Programs.

[FR Doc. 2011–12231 Filed 5–17–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9308–1]

Re-Proposal of Effluent Limits Under the NPDES General Permit for Oil and Gas Exploration, Development and Production Facilities Located in State and Federal Waters in Cook Inlet, AK (AKG–31–5000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA Region 10 today re-proposes six effluent limits for produced water under the National Pollutant Discharge Elimination System (NPDES) General Permit for Oil and Gas Exploration, Development and Production Facilities in State and Federal Waters in Cook Inlet, Permit No. AKG–31–5000 (Permit). The effluent limits subject to the re-proposal are: mercury, copper, total aromatic hydrocarbons (TAH), total aqueous hydrocarbons (TAqH), silver, and whole effluent toxicity (WET). As proposed, the Permit would continue to authorize discharges from exploration, development, and production facilities that are included in the Coastal and Offshore Subcategory of the Oil and Gas Extraction Point Source Category as authorized by Section 402 of the Clean Water Act (CWA or "the Act"), 33 U.S.C. 1342.

State Certification: Section 401 of the Act, 33 U.S.C. 1341, requires EPA to seek a certification from the State that the conditions of the re-proposed Permit are stringent enough to comply with State water quality standards. EPA obtained a draft certification from the Alaska Department of Environmental Conservation (ADEC) on May 3, 2011. EPA intends to seek a final certification from ADEC prior to issuing the final Permit. When the State issues certification, the State may impose more stringent conditions than are currently included in the Permit re-proposal to ensure compliance with State water quality standards. EPA would then be required to include the more stringent conditions from the State certification in the Permit pursuant to Section 401(d) of the Act, 33 U.S.C. 1341(d).

DATES: *Comments.* The public comment period on the re-proposed produced water effluent limits will be from the date of publication of this Notice until June 20, 2011. Comments must be received or post-marked by no later than midnight on June 20, 2011.

ADDRESSES: You may submit comments by any of the following methods. EPA will consider all comments prior to making its final decision.

Mail: Send paper copies to Hanh Shaw, Office of Water and Watersheds, Mail Stop OWW–130, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101–3140.

E-mail: Send electronic copies to *shaw.hanh@epa.gov.*

Fax: Fax copies to the attention of Hanh Shaw at (206) 553–0165.

Hand Delivery/Courier: Deliver copies to Hanh Shaw, Office of Water and Watersheds, Mail Stop OWW–130, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101–3140. Call (206) 553–1200 before delivery to verify business hours.

Viewing and/or Obtaining Copies of Documents. A copy of the Permit re-proposal, the fact sheet that fully explains the re-proposal, and a copy of the State's draft certification of reasonable assurance may be obtained or viewed at the following locations. (1) EPA Region 10 Library, Park Place Building, 1200 6th Avenue, Suite 900, Seattle, WA 98101–3140; (206) 553–

1289. (2) EPA, Region 10, Alaska Operations Office, 222 W 7th Avenue, #19, Room 537, Anchorage, AK 99513; (907) 271–5083. (3) EPA Web site *http://yosemite.epa.gov/r10/water.nsf/NPDES+Permits/Permits+Homepage.* (4) ADEC Anchorage office, 555 Cordova Street, Anchorage, AK 99501–2617. (5) ADEC Web site *http://www.dec.state.ak.us/water/index.htm.*

FOR FURTHER INFORMATION CONTACT: Hanh Shaw, Office of Water and Watersheds, U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue, Suite 900, Mail Stop OWW–130, Seattle, WA 98101–3140, (206) 553–0171, *shaw.hanh@epa.gov.*

SUPPLEMENTARY INFORMATION: On May 25, 2007, EPA issued the NPDES General Permit for Oil and Gas Exploration, Development and Production Facilities in State and Federal Waters in Cook Inlet, AKG–31–5000, effective July 2, 2007. On June 17, 2007, a petition for review was filed with the Ninth Circuit Court of Appeals (Court) by Cook Inletkeeper, Cook Inlet Fishermen's Fund, the Native Village of Nanwalek, and the Native Village of Port Graham (Petitioners) pursuant to Section 509(b)(1)(F) of the Act, 33 U.S.C. 1369(b)(1)(F). Among other things, Petitioners challenged the effluent limits in the Permit that became less stringent than the previous permit, claiming that these less stringent limits were not supported by an adequate antidegradation analysis. On March 15, 2010, EPA filed a Motion for Voluntary Remand (Motion). The Motion requested the Court to remand the less stringent produced water effluent limits for mercury, copper, TAH, TAqH, and WET to allow EPA to reconsider the inclusion of these limits in the Permit. On October 21, 2010, the Court issued a Memorandum which granted EPA's Motion, subject to specific reporting requirements (Ninth Circuit, Case No. 07–72420). As a result, the Court remanded the requested effluent limits to EPA. At the time EPA made its Motion to the Court, EPA inadvertently left out the less stringent silver effluent for produced water. This was an error and EPA should have included this limit in the remand request. Therefore, EPA has also included the silver effluent limit in this re-proposal.

Authority: This action is taken under the authority of Section 402 of the Clean Water Act as amended, 42 U.S.C. 1342. I hereby provide public notice of the Permit re-proposal in accordance with 40 CFR 124.10.

Dated: May 11, 2011.

Christine Psyk,

Associate Director, Office of Water and Watersheds, Region 10.

[FR Doc. 2011–12216 Filed 5–17–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 17, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Paul.Laurenzano@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review", (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Paul Laurenzano on (202) 418–1359.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0298.

Title: Tariffs (Other Than Tariff Review Plan)—Part 61.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 580 respondents; 1,160 responses.

Estimated Time per Response: 50 hours.

Frequency of Response: On occasion and biennial reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–155, 201–205, 208, 251–271, 403, 502 and 503.

Total Annual Burden: 58,000 hours.

Total Annual Cost: $945,400.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The information requested is not of a confidential nature. Respondents who believe certain information to be of a proprietary nature may solicit confidential treatment of their material in accordance with the procedures described in 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) to obtain the full three year clearance. There is no change in the reporting requirements. There is a $46,400 increase adjustment in the

annual cost. This is due to an increase in the Commission's filing fees.

Part 61 is designed to ensure that all tariffs filed by common carriers are formally sound, well organized, and provide the Commission and the public with sufficient information to determine the justness and reasonableness as required by the Communications Act of 1934, as amended, of the rates, terms and conditions of those tariffs.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–12133 Filed 5–17–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Economic Inclusion (ComE-IN); Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Economic Inclusion, which will be held in Washington, DC. The Advisory Committee will provide advice and recommendations on initiatives to expand access to banking services by underserved populations.

DATES: Thursday, June 2, 2011, from 8:45 a.m. to 3 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will be focused on the state of low- and moderate-income household finances, the future of economic inclusion efforts, and the FDIC Chairman's Award for Excellence in Serving the Needs of Low- and Moderate-Income Consumers. The agenda may be subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting. This ComE–IN meeting will be Webcast live via the Internet at: *http://www.vodium.com/goto/fdic/advisorycommittee.asp*. This service is free and available to anyone with the following systems requirements: *http://www.vodium.com/home/sysreq.html*. Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at *http://www.adobe.com/shockwave/download/download.cgi?P1_Prod_Version=ShockwaveFlash*. Installation questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed Internet connection is recommended. The ComE–IN meeting videos are made available on-demand approximately two weeks after the event.

Dated: May 13, 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2011–12152 Filed 5–17–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011741–016.

Title: U.S. Pacific Coast-Oceania Agreement.

Parties: A.P. Moller-Maersk A/S; CMA CGM S.A.; Hamburg-Sud; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW., Suite 1100; Washington, DC 20006.

Synopsis: The amendment eliminates Maersk Line's allocation on the PNW string and revises the allocations of the other parties accordingly.

Agreement No.: 012042–004.

Title: MOL/ELJSA Slot Exchange Agreement.

Parties: Evergreen Line Joint Service Agreement and Mitsui O.S.K. Lines, Ltd.

Filing Party: Susannah K. Keagle, Esq.; Nixon Peabody, LLP; Gas Company Tower; 555 West Fifth Street, 46th Floor; Los Angeles, CA 90013.

Synopsis: The amendment removes the parties' U.S. East Coast services from the agreement.

Agreement No.: 012126.

Title: Maersk Line/Dole Space Charter Agreement.

Parties: A.P. Moller-Maersk A/S and Dole Ocean Cargo Express, Inc.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The agreement authorizes Maersk Line to charter space to Dole in the trades between the U.S. Gulf coast and Guatemala and Honduras.

Agreement No.: 012127.

Title: Hoegh/Liberty Space Charter and Cooperative Working Agreement.

Parties: Hoegh Autoliners AS and Liberty Global Logistics LLC.

Filing Party: Anne E. Mickey, Esq.; Cozen O'Connor; 1627 I Street, NW., Suite 1100; Washington, DC 20006.

Synopsis: The agreement authorizes Hoegh to charter space to Liberty for U.S. military preference cargo on an "as needed-as available" basis between U.S. ports and ports worldwide.

By Order of the Federal Maritime Commission.

Dated: May 13, 2011.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2011–12233 Filed 5–17–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46

CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by e-mail at *OTI@fmc.gov.*

Allround Forwarding Holding, Inc. (NVO & OFF), 134 West 26th Street, New York, NY 10001, Officers: Hatto H. Dachgruber, President/Director, (Qualifying Individual), John Wellock, Vice President, Application Type: License Transfer.

Anker International, LLC (NVO & OFF), 738 Robinson Farms Drive, Marietta, GA 30068, Officer: Ford M. Orton, Sole Manager, (Qualifying Individual), Application Type: New NVO & OFF License.

Asian Link Logistics, LLC dba Best Global (NVO & OFF), 829 Graves Street, Kernersville, NC 27285, Officers: David W. Reich, Jr., Member Manager, (Qualifying Individual), Gary Surber, CFO, Application Type: Trade Name Change.

Bonaberi Shipping & Moving, Inc. (NVO & OFF), 1905 Virginia Avenue, Hyattsville, MD 20785, Officers: Tse E. Bangarie, President/Secretary/Treasurer, (Qualifying Individual), Charles A. Nguti, Board Member, Application Type: New NVO & OFF License.

Dunblare Import—Export Inc. (OFF), 13100 N.W. 113th Avenue Road, Medley, FL 33178, Officers: Mark D. Minors, Vice President/Treasurer, (Qualifying Individual), David Minors, President/Secretary, Application Type: New NVO License.

Hansa Meyer Global Transport USA, LLC dba Hansa Shipping LLC, (OFF), 712 Main Street, Suite 1820, Houston, TX 77002, Officers: Fritz Keller, Vice President (Marketing), (Qualifying Individual), Frank Scheibner, CEO/Pres./Sec./Treasurer, Application Type: Trade Name Change.

Nashrah Shipping & Logistics (Private) Limited dba, Nashrah Shipping and Logistics (NVO), Mezzanine Floor, Trade Ave., Tower 1, Hasrat Mohani Road, M1, Karachi, Pakistan, Officers: Syed Ali A. Zaidi, Director, (Qualifying Individual), Mohammed Aqil Maniar, CEO, Application Type: New NVO License.

Ocean Shipping Corporation (OFF), 1981 Jamaica Drive, Navarre, FL 32566, Officers: Alberto E. Puentes, President, (Qualifying Individual), Denise M. Puentes, Vice President/Secretary, Application Type: New OFF License.

Pacific Global Logistics, Inc. (NVO & OFF), 1500 Pumphrey Avenue, #105–106, Auburn, AL 36832, Officers: Joseph K. Ji, COO, (Qualifying Individual), Jong S. Yoon, CFO, Application Type: New NVO & OFF License.

Prolink, Inc. (NVO & OFF), 10341 SW 141 Street, Miami, FL 33176, Officer: Maria D. Ulloa, Pres./Sec./Treas./Director, (Qualifying Individual), Application Type: New NVO & OFF License.

Red Logistics Corp. (OFF), 2789 NW. 82nd Avenue, Doral, FL 33122, Officers: Gabriel A. Znidarcic, President, (Qualifying Individual), Claudio Baachi, Secretary/Treasurer, Application Type: New OFF License.

Rich Pacific USA, Inc. (NVO & OFF), 18605 E. Gale Avenue, #288, City of Industry, CA 91748, Officers: David Liu, President/CFO, (Qualifying Individual), Jenny Zhao, Secretary, Application Type: New NVO & OFF License.

Siati Express, Inc. (NVO & OFF), 6117 NW. 72nd Avenue, Miami, FL 33166, Officers: Jose F. Banderas, Director, (Qualifying Individual), Zinnia Y. Mora, Director, Application Type: New NVO & OFF License.

Solomon Emeke dba Desaiah Limited (NVO & OFF), 3696 Park Avenue, Ellicott City, MD 21043, Officer: Solomon Emeke, Sole Proprietor, (Qualifying Individual), Application Type: Add NVO Service.

TCRE Global, Inc. dba Joinus Worldwide Freight (NVO), 1201 S. Beach Blvd., #202, La Habra, CA 90631, Officers: Christina Han, President/CFO/Secretary, (Qualifying Individual), Terry Han, Vice President, Application Type: New NVO License.

Team Ocean Services, Inc. (NVO & OFF), 629 West Broadway Street, Winnsboro, TX 75494, Officers: Robert P. Imbriani, Vice President, (Qualifying Individual), Joe E. Brunson, President, Application Type: QI Change.

Time Winner Int'l Inc. dba Time Winner Int'l Express, (NVO & OFF), 20947 Currier Road, Unit P, Walnut, CA 91789, Officers: Janet V. Lau, Secretary, (Qualifying Individual), Ka Y. Shum, CEO, Application Type: New NVO & OFF License.

U.S. Group Consolidator, Inc. (NVO & OFF), 618 Glasgow Avenue, Suite #355, Inglewood, CA 90301, Officers: Andy C. Wu, Vice President, (Qualifying Individual), Barry Chu, President, Application Type: QI Change.

Uniglobal Logistics LLC (NVO), 39 Old Ridgebury Road, #N–1, Danbury, CT 06810, Officers: Robert H. Shellman, Manager/President, (Qualifying Individual), Cosmo J. Alberico, Treasurer, Application Type: New NVO License.

Dated: May 13, 2011.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2011–12225 Filed 5–17–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
018434N	K & S Freight Systems, Inc., 2801 NW. 74th Avenue, Suite 219, Miami, FL 33122	April 5, 2011.
020335NF	Intercontinental Cargo Enterprises, Inc., 8501 NW. 17th Street, Suite 120, Miami, FL 33126	March 16, 2011.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–12224 Filed 5–17–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License Number: 021932N.
Name: Cargolinx Inc.
Address: 6405 NW 36th Street, Suite 107, Miami, FL 33166.
Order Published: FR: 5/5/11 (Volume 76, No. 87, Pg. 25692).

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–12223 Filed 5–17–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 2813F.
Name: Vital International Freight Services, Inc.
Address: 5200 W. Century Blvd., Suite 290, Los Angeles, CA 90045.
Date Revoked: April 11, 2011.
Reason: Failed to maintain a valid bond.

License Number: 004093F.
Name: Marathon International Transport Services, LLP.
Address: 7100 Washington Avenue, South, Eden Prairie, MN 55344.
Date Revoked: April 23, 2011.
Reason: Failed to maintain a valid bond.

License Number: 4473N.
Name: Maromar International Freight Forwarders Inc. dba Maromar Shipping Line.
Address: 8710 NW. 99th Street, Medley, FL 33178.
Date Revoked: April 8, 2011.
Reason: Failed to maintain a valid bond.

License Number: 4677F.
Name: B.M. & P. International, Inc.
Address: 2150 East College Avenue, Suite B, Cudahy, WI 53110.
Date Revoked: April 28, 2011.
Reason: Failed to maintain a valid bond.

License Number: 10873F.
Name: Ameripack Services, Inc.
Address: 4696 NW. 74th Avenue, Miami, FL 33166.
Date Revoked: April 27, 2011.
Reason: Failed to maintain a valid bond.

License Number: 15191N.
Name: Conti-Mar, Inc.
Address: 4456 NW. 102nd Place, Doral, FL 33178.
Date Revoked: April 2, 2011.
Reason: Failed to maintain a valid bond.

License Number: 017925N.
Name: Elite Express Co., Inc.
Address: 1555 W. Willow Street, Long Beach, CA 90810.
Date Revoked: April 1, 2011.
Reason: Failed to maintain a valid bond.

License Number: 018088F.
Name: ILS-International Logistics Solutions, Inc.
Address: 1345 East Chandler Road, Building 1, Suite 205, Phoenix, AZ 85048.
Date Revoked: March 31, 2011.
Reason: Failed to maintain a valid bond.

License Number: 019818NF.
Name: Chumarks International Company Limited
Address: 3122 Fulton Street, Ground Floor, Brooklyn, NY 11208.
Date Revoked: April 22, 2011.
Reason: Failed to maintain valid bonds.

License Number: 018328F.
Name: Sentry Cargo International, Inc.
Address: 8322 NW. 68th Street, Miami, FL 33166.
Date Revoked: April 3, 2011.
Reason: Failed to maintain a valid bond.

License Number: 019868N.
Name: Zenith Logistic (USA) Inc.
Address: 175–01 Rockaway Blvd., Suite 218, Jamaica, NY 11434.
Date Revoked: April 27, 2011.
Reason: Failed to maintain a valid bond.

License Number: 019914NF.
Name: Princess Cargo.
Address: 646 West Pacific Coast Highway, Long Beach, CA 90806.
Date Revoked: April 18, 2011.
Reason: Failed to maintain valid bonds.

License Number: 020264N.
Name: Empire Shipping Co. Inc.
Address: 100 East Peddie Street, Newark, NJ 07114.
Date Revoked: April 2, 2011.
Reason: Failed to maintain a valid bond.

License Number: 020387N.
Name: Embarque M. Calvo, Inc.
Address: 1220 Brook Avenue, Bronx, NY 10456.
Date Revoked: April 7, 2011.
Reason: Failed to maintain a valid bond.

License Number: 020656F.
Name: Dulce Auto Import & Export, Inc.
Address: 15316 SW. 16th Terrace, Miami, FL 33185.
Date Revoked: April 15, 2011.
Reason: Failed to maintain a valid bond.

License Number: 021303N.
Name: Guzal Cargo Express Corp.
Address: 5561 NW. 72nd Avenue, Miami, FL 33166.
Date Revoked: April 28, 2011.
Reason: Failed to maintain a valid bond.

License Number: 021355N.
Name: LQ Logistic Inc.
Address: 820 S. Garfield Avenue, Suite 202, Alhambra, CA 91801.
Date Revoked: April 21, 2011.
Reason: Failed to maintain a valid bond.

License Number: 021715N.
Name: E–Z Cargo Inc.
Address: 501 New Country Road, Secaucus, NJ 07094.
Date Revoked: April 27, 2011.
Reason: Surrendered license voluntarily.

License Number: 022056N.
Name: Prolog Services Inc. dba PSI Ocean Freight Systems.
Address: 5803 Sovereign Drive, Suite 220, Houston, TX 77036.
Date Revoked: April 9, 2011.
Reason: Failed to maintain a valid bond.

License Number: 022232NF.
Name: Simos Logistics Co., Inc.
Address: 732 South Raven Road, Shourewood, IL 60404.
Date Revoked: April 7, 2011.

Reason: Failed to maintain valid bonds.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–12222 Filed 5–17–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 13, 2011.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *BankGuam Holding Company,* to become a bank holding company by acquiring 100 percent of Bank of Guam, both of Hagatna, Guam, and also elects to become a financial holding company.

Board of Governors of the Federal Reserve System, May 13, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–12194 Filed 5–17–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Independent Scientific Peer Review Panel Report: Evaluation of the Validation Status of an In Vitro Estrogen Receptor Transcriptional Activation Test Method for Endocrine Disruptor Chemical Screening: Notice of Availability and Request for Public Comments

AGENCY: Division of the National Toxicology Program (DNTP), National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Notice of availability and request for comments.

SUMMARY: The NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM), on behalf of the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), convened an independent international scientific peer review panel (hereafter, Panel) on March 29–30, 2011, to evaluate the validation status of the LUMI–CELL® (BG1Luc ER TA) test method, an *in vitro* transcriptional activation (TA) assay used to identify chemicals that can interact with human estrogen receptors (ERs). The Panel report is now available on the NICEATM–ICCVAM Web site at: *http://iccvam.niehs.nih.gov/docs/endo_docs/EDPRPRept2011.pdf* or by contacting NICEATM (see **ADDRESSES**). The report contains (1) the Panel's evaluation of the validation status of the test method and (2) the Panel's comments on the draft ICCVAM test method recommendations. NICEATM invites public comment on the Panel report.

DATES: Written comments on the Panel report should be received by July 5, 2011.

ADDRESSES: NICEATM prefers that comments be submitted electronically by e-mail to *niceatm@niehs.nih.gov.* Comments can also be submitted via the NICEATM–ICCVAM Web site at *http://iccvam.niehs.nih.gov/contact/FR_pubcomment.htm.* Written comments can be sent by mail or fax to Dr. Warren Casey, Deputy Director, NICEATM, NIEHS, P.O. Box 12233, Mail Stop: K2–16, Research Triangle Park, NC 27709; (fax) 919–541–0947. Courier address: NIEHS, NICEATM, 530 Davis Drive, Room 2035, Durham, NC 27713.

FOR FURTHER INFORMATION CONTACT: Dr. Warren Casey: (telephone) 919–316–4729, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

In January 2011, NICEATM announced the convening of an independent scientific peer review panel to review and comment on the draft background review document (BRD) summarizing available data, reliability and accuracy of the BG1Luc ER TA test method, the draft recommendations, as well as the availability of the draft documents for public comment (76 FR 4113). The Panel met in public session on March 29–30, 2011, at the Natcher Conference Center in Bethesda, MD. The Panel reviewed the draft ICCVAM BRD for completeness, errors, and omissions of any existing relevant data or information. The Panel also evaluated the information in the draft documents to determine the extent to which each of the applicable criteria for validation and acceptance of toxicological test methods (ICCVAM, 2003a) had been appropriately addressed. The Panel then considered the ICCVAM draft recommendations and commented on the extent that the recommendations were supported by the information provided in the draft BRD.

In January 2004, Xenobiotic Detection Systems, Inc. (XDS, Durham, NC) nominated their LUMI–CELL® BG1Luc ER TA test method for an interlaboratory validation study. This method uses BG–1 cells, a human ovarian carcinoma cell line that is stably transfected with an estrogen-responsive luciferase reporter gene to measure whether and to what extent a substance induces or inhibits TA activity via ER mediated pathways (Denison and Heath-Pagliuso, 1998). Included in the nomination package were test results from XDS for 56 of the 78 ICCVAM reference substances for agonist activity and 16 of the 78 ICCVAM reference substances for antagonist activity. These studies were funded primarily by an NIEHS Small Business Innovation Research (SBIR) grant (SBIR43ES010533–01).

In accordance with the ICCVAM nomination process, NICEATM conducted a preliminary evaluation of the nomination package to determine the extent to which it addressed the ICCVAM prioritization criteria and adherence to the ICCVAM recommendations for the standardization and validation of *in vitro* endocrine disruptor test methods (ICCVAM, 2003b). ICCVAM and the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM) recommended that the BG1Luc ER TA test method should be

considered a high priority for interlaboratory studies based upon the lack of adequately validated test methods and the regulatory and public health need for such test methods. Based on this evaluation, ICCVAM recommended that:

- The BG1Luc ER TA test method should be considered a high priority for interlaboratory validation studies as an *in vitro* test method for the detection of test substances with ER agonist and antagonist activity.
- Validation studies should include coordination and collaboration with the European Centre for the Validation of Alternative Methods (ECVAM) and the Japanese Center for the Validation of Alternative Methods (JaCVAM) and include one laboratory in each of the three respective geographic regions (United States, Europe, and Japan).
- In preparation for the interlaboratory validation study, XDS should conduct protocol standardization studies with an emphasis on filling data gaps in the antagonist protocol for the BG1Luc ER TA.

The NIEHS subsequently agreed to support the validation study in light of its role as one of the three NTP agencies, whose mission includes the development and validation of improved testing methods. Based on the results of this study, ICCVAM is now reviewing the validation status of this test method for identification of substances with *in vitro* ER agonist or antagonist activity. NICEATM and the ICCVAM Interagency Endocrine Disruptors Working Group prepared a draft BRD that provides a comprehensive description and the data from the validation study used to assess the accuracy and reliability of the BG1Luc ER TA test method. ICCVAM also developed draft recommendations for its use.

Availability of the Peer Panel Report

The Panel's conclusions and recommendations are detailed in the *Independent Scientific Peer Review Panel Report: Evaluation of the Validation Status of the BG1Luc4E2 ER TA (LUMICELL), an In Vitro Transcriptional Activation Assay Used to Identify Chemicals That Can Interact with Human Estrogen Receptors* which is available along with the draft documents reviewed by the Panel and the draft ICCVAM test method recommendations at *http://iccvam.niehs.nih.gov/methods/endocrine/PeerPanel11.htm.*

Request for Public Comments

NICEATM invites the submission of written comments on the Panel report. When submitting written comments, please refer to this **Federal Register** notice and include appropriate contact information (name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, if applicable). All comments received will be made publicly available via the NICEATM–ICCVAM Web site at *http://iccvam.niehs.nih.gov/methods/endocrine/PeerPanel11.htm.* ICCVAM will consider the Panel report along with public comments and comments made by SACATM at their June 16–17, 2011 meeting (67 FR 23323) when finalizing test method recommendations. Final ICCVAM recommendations will be published in an ICCVAM test method evaluation report, which will be forwarded to relevant Federal agencies for their consideration. The evaluation report will also be available to the public on the NICEATM–ICCVAM Web site at *http://iccvam.niehs.nih.gov/methods/endocrine/ERTA–TMER.htm* and by request from NICEATM (see **ADDRESSES** above).

Background Information on ICCVAM, NICEATM, and SACATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological and safety testing test methods that more accurately assess the safety and hazards of chemicals and products and that refine (decrease or eliminate pain and distress), reduce, and replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285l–3) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM and provides scientific and operational support for ICCVAM-related activities and conducts independent validation studies to assess the usefulness and limitations of new, revised, and alternative test methods and strategies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies applicable to the needs of U.S. Federal agencies. Additional information about ICCVAM and NICEATM can be found on the NICEATM–ICCVAM Web site (*http://iccvam.niehs.nih.gov).*

SACATM was established in response to the ICCVAM Authorization Act [Section 285l-3(d)] and is composed of scientists from the public and private sectors. SACATM advises ICCVAM, NICEATM, and the Director of the NIEHS and NTP regarding statutorily mandated duties of ICCVAM and activities of NICEATM. SACATM provides advice on priorities and activities related to the development, validation, scientific review, regulatory acceptance, implementation, and national and international harmonization of new, revised, and alternative toxicological test methods. Additional information about SACATM, including the charter, roster, and records of past meetings, can be found at *http://ntp.niehs.nih.gov/go/167.*

References

Denison MS, Heath-Pagliuso S. 1998. The Ah receptor: A regulator of the biochemical and toxicological actions of structurally diverse chemicals. Bull Environ Contam Toxicol 61(5): 557–568.

ICCVAM. 2003a. ICCVAM Guidelines for the Nomination and Submission of New, Revised, and Alternative Test Methods. NIH Publication No. 03–4508. Research Triangle Park, NC.

ICCVAM. 2003b. ICCVAM Evaluation of In Vitro Test Methods For Detecting Potential Endocrine Disruptors: Estrogen Receptor and Androgen Receptor Binding and Transcriptional Activation Assays.

Dated: May 11, 2011.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2011–12264 Filed 5–17–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Standards Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Standards Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and

certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The meeting will be held on June 22, 2011, from 9 a.m. to 3 p.m./Eastern Time.

Location: To Be Determined. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov.*

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups, including the Clinical Operations, Vocabulary Task Force, Clinical Quality, Implementation, and Enrollment Workgroups. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 25, 2011. Oral comments from the public will be scheduled between approximately 2 and 3 p.m./Eastern Time. Time allotted for each presentation will be limited to three minutes each. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: May 9, 2011.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2011–12107 Filed 5–17–11; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Policy Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The meeting will be held on June 8, 2011, from 10 a.m. to 4 p.m./Eastern Time.

Location: Renaissance Dupont Circle Hotel, 1143 New Hampshire Ave., NW., Washington, DC. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov.*

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups, including the Meaningful Use Workgroup, the Privacy & Security Tiger Team, the Information Exchange Workgroup, and the Quality Measures Workgroup. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 2, 2011. Oral comments from the public will be scheduled between approximately 3 and 4 p.m. Time allotted for each presentation is limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: May 9, 2011.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2011–12112 Filed 5–17–11; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Policy Committee's Workgroup Meetings; Notice of Meetings

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meetings.

This notice announces forthcoming subcommittee meetings of a federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

Name of Committees: HIT Policy Committee's Workgroups: Meaningful Use, Privacy & Security Tiger Team, Quality Measures, Governance, Adoption/Certification, and Information Exchange workgroups.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The HIT Policy Committee Workgroups will hold the following public meetings during June 2011: June 1st Meaningful Workgroup, 10 a.m. to 12 p.m./ET; June 3rd Privacy & Security Tiger Team, 2 p.m. to 4 p.m/ET; June 16th Privacy & Security Tiger Team, 2 p.m. to 4 p.m./ET; and June 30th Enrollment Workgroup, 1 p.m. to 4 p.m/ET.

Location: All workgroup meetings will be available via webcast; for instructions on how to listen via telephone or Web visit *http://healthit.hhs.gov*. Please check the ONC website for additional information or revised schedules as it becomes available.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, *Fax:* 202–690–6079, *e-mail: judy.sparrow@hhs.gov*. Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that affect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The workgroups will be discussing issues related to their specific subject matter, e.g., meaningful use, information exchange, privacy and security, quality measures, governance, or adoption/certification. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroup's meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: May 9, 2011.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2011–12110 Filed 5–17–11; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Standards Committee's Workgroup Meetings; Notice of Meetings

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meetings.

This notice announces forthcoming subcommittee meetings of a Federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

Name of Committees: HIT Standards Committee's Workgroups: Clinical Operations, Vocabulary Task Force, Clinical Quality, Implementation, and Privacy & Security Standards workgroups.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The HIT Standards Committee Workgroups will hold the following public meetings during June 2011: June 1st Vocabulary Task Force, 1 p.m. to 2:30 p.m./ET; June 6th Clinical Quality Workgroup, 2 p.m. to 3:30 p.m./ET; June 17th Clinical Operations Workgroup, 2 p.m. to 3:30 p.m./ET; June 20th Clinical Quality Workgroup, 10:30 a.m. to 12:30 p.m./ET; and Clinical Operations Workgroup, 10 a.m. to 12 p.m./ET.

Location: All workgroup meetings will be available via webcast; visit *http://healthit.hhs.gov* for instructions on how to listen via telephone or Web. Please check the ONC Web site for additional information as it becomes available. Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov* Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that affect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The workgroups will be discussing issues related to their specific subject matter, *e.g.,* clinical operations vocabulary standards, clinical quality, implementation opportunities and challenges, and privacy and security standards activities. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroups' meeting dates. Oral comments from the public will be scheduled at the conclusion of each

workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: May 9, 2011.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2011–12106 Filed 5–17–11; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Toxicology Program (NTP) Board of Scientific Counselors

AGENCY: National Toxicology Program (NTP), National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health.

ACTION: Meeting announcement and request for comments.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a meeting of the NTP Board of Scientific Counselors (BSC). The BSC is a federally chartered, external advisory group composed of scientists from the public and private sectors that provides primary scientific oversight to the NTP and evaluates the scientific merit of the NTP's intramural and collaborative programs.

DATES: The BSC meeting will be held on July 21, 2011. The deadline for submission of written comments is July 7, 2011, and for pre-registration to attend the meeting, including registering to present oral comments, is July 14. 2011. Persons needing interpreting services in order to attend should contact 301–402–8180 (voice) or 301–435–1908 (TTY). For other accommodations while on the NIEHS campus, contact 919–541–2475 or e-mail *niehsoeeo@niehs.nih.gov.* Requests should be made at least 7 business days in advance of the event.

ADDRESSES: The BSC meeting will be held in the Rodbell Auditorium, Rall Building at the NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709. Public comments on all agenda topics and any other correspondence should be submitted to Dr. Lori White, Designated Federal Officer for the BSC, Office of Liaison, Policy and Review, Division of NTP, NIEHS, P.O. Box 12233, K2–03, Research Triangle Park, NC 27709; telephone: 919–541–9834; fax: 919–541–0295; *whiteld@niehs.nih.gov.* Courier address: NIEHS, 530 Davis Drive, Room K2136, Morrisville, NC 27560.

FOR FURTHER INFORMATION CONTACT: Dr. Lori White (telephone: 919–541–9834 or *whiteld@niehs.nih.gov*).

SUPPLEMENTARY INFORMATION:

Preliminary Agenda Topics and Availability of Meeting Materials

- Report of the NIEHS/NTP Director
- Report of the NTP Associate Director
- Report on NTP Workshop: Role of Environmental Chemicals in the Development of Diabetes and Obesity
- Collaborative Transgenerational Studies
- Project Update: Characterization of Fungal Exposures
- Office of Report on Carcinogens Concept: Workshop on Permanent Hair Dyes
- Systematic Reviews in NTP Analysis Activities

The updated agenda, roster of BSC members, background materials, public comments, and any additional information, when available, will be posted on the BSC meeting Web site (*http://ntp.niehs.nih.gov/go/165*) or may be requested in hardcopy from the Designated Federal Officer for the BSC (see **ADDRESSES** above). Following the meeting, summary minutes will be prepared and made available on the BSC meeting Web site.

Attendance and Registration

The meeting is scheduled for July 21, 2011, beginning at 8 a.m. (Eastern Daylight Time) and continuing to adjournment. This meeting is open to the public with attendance limited only by the space available. Individuals who plan to attend are encouraged to register online at the BSC meeting Web site (*http://ntp.niehs.nih.gov/go/165*) by July 14, 2011, to facilitate planning for the meeting. Registered attendees are encouraged to access this Web site to stay abreast of the most current information regarding the meeting. The NTP is making plans to videocast the meeting through the Internet at *http://www.niehs.nih.gov/news/video/live.*

Request for Comments

Written comments submitted in response to this notice should be received by July 7, 2011. Comments will be posted on the BSC meeting Web site and persons submitting them will be identified by their name and affiliation and/or sponsoring organization, if applicable. Persons submitting written comments should include their name, affiliation (if applicable), phone, e-mail, and sponsoring organization (if any) with the document.

Time will be allotted during the meeting for the public to present oral comments to the BSC on the agenda topics. In addition to in-person oral comments at the meeting at the NIEHS, public comments can be presented by teleconference line. There will be 50 lines for this call; availability will be on a first-come, first-served basis. The available lines will be open from 8 a.m. until adjournment, although public comments will be received only during the formal public comment periods, which are indicated on the preliminary agenda. Each organization is allowed one time slot per agenda topic. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes at the discretion of the BSC chair. Persons wishing to present oral comments are encouraged to pre-register on the NTP meeting Web site, indicate whether they will present comments in-person or via the teleconference line, and list the topic(s) on which they plan to comment. The access number for the teleconference line will be provided to registrants by email prior to the meeting. Registration for oral comments will also be available on both meeting days, although time allowed for presentation by these registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register at the meeting.

Persons registering to make oral comments are asked to send a copy of their statement or PowerPoint slides to the Designated Federal Officer for the BSC (see **ADDRESSES** above) by July 14, 2011. Written statements can supplement and may expand the oral presentation. If registering on-site and reading from written text, please bring 40 copies of the statement for distribution to the BSC and NTP staff and to supplement the record.

Background Information on the NTP Board of Scientific Counselors

The BSC is a technical advisory body comprised of scientists from the public and private sectors that provides primary scientific oversight to the NTP. Specifically, the BSC advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology, neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. Members serve overlapping terms of up to four years. The BSC usually meets biannually.

Dated: May 11, 2011.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2011–12272 Filed 5–17–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–11–11FK]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Exploring the OSH Needs of Small Construction Business—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. In this capacity, NIOSH will conduct in-depth interviews designed to assess perceptions and opinions among the target audience, small construction business owners, and to provide content for the development of a survey to assess the occupational safety and health needs and motivators for seeking occupational safety and health (OSH) information among small construction business owners.

Exploring the OSH Needs of Small Construction Business is a four year field study for which the overall goal is to identify the occupational safety and health (OSH) needs of small construction businesses (SCBs), and to inform methods that will successfully motivate SCB owners to seek OSH training relevant to their unique work situations. The data gathered in this study regarding SCB owners businesses' specific training needs, motivational factors, and preferred information sources will be of significant practical value when designing and implementing future interventions.

As part of this project, a survey will be developed to assess SCB owners businesses' specific training needs, motivational factors, and preferred information sources. The proposed in-depth interviews described here are a critical step toward the development of this survey. Phase 1 of this project included interview development and revision. The goal of Phase 2 of this project is to gather key-informant perceptions and opinions among the target audience, small construction business owners in the greater Cincinnati area with 10 or fewer employees. Data gathered from in-depth interviews will provide response content for the development of a survey to assess the occupational safety and health needs and motivators for seeking OSH information among small construction business owners. That is, the results of these interviews will be analyzed to identify common sets of responses, and these responses will be used in the development of the survey mentioned above.

Construction had the most fatal injuries of any sector, with 1,178 fatalities in 2006 (21% of total) (U.S. Dept. of Labor, 2008). More than 79% of construction businesses employ fewer than 10 employees (CPWR, 2007), and this establishment size experiences the highest fatality rate within construction (U.S. Dept. of Labor, 2008). The need for reaching this population with effective, affordable, and culturally appropriate training has been documented in publications and is increasingly becoming an institutional priority at NIOSH. Given the numerous obstacles which small construction business owners face in effectively managing occupational safety and health (*e.g.,* financial and time constraints), there is a need for identifying the most crucial components of occupational safety and health training. Additionally, previous investigations suggest a need for persuading small construction business owners to seek out occupational safety and health training.

This interview will be administered to a sample of approximately 30 owners of construction businesses with 10 or fewer employees from the Greater Cincinnati area. The sample size is based on recommendations related to qualitative interview methods and the research team's prior experience.

Participants for this data collection will be recruited with the assistance of contractors who have successfully performed similar tasks for NIOSH in the past. Participants will be compensated for their time. The interview questionnaire will be administered verbally to participants in English.

Once this study is complete, results will be made available via various means including print publications and the agency Internet site. The information gathered by this project could be used by OSHA to determine guidelines for the development of appropriate training materials for small construction businesses. The results of this project will benefit construction workers by developing recommendations for increasing the effectiveness of occupational safety and health outreach methods specifically targeted to small construction businesses. Although beyond the scope of this study, it is expected that improved use of OSH programs will

lower rates of injuries and fatalities for workers.

NIOSH expects to complete data collection no later than May 2012. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
SCBs	30	1	1.5	45
Total				45

Dated: May 12, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–12171 Filed 5–17–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day-11–0109]

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 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Respiratory Protective Devices—42 CFR part 84—Regulation 0920–0109-Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This data collection was formerly named Respiratory Protective Devices 30 CFR part 11 but in 1995, the respirator standard was moved to 42 CFR part 84. The regulatory authority for the National Institute for Occupational Safety and Health (NIOSH) certification program for respiratory protective devices is found in the Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 577a, 651 *et seq.,* and 657(g)) and the Occupational Safety and Health Act of 1970 (30 U.S.C. 3, 5, 7, 811, 842(h), 844). These regulations have as their basis the performance tests and criteria for approval of respirators used by millions of American construction workers, miners, painters, asbestos removal workers, fabric mill workers, and fire fighters. Regulations of the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) also require the use of NIOSH-approved respirators. These regulations also establish methods for respirator manufacturers to submit respirators for testing under the regulation and have them certified as NIOSH-approved if they meet the criteria given in the above regulation. NIOSH, in accordance with 42 CFR Part 84: (1) Issues certificates of approval for respirators which have met specified construction, performance, and protection requirements; (2) establishes procedures and requirements to be met in filing applications for approval; (3) specifies minimum requirements and methods to be employed by NIOSH and by applicants in conducting inspections, examinations, and tests to determine effectiveness of respirators; (4) establishes a schedule of fees to be charged applicants for testing and certification, and (5) establishes approval labeling requirements. Information is collected from those who request services under 42 CFR part 84 in order to properly establish the scope and intent of request. Information collected from requests for respirator approval functions includes contact information and information about factors likely to affect respirator performance and use. Such information includes, but is not necessarily limited to, respirator design, manufacturing methods and materials, quality assurance plans and procedures, and user instruction and draft labels, as specified in the regulation.

The main instrument for data collection for respirator approval functions is the SAF, Standard Application for the Approval of Respirators, currently Version 7. A replacement instrument, SAF V.8, which collects the same information is available for applicants without the requisite software environment for V.7. Respirator manufacturers are the respondents (estimated to average 75 each year over the years 2011–2013) and upon completion of the SAF their requests for approval are evaluated. Although there is no cost to respondents to submit an application other than their time to participate, respondents requesting respirator approval are required to submit fees for necessary testing as specified in 42 CFR 84.20–22, 84.66, 84.258 and 84.1102. In calendar year 2010 $395,564.00 was accepted. Applicants are required to provide test data that shows that the respirator is capable of meeting the specified requirements in 42 CFR part 84. The requirement for submitted test data is likely to be satisfied by standard testing performed by the manufacturer, and no extra burden is expected.

42 CFR part 84 approvals offer corroboration that approved respirators are produced to certain quality standards. Although 42 CFR part 84 Subpart E prescribes certain quality standards, it is not expected that requiring approved quality standards will impose an additional cost burden over similarly effective quality standards that are not approved under 42 CFR Part 84. Manufacturers with current approvals are subject to site audits by the Institute or its agents. There is no fee associated with audits. Audits may occur periodically or as a result of a reported issue. An average of 61 site audits were conducted annually over the calendar years 2008–2010, and this rate is expected to continue.

There are no costs to the respondents other than their time. The total estimated annual burden hours are 138,840.

ESTIMATED ANNUALIZED BURDEN HOURS

Form	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs)	Total burden (in hrs)
Standard Application for the Approval of Respirators	75	8	229	137,400
Audit	60	1	24	1,440

Dated: May 11, 2011.

Carol E. Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–12170 Filed 5–17–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day-11–11FE]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Musculoskeletal Disorder (MSD) Intervention Effectiveness in Wholesale/Retail Trade Operations—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Under Public Law 91–596, sections 20 and 22 (Section 20–22, Occupational Safety and Health Act of 1970), NIOSH has the responsibility to conduct research to advance the health and safety of workers. In this capacity, NIOSH proposes to conduct a study to assess the effectiveness and cost-benefit of occupational safety and health (OSH) interventions for musculoskeletal disorders (MSDs) among wholesale/retail trade (WRT) workers.

In 2008, MSDs accounted for $15.2 billion or 28% of total direct workers compensation costs of illnesses or injuries in private industry. The WRT industry sector employs over 21 million workers or 19% of the workforce in private industry. MSDs accounted for 28% of the total non-fatal injuries and illnesses involving days away from work (DAW) in the WRT sector in 2008. The majority (91%) of these severe MSD cases were associated with overexertion during material handling. Identifying effective controls to reduce overexertion MSDs is a key step in reducing the overall injury/illness burden in the WRT sector. It follows that major NIOSH strategic goals in the WRT sector are to reduce MSDs in part, by assessing the effectiveness and cost-benefit of interventions. Most prior MSD intervention effectiveness studies have been quasi-experimental designs focused on short term workload assessments as outcomes. The studies have also been mixed in quality and findings. There is a clear need to conduct rigorous experimental research to define further the effectiveness and cost-benefit of MSD control interventions. A renewed partnership between NIOSH and the Ohio Bureau of Workers Compensation (OBWC) provides a timely opportunity to conduct such research in a relevant and efficient manner.

For the current study, NIOSH and the OBWC will collaborate on a multi-site intervention study at OBWC-insured WRT companies from 2011–2014. In overview, MSD engineering control interventions [stair-climbing, powered hand trucks (PHT) and powered truck lift gates (TLG)] will be tested for effectiveness in reducing self-reported back and upper extremity pain among 960 employees performing delivery operations in 72 WRT establishments using a prospective experimental design (multiple baselines across groups with randomization). These interventions were chosen because prior OBWC pilot studies indicated the interventions had a high level of acceptability to target employees and initial high effectiveness in reducing MSD risk factors and potential future MSDs. The costs of the interventions will be funded through existing OBWC funds and participating establishments. This study will provide important information that is not currently available elsewhere on the effectiveness of OSH interventions for WRT workers. This project fits the mission of CDC–NIOSH to conduct scientific intervention effectiveness research to support the evidenced based prevention of occupational injuries and illnesses.

For this study, the target population (people, groups or workplaces which might benefit from the MSD interventions being tested) includes United States WRT establishments (North American Industry Classification System codes 42–45) performing delivery operations. The sampling frame (segment of the target population) includes OBWC-insured WRT establishments performing delivery operations. The study sample (people, work groups or workplaces chosen from the sampling frame) includes OBWC-insured WRT establishments who volunteer to participate in the OBWC–NIOSH collaboration research project.

Twenty-four OBWC-insured WRT establishments will be recruited from each of three total employee categories (<20 employees, 20–99 employees, and 100+ employees) for a total of 72 establishments with 3,240 employees. The study sub-sample (people, work groups or workplaces chosen from the sampling frame) will be volunteer employees at OBWC-insured WRT establishments who perform material handling tasks related to the delivery

operations of large items (such as appliances, furniture, vending machines, furnaces, or water heaters) that are expected to be impacted by the powered hand truck (PHT) and truck lift gate (TLG) interventions. It is estimated that there will be 960 impacted employees in the recruited establishments, which will be paired according to previous WC loss history and establishment size. Within each pair, one establishment will be randomly chosen to receive the PHT or TLG intervention in the first phase, and the other will serve as a matched control until it receives the same intervention 12 months later.

The main outcomes for this study are self-reported low back pain and upper extremity pain collected using surveys every three months over a two-year period from volunteer WRT delivery workers at participating establishments. Individuals will also be asked to report usage of the interventions and material handling exposures every three months over two years. Individuals will also be asked to complete an annual health assessment survey at baseline, and once annually for two years. A 20% sample of survey participants will also be asked to participate in a clinical assessment of low back function at baseline, and once annually for two years. In order to maximize efficiency and reduce burden, a Web-based survey is proposed for the majority (95%) of survey data collection. All collected information will be used to determine whether there are significant differences in reported musculoskeletal pain and functional back pain score ratios (pre/post intervention scores) when intervention and control groups are compared, while controlling for covariates. Once the study is completed, results will be made available through the NIOSH Internet site and peer-reviewed publications.

In summary, this study will determine the effectiveness of the tested MSD interventions for WRT delivery workers and enable evidence based prevention practices to be shared with the greatest audience possible. NIOSH expects to complete data collection in 2014. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total burden (in hours)
Delivery Workers in Wholesale/Retail Trade (WRT) Operations.	Self-reported low back pain	960	9	5/60	720
	Self-reported upper extremity pain	960	9	5/60	720
	Self-reported specific job tasks and safety incidents.	960	9	5/60	720
	Self-reported general work environment and health.	960	3	10/60	480
	Informed Consent Form (Overall Study).	960	1	5/60	80
	Low Back Functional Assessment	192	3	20/60	192
	Informed Consent Form (Low Back Functional Assessment).	960	1	5/60	80
	Early Exit Interview	106	1	5/60	9
Total					3,001

Dated: May 12, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–12172 Filed 5–17–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–238]

Draft Alert Entitled "Preventing Occupational Respiratory Disease From Dampness in Office Buildings, Schools, and Other Nonindustrial Buildings"

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of draft document for public comment.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), announces the availability of a draft Alert entitled "Preventing Occupational Respiratory Disease from Dampness in Office Buildings, Schools, and other Nonindustrial Buildings" now available for public comment. The draft document and instructions for submitting comments can be found at: *http://nioshdev.cdc.gov/niosh/docket/review/docket238/default.html.* The purpose of this Alert is to provide workers and employers with information necessary for prevention of respiratory disease and proper response to damp building conditions. This guidance does not have the force and effect of the law.

Public Comment Period: Comments must be received by July 12, 2011.

ADDRESSES: Written comments may be submitted to the NIOSH Docket Office, identified by Docket Number NIOSH–238, by any of the following ways:

- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, 4676 Columbia Parkway, MS C–34, Cincinnati, Ohio 45226.
- *Facsimile:* (513) 533–8285.
- *E-mail: nioshdocket@cdc.gov.*

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Room 109, Cincinnati, Ohio 45226. The comment period for NIOSH–238 will close on July 12, 2011. All comments received will be available on the NIOSH Docket Web page at *http://www.cdc.gov/niosh/docket,* by August 9, 2011, and comments will be available in writing by request. NIOSH includes all comments received without change in the docket, including any personal information provided. All electronic comments should be formatted as

Microsoft Word. Please make reference to Docket Number NIOSH–238.

FOR FURTHER INFORMATION CONTACT: Michelle R. Martin, M.A., NIOSH/CDC, 1095 Willowdale Road, Morgantown, WV 26505, telephone (304) 285–5734, e-mail *mij2@cdc.gov.*

Dated: May 11, 2011.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2011–12166 Filed 5–17–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Time and Date: 8:30 a.m.–3:45 p.m., June 7, 2011.

Place: Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people. Teleconference available toll-free; please dial (877) 328–2816, Participant Pass Code 6558291.

Purpose: The Secretary, the Assistant Secretary for Health, and by delegation the Director, Centers for Disease Control and Prevention, are authorized under Sections 301 and 308 of the Public Health Service Act to conduct directly or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health. The Board of Scientific Counselors shall provide guidance to the Director, National Institute for Occupational Safety and Health on research and prevention programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings and disseminating results. The Board shall evaluate the degree to which the activities of the National Institute for Occupational Safety and Health: (1) Conform to appropriate scientific standards, (2) address current, relevant needs, and (3) produce intended results.

Matters to be Discussed: NIOSH Director update; NIOSH Carcinogen Policy; discussions on the Implementation of the National Academies Program Recommendations for Hearing Loss Prevention; Personal Protective Technologies; Health Hazard Evaluations; Construction Safety and Health; Traumatic Injury Prevention; Agriculture, Forestry and Fishing.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Roger Rosa, Executive Secretary, BSC, NIOSH, CDC, 395 E Street, SW., Suite 9200, Patriots Plaza Building, Washington, DC 20201, Telephone: (202) 245–0655, Fax: (202) 245–0664.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: May 11, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–12177 Filed 5–17–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Member Conflict Review, Program Announcement (PA) 07–318, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 1 p.m.–3 p.m., June 22, 2011 (Closed).

Place: National Institute for Occupational Safety and Health (NIOSH), CDC, 1095 Willowdale Road, Morgantown, West Virginia 26506, *Telephone:* (304) 285–6143.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of "Member Conflict Review, PA 07–318."

Contact Person for More Information: Bernadine Kuchinski, PhD, Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, Robert A. Taft Laboratories, 4676 Columbia Pkwy, MS C–7, Cincinnati, Ohio 45226; *Telephone:* (513) 533–8511.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: May 11, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–12179 Filed 5–17–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial review.

The meeting announced below concerns Affordable Care Act (ACA): Childhood Obesity Research Funding Opportunity Announcement (FOA) DP11–007, Panel A, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date:

7:30 p.m.–9 p.m., June 7, 2011 (Closed)

8:30 a.m.–5:30 p.m., June 8, 2011 (Closed)

8:30 a.m.–5:30 p.m., June 9, 2011 (Closed)

Place: Georgian Terrace Hotel, 659 Peachtree Street, NE., Atlanta, Georgia 30308, Telephone: (404) 989–8305.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of "Affordable Care Act (ACA): Childhood Obesity Research Funding Opportunity Announcement (FOA) DP11–007, Panel A," initial review.

Contact Person for More Information: Brenda Colley Gilbert, PhD, M.S.P.H., Director, Extramural Research Program Office, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., Mailstop K92, Atlanta, Georgia 30341, Telephone: (770) 488–6295, *BJC4@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 11, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–12173 Filed 5–17–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–237]

Strategy To Address Recommendations Issued by the Institute of Medicine in November 2010 Report; Comment Request

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public comment period.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH), National Personal Protective Technology Laboratory (NPPTL), requests input on the NIOSH, NPPTL strategy to address the recommendations issued by the Institute of Medicine (IOM) in the November 2010 report *Certifying Personal Protective Technologies: Improving Worker Safety.* The report focuses on the need for a consistent and risk-based approach to Personal Protective Technology (PPT) conformity assessment.

PUBLIC COMMENT PERIOD: Written or electronic comments must be received on or before July 1, 2011.

ADDRESSES: You may submit comments, identified by docket number NIOSH–237, by any of the following methods:

- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226
- *Facsimile:* (513) 533–8285
- *E-mail: nioshdocket@cdc.gov*

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226. All comments received will be available on the NIOSH Docket Web page at *http://www.cdc.gov/niosh/docket,* and in writing by request. NIOSH includes all comments received without change in the docket and the electronic docket, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: John Sporrer, NIOSH, NPPTL, Post Office Box 18070, Building 20, Pittsburgh, PA 15236; E-mail ppeconcerns@cdc.gov, telephone (412) 386–6435.

SUPPLEMENTARY INFORMATION: In the November 2010 report the Institute of Medicine (IOM) made three recommendations for advancing conformity assessment for Personal Protective Technologies (PPT) in the nation. These recommendations are:

(1) Develop and Implement Risk-Based Conformity Assessment Processes for Non-Respirator PPT; (2) Enhance Research, Standards Development, and Communication; and (3) Establish a PPT and Occupational Safety and Health Surveillance System.

The report may be accessed, for free, at: *http://www.nap.edu/catalog.php?record_id=12962.*

Conformity Assessment Components

NIOSH, NPPTL envisions that PPT conformity assessment can involve the following components: standards, testing, inspection, certification, registration, accreditation, supplier's declaration of conformity (SDoC), communication, post-market testing and evaluation, and health surveillance. NIOSH, NPPTL is already responsible for certifying respirators for use in the United States. The management responsibilities of PPT Program conformity assessment undertaken by NIOSH, NPPTL include developing the strategy to implement the IOM recommendations.

Near Term Strategy

NIOSH, NPPTL intends to implement a multi-year strategy to address Recommendation 1 of the IOM report to develop and implement risk-based conformity assessment processes for non-respirator PPT.

The impacts of non-compliance (consequences of failure to provide the expected protection) are best described in terms of their potential risk to the user and the independence and rigor of conformity assessment. This relationship is described in Gordon Gillerman's *Making the Confidence Connection* published in ASTM Standardization News (2004), which can be viewed at *http://www.astm.org/SNEWS/DECEMBER_2004/gillerman_dec04.html.*

Timeline To Address Recommendation 1

The timeline to address Recommendation 1 includes, but is not limited to the following activities conducted over a two year time period:

1. defining the standards to be included in the process;
2. identifying the PPE on the market which complies with current standards;
3. finalizing the conformity assessment terminology to be used in the effort;
4. defining low, medium, and high levels of risk;
5. assessing available sources (e.g. surveillance data) to document the risks of the PPE not working properly and the risks of noncompliance;
6. defining the level of conformity assessment, including configuration management, required for each level of risk; and
7. defining the types of PPE to be included in the framework to include those required by regulation, those desired by the user, and those that respond to specific health and safety needs in the marketplace.

NIOSH, NPPTL will develop a draft risk-based strategy and solicit public comment on the strategy. NIOSH, NPPTL will conduct face-to-face and virtual public meetings to discuss the PPT conformity assessment strategy during the strategy development process. The proposed strategy will be published and is expected to serve as a reference for standards development organizations.

Stakeholder input to the NIOSH, NPPTL strategy to address the recommendations provided in the IOM report may be submitted to NIOSH Docket 237 until July 1, 2011.

Dated: May 11, 2011.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2011–12167 Filed 5–17–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10292]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections 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.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* State Medicaid Health Information Technology (HIT) Plan, Planning-Advance Planning Document and Update, Implementation Advance Planning Document (IAPD) and Update, and Annual IAPD to implement section 4201 of the American Reinvestment and Recovery Act of 2009; *Use:* To assess the appropriateness of States' requests for Federal financial participation for expenditures under their Medicaid Electronic Health Record Incentive Program related to health information exchange, CMS staff will review the submitted information and documentation in order to make an approval determination for the APD. CMS is issuing an updated IAPD template to reduce the burden on States by clearly indicating the information required for a successful submission; *Form Number:* CMS–10292 (OMB #: 0938–1088); *Frequency:* Yearly, once, occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 448. (For policy questions regarding this collection contact Richard Friedman at 410–786–4451. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *July 18, 2011:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier CMS–10292, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 13, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–12244 Filed 5–17–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Free Clinics FTCA Program Application (OMB No. 0915–0293)—Revision

Under 42 U.S.C. 233(o) and HRSA BPHC Policy Information Notice 2011–02, "Free Clinics Federal Tort Claims Act (FTCA) Program Policy Guide," the FTCA Free Clinic Program requires free clinics to submit annual, renewal, and supplemental applications for the process of deeming qualified health care professionals, board members, officers, and contractors for FTCA malpractice insurance coverage. It is proposed that the application forms be modified to comply with the Patient Protection and Affordable Care Act section 10608, amending 42 U.S.C. 233(o)(1), as well as upgrade the application to provide for an electronic submission. The modifications include: (1) Inclusion of board members, officers, employees, and contractors into one comprehensive application, and (2) a fully electronic application that can be submitted electronically via e-mail or the internet. It is anticipated that these modifications will decrease the time and effort required by the current OMB approved FTCA application forms.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Free Clinics FTCA Program Application	200	1	200	14	2800
Total	200		200		2800

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments

should be received within 60 days of this notice.

Dated: May 12 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–12248 Filed 5–17–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities, Office of Science Policy, Office of the Director; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the meeting of the National Science Advisory Board for Biosecurity (NSABB).

Name of Committee: National Science Advisory Board for Biosecurity.

Date: June 23, 2011.

Time: 8:30 a.m. to 4 p.m. Eastern Daylight Time (Times are approximate and subject to change)

Agenda: Presentations and discussions regarding: (1) Update of Federal activities relevant to the mission of the NSABB; (2) review of proposed NSABB Culture of Responsibility Working Group Draft Report: "Guidance for Enhancing Personnel Reliability and Strengthening the Culture of Responsibility at the Local Level" and NSABB Outreach and Education Working Group Draft Report: "Strategies to Educate Non-Traditional Audiences about Dual Use Research in the Life Sciences: Amateur Biologists and Scientists in Non-Life Science Disciplines;" (3) update on activities of NSABB Working Groups on Codes of Conduct; International Engagement; and Journal Review Policies; (4) planning for future NSABB meetings and activities; and (5) other business of the Board.

Place: National Institutes of Health, Building 31, Center Drive, 6th Floor, Conference Room 6, Bethesda, Maryland 20892.

Contact Person: Ronna Hill, NSABB Program Assistant, NIH Office of Biotechnology Activities, 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892, (301) 496–9838, *hillro@od.nih.gov*.

Under authority 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established the NSABB to provide advice, guidance and leadership regarding federal oversight of dual use research, defined as biological research that generates information and technologies that could be misused to pose a biological threat to public health and/or national security.

The meeting will be open to the public, however pre-registration is strongly recommended due to space limitations. Persons planning to attend should register online at: *http://oba.od.nih.gov/biosecurity/biosecurity_meetings.html* or by calling Palladian Partners, Inc. (Contact: Joel Yaccarino at 301–650–8660). Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate these requirements upon registration.

This meeting will also be webcast. To access the webcast, as well as the draft meeting agenda and pre-registration information, connect to: *http://oba.od.nih.gov/biosecurity/biosecurity_meetings.html.* Please check this site for updates.

Any member of the public interested in presenting oral comments relevant to the mission of the NSABB at the meeting should notify the Contact Person listed on this notice. Interested individuals and representatives of an organization may submit a letter of intent, a brief description of the organization represented, and the short description of the oral presentation. Only one representative of an organization will be permitted to present oral comments. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments relevant to the mission of the NSABB. All written comments should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Dated: May 12, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12269 Filed 5–17–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIDCR Special Grants Review Committee; NIDCR Special Grants Review Committee: Review of F, K, and R03 Applications.

Date: June 9–10, 2011.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Raj K Krishnaraju, PhD, MS, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Rm 4AN 32J, Bethesda, MD 20892, 301–594–4864, *kkrishna@nidcr.nih.gov*.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel;

Agenda: Review Conference Grant Application (R13).

Date: June 30, 2011.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, NIH 6701 Democracy Blvd, Room 672, MSC 4878, Bethesda, MD 20892–4878, 301–594–4809, *mary_kelly@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 12, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12268 Filed 5–17–11; 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: Cardiovascular and Respiratory Sciences Integrated Review

Group; Lung Cellular, Molecular, and Immunobiology Study Section.

Date: June 1–2, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: George M Barnas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Basic Mechanisms of Cancer Therapeutics Study Section.

Date: June 6–7, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Lambratu Rahman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–451–3493, *rahmanl@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biobehavioral Regulation, Learning and Ethology.

Date: June 8, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Mark 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, *mark.lindner@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Molecular Neuropharmacology and Signaling Study Section.

Date: June 9–10, 2011.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Deborah L Lewis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–408–9129, *lewisdeb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Gastrointestinal Pathophysiology–1.

Date: June 20, 2011.

Time: 12 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Oral Biology.

Date: June 22, 2011.

Time: 2:30 p.m. to 5 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: Jean D. Sipe, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, 301/435–1743, *sipej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Healthcare Delivery and Methodologies.

Date: June 23–24, 2011.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Delia Olufokunbi Sam, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Vision Sciences and Technology.

Date: June 24, 2011.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington, DC Hotel, 999 Ninth Street, NW., Washington, DC 20001.

Contact Person: George Ann McKie, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, 301–996–0993, *mckiegeo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Biophysical and Biochemical Sciences.

Date: June 27–28, 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: Alexander Gubin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biological Chemistry and Biophysics.

Date: June 27–28, 2011.

Time: 8:30 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: Sergei Ruvinov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

Date: June 28–29, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Yuanna Cheng, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 435–1195, *Chengy5@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 12, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12267 Filed 5–17–11; 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, Longevity Consortium.

Date: June 9, 2011.

Time: 1 p.m. to 4 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.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Cellular Stress and Tissue Damage In Aging.

Date: July 7, 2011.

Time: 12 p.m. to 4 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: May 12, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12266 Filed 5–17–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Development of Dose-Optimized CT Imaging Protocols (2011/10).

Date: June 17, 2011.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Blvd., 242, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John K. Hayes, PhD, Scientific Review Officer, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, 301–451–3398, *hayesj@mail.nih.gov.*

Dated: May 12, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12230 Filed 5–17–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel; R25 Grant Review.

Date: May 23–24, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Robert Nettey, MD, Chef, Scientific Review Officer, National Institute on Minority Health and Health Disparities, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 496–3996, *netteyr@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: May 12, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12229 Filed 5–17–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2011–0035]

Privacy Act of 1974; Department of Homeland Security United States Coast Guard–024 Auxiliary Database System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue an existing Department of Homeland Security system of records titled, "Department of Homeland Security/United States Coast Guard–024 Auxiliary Database (AUXDATA) System of Records." This system of records will allow the Department of Homeland Security/United States Coast Guard to track and report contact, activity, performance, and achievement information about the members of its volunteer workforce element, the United States Coast Guard Auxiliary. As a result of the biennial review of this system, records have been updated in the "Retention and Disposal" category to reflect the specific retention schedules for personal information, Auxiliary qualifications information, Auxiliary activities information, information on facilities, and Auxiliarists. This updated system will be included in the Department of Homeland Security's inventory of record system.

DATES: Submit comments on or before June 17, 2011. This system will be effective

ADDRESSES: You may submit comments, identified by docket number DHS–2011–0035 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking.

All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

• *Docket:* For access to the docket, to read background documents, or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Eileen Yenikaliotis (202–475–3515), Privacy Officer, United States Coast Guard, 2100 2nd Street, SW., Washington, DC 20593. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C.§ 552a the Department of Homeland Security (DHS) United States Coast Guard (USCG) proposes to update and reissue an existing DHS system of records titled, "DHS/USCG–024 Auxiliary Database (AUXDATA) System of Records."

The AUXDATA system is the USCG's information system that tracks and reports contact, activity, performance, and achievement information about the members of its volunteer workforce element, the USCG Auxiliary. To become an Auxiliarist, an individual must be at least 17 years of age, be a U.S. citizen, and successfully complete an enrollment process that includes a background check conducted through the Coast Guard Security Center (SECCEN) and the Office of Personnel Management (OPM). Vessel ownership, aircraft ownership, radio station ownership, or special skills are desirable, but not mandatory. When an applicant's Auxiliary enrollment package is forwarded to the Coast Guard District Director of Auxiliary office, the information about the applicant is entered into the AUXDATA system. This places the applicant in an Auxiliary membership status of "Approval Pending" until the completion of the required background check. During this time, the applicant is issued an Employee Identification number and identified as an Auxiliarist with a membership status prior to the completion of the background check. The applicant can begin participating in training, Auxiliary activities, and get limited credit for the participation until the completion of the background check. The majority of applicants ultimately receive favorable background check results and their membership status is changed to "Initially Qualified" or "Basically Qualified" in AUXDATA depending upon their personal training history. If an applicant receives an unfavorable background check, the individual is disenrolled from the Auxiliary. The handling and retention of applicant information in AUXDATA is the same regardless of the duration of the membership and is archived until the record is destroyed/deleted 30 years after disenrollment.

As a result of the biennial review of this system, the "Retention and disposal" category has been amended as follows:

Information collected by AUXDATA is stored for a minimum of five years after the record is created, then retained and destroyed in accordance with USCG Commandant Instruction M5212.12 (series), Information and Life Cycle Management Manual, approved by the National Archives and Records Administration (NARA).

• Personal information (name, employee identification number, address, birth date, phone number) is destroyed/deleted 30 years after disenrollment or death of a member. (AUTH: N1–26–05–10)

• Item 2a Information on facilities (boats, radio stations or aircraft owned by Auxiliarists as well as facility identification numbers (e.g. boat license number) destroy/delete data 5 years after facility becomes inactive or is withdrawn from service. (AUTH: N1–26–05–10) Item 2c(1)

• Item 2b Auxiliary qualifications information (formal designations in program disciplines that result from successful completion of training regimens, for example: Class instructor, vessel examiner, boat coxswain, and certifications and licenses); Training Management Tool destroy/delete data 30 years after disenrollment or death of a member. (AUTH: N1–26–05–10)

• Item 2d Auxiliary activities information (patrols conducted, classes taught); destroy/delete data when no longer needed for administrative use or 5 years after final action is completed. (AUTH: N1–26–05–10)

Consistent with DHS' information sharing mission, information stored in the DHS/USCG Auxiliary Database (AUXDATA) System of Records may be shared with other DHS components, as well as appropriate federal, state, local, tribal, territorial foreign, or international government agencies. This sharing will only occur after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice. This updated system will be included in DHS' inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Below is the description of the DHS/USCG–024 Auxiliary Database System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS

DHS/USCG–024

SYSTEM NAME:

United States Coast Guard Auxiliary Database (AUXDATA).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the USCG Headquarters in Washington, DC, the USCG Operations Systems Center in Martinsburg, WV, and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

As of January 2011, the Auxiliary had approximately 30,400 members in active status and approximately 7,000 members in retired status (i.e., members who have 15 years of recorded Auxiliary membership but no longer desire to engage in Auxiliary activities). Categories of individuals covered by this system include all current and former USCG Auxiliarists, the volunteer workforce element of the USCG. This includes applicants who have submitted requisite information to the USCG as part of the enrollment process. The enrollment process entails submission of this information, verification of

proper age and U.S. citizenship, and completion of a background check conducted through the Coast Guard Security Center (SECCEN) and the Office of Personnel Management (OPM). Auxiliary enrollment ends upon disenrollment, retirement, or death. An Auxiliarist's AUXDATA records are archived upon the end of their enrollment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Personal information (name, employee identification number, address, birth date, phone number);
- Auxiliary qualifications information (formal designations in program disciplines that result from successful completion of training regimens, for example: class instructor, vessel examiner, boat coxswain, and certifications and licenses);
- Auxiliary activities information (patrols conducted, classes taught); and
- Information on facilities (boats, radio stations or aircraft-owned by Auxiliarists as well as facility identification numbers (e.g. boat license number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; The Federal Records Act, 44 U.S.C. 3101; 14 U.S.C. 632, 830, and 831; COMDTINST M16790.1 (series).

PURPOSE(S):

This system is the primary information management tool for the USCG Auxiliary program. As the repository for personal and activity data for Auxiliarists and the units they comprise, AUXDATA is routinely used at local, regional, and national USCG levels to measure and monitor the levels of support that the Auxiliary provides to USCG missions and to recognize Auxiliarists for their service. It also provides an inventory of Auxiliary surface, air, and radio facilities that are offered to and accepted for use by the USCG.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records of information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee of DHS in his/her official capacity;
3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;
2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and
3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on tape at the USCG Operations Systems Center in Martinsburg, WV.

RETRIEVABILITY:

Information may be retrieved by an individual's name and employee identification number (EMPLID).

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Information collected by AUXDATA is stored for a minimum of five years after the record is created, then retained and destroyed in accordance with Coast Guard Commandant Instruction M5212.12 (series), Information and Life Cycle Management Manual, approved by the National Archives and Records Administration (NARA).

- Personal information (name, employee identification number, address, birth date, phone number) is destroyed/deleted 30 years after

disenrollment or death of a member. (AUTH: N1–26–05–10)

• Item 2a Information on facilities (boats, radio stations or aircraft-owned by Auxiliarists as well as facility identification numbers (e.g. boat license number) destroy/delete data 5 years after facility becomes inactive or is withdrawn from service. (AUTH: N1–26–05–10) Item 2c(1)

• Item 2b Auxiliary qualifications information (formal designations in program disciplines that result from successful completion of training regimens, for example: Class instructor, vessel examiner, boat coxswain, and certifications and licenses); Training Management Tool Destroy/Delete data 30 years after disenrollment or death of a member. (AUTH: N1–26–05–10)

• Item 2d Auxiliary activities information (patrols conducted, classes taught); Destroy/Delete data when no longer needed for administrative use or 5 years after final action is completed. (AUTH: N1–26–05–10)

SYSTEM MANAGER AND ADDRESS:

United States Coast Guard, Office of Command, Control, Communications, Computers, and Sensors Capabilities (CG–761), United States Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001. United States Coast Guard, Office of Auxiliary and Boating Safety (CG–542), United States Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to United States Coast Guard, Office of Command, Control, Communications, Computers, and Sensors Capabilities (CG–761), United States Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001. United States Coast Guard, Office of Auxiliary and Boating Safety (CG–542), United States Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001.

When seeking records about yourself from this system of records or any other USCG system of records your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

• An explanation of why you believe the Department would have information on you,

• Specify when you believe the records would have been created,

• If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the USCG may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Records are obtained from forms completed by USCG Auxiliary members.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: April 19, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–12029 Filed 5–17–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. USCG–2011–0144]

Towing Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Towing Safety Advisory Committee (TSAC) will meet June 16, 2011, in Memphis, Tennessee. This meeting will be open to the public.

DATES: The Towing Safety Advisory Committee will meet on Thursday, June 16, 2011, from 8 a.m. to 5 p.m. Please note that the meeting may close early if the committee has completed its business. Written comments must be submitted no later than June 8, 2011.

ADDRESSES: The meeting will be held at The Crowne Plaza Memphis Downtown Hotel, 300 North Second Street, Memphis, Tennessee 38105. *Hotel Web site: http://www.cpmemphishotel.com/.*

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee and subcommittees. Written comments must be identified by Docket No. USCG–2011–0144 and submitted by *one* of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *E-mail: Michael.J.Harmon@uscg.mil* or *Patrick.J.Mannion@uscg.mil.* Include the docket number in the subject line of the message.

• *Fax:* 202–372–1926.

• *Mail:* U.S. Coast Guard Headquarters, CG–5222; 2100 Second Street, SW. Stop 7126; Washington, DC 20593–7126. We encourage use of electronic submissions because security screening may delay the delivery of mail.

FOR FURTHER INFORMATION CONTACT: Capt. Michael J. Harmon, ADFO, TSAC; U.S. Coast Guard Headquarters, CG–5222, Vessel & Facilities Operating Standards Division; telephone (202) 372–1427, fax (202) 372–1926, or *e-mail at: michael.j.harmon@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463) as amended (FACA). This Committee is established in accordance with and operates under the provisions of the FACA. It was established under the authority of 33 U.S.C. 1231a and advises, consults with, and makes recommendations reflecting the Committee's independent judgment to the Secretary of the Department of Homeland Security (DHS) on matters relating to shallow-draft inland and coastal waterway navigation and towing safety. TSAC may complete specific assignments such as studies, inquiries, workshops, and fact finding in consultation with individuals and groups in the private sector and/or with state and local government jurisdictions in compliance with FACA.

Agenda for June 16, 2011

The agenda for the June 16, 2011 TSAC public meeting is as follows:

(1) Roll call of committee members and determination of a quorum.

(2) Approval of minutes from the October 26, 2010, meeting.

(3) *Committee Administration:*

a. Discussion of Committee By-Laws.

b. DFO announcements.

(4) *Presentation and discussion of reports and recommendations from the subcommittees on:*

a. Update on Commercial/Recreational Boating Interface from TSAC Acting Chairman.

b. Work-Group report on the review and recommendations for the revision of NVIC 04–01 "Licensing and Manning for Officers of Towing Vessels."

(5) Report on National Maritime Center (NMC) activities from NMC Commanding Officer.

(6) Report on Office of Vessel Activities and the Towing Vessel National Center of Expertise from CG–5431.

(7) An Update from the Office of Marine Investigations and Casualty Analysis (CG–545) by Captain David Fish & Mr. Dave Dickey:

a. A presentation on the LONNY FUGATE marine casualty.

b. Development of a new Navigation and Vessel Inspection Circular (NVIC) to refine and clarify casualty reporting requirements.

c. The Coast Guard's report to Congress on "Human Factors contributing to oil spills and potential oil spills."

(8) Period for Public comment.

(9) Adjournment of meeting.

A copy of each report is available at the *https://www.fido.gov* Web site or by contacting Michael J. Harmon. Once you have accessed the TSAC Committee page, click on the meetings tab and then the "View" button for the meeting dated May 16, 2011 to access the information for this meeting. Minutes will be available 90 days after this meeting. Both minutes and documents applicable for this meeting can also be found at an alternative site using the following web address: *https://homeport.uscg.mil* and use these key strokes: Missions Port and Waterways Safety Advisory Committee TSAC and then use the event key.

The meeting will be recorded by a court reporter. A transcript of the meeting and any material presented at the meeting will be made available through the *https://www.fido.gov* Web site.

The committee will review the information presented on each issue, deliberate on any recommendations presented in the subcommittees' reports, and formulate recommendations for the Department's consideration.

Public Participation

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee and subcommittees. Written comments must be identified by Docket No. USCG–2011–0144 and submitted by *one* of the methods specified in **ADDRESSES**. Written comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided. Anyone can search the electronic form of comments received into the docket 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316). For access to the docket to read background documents or comments received in response to this notice, go to *http://www.regulations.gov.*

An opportunity for public oral comment will be held during the TSAC public meeting on June 16, 2011, as the last agenda item prior to closing the meeting. Speakers are requested to limit their comments to 5 minutes. Please note that the public oral comment period may end before the prescribed ending time indicated following the last call for comments. Contact the individual listed below to register as a speaker.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Capt. Michael J. Harmon at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Minutes

Minutes from the meeting will be available for the public to review 30 days following the close of the meeting and can be accessed from the Coast Guard Homeport Web site *http://homeport.uscg.mil.*

Dated: May 12, 2011.

F.J. Sturm,

Acting Director of Commercial Regulations and Standards.

[FR Doc. 2011–12247 Filed 5–17–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0371]

Commercial Fishing Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Commercial Fishing Safety Advisory Committee (CFSAC). The CFSAC provides advice and makes recommendations to the Coast Guard and the Department of Homeland Security on matters relating to the safe operation of commercial fishing industry vessels.

DATES: Applicants should submit a cover letter and resume in time to reach the Designated Federal Officer on or before June 30, 2011.

ADDRESSES: Send your application in written form to Commandant (CG–543), U.S. Coast Guard, 2100 Second Street, SW., Mail Stop 7581, Washington, DC 20593–7581. This notice and application information are also available on the Internet at *http://www.FishSafe.info.*

FOR FURTHER INFORMATION CONTACT: Mr. Jack Kemerer of the Coast Guard by telephone at 202–372–1249, fax 202–372–1917, or e-mail: *jack.a.kemerer@uscg.mil.*

SUPPLEMENTARY INFORMATION: The CFSAC is a Federal advisory committee under 5 U.S.C. App. (Pub. L. 92–463). The Coast Guard chartered the CFSAC to provide advice on issues related to the safety of commercial fishing industry vessels regulated under Chapter 45 of Title 46, United States Code, which includes uninspected fishing vessels, fish processing vessels, and fish tender vessels. (See 46 U.S.C. 4508.)

The CFSAC meets at least once a year. It may also meet for other extraordinary purposes. Its subcommittees may gather throughout the year to prepare for meetings or develop proposals for the committee as a whole to address specific problems.

The Coast Guard will consider applications for seven positions that expire or become vacant in October 2011 in the following categories: (a) Commercial Fishing Industry (*four* positions); (b) General Public, a marine surveyor who provides services to vessels to which Chapter 45 of Title 46, U.S.C. applies (*one* position); (c) Manufacturers of equipment for vessels to which Chapter 45 of Title 46, U.S.C. applies (*one* position); and (d) Owners of vessels to which Chapter 45 of Title 46, U.S.C. applies (*one* position).

The CFSAC consists of 18 members as follows:

(a) Ten members who shall represent the commercial fishing industry and who—(1) reflect a regional and representational balance; and (2) have experience in the operation of vessels to which Chapter 45 of Title 46, U.S.C. applies, or as crew member or processing line worker on a fish processing vessel;

(b) Three members who shall represent the general public, including, whenever possible—(1) An independent expert or consultant in maritime safety;

(2) a marine surveyor who provides services to vessels to which Chapter 45 of Title 46, U.S.C. applies; and (3) a person familiar with issues affecting fishing communities and families of fishermen;

(c) One member each of whom shall represent—(1) naval architects and marine engineers; (2) manufacturers of equipment for vessels to which Chapter 45 of Title 46, U.S.C. applies; (3) education or training professionals related to fishing vessel, fish processing vessel, fish tender vessel safety or personnel qualifications; (4) underwriters that insure vessels to which Chapter 45 of Title 46, U.S.C. applies; and (5) owners of vessels to which Chapter 45 of title 46, U.S.C. applies.

Each member serves for a term of three years. An individual may be appointed to a term as a member more than once. All members serve at their own expense and receive no salary from the Federal Government, although travel reimbursement and per diem may be provided for called meetings. Registered lobbyists are not eligible to serve on Federal Advisory Committees. Registered lobbyists are lobbyists required to comply with provisions contained in the Lobbying Disclosure Act, Title 2, United States Code, Section 1603.

In support of the Coast Guard policy on gender and ethnic non-discrimination, we encourage qualified men and women and members of all racial and ethnic groups to apply. The Coast Guard values diversity; all the different characteristics and attributes of persons that enhance the mission of the Coast Guard.

If you are selected as a member drawn from the general public, you will be appointed and serve as a Special Government Employee (SGE) as defined in Section 202(a) of Title 18, United States Code. As a candidate for appointment as a SGE, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). A completed OGE Form 450 is not releasable to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Only the Designated Agency Ethics Official (DAEO) or the DAEO's designate may release a Confidential Financial Disclosure Report.

If you are interested in applying to become a member of the Committee, send your application in written form to Commandant (CG–543), U.S. Coast Guard, 2100 Second Street, SW., Mail Stop 7581, Washington, DC 20593–7581. Send the application in time for it to be received by the Designated Federal Officer, Captain E.P. Christensen, on or before June 30, 2011.

Dated: May 10, 2011.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. 2011–12151 Filed 5–17–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–777; Extension of an Existing Information Collection; Comment Request

ACTION: 60–Day Notice of Information Collection Under Review; Form I–777, Application for Replacement of Northern Mariana Card; OMB Control No. 1615–0042.

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 July 18, 2011.

During this 60-day period, USCIS will be evaluating whether to revise the Form I–777. Should USCIS decide to revise Form I–777 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–777.

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 Secretariat, 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. 1615–0042 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. 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.

Written comments and suggestions from the public and affected agencies concerning the collection of information 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:* Application for Replacement of Northern Marina Card.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–777; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–777 is used by applicants applying for a Northern Marina identification card if they received United States citizenship pursuant to Public Law 94–241 (covenant to establish a Commonwealth of the Northern Marina Islands).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at .50 hours (30 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50 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: May 12, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–12127 Filed 5–17–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Bonded Warehouse Regulations

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0041.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Bonded Warehouse Regulations. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 11254) on March 1, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 17, 2011.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION:

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Bonded Warehouse Regulations.

OMB Number: 1651–0041.

Form Number: None.

Abstract: Owners or lessees desiring to establish a bonded warehouse must make written application to the U.S. Customs and Border Protection (CBP) port director where the warehouse is located. The application must include the warehouse location, a description of the premises, and an indication of the class of bonded warehouse permit desired. Alterations to or relocation of a bonded warehouse within the same CBP port may be made by applying to the CBP port director of the port in which the facility is located. The authority to establish and maintain a bonded warehouse is set forth in 19 U.S.C. 1555, and provided for by 19 CFR 19.2, 19 CFR 17, 19 CFR 19.3, 19 CFR 19.6, 19 CFR 19.14, and 19 CFR 19.36.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 198.

Estimated Number of Responses per Respondent: 46.7.

Estimated Total Annual Responses: 9,254.

Estimated Time per Response: 32 minutes.

Estimated Total Annual Burden Hours: 4,932.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: May 12, 2011 .

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–12135 Filed 5–17–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Automated Commercial Environment Trade Survey

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Establishment of a new collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Automated Commercial Environment Trade Survey. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 13204) on March 10, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 17, 2011.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to

oira_submission@omb.eop.gov or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Automated Commercial Environment Trade Survey.

OMB Number: Will be assigned upon approval.

Form Number: None.

Abstract: CBP plans to conduct a survey of commercial entities, including Non-Vessel Operating Common Carriers, Freight Forwarders, Foreign Trade Zones, Filers (to include Brokers and Self-Filers), Importers, Carriers and Sureties, regarding their use of and experience with the Automated Commercial Environment (ACE) system. This voluntary survey will be conducted over the internet by e-mail and/or telephone invitation. The survey will include questions about current, as well as future ACE functionalities. The results and analysis of the survey responses will be used to characterize the trade community's experience with ACE and inform future functionality deployments.

Current Actions: CBP proposes to establish a new collection of information.

Type of Review: Approval of a new collection of information.

Affected Public: Businesses.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 500.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: May 12, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–12143 Filed 5–17–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–44]

Notice of Submission of Proposed Information Collection to OMB Continuation of Interest Reduction Payments After Refinancing Section 236 Projects

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Owners of Section 236 projects may submit information to HUD to request continuation of interest reduction payments after refinancing. As part of these refinancing transactions, HUD requires the execution of interest Reduction Payment Agreements and Use Agreements. HUD uses the information to ensure that projects are maintained as low-income housing resources.

DATES: *Comments Due Date:* June 17, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal.

Comments should refer to the proposal by name and/or OMB approval Number (2502–0572) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA-Submission@omb.eop.gov;* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Continuation of Interest Reduction Payments after Refinancing Section 236 Projects.

OMB Approval Number: 2502–0572.

Form Numbers: HUD–93173, HUD–93174, HUD–93175, HUD–93176.

Description of the Need for the Information and Its Proposed Use: Owners of Section 236 projects may submit information to HUD to request continuation of interest reduction payments after refinancing. As part of these refinancing transactions, HUD requires the execution of interest Reduction Payment Agreements and Use Agreements. HUD uses the information to ensure that projects are maintained as low-income housing resources.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	1,030	4		0.5		2,060

Total Estimated Burden Hours: 2,060.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 11, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–12115 Filed 5–17–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5500–N–12]

Notice of Availability: Notice of Funding Availability (NOFA) for HUD's Fiscal Year (FY) 2011 Section 4 Capacity Building for Community Development and Affordable Housing Grants

AGENCY: Office of the Chief of the Human Capital Officer, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its Web site of the applicant information, submission deadlines, funding criteria, and other requirements for HUD's FY2011 Section 4 Capacity Building for Community Development and Affordable Housing Grants. Specifically, this NOFA announces the availability of approximately $49.9 million is made available under the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Public Law 112–10, approved April 15, 2011. Of these funds at least $5 million shall be made available for rural capacity building activities.

Purpose: Through funding of national intermediaries, the Section 4 Capacity Building program enhances the capacity and ability of community development corporations (CDCs) and community housing development organizations (CHDOs) to carry out community development and affordable housing activities that benefit low-income families.

Background: The competition is limited to the organizations identified in the Department of Defense and Full-Year Continuing Appropriations Act, 2011. Public Law 112–10, approved April 15, 2011. These organizations are: Enterprise Community Partners, Inc. (formerly The Enterprise Foundation), the Local Initiatives Support Corporation (LISC), and Habitat for Humanity International. Specifically, the only applicants eligible for this competition are the three organizations located at the following addresses:

- Enterprise Community Partners, Inc., 10227 Wincopin Circle, Suite 500, Columbia, MD 21044.
- Local Initiatives Support Corporation, 501 Seventh Avenue, 7th Floor, New York, NY 10018.
- Habitat for Humanity International, 121 Habitat Street, Americus, GA 31709.

Affiliates and local offices of these organizations and their community partners are not eligible to compete either directly or independently for capacity building grants under this notice, but rather may seek funding from the above organizations.

SUPPLEMENTARY INFORMATION: The NOFA providing information regarding the funds available, application process, funding criteria and eligibility requirements, application and instructions can be found using the Department of Housing and Urban Development agency link on the Grants.gov/Find Web site at *http://www.grants.gov/search/agency.do.* A link to the funding opportunity is also available on the HUD Web site at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/fundsavail.*

The link from the funds available page will take you to the agency link on Grants.gov. The Catalogue of Federal Domestic Assistance (CFDA) number for Capacity Building for Community Development and Affordable Housing Grants is 14.252. Applications must be submitted electronically through Grants.gov.

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in the program NOFA. Program staff will not be available to provide guidance on how to prepare the application. Questions regarding the 2011 General Section should be directed to the Office of Grants Management and Oversight at (202) 708–0667 or the NOFA Information Center at 800–HUD–8929 (toll free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 800–877-8339.

Dated: May 11, 2011.

Barbara S. Dorf,

Director, Office of Departmental Grants, Management and Oversight, Office of the Chief of the Human Capital Officer.

[FR Doc. 2011–12114 Filed 5–17–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5500–N–02]

Notice of Availability: Notice of Funding Availability (NOFA) for HUD's Fiscal Year (FY) 2011 Lead-Based Paint Hazard Control Grant Program and Lead Hazard Reduction Demonstration Grant Program and Amendment and Technical Corrections

AGENCY: Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Notice of Availability and Technical Amendment and Technical Corrections to the Notice of Funding Availability (NOFA) for HUD's Fiscal Year (FY) 2011 Lead-Based Paint Hazard Control Grant Program and Lead Hazard Reduction Demonstration Grant Program, FR–5500–N–02.

SUMMARY: On April 8, 2011, HUD posted the Notice of Funding Availability (NOFA) for the Fiscal Year (FY) 2011 Lead-Based Paint Hazard Control Grant Program and Lead Hazard Reduction Demonstration Grant Program to Grants.gov (FR–5500–N–02). The NOFA announced the availability of information on applicant eligibility, submission deadlines, funding criteria, and other requirements for HUD's FY2011 Lead-Based Paint Hazard Control Grant Program and Lead Hazard Reduction Demonstration Grant Program. The posted NOFA indicated that the total amount of funding available was subject to enactment of HUD appropriations.

On May 10, 2011, HUD posted an amendment to the NOFA which provided the funding available as a result of enactment of the HUD appropriations Act, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Public Law 112–10, approved April 15, 2011, and other technical Corrections. Based on the enactment of the FY2011 HUD

appropriations, approximately $95.5 million is available for the programs in this NOFA. Of this amount, approximately $47.5 million is available for the Lead-Based Paint Hazard Control Program and $48 million for the Lead Hazard Reduction Demonstration Grant Program.

The notice also amended the deadline date for applications and made other technical corrections to the NOFA. As a result of these technical corrections, the new deadline date for this NOFA is 11:59:59 p.m. June 10, 2011.

The purpose of the Lead-Based Paint Hazard Control Grant Program and the Lead Hazard Reduction Demonstration Grant Program is to assist states, Native American Tribes, cities, counties/parishes, or other units of local government in undertaking comprehensive programs to identify and control lead-based paint hazards in eligible privately owned rental or owner-occupied housing with the exception that the Lead Hazard Reduction Demonstration Grant Program is targeted to urban jurisdictions with the greatest lead-based paint hazard control needs.

The notice providing information regarding the application process, funding criteria and eligibility requirements, application and instructions, and amendment and technical corrections can be found using the Department of Housing and Urban Development agency link on the Grants.gov/Find Web site at *http://www.grants.gov/search/agency.do.* A link to the funding opportunity is also available on the HUD Web site at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/fundsavail.*

The link from the funds available page will take you to the agency link on Grants.gov. The Catalogue of Federal Domestic Assistance (CFDA) number for the Lead Hazard Reduction Demonstration program is 14.900. The Catalogue of Federal Domestic Assistance (CFDA) number for the Lead Hazard Reduction Demonstration program is 14.905. Applications must be submitted electronically through Grants.gov.

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in the program NOFA. Program staff will not be available to provide guidance on how to prepare the application. Questions regarding the 2011 General Section should be directed to the Office of Grants Management and Oversight at (202) 708–0667 or the NOFA Information Center at 800–HUD–8929 (toll free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 800–877–8339.

Dated: May 11, 2011.

Barbara S. Dorf,

Director, Office of Departmental Grants Management and Oversight, Office of the Chief of the Human Capital Officer.

[FR Doc. 2011–12123 Filed 5–17–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5500–N–03]

Notice of Availability: Notice of Funding Availability (NOFA) for HUD's Fiscal Year (FY) 2011 Healthy Homes Production Program and Amendment to the NOFA

AGENCY: Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Notice of Funding Availability (NOFA) for HUD's Fiscal Year (FY) 2011 Healthy Homes Production Program and amendment to the NOFA.

SUMMARY: On April 8, 2011, HUD posted the Notice of Funding Availability (NOFA) for the Fiscal Year (FY) 2011 Healthy Homes Production NOFA to Grants.gov. The NOFA was posted as FR–5500–N–03). The NOFA announced the availability of information on applicant eligibility, submission deadlines, funding criteria, and other requirements for HUD's FY2011 Healthy Homes Production Program. The posted NOFA indicated that the total amount of funding available was subject to enactment of HUD appropriations.

On May 10, 2011, HUD posted an amendment to the NOFA which provided the funding available as a result of enactment of the HUD appropriations Act, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Public Law 112–10, approved April 15, 2011. Based on the enactment of the FY2011 HUD appropriations, approximately $13.3 million is available for the program NOFA. The amendment was posted to Grants.gov as a modification to the NOFA.

The purpose of the Healthy Homes Production Grant Program is to identify and correct significant housing-related health and safety hazards in privately owned, low-income rental or owner occupied housing.

The notice providing information regarding the application process, funding criteria and eligibility requirements, application and instructions can be found using the Department of Housing and Urban Development agency link on the Grants.gov/Find Web site at *http://www.grants.gov/search/agency.do.* A link to the funding opportunity is also available on the HUD Web site at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/fundsavail.*

The link from the funds available page will take you to the agency link on Grants.gov. The Catalogue of Federal Domestic Assistance (CFDA) number for the Healthy Homes Production program is 14.914. Applications must be submitted electronically through Grants.gov.

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in the program NOFA. Program staff will not be available to provide guidance on how to prepare the application. Questions regarding the 2011 General Section should be directed to the Office of Grants Management and Oversight at (202) 708–0667 or the NOFA Information Center at 800–HUD–8929 (toll free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 800–877–8339.

Dated: May 11, 2011.

Barbara S. Dorf,

Director, Office of Departmental Grants Management and Oversight. Office of the Chief of the Human Capital Officer.

[FR Doc. 2011–12122 Filed 5–17–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDT03000–L14300000.EU0000; IDI–35577]

Notice of Intent To Prepare an Environmental Assessment for the Disposal of Public Lands in Jerome County, Idaho, and Possible Land Use Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM), Shoshone

Field Office, Shoshone, Idaho, intends to prepare an Environmental Assessment (EA) and a possible amendment to the 1985 Monument Resource Management Plan (RMP), Shoshone, Idaho, to identify a specific 7.45 acre parcel of land for potential direct sale. By this notice the BLM is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the EA. Comments on issues may be submitted in writing until June 17, 2011. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media. In order to be included in the EA, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation upon publication of the EA.

ADDRESSES: Comments should be addressed to Ruth A. Miller, BLM Shoshone Field Manager, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Lisa Claxton, Realty Specialist, BLM Shoshone Field Office, telephone (208) 736–2360; address 400 West F Street, Shoshone, Idaho 83352. 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.

SUPPLEMENTARY INFORMATION: The adjacent private landowners submitted a proposal to the BLM to acquire the following-described land by direct sale, under the authority of Section 203 of FLPMA (43 U.S.C. 1713):

Boise Meridian

T. 10 S., R. 19 E.,
sec. 25, lot 10.

The area described contains 7.45 acres in Jerome County.

The Monument RMP identifies these lands as available for disposal, although not through sale. The proposed amendment would allow for disposal via sale. On April 29, 2010, the above-described land was segregated from appropriation under the public land laws, including the mining laws, in anticipation of the proposed sale and pending completion of the land use planning process. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or on April 29, 2012, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date. This notice initiates the public scoping process to identify specific issues related to the proposed amendment and associated environmental analysis.

Any protests regarding the proposed land use plan amendment will be reviewed by the BLM Director, who may sustain, vacate, or modify this land use planning action in whole or in part. In the absence of timely filed protests, this planning decision will become the final determination of the Department of the Interior.

This plan amendment will be limited to an analysis of whether the subject property meets the Section 203 sales criteria of FLPMA. The planning process begins with the publication of this notice in the **Federal Register**. The BLM will follow the Bureau's planning regulations (43 CFR 1600) in processing this plan amendment.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised 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 from public review your personal indentifying information, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7 and 43 CFR 2711.1–2(a)(c).

Ruth A. Miller,

Shoshone Field Manager.

[FR Doc. 2011–12197 Filed 5–17–11; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDI00000–LF31010WU–PN0000–LFHFPJ020000]

Notice of Public Meeting, Idaho Falls District Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The Idaho Falls District RAC will meet in Pocatello, Idaho on June 28–29, 2011 for a two-day meeting at the Pocatello Field Office, 4350 Cliffs Drive, Pocatello, Idaho 83204. The first day will begin at 10 a.m. and adjourn at 5 p.m. The second day will begin at 8:30 a.m. and adjourn at 2:30 p.m. Members of the public are invited to attend. A comment period will be held following the introductions at 10 a.m. All meetings are open to the public.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the BLM Idaho Falls District (IFD), which covers eastern Idaho.

Items on the agenda will include an overview of the current issues affecting the District and Field Offices, review and approval of past meeting minutes, public comment period and a presentation of the Soda Hills Travel Management Plan Concept as well as other issues pertinent to the Pocatello Field Office. Following the morning part of the meeting, tours will be conducted throughout the Pocatello area to discuss fuels projects, recreation, trails and stimulus projects. The second day RAC members will tour Soda Hills to learn more about the fuels work occurring in the area and the start of the Soda Hills Travel Management proposal.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Sarah Wheeler, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone: (208) 524–7550. E-mail: *Sarah_Wheeler@blm.gov.*

Dated: May 9, 2011.

Joe Kraayenbrink,

Idaho Falls District Manager.

[FR Doc. 2011–12163 Filed 5–17–11; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Thomas Burke Memorial Washington State Museum (Burke Museum), University of Washington, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and a present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Burke Museum. Repatriation of the human remains and associated funerary objects to the tribe named below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the Burke Museum at the address below by June 17, 2011.

ADDRESSES: Peter Lape, Burke Museum, University of Washington, Box 35101, Seattle, WA 98195, telephone (206) 685–9364.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the Thomas Burke Memorial Washington State Museum (Burke Museum), University of Washington, Seattle, WA. The human remains and associated funerary objects were removed from an island northwest of Sitka, in Southeast Alaska.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Burke Museum professional staff in consultation with representatives of the Official Village of Kake, Shee Atika, Inc., Sitka Tribe of Alaska, and Sealaska Heritage Institute, a regional Native Alaskan nonprofit organization.

History and Description of the Remains

Before 1902, human remains representing a minimum of five individuals were removed from an island northwest of Sitka, in Southeast Alaska. The documentation is unclear as to whether the human remains were removed from the west coast of Chichagof Island or Siginaka Island. These human remains were collected by Alexander Phil (or Piel) from a cave. Phil kept the human remains and funerary objects above his saloon in Sitka for an unknown period of time before H.A. Bauer brought them to Seattle. Bauer transferred the human remains to the Burke Museum in 1902 (Burke Accn. #998). The human remains include mummified human remains of a female. In 1922, a Tlingit individual identified her as a shaman or Indian doctor known to have been removed from the area; however, she was not identified by name. The remaining four individuals have not been identified. The five associated funerary objects are one wood burial box, two copper earrings (one set), one set of burial wrappings and rope, and one wood box inlaid with otter teeth.

The human remains are consistent with Native American morphology as evidenced through posterior flattening of the crania, as well as the presence of wormian bones. The historic cultural practices of the Tlingit included placing the human remains of shamans in a little house or cave (DeLaguna 1990) with some of their paraphenelia. Although mummification in a crouched position has been documented in both Tlingit and Aleut traditional territory throughout Southeast Alaska, the funerary objects are consistent with contemporary Tlingit material culture. The Northern Tlingit occupied the outer islands and coasts of Southeast Alaska, and the Sitka Tribe of Alaska, which includes the Northern Tlingit, traditionally occupied the west coast of Chichagof Island and Siginaka Island.

Determinations Made by the Burke Museum

Officials of the Burke Museum have determined that:

- Based on anthropological and biological evidence, the human remains and associated funerary objects are Native American.
- Pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of five individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the five objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Sitka Tribe of Alaska.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Peter Lape, Burke Museum, University of Washington, Box 35101, Seattle, WA 98195, telephone (206) 685–9364, before June 17, 2011. Repatriation of the human remains and associated funerary objects to the Sitka Tribe of Alaska may proceed after that date if no additional claimants come forward.

The Burke Museum is responsible for notifying the Official Village of Kake, Shee Atika, Inc., Sitka Tribe of Alaska, and the Sealaska Heritage Institute, a regional Native Alaskan nonprofit organization, that this notice has been published.

Dated: May 12, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–12249 Filed 5–17–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0511–7359; 2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before April 30, 2011. Pursuant to section 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United

States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by June 2, 2011. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

J. Paul Loether,

Chief,

National Register of Historic Places/National Historic Landmarks Program.

ARKANSAS

Cross County

East Hamilton Avenue Historic District, E. Hamilton Ave. between N. Falls Blvd. & N. Killough Rd.; Eldridge Ct., Wynne, 11000330

GEORGIA

DeKalb County

Fischer, Dr. Luther C. and Lucy Hurt, House, 4146 Chamblee Dunwoody Rd., Atlanta, 11000331

Gordon County

Calhoun Downtown Historic District, Jct. of Court and Wall Sts., Calhoun, 11000332

MASSACHUSETTS

Essex County

Seaside Park, Atlantic Ave., Marblehead, 11000333

OKLAHOMA

Cleveland County

Oklahoma Center for Continuing Education Historic District, Bounded by Asp Ave., Kellogg Dr., Maple & 4th Sts., Norman, 11000334

Custer County

Thomas Community Building, 120 E. Broadway, Thomas, 11000335

Jackson County

Frazer Cemetery, ½ mi. S. of Jct. Cty. Rd. 202 & US 62, 2 mi. W. of Jackson County Courthouse, Altus, 11000336

Garnett, Elmer and Lela, House, 801 E. Commerce St., Altus, 11000337

Kiowa County

Joyce House, (Resources Designed by Herb Greene in Oklahoma MPS) Cty. Rd. 1620 EW, 2½ mi. W. of US 183, Snyder, 11000338

Lincoln County

Chandler Baseball Camp, 2000 W. Park Rd., Chandler, 11000339

Ottawa County

Dobson Family House, 106 A St., SW., Miami, 11000340

PENNSYLVANIA

Susquehanna County

Montrose Historic District, Roughly bounded by Wyalusing, Owego, Spruce & Chenango Sts., Lake Ave., High & Turrell Sts., Grow Ave., Jessup St., Montrose, 11000342

TEXAS

Dallas County

Adamson, W.H., High School, 201 E. 9th St., Dallas, 11000343

Santa Fe Terminal Building No. 4, 1033 Young St., Dallas, 11000344

Kerr County

Guthrie Building, 241 Earl Garrett St., Kerrville, 11000345

Newton County

Deweyville Swing Bridge, (Historic Bridges of Texas MPS) TX 12 & LA 12 at Sabine R., Deweyville, 11000346

Travis County

Wilshire Historic District, Bounded by SPRR, Ardenwood Rd., Wilshire Blvd. & the Delwood III subdivision, Austin, 11000347

VIRGINIA

Campbell County

Brookneal Historic District, Adams Ferry Rd., Old Main, Main E. Rush & Commerce Sts., Lynchburg, Wycliffe & Cook Aves., & Pick St., Brookneal, 11000348

Fairfax County

Vale School—Community House, 3124 Fox Mill Rd., Oakton, 11000349 Rockbridge County Chapel Hill, 68 Charming Ln., Lexington, 11000350

Wise County

St. Paul Historic District, Portions of 4th & 5th Aves., Russell & Broad Sts., St. Paul, 11000351

Sunnydale Farm, 12439 Sunnydale Farm Rd., Pound, 11000352

Request for REMOVAL has been made for the following resources:

INDIANA

Madison County

Fussell, Solomon, Farm IN 38 E. of jct. with Cty. Rd. 150 W., Pendleton, 92000675

Marion County

Harriett (Apartments and Flats of Downtown Indianapolis TR), 124–128 N. East St.,Indianapolis, 83000057

Vanderburgh County

Old Hose House No. 4, (Downtown Evansville MRA), 623 Ingle St., Evansville, 82001856

Wabash Valley Motor Company, (Downtown Evansville MRA), 206–208 SE. 8th St., Evansville 82000126

OREGON

Multnomah County

Shriners Hospital for Crippled Children, 8200 NE. Sandy Blvd. Portland 89001869

[FR Doc. 2011–12128 Filed 5–17–11; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–480 and 731–TA–1188 (Preliminary)]

High Pressure Steel Cylinders From China; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701–TA–480 and 731–TA–1188 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of High Pressure Steel Cylinders, provided for in subheading 7311.00.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by June 24, 2011. The Commission's views are due at Commerce within five business days thereafter, or by July 5, 2011.

For further information concerning the conduct of these investigations 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 and B (19 CFR part 207).

DATES: *Effective Date:* May 11, 2011.

FOR FURTHER INFORMATION CONTACT: Edward Petronzio (202–205–3176), 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 investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on May 11, 2011, by Norris Cylinder Company, Longview, Texas.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register.** Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

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 investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 1, 2011, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Requests to appear at the conference should be filed with the Office of the Secretary (*William.bishop@usitc.gov* and *Sharon.bellamy@usitc.gov*) on or before May 30, 2011. Parties in support of the imposition of antidumping and countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 6, 2011, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must 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 FR 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 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (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 investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: May 12, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–12074 Filed 5–17–11; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–755]

In the Matter of Certain Starter Motors And Alternators; Notice of Commission Decision Not To Review an Initial Determination Granting Complainants' Unopposed Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 14) granting complainants' unopposed motion to amend the complaint and notice of investigation to name Yun Sheng USA Inc. of San Francisco, California ("Yun Sheng") and Electric Motor Services of Logan, West Virginia ("EMS") as respondents in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–1999. 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 January 19, 2011, based on a complaint filed by Remy International, Inc. and Remy Technologies, L.L.C. (collectively, "Remy"). 76 FR 3158. The complaint alleges 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 starter motors and alternators by reason of infringement of various United States Patents. The original complaint named eight respondents. On April 11, 2011, Remy filed a motion to amend the complaint and notice of investigation to add Yun Sheng and EMS as respondents. On April 21, 2011, the Commission investigative attorney filed a response in support of the motion. No other responses were filed.

On April 27, 2011, the ALJ issued the subject ID granting Remy's motion to add Yun Sheng and EMS as respondents. No petitions for review of the ID were filed.

The Commission has determined not to review the ID.

The Notice of Investigation is amended to include the following respondents alleged to be in violation of section 337 and are parties upon which the amended complaint is to be served:

Yun Sheng USA, Inc. 395 Oyster Point, Blvd., Ste 230, San Francisco, California 94080;

Electric Motor Services, 70 River Rd., Logan, West Virginia 25601–4042.

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 section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: May 13, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–12182 Filed 5–17–11; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–376 (Second Review)]

Stainless Steel Plate From Belgium; Termination of Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: Effective June 1, 2010, the Department of Commerce ("Commerce") initiated and the U.S. International Trade Commission ("Commission") instituted a five-year review concerning the countervailing duty order on stainless steel plate from Belgium (75 FR 30777 and 75 FR 30434). On May 5, 2011, Commerce published notice in the **Federal Register** of the final results of its full five-year review of the countervailing duty order concerning stainless steel plate from Belgium, finding that revocation of the countervailing duty order would not likely lead to continuation or recurrence of a countervailable subsidy. Therefore, Commerce revoked the countervailing duty order (76 FR 25666). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

DATES: *Effective Date:* May 5, 2011.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*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.*

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: May 12, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–12181 Filed 5–17–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–700]

In the Matter of Certain Mems Devices and Products Containing Same; Notice of Commission Decision to Affirm-In-Part and Reverse-In-Part a Final Initial Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order; and 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 to affirm-in-part and reverse-in-part a final initial determination ("ID") of the presiding administrative law judge ("ALJ") finding a violation of section 337 by respondents in the above-captioned investigation, and has issued a limited exclusion order directed against products of respondents Knowles Electronics LLC ("Knowles") of Itasca, Illinois and Mouser Electronics, Inc. ("Mouser") of Mansfield, Texas.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5468. 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 January 5, 2010, based on a complaint filed on December 1, 2009, by Analog Devices, Inc. ("Analog Devices") of Norwood, Massachusetts. 75 FR 449–50 (January 5, 2010). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 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 microelectromechanical systems ("MEMS") devices and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 7,220,614 ("the '614 patent") and 7,364,942 ("the '942 patent"). The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. The complaint named as respondents Knowles and Mouser.

On December 23, 2010, the ALJ issued his final ID finding a violation of section 337 by respondents as to the '942 patent only, and issued his recommended determinations on remedy and bonding. On January 18, 2011, respondents, Analog Devices, and the Commission investigative attorney ("IA") each filed a petition for review of the final ID, and each party filed a response on January 27, 2011.

On March 7, 2011, the Commission determined to review: (1) The ALJ's construction of the claim term "oven" relating to both the '614 and '942 patents; (2) the ALJ's construction of the claim term "sawing" relating to both the '614 and '942 patents; (3) the ALJ's determination that the accused process does not infringe, either literally or under the doctrine of equivalents, claims 12, 15, 31–32, 34–35, and 38–39 of the '614 patent or claim 1 of the '942 patent; (4) the ALJ's finding that U.S. Patent No. 5,597,767 ("the '767 patent") does not incorporate by reference U.S. Patent Nos. 5,331,454 ("the '454 patent") and 5,512,374 ("the '374 patent"); (5) the ALJ's finding that claims 2–6 and 8 are infringed by the accused process; (6) the ALJ's findings that claims 34–35 and 38–39 of the '614 patent, and claims 2–6 and 8 of the '942 patent, are not anticipated, under 35 U.S.C. 102(a), by the '767 patent or the '374 patent; (7) the ALJ's findings that claims 34–35 and 38–39 of the '614 patent are not obvious, under 35 U.S.C. 103, in view of the '767 patent and the Sakata *et al.* ("Sakata") prior art reference; and (8) the ALJ's finding that the technical prong of the domestic industry requirement is satisfied as to both the '614 and '942 patents. The determinations made in the final ID that were not reviewed became final determinations of the Commission by operation of rule. *See* 19 U.S.C. 210.42(h).

The Commission requested the parties to respond to certain questions concerning the issues under review and requested written submissions on the issues of remedy, the public interest, and bonding from the parties and interested non-parties. 74 FR 13433–34 (March 11, 2011).

On March 18 and March 25, 2011, respectively, complainant Analog Devices, respondents, and the IA each filed a brief and a reply brief on the issues for which the Commission requested written submissions. Also, on March 21, 2001, respondents filed a motion for leave to file a corrected submission that clarified that the March 18, 2011 submission was filed on behalf of both Knowles and Mouser. On March 29, 2011, respondents filed a motion for leave to file a corrected submission that strikes a portion of their initial brief. On March 31, 2011, respondents filed notice of their withdrawal of their March 29, 2011 motion. The Commission has determined to grant respondents' remaining motion of March 21, 2011.

Having reviewed the record in this investigation, including the final ID and the parties' written submissions, the Commission has determined to affirm-in-part and reverse-in-part the ID's findings under review. Particularly, the Commission has reversed the ALJ's finding and has determined that the '767 patent incorporates by reference the '374 and '454 patents.

The Commission has affirmed all other issues under review including the following: (1) The ALJ's construction of the claim term "oven" relating to both the '614 and '942 patents; (2) the ALJ's construction of the claim term "sawing" relating to both the '614 and '942 patents; (3) the ALJ's determination that the accused process does not infringe, either literally or under the doctrine of equivalents, claims 12, 15, 31–32, 34–35, and 38–39 of the '614 patent or claim 1 of the '942 patent; (4) the ALJ's finding that claims 2–6 and 8 of the '942 patent are infringed by the accused process; (5) the ALJ's findings that claims 34–35 and 38–39 of the '614 patent, and claims 2–6 and 8 of the '942 patent, are not anticipated, under 35 U.S.C. 102(a), by the '767 patent or the '374 patent; (6) the ALJ's findings that claims 34–35 and 38–39 of the '614 patent are not obvious, under 35 U.S.C. 103, in view of the '767 patent and Sakata; and (7) the ALJ's finding that Analog Devices satisfies the technical prong of the domestic industry requirement with respect to the '614 and '942 patents, based on his finding that respondents' argument based on *NTP, Inc.* v. *Research In Motion, Ltd.,* 418 F.3d 1282, 1313–1321 (Fed. Cir. 2005), is waived. The Commission has taken no position on the ALJ's finding that the domestic industry is satisfied even if respondents' argument based on *NTP* is not waived. These actions result in a finding of a violation of section 337 with respect to claims 2–6 and 8 of the '942 patent.

Further, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of MEMS devices and products containing the same that infringe claims 2–6 and 8 of the '942 patent that are manufactured abroad by or on behalf of, or are imported by or on behalf of, Knowles or Mouser, or any of their affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or successors or assigns.

The Commission further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. 1337(d)(1)) do not preclude issuance of the limited exclusion order. Finally, the Commission determined that no bond is required to permit temporary importation during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's order and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The Commission has terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42, 210.45, and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42, 210.45, 210.50).

By order of the Commission.

Issued: May 10, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–12183 Filed 5–17–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Park System Resource Protection Act

Notice is hereby given that on May 9, 2011, the United States lodged a proposed Consent Decree in *United States et al.* v. *South Carolina Electric & Gas Company,* Case No. 2–11–cv–1110–CWH (D. S. Car. May 9, 2011). The proposed Consent Decree resolves environmental claims brought by plaintiffs including the United States Department of Interior, National

Oceanic and Atmospheric Administration of the United States Department of Commerce, the Office of the Governor of South Carolina, the South Carolina Department of Health and Environmental Control ("SDHEC"), and the South Carolina Department of Natural Resources ("SCDNR") against South Carolina Electric & Gas Company ("SCE&G"). The claims arise from the release of hazardous substances at the National Park Service's Dockside II Property, which is located in Fort Sumter National Monument, Charleston, South Carolina.

Under the terms of the Consent Decree, SCE&G agrees to pay the United States $3.4 million for costs incurred responding to the release or threatened release of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607(a). In addition, SCE&G agrees to pay $200,000 in damages to the United States for damages incurred by the National Park Service under the Park System Resource Protection Act, 16 U.S.C. 19jj. SCE&G also agrees to pay $120,528.88 to state and federal trustees for natural resources damages, which will be used for oyster habitat restoration, 42 U.S.C. 9607(a). Finally, SCE&G has agreed to reimburse NOAA for $26,932.51, SCDHEC for $1,589.26, and SCDNR for $949.35 in costs incurred performing natural resources damages assessments, 42 U.S.C. 9607(a). In return, SCE&G, will receive a covenant not to sue from the United States with respect to past and future response costs at the Dockside II Property pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a) and damages under the Park System Resource Protection Act, 16 U.S.C. 19jj. SCE&G will also receive a covenant from the United States and State of South Carolina for natural resources damages pursuant to CERCLA Section 107(a) at the Calhoun Park Area Site, 42 U.S.C. 9607(a).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to Ignacia S. Moreno, Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States et al.* v. *South Carolina Electric & Gas Company,* Case No. 2–11–cv–1110–CWH (D. S. Car. May 9, 2011), D.J. Ref. 90–11–2–1171/1.

The Consent Decree may be examined on the following Department of Justice website: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.50 (.25 cents per page reproduction cost) payable to the U.S. Treasury, or if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Dated: May 12, 2011.

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–12218 Filed 5–17–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Respirator Program Records

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, "Respirator Program Records," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before June 17, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: MSHA regulations provide that, generally, whenever respiratory equipment is used, metal and nonmetal mine operators institute a respirator program governing selection, maintenance, training, fitting, supervision, cleaning, and use of respirators. These regulations seek to control miner exposure to harmful airborne contaminants by using engineering controls to prevent contamination and vent or dilute the contaminated air. The regulations include information collections related to the development of a respirator program that addresses the selection, use, and care of respirators; fit-testing records used to ensure that a respirator worn by an individual is the same brand, model, and size respirator that was worn when that individual successfully passed a fit-test; and records kept of inspection dates and findings for respirators maintained for emergency use. The mine operator uses the information to issue proper respiratory protection to miners when feasible engineering and/or administrative controls do not reduce miners' exposures to permissible levels. The MSHA uses the information to determine compliance with the standard.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1219–0048. The current OMB approval is scheduled to expire on May 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-

to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on January 19, 2011 (76 3175).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure appropriate consideration, comments should reference OMB Control Number 1219–0048. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Title of Collection: Respirator Program Records.

OMB Control Number: 1219–0048.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 400.

Total Estimated Number of Responses: 7200.

Total Estimated Annual Burden Hours: 2898.

Total Estimated Annual Costs Burden: $120,000.

Dated: May 12, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–12174 Filed 5–17–11; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Hoist Operators' Physical Fitness

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, "Hoist Operators' Physical Fitness," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before June 17, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Regulations 30 CFR 56.19057 and 57.19057 require the annual examination and certification of hoist operators' fitness by a qualified, licensed physician that includes documentation and recordkeeping requirements. The safety of all metal and nonmetal miners riding hoist conveyances is largely dependent upon the attentiveness and physical capabilities of the hoist operator. Improper movements, over-speed, and over-travel of a hoisting conveyance can result in serious physical harm or death to all passengers.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1219–0049. The current OMB approval is scheduled to expire on May 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on January 19, 2011 (76 FR 3175).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1219–0049. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Title of Collection: Hoist Operators' Physical Fitness.

OMB Control Number: 1219–0049.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 70.

Total Estimated Number of Responses: 350.

Total Estimated Annual Burden Hours: 12.

Total Estimated Annual Costs Burden: $157,793.

Dated: May 12, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–12186 Filed 5–17–11; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Material Hoists, Personnel Hoists, and Elevators

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, "Material Hoists, Personnel Hoists, and Elevators," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before June 17, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The information collection requirements contained in the Standard on Material Hoists, Personnel Hoists, and Elevators, 29 CFR 1926.552, are designed to protect workers who operate and work around personnel hoists. Specifically, the Standard requires that the rated load capacities, recommended operating speeds, and special hazard warnings or instructions be posted on cars and platforms; that operating rules for material hoists be established and posted at the operator's station of the hoist; a signal system and allowable line speed for various loads; and that cars be provided with a capacity and data plate secured in a conspicuous place on the car or crosshead. These posting requirements are used by the operator and crew of the material and personnel hoists to determine how to use the specific machine and how much it will be able to lift as assembled in one or a number of particular configurations. If not properly used, the machine would be subject to failures, endangering the employees in the immediate vicinity. The Standard also specifies certification and recordkeeping requirements related to required testing and inspection of hoists. This certification ensures that the equipment has been tested and is in safe operating condition.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0231. The current OMB approval is scheduled to expire on May 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on December 3, 2010 (75 FR 75500).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the *ADDRESSES* section within 30 days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should reference OMB Control Number 1218–0231. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Title of Collection: Material Hoists, Personnel Hoists, and Elevators.

OMB Control Number: 1218–0231.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 18,372.

Total Estimated Number of Responses: 90,290.

Total Estimated Annual Burden Hours: 20,957.

Total Estimated Annual Costs Burden: $0.

Dated: May 12, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–12196 Filed 5–17–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued

during the period of April 25, 2011 through April 29, 2011.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) there has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) a significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) the acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
75,040	Jason Incorporated, Janesville Acoustics Div, Jason Partners Holdings, Accurate Quality Inspect.	Grand Rapids, MI	December 20, 2009.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,928	Gudebrod Industries, LLC, Workers Whose Wages Reported Under Carwild Corp, Empresas LLC, Medsorb.	Pottstown, PA	November 25, 2009.
75,225	ECI Telecom DND, Inc., Belcan Serv, Freedom Cad, AccountStaff, HP, Sterling Tops & Raeder Landry.	Pittsburgh, PA	February 3, 2010.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
75,304	Meritor Heavy Vehicle Systems, LLC, Arvinmeritor, Inc., Industrial Group Div, Populus Group and Academy Medical.	Heath, OH	January 27, 2010.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1)(employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
75,237	ComDel Innovation	Wahpeton, ND	
75,287	Anchorage Daily News, A Member of the McClatchy Company.	Anchorage, AK	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
74,725	Albany Services, Working On-Site at Visa, Inc..	Highlands Ranch, CO	
74,932	Verizon, Inc., Erie BRC Division	Erie, PA	
75,043	SpectraWatt, Inc., Including On-Site Leased Workers from Kelly Services.	Hopewell Junction, NY	
75,129	Whirlpool Corporation, Yakima Call Center Div.; CXC; Leased workers Randstad Inhouse Services, LP.	Yakima, WA	
75,162	Pisgah Yarn and Dyeing Company, Including On-Site Leased Workers of Manpower, Inc..	Old Fort, NC	
75,302	Udelhoven Oilfield System Services, Working On-Site at Kenai LNG Plant.	Nikiski, AK	

Determinations Terminating Investigations of Petitions for Worker for Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
75,108	The Fish Harder Companies, LLC	Clymer, PA	
75,212	Burnand & Co., Inc.	Nogales, AZ	

I hereby certify that the aforementioned determinations were issued during the period of *April 25, 2011 through April 29, 2011.* Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at http://*www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: May 5, 2011.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–12144 Filed 5–17–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 31, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 31, 2011.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 5th day of May 2011.

Elliott S. Kushner.

Certifying Officer, Office of Trade Adjustment Assistance.

Appendix

16 TAA PETITIONS INSTITUTED BETWEEN 4/25/11 AND 4/29/11

TA–W	Subject Firm (Petitioners)	Location	Date of institution	Date of petition
80127	Alternative Manufacturing (Workers)	Winthrop, ME	04/25/11	04/22/11
80128	Wheeler Logging Services, Inc. (State/One-Stop).	White Swan, WA	04/25/11	04/21/11
80129	Smothers Hoisery LLC (Company)	Sylvania, AL	04/25/11	04/21/11
80130	Oak Patch Gifts (Jody Coyote) (Workers)	Eugene, OR	04/25/11	04/19/11
80131	Invensys (State/One-Stop)	Irvine, CA	04/26/11	04/22/11
80132	Winchester Electronics (State/One-Stop)	Wallingford, CT	04/28/11	04/21/11
80133	Nevion USA, Inc. (Company)	Oxnard, CA	04/28/11	04/26/11
80134	Premier Pet Products (Company)	Midlothian, VA	04/28/11	04/27/11
80135	PSC Fabricating (State/One-Stop)	Fort Smith, AR	04/28/11	04/26/11
80136	Mitsubishi Digital Electronics America, Inc. (Company).	Braselton, GA	04/29/11	04/21/11
80137	Yorktowne Inc. (Workers)	Red Lion, PA	04/29/11	03/31/11
80138	Southwire Company (State/One-Stop)	Long Beach, CA	04/29/11	04/27/11
80139	Electrolux Home Products, Inc. (Company)	Webster City, IA	04/29/11	04/28/11
80140	Trans-Lux Corporation (State/One-Stop)	Strafford, CT	04/29/11	04/27/11
80141	Bank Of America, NA (Workers)	Fort Wayne, IN	04/29/11	04/28/11
80142	Ditan Distribution llc (Company)	Forest Park, GA	04/29/11	04/27/11

[FR Doc. 2011–12145 Filed 5–17–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0061]

Federal Advisory Council on Occupational Safety and Health (FACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of meeting and member appointment.

SUMMARY: The Federal Advisory Council on Occupational Safety and Health (FACOSH) will meet June 7, 2011, in Washington, DC. On January 12, 2011, the Secretary appointed one person to FACOSH. This **Federal Register** notice also announces this appointment.

DATES: *FACOSH meeting:* FACOSH will meet from 1 p.m. to 4 p.m., Tuesday, June 7, 2011.

Submission of comments, requests to speak, and requests for special accommodations: Comments, requests to speak at the FACOSH meeting, and requests for special accommodations to attend the FACOSH meeting must be submitted (postmarked, sent, transmitted) by May 31, 2011.

ADDRESSES: *FACOSH meeting:* FACOSH will meet in C–5521 Room 4, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Submission of comments and requests to speak: Comments and requests to speak at the FACOSH meeting, identified by Docket No. OSHA–2011–

0061, may be submitted by one of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for making submissions.

Facsimile: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Mail, express delivery, hand delivery, messenger or courier service: You must submit a copy of your submission to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (877) 889–5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Requests for special accommodations for FACOSH meeting: Submit requests for special accommodations by telephone, e-mail or hard copy to Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999; e-mail *chatmon.veneta@dol.gov.*

Instructions: All submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2011–0061). Because of security-related procedures, submissions by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, and messenger or courier service. For additional information on submitting comments and requests to speak, see the **SUPPLEMENTARY INFORMATION** section below.

Comments and requests to speak, including any personal information provided, will be posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested persons about submitting certain personal information such as social security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Ms. Diana Petterson, Office of Public Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202)-693–1898; e-mail *petterson.diana@dol.gov.*

For general information: Mr. Francis Yebesi, OSHA, Office of Federal Agency Programs, U.S. Department of Labor, Room N–3622, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2122; e-mail *ofap@dol.gov.*

SUPPLEMENTARY INFORMATION:

FACOSH Meeting

FACOSH will meet Tuesday, June 7, 2011, in Washington, DC. All FACOSH meetings are open to the public.

FACOSH is authorized by 5 U.S.C. 7902, section 19 of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 668), and Executive Order 12196 to advise the Secretary of Labor (Secretary) on all matters relating to the occupational safety and health of Federal employees. This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the Federal workforce and how to encourage each Federal Executive Branch Department and Agency to establish and maintain effective occupational safety and health programs.

The tentative agenda for the FACOSH meeting includes:

- Emerging Issues Subcommittee update on its analysis of Permissible Exposure Limits applicable to Federal agencies;
- Training Subcommittee update on its review of occupational safety and health training requirements for Federal workers and requirements of the Safety and Health Management and Industrial Hygiene OPM job series;
- Presentation on the Department of Labor national outreach initiative to protect workers from heat-related illnesses and its application to Federal workers; and
- Update on a national outreach initiative to protect workers from the hazard of distracted driving and its application to Federal workers,

FACOSH meetings are transcribed and detailed minutes of the meetings are prepared. Meeting transcripts, minutes and other materials presented at the meeting are included in the FACOSH meeting record, which is posted at *http://www.regulations.gov.*

Public Participation

FACOSH meetings are open to the public. Interested persons may submit a request to make an oral presentation to FACOSH by one of the methods listed in the **ADDRESSES** section. The request must state the amount of time requested to speak, the interest represented (*e.g.,* organization name), if any, and a brief outline of the presentation. Requests to address FACOSH may be granted as time permits and at the discretion of the FACOSH chair.

Interested persons also may submit comments, including data and other information, using one of the methods listed in the **ADDRESSES** section. OSHA will provide all submissions to FACOSH members prior to the meeting and put them in the public docket for that meeting.

Individuals who need special accommodations and wish to attend the FACOSH meeting must contact Ms. Chatmon by one of the methods listed in the **ADDRESSES** section.

Submissions and Access to Public Record

You may submit comments, requests to speak and requests for special accommodations (1) electronically, (2) by facsimile, or (3) by hard copy. All submissions, including attachments and other materials, must identify the Agency name and the OSHA docket number for this notice (Docket No. OSHA–2011–0061). You may supplement electronic submissions by uploading documents electronically. If, instead, you wish to submit hard copies of supplementary documents, you must submit a copy to the OSHA Docket Office using the instructions in the **ADDRESSES** section. The additional materials must clearly identify your electronic submission by name, date and docket number.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. For information about security procedures concerning the delivery of submissions by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Written comments and requests to speak are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting certain personal information such as Social Security numbers and birthdates.

Meeting transcripts, minutes, written comments and requests to speak are included in the public record of the FACOSH meeting. To read or download documents in the public record, go to Docket No. OSHA–2011–0061 at *http://www.regulations.gov* or to the OSHA Docket Office. Although all documents in the public listed in the *http://www.regulations.gov* index, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through that Webpage. All documents in the public record, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regulations.gov* to make submissions and to access the docket and exhibits is available at that Webpage. Contact the OSHA Docket Office for information about materials not available through the Webpage and for assistance in using the Internet to locate documents in the public record.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, is also available at OSHA's Web page at *http://www.osha.gov.*

Announcement of FACOSH Appointments

The Secretary has appointed Mr. Edward A. Hamilton, Sr., U.S. Department of Justice, to complete the unexpired term of a FACOSH management member who is no longer able to serve on the Council. FACOSH is comprised of 16 members; eight who represent Federal agency management and eight from labor organizations that represent Federal employees.

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 19 of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 668), 5 U.S.C. 7902, the Federal Advisory Committee Act (5 U.S.C. App. 2) and regulations issued under FACA (41 CFR part 102–3), section 1–5 of Executive Order 12196, and Secretary of Labor's Order No. 4–2010 (75 FR 55335 (9/10/2010)).

Signed at Washington, DC, on May 13, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–12190 Filed 5–17–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Federal Employees' Compensation Proposed Renewal of the Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Claim for Compensation (CA–7); Authorization for Examination and/or Treatment (CA–16); Duty Status Report (CA–17); Attending Physician's Report (CA–20); Request for the Services of an Attendant (CA–1090); Referral to a Medical Specialist (CA–1305); OWCP Requirements for Audiological Examination (CA–1087); Referral for a Complete Audiologic and Otologic Examination (CA–1331); Outline for Audiologic Examination (CA–1332); Work Capacity Evaluation, Psychiatric/Psychological Conditions (OWCP–5a); Work Capacity Evaluation, Cardiovascular/Pulmonary Conditions (OWCP–5b); and Work Capacity Evaluation, Musculoskeletal Conditions (OWCP–5c). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before July 18, 2011.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–1378, E-mail *Alvarez.Vincent@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.* The statute provides for the payment of benefits for wage loss and/or for permanent impairment to a scheduled member, arising out of a work related injury or disease. The Act outlines the elements of pay which are to be included in an individual's pay rate, and sets forth various other criteria for determining eligibility to and the amount of benefits, including: Augmentation of basic compensation for individuals with qualifying dependents; a requirement to report any earnings during a period that compensation is claimed; a prohibition against concurrent receipt of FECA benefits and benefits from OPM or certain VA benefits; a mandate that money collected from a liable third party found responsible for the injury for which compensation has been paid is applied to benefits paid or payable. This information collection is currently approved for use through September 30, 2011.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks extension of approval to collect this information collection in order to carry out its statutory responsibility to compensate injured employees under the provisions of the Act.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: FECA Medical Reports, Claim for Compensation.

OMB Number: 1240–0046.

Agency Number: CA–7; CA–16; CA–17; CA–20; CA–1090; CA–1305; CA–1087; CA–1331; CA–1332; OWCP–5a; OWCP–5b; and OWCP–5c

Affected Public: Individuals or households; Business or other for-profit; Federal Government.

Total Respondents: 232,853.

Form	Time to complete	Number of responses	Hours burden
CA–7	13 min	500	108
CA–16	5 min	33,699	2,808
CA–17	5 min	143,965	11,997
CA–20	5 min	43,097	3,591
CA–1090	10 min	225	38
CA–1305	20 min	130	43
CA–1331/CA–1087 *	5 min	1,108	92
CA–1332	30 min	10	5
OWCP–5's	15 min	10,119	2,530
Totals		232,853	21,212

* Responses and hours associated with Form CA–1087 are included in the estimates for the Form CA–1331. The Form CA–1087 is attached to the Form CA–1331.

Total Annual Responses: 232,853.

Average Time per Response: 5 minutes–30 minutes.

Estimated Total Burden Hours: 21,212.

Frequency: As Needed.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $109,441.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 13, 2011.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, US Department of Labor.

[FR Doc. 2011–12215 Filed 5–17–11; 8:45 am]

BILLING CODE 4510–CH–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–048)]

Notice of Intent To Grant Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a partially exclusive license in the United States to practice the inventions described and claimed in USPN 6,133,036, Preservation of Liquid Biological Samples, NASA Case No. MSC- 22616–2, and USPN 6,716,392, Preservation of Liquid Biological Samples, NASA Case No. MSC–22616–3 to ApoCell, Inc., having its principal place of business in Houston, Texas. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective partially exclusive license may be granted unless within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated partially exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, 2101 NASA Parkway, Houston, Texas 77058, Mail Code AL; Phone (281) 483–3021; Fax (281) 483–6936.

FOR FURTHER INFORMATION CONTACT: Kurt G. Hammerle, Intellectual Property Attorney, Office of Chief Counsel, 2101 NASA Parkway. Phone (281) 483–1001; Fax (281) 483–6936. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

Dated: May 12, 2011.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2011–12105 Filed 5–17–11; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0109]

NUREG/CR–XXXX, Development of Quantitative Software Reliability Models for Digital Protection Systems of Nuclear Power Plants Draft Report for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Announcement of issuance for public comment, availability.

SUMMARY: The Nuclear Regulatory Commission has issued for public comment a document entitled: NUREG/CR–XXXX, "Development of Quantitative Software Reliability Models for Digital Protection Systems of Nuclear Power Plants, Draft Report for Comment."

DATES: Please submit comments by July 18, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2011–0109 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–2011–0109. 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.* NUREG/CR–XXXX is available electronically under ADAMS Accession Number ML111020087.

• *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–2011–0109.

FOR FURTHER INFORMATION CONTACT: Alan Kuritzky, Division of Risk Analysis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. *Telephone:* 301–251–7587, *e-mail: Alan.Kuritzky@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC is conducting research to support development of regulatory guidance for using risk information related to digital systems in the licensing actions of nuclear power plants (NPPs). The objective of this research is to identify and develop methods, analytical tools, and regulatory guidance for (1) including models of digital systems into NPP probabilistic risk assessments (PRAs), and (2) incorporating digital systems in the NRC's risk-informed licensing and oversight activities.

A previous Brookhaven National Laboratory (BNL) technical report, entitled "Review of Quantitative Software Reliability Methods," BNL–94047–2010 (ADAMS Accession No. ML102240566), documented a review of currently available quantitative software reliability methods (QSRMs) that can be used to quantify software failure rates and probabilities of digital systems at NPPs for use in PRAs and identified a set of desirable characteristics for QSRMs. The current draft report documents a comparison of the previously-identified QSRMs against the set of desirable characteristics. Three candidate QSRMs were identified for further literature review to assess their suitability for estimating demand-failure probabilities of safety-critical protection systems and to formulate an approach for applying each of them to an example system in a case study. The example digital protection system to be used in the case studies is also identified. The actual case studies will be documented in separate reports. Completion of the case studies is expected to provide a much better understanding of the existing capabilities and limitations in treating software failure in digital system reliability models for use in NPP PRAs.

Dated at Rockville, Maryland, this 10th day of May, 2011.

For the Nuclear Regulatory Commission.

Kevin A. Coyne,

Chief, Probabilistic Risk Assessment Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 2011–12200 Filed 5–17–11; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: US Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 611; SEC File No. 270–540; OMB Control No. 3235–0600.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the existing collection of information provided for in the following rule: Rule 611 (17 CFR 242.611).

On June 9, 2005, effective August 29, 2005 (*see* 70 FR 37496, June 29, 2005), the Commission adopted Rule 611 of Regulation NMS under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) to require any national securities exchange, national securities association, alternative trading system, exchange market maker, over-the-counter market maker and any other broker-dealer that executes orders internally by trading as principal or crossing orders as agent, to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution of a transaction in its market at a price that is inferior to a bid or offer displayed in another market at the time of execution (a "trade-though"), absent an applicable exception and, if relying on an exception, that are reasonably designed to assure compliance with the terms of the exception. Without this collection of information, respondents would not have a means to enforce compliance with the Commission's intention to prevent trade-throughs pursuant to the rule.

There are approximately 658 respondents [1] per year that will require an aggregate total of 39,480 hours to comply with this rule.[2] It is anticipated that each respondent will continue to expend approximately 60 hours annually: two hours per month of internal legal time and three hours per month of internal compliance time to ensure that its written policies and procedures are up-to-date and remain in compliance with Rule 611. The estimated cost for an in-house attorney is $354 per hour and the estimated cost for an assistant compliance director in the securities industry is $320 per hour. Therefore the estimated total cost of compliance for the annual hour burden is as follows: [(2 legal hours × 12 months × $354) × 658] + [(3 compliance hours × 12 months × $320) × 658] = $13,170,528.[3] There are no longer any start-up costs associated with Rule 611.

[1] This estimate includes thirteen national securities exchanges and one national securities association that trade NMS stocks. The estimate also includes the approximately 601 firms that were registered equity market makers or specialists at year-end 2009, as well as 43 alternative trading systems that operate trading systems that trade NMS stocks.

[2] The one-time hour burden associated with developing the required policies and procedures is no longer applicable.

[3] The total cost of compliance for the annual hour burden has been revised to reflect updated

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov*. Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov* ; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: May 13, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12208 Filed 5–17–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 203A–2(f); SEC File No. 270–501; OMB Control No. 3235–0559.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collection of information discussed below.

Rule 203A–2(f),[1] which is entitled "Internet Investment Advisers," exempts from the prohibition on Commission registration an Internet investment adviser who provides investment advice to all of its clients exclusively through computer software-based models or applications termed under the rule as "interactive Web sites." These advisers generally would not meet the statutory thresholds currently set out in section 203A of the Advisers Act [2] or the thresholds set out in section 203A as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") beginning on July 21, 2011 [3]— they do not manage $25 million or more in assets and do not advise registered investment companies,[4] or they manage between $25 million and $100 million in assets, do not advise registered investment companies or business development companies, and are required to be registered as investment advisers with the states in which they maintain their principal offices and places of business and are subject to examination as an adviser by such states.[5] Eligibility under rule 203A–2(f) is conditioned on an adviser maintaining in an easily accessible place, for a period of not less than five years from the filing of Form ADV relying on the rule,[6] a record demonstrating that the adviser's advisory business has been conducted through an interactive Web site in accordance with the rule.[7]

This record maintenance requirement is a "collection of information" for PRA purposes. The Commission believes that approximately 58 advisers are registered with the Commission under rule 203A–2(f), which involves a recordkeeping requirement manifesting in approximately four burden hours per year per adviser and results in an estimated 232 of total time burden (4 × 58) for all advisers.

This collection of information is mandatory, as it is used by Commission staff in its examination and oversight program in order to determine continued Commission registration eligibility of advisers registered under this rule. Responses generally are kept confidential pursuant to section 210(b) of the Advisers Act.[8] An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 13, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12207 Filed 5–17–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 19b–1; SEC File No. 270–312; OMB Control No. 3235–0354.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

estimated cost figures for an in-house attorney and an assistant compliance director. These figures are from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by Commission staff for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[1] 17 CFR 275.203A–2(f). Included in rule 203A–2(f) is a limited exception to the interactive Web site requirement which allows these advisers to provide investment advice to no more than 14 clients through other means on an annual basis. 17 CFR 275.203A–2(f)(1)(i). The rule also precludes advisers in a control relationship with the SEC-registered Internet adviser from registering with the Commission under the common control exemption provided by rule 203A–2(c) (17 CFR 275.203A–2(c)). 17 CFR 275.203A–2(f)(1)(iii).

[2] 15 U.S.C. 80b–3a(a).

[3] Public Law 111–203, 124 Stat. 1376 (2010).

[4] 15 U.S.C. 80b–3a(a).

[5] *See* section 410 of the Dodd-Frank Act. A mid-sized adviser managing between $25 million and $100 million also will be permitted to register with the Commission if it would be required to register with 15 or more states. These amendments are effective on July 21, 2011.

[6] The five-year record retention period is a similar recordkeeping retention period as imposed on all advisers under rule 204–2 of the Adviser Act. See rule 204–2 (17 CFR 275.204–2).

[7] 17 CFR 275.203A–2(f)(1)(ii).

[8] 15 U.S.C. 80b–10(b).

Section 19(b) of the Investment Company Act of 1940 (the "Act") (15 U.S.C. 80a–19(b)) authorizes the Commission to regulate registered investment company ("fund") distributions of long-term capital gains made more frequently than once every twelve months. Rule 19b–1 under the Act [1] prohibits funds from distributing long-term capital gains more than once every twelve months unless certain conditions are met. Rule 19b–1(c) (17 CFR 270.19b–1(c)) permits unit investment trusts ("UITs") engaged exclusively in the business of investing in certain eligible fixed-income securities to distribute long-term capital gains more than once every twelve months, if: (i) The capital gains distribution falls within one of several categories specified in the rule [2] and (ii) the distribution is accompanied by a report to the unitholder that clearly describes the distribution as a capital gains distribution (the "notice requirement").[3] Rule 19b–1(e) (17 CFR 270.19b–1(e)) permits a fund to apply to the Commission for permission to distribute long-term capital gains more than once a year if the fund did not foresee the circumstances that created the need for the distribution. The application must set forth the pertinent facts and explain the circumstances that justify the distribution.[4] An application that meets those requirements is deemed to be granted unless the Commission denies the request within 15 days after the Commission receives the application.

Commission staff estimates that, on average, each year six funds file an application under rule 19b–1(e). The staff understands that funds that file an application generally use outside counsel to prepare the application. The cost burden of using outside counsel is discussed below. The staff estimates that, on average, the fund's investment adviser spends a total of approximately 4 hours to review an application, including 3.5 hours by an assistant general counsel, 0.5 hours by an administrative assistant, and the fund's board of directors spends an additional 1 hour, for a total of 5 hours. Thus, the Commission staff estimates that the annual time burden of the collection of information imposed by rule 19b–1 is approximately five hours per fund, for a total burden of 30 hours.

The Commission staff estimates that there is no time burden associated with complying with the collection of information component of rule 19b–1(c).

As noted above, the Commission staff understands that funds that file an application under rule 19b–1(e) generally use outside counsel to prepare the application.[5] The staff estimates that, on average, outside counsel spends 10 hours preparing a rule 19b–1(e) application, including eight hours by an associate and two hours by a partner. Outside counsel billing arrangements and rates vary based on numerous factors, but the staff has estimated the average cost of outside counsel as $400 per hour, based on information received from funds, intermediaries, and their counsel. The staff therefore estimates that the average cost of outside counsel preparation of the 19b–(e) exemptive application is $4,000.[6] Thus, the staff estimates that the total annual cost burden imposed by the exemptive application requirements of rule 19b–1(e) is $24,000.[7]

The Commission staff estimates that there are approximately 3759 UITs [8] that may rely on rule 19b–1(c) to make capital gains distributions. The staff estimates that, on average, these UITs rely on rule 19b–1(c) once a year to make a capital gains distribution.[9] In most cases, the trustee of the UIT is responsible for preparing and sending the notices that must accompany a capital gains distribution under rule 19b–1(c)(2). These notices require limited preparation, the cost of which accounts for only a small, indiscrete portion of the comprehensive fee charged by the trustee for its services to the UIT. The staff believes that as a matter of good business practices, and for tax preparation reasons, UITs would collect and distribute the capital gains information required to be sent to unitholders under rule 19b–1(c) even in the absence of the rule. The staff estimates that the cost of preparing a notice for a capital gains distribution under rule 19b–1(c)(2) is approximately $50. There is no separate cost to mail the notices because they are mailed with the capital gains distribution. Thus, the staff estimates that the capital gains distribution notice requirement imposes an annual cost on UITs of approximately $187,950.[10] The staff therefore estimates that the total cost imposed by rule 19b–1 is $211,950 ($187,950 plus $24,000 equals $211,950).

Based on these calculations, the total number of respondents for rule 19b–1 is estimated to be 3765 (3759 UIT portfolios + 6 funds filing an application under rule 19b–1(e)), the total annual hour burden is estimated to be 30 hours, and the total annual cost burden is estimated to be $211,950. These estimates of average annual burden hours and costs are made solely for purposes of the Paperwork Reduction Act. The collections of information required by 19b–1(c) and 19b–1(e) are necessary to obtain the benefits described above. Responses will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

[1] 17 CFR 270.19b–1.

[2] 17 CFR 270.19b–1(c)(1).

[3] The notice requirement in rule 19b–1(c)(2) (17 CFR 270.19b–1(c)(2)) supplements the notice requirement of section 19(a) [15 U.S.C. 80a–19(a)] and rule 19a–1 [17 CFR 270.19a–1], which requires any distribution in the nature of a dividend payment made by a fund to its investors to be accompanied by a notice disclosing the source of the distribution.

[4] Rule 19b–1(e) also requires that the application comply with rule 0–2 [17 CFR 270.02], which sets forth the general requirements for papers and applications filed with the Commission.

[5] This understanding is based on conversations with representatives from the fund industry.

[6] This estimate is based on the following calculation: 10 hours multiplied by $400 per hour equals $4000.

[7] This estimate is based on the following calculation: $4,000 multiplied by 6 (funds) equals $24,000.

[8] The Investment Company Institute, Unit Investment Trust Data, (January 2011).

[9] The number of times UITs rely on the rule to make capital gains distributions depends on a wide range of factors and, thus, can vary greatly across years. A number of UITs are organized as grantor trusts, and therefore do not generally make capital gains distributions under rule 19b–1(c), or may not rely on rule 19b–1(c) as they do not meet the rule's requirements. Other UITs may distribute capital gains biannually, annually, quarterly, or at other intervals.

[10] This estimate is based on the following calculation: 3759 UITs multiplied by $50 equals $187,950.

Dated: May 13, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12206 Filed 5–17–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17f–7; SEC File No. 270–470; OMB Control No. 3235–0529.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") requests for extension of the previously approved collections of information discussed below.

Rule 17f–7 (17 CFR 270.17f–7) permits funds to maintain their assets in foreign securities depositories based on conditions that reflect the operations and role of these depositories.[1] Rule 17f–7 contains some "collection of information" requirements. An eligible securities depository has to meet minimum standards for a depository. The fund or its investment adviser generally determines whether the depository complies with those requirements based on information provided by the fund's primary custodian (a bank that acts as global custodian). The depository custody arrangement has to meet certain risk limiting requirements. The fund can obtain indemnification or insurance arrangements that adequately protect the fund against custody risks. The fund or its investment adviser generally determines whether indemnification or insurance provisions are adequate. If the fund does not rely on indemnification or insurance, the fund's contract with its primary custodian is required to state that the custodian will provide to the fund or its investment adviser a custody risk analysis of each depository, monitor risks on a continuous basis, and promptly notify the fund or its adviser of material changes in risks. The primary custodian and other custodians also are required to agree to exercise reasonable care.

The collection of information requirements in rule 17f–7 are intended to provide workable standards that protect funds from the risks of using securities depositories while assigning appropriate responsibilities to the fund's primary custodian and investment adviser based on their capabilities. The requirement that the depository meet specified minimum standards is intended to ensure that the depository is subject to basic safeguards deemed appropriate for all depositories. The requirement that the custody contract state that the fund's primary custodian will provide an analysis of the custody risks of depository arrangements, monitor the risks, and report on material changes is intended to provide essential information about custody risks to the fund's investment adviser as necessary for it to approve the continued use of the depository. The requirement that the primary custodian agree to exercise reasonable care is intended to provide assurances that its services and the information it provides will meet an appropriate standard of care. The alternative requirement that the funds obtain adequate indemnification or insurance against the custody risks of depository arrangements is intended to provide another, potentially less burdensome means to protect assets held in depository arrangements.

The staff estimates that each of approximately 836 investment advisers[2] will make an average of 8 responses annually under the rule to address depository compliance with minimum requirements, any indemnification or insurance arrangements, and reviews of risk analyses or notifications. The staff estimates each response will take 6 hours, requiring a total of approximately 48 hours for each adviser. The total annual burden associated with these requirements of the rule will be approximately 40,128 hours (836 advisers × 48 hours per adviser). The staff further estimates that during each year, each of approximately 15 global custodians will make an average of 4 responses to analyze custody risks and provide notice of any material changes to custody risk under the rule. The staff estimates that each response will take 260 hours, requiring approximately 1040 hours annually per custodian.[3] The total annual burden associated with these requirements is approximately 15,600 hours (15 custodians × 1040 hours). Therefore, the staff estimates that the total annual time burden associated with all collection of information requirements of the rule is 55,728 hours (40,128 + 15,600). The total annual cost of the burden is estimated to be $14,948,736 (40,128 × $287 for a portfolio manager, plus 15,600 hours × $220/hour for a trust administrator's time).[4] The estimate of average time burden is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's permission for funds to maintain their assets in foreign custodians.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 13, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12205 Filed 5–17–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

[1] Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. IC–23815 (April 29, 1999) (64 FR 24489 (May 6, 1999)).

[2] At the start of 2011, 836 investment advisers managed or sponsored open-end (including ETFs) portfolios and closed-end registered funds.

[3] These estimates are based on conversations with representatives of the fund industry.

[4] The salaries for a portfolio manager and a trust administrator are from SIFMA's Management & Professional Earnings in the Securities Industry 2010, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

Extension:

Form N–8B–4; SEC File No. 270–180; OMB Control No. 3235–0247.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") requests for extension of the previously approved collection of information discussed below.

Form N–8B–4 (17 CFR 274.14) is the form used by face-amount certificate companies to comply with the filing and disclosure requirements imposed by Section 8(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(b)). Form N–8B–4 requires disclosure about the face-amount certificate company's organization, controlling persons, business, policies, securities, investment adviser, depositary, management personnel, compensation, and financial statements. The Commission uses the information provided in the collection of information to determine compliance with Section 8(b) of the Investment Company Act of 1940.

Based on the Commission's industry statistics, the Commission estimates that there would be approximately one annual filing on Form N–8B–4. The Commission estimates that each registrant filing a Form N–8b–4 would spend 171 hours in preparing and filing the form and that the total annual time burden for all Form N–8B–4 filings would be 171 hours. Estimates of the burden hours are made solely for the purposes of the PRA, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

The information provided on Form N–8B–4 is mandatory. The information provided on Form N–8B–4 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov*: and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: May 13, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12204 Filed 5–17–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17f–5; SEC File No. 270–259; OMB Control No. 3235–0269.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") requests for extension of the previously approved collections of information discussed below.

Rule 17f–5 under the Investment Company Act of 1940 (15 U.S.C. 80a) ("Investment Company Act" or "Act") governs the custody of the assets of registered management investment companies ("funds") with custodians outside the United States.[1] Under rule 17f–5, the fund's board of directors must find that it is reasonable to rely on each delegate it selects to act as the fund's foreign custody manager. The delegate must agree to provide written reports that notify the board when the fund's assets are placed with a foreign custodian and when any material change occurs in the fund's custody arrangements. The delegate must agree to exercise reasonable care, prudence, and diligence, or to adhere to a higher standard of care. When the foreign custody manager selects an eligible foreign custodian, it must determine that the fund's assets will be subject to reasonable care if maintained with that custodian, and that the written contract that governs each custody arrangement will provide reasonable care for fund assets. The contract must contain certain specified provisions or others that provide at least equivalent care. The foreign custody manager must establish a system to monitor the performance of the contract and the appropriateness of continuing to maintain assets with the eligible foreign custodian.

The collection of information requirements in rule 17f–5 are intended to provide protection for fund assets maintained with a foreign bank custodian whose use is not authorized by statutory provisions that govern fund custody arrangements,[2] and that is not subject to regulation and examination by U.S. regulators. The requirement that the fund board determine that it is reasonable to rely on each delegate is intended to ensure that the board carefully considers each delegate's qualifications to perform its responsibilities. The requirement that the delegate provide written reports to the board is intended to ensure that the delegate notifies the board of important developments concerning custody arrangements so that the board may exercise effective oversight. The requirement that the delegate agree to exercise reasonable care is intended to provide assurances to the fund that the delegate will properly perform its duties.

The requirements that the foreign custody manager determine that fund assets will be subject to reasonable care with the eligible foreign custodian and under the custody contract, and that each contract contain specified provisions or equivalent provisions, are intended to ensure that the delegate has evaluated the level of care provided by the custodian, that it weighs the adequacy of contractual provisions, and that fund assets are protected by minimal contractual safeguards. The requirement that the foreign custody manager establish a monitoring system is intended to ensure that the manager periodically reviews each custody arrangement and takes appropriate action if developing custody risks may threaten fund assets.

Commission staff estimates that each year, approximately 135 registrants[3] could be required to make an average of one response per registrant under rule 17f–5, requiring approximately 2.5 hours of board of director time per response, to make the necessary findings concerning foreign custody managers. The total annual burden

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[1] 17 CFR 270.17f–5. All references to rules 17f–5, 17f–7, 17d–1, or 19b–1 in this notice are to 17 CFR 270.17f–5, 17 CFR 270.17f–7, 17 CFR 270.17d–1, and 17 CFR 270.19b–1, respectively.

[2] *See* section 17(f) of the Investment Company Act [15 U.S.C. 80a–17(f)].

[3] This figure is an estimate of the number of new funds each year, based on data reported by funds in 2010 on Form N–1A and Form N–2. In practice, not all funds will use foreign custody managers, and the actual figure may be smaller.

associated with these requirements of the rule is up to approximately 337.5 hours (135 registrants × 2.5 hours per registrant). The staff further estimates that during each year, approximately 15 global custodians[4] are required to make an average of 4 responses per custodian concerning the use of foreign custodians other than depositories. The staff estimates that each response will take approximately 270 hours, requiring approximately 1,080 total hours annually per custodian. The total annual burden associated with these requirements of the rule is approximately 16,200 hours (15 global custodians × 1,080 hours per custodian). Therefore, the total annual time burden of all collection of information requirements of rule 17f–5 is estimated to be up to 16,537.5 hours (337.5 + 16,200). The total annual internal cost of the burden is estimated to be $4,914,000 (337.5 hours × $4,000/hour for board of director's time, plus 16,200 hours × $220/hour for a trust administrator's time).[5] Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's permission for funds to maintain their assets in foreign custodians.

The estimate of average time burden is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Rule 17f–5 does not impose any paperwork related cost burden.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

[4] This estimate is based on staff research.

[5] The board hourly rate is based on fund industry representations. The $220/hour figure for a trust administrator is from SIFMA's Management & Professional Earnings in the Securities Industry 2010, modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

Dated: May 13, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12203 Filed 5–17–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–17D–1; SEC File No. 270–231; OMB Control No. 3235–0229.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 17(d) (15 U.S.C. 80a–17(d)) of the Investment Company Act of 1940 ("Act") authorizes the Commission to adopt rules that protect funds and their security holders from overreaching by affiliated persons when the fund and the affiliated person participate in any joint enterprise or other joint arrangement or profit-sharing plan. Rule 17d-1 under the Act (17 CFR 270.17d–1) prohibits funds and their affiliated persons from participating in a joint enterprise, unless an application regarding the transaction has been filed with and approved by the Commission. Paragraph (d)(3) of the rule provides an exemption from this requirement for any loan or advance of credit to, or acquisition of securities or other property of, a small business concern, or any agreement to do any of the foregoing ("investments") made by a small business investment company ("SBIC") and an affiliated bank, provided that reports about the investments are made on forms the Commission may prescribe. Rule 17d–2 (17 CFR 270.17d–2) designates Form N–17D–1 (17 CFR 274.200) ("form") as the form for reports required by rule 17d–1.

SBICs and their affiliated banks use form N–17D–1 to report any contemporaneous investments in a small business concern. The form provides shareholders and persons seeking to make an informed decision about investing in an SBIC an opportunity to learn about transactions of the SBIC that have the potential for self dealing and other forms of overreaching by affiliated persons at the expense of shareholders.

Form N–17D–1 requires SBICs and their affiliated banks to report identifying information about the small business concern and the affiliated bank. The report must include, among other things, the SBIC's and affiliated bank's outstanding investments in the small business concern, the use of the proceeds of the investments made during the reporting period, any changes in the nature and amount of the affiliated bank's investment, the name of any affiliated person of the SBIC or the affiliated bank (or any affiliated person of the affiliated person of the SBIC or the affiliated bank) who has any interest in the transactions, the basis of the affiliation, the nature of the interest, and the consideration the affiliated person has received or will receive.

Up to three SBICs may file the form in any year.[1] The Commission estimates the burden of filling out the form is approximately one hour per response and would likely be completed by an accountant or other professional. Based on past filings, the Commission estimates that no more than one SBIC is likely to use the form each year. Most of the information requested on the form should be readily available to the SBIC or the affiliated bank in records kept in the ordinary course of business, or with respect to the SBIC, pursuant to the recordkeeping requirements under the Act. Commission staff estimates that it should take approximately one hour for an accountant or other professional to complete the form.[2] The estimated total annual burden of filling out the form is 1 hour, at an estimated total annual cost of $198.[3] The Commission will not keep responses on Form N–17D–1 confidential.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it

[1] As of February 4, 2011, three SBICs were registered with the Commission.

[2] This estimate of hours is based on past conversations with representatives of SBICs and accountants that have filed the form.

[3] Commission staff estimates that the annual burden would be incurred by a senior accountant with an average hourly wage rate of $198 per hour. *See* Securities Industry and Financial Markets Association, Report on Management and Professional Earnings in the Securities Industry 2010, modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 13, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12201 Filed 5–17–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form 40–F; OMB Control No. 3235–0381; SEC File No. 270–335 .

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for approval of extension of the previously approved collection of information discussed below.

Form 40–F (17 CFR 249.240f) is used by certain Canadian issuers to register a class of securities under Section 12 of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78*l*) or as an annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)). The information required in the Form 40–F is used by investors making investment decisions with respect to the securities of such Canadian companies. All information provided to the Commission is available for public review. Information provided by Form 40–F is mandatory. We estimate that Form 40–F takes approximately 427 hours per response and is filed by approximately 205 respondents. We estimate that 25% of the 427 hours per response (106.75 hours) is prepared by the issuer for a total reporting burden of 21,884 (106.75 hours per response x 205 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 11, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12155 Filed 5–17–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64476; File No. SR–BYX–2011–009]

Self-Regulatory Organizations; BATS Y–Exchange, Inc.; Notice of Filing of Proposed Rule Change by BATS Y–Exchange, Inc. To Amend BYX Rule 11.9, Entitled "Orders and Modifiers" and BYX Rule 11.13, Entitled "Order Execution"

May 12, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 9, 2011, BATS Y–Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BYX Rule 11.9, entitled "Orders and Modifiers" and BYX Rule 11.13, entitled "Order Execution."

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchange proposes a change to its order handling procedures to allow both Non-Displayed Orders[3] and orders subject to price sliding that are not executable at their most aggressive price to be executed at one-half minimum price variation less aggressive than that price. The reference to the most "aggressive" price, as used in this filing, means for bids the highest price the User is willing to pay, and for offers the lowest price at which the User is willing to sell. The Exchange believes that the proposed change to its order handling procedures will allow for tighter spreads on the Exchange and will provide both sides of a given transaction with price improvement not otherwise available without such change.

In addition to the proposed changes to its order handling procedures, the Exchange proposes to modify the Exchange's rules to make clear that an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in Rule 11.9(c)(11), a Non-Displayed Order is "a market or limit order that is not displayed on the Exchange."

order subject to "NMS price sliding" (as described below) can be ranked at the same price as an order displayed on the other side of the BATS Book,[4] although temporarily not executable at that price and displayed at one minimum price variation less aggressive than its price. For bids, this means that a price slid order is displayed at one minimum price variation less than the current national best offer ("NBO"), and for offers, this means that a price slid order is displayed at one minimum price variation more than the current national best bid ("NBB").

Both of the scenarios described below, (1) Non-Displayed Orders posted opposite-side, same priced displayed orders, and (2) orders subject to price sliding that are ranked at a price equal to an opposite-side displayed order, can occur when an order on either side of the market is a BATS Post Only Order. As defined in Rule 11.9(c)(6), a BATS Post Only Order is "[a]n order that is to be ranked and executed on the Exchange pursuant to Rule 11.12 and Rule 11.13(a)(1) or cancelled, as appropriate, without routing away to another trading center except that the order will not remove liquidity from the BATS Book." Accordingly, a BATS Post Only Order does not remove liquidity, but posts to the BATS Book to the extent permissible.

The Exchange's allowance of Non-Displayed Orders or ranking of price slid orders at the locking price is not inconsistent with the locked markets provision of Regulation NMS,[5] which applies to quotations that are *displayed* at prices that lock other protected quotations. In the case of a Non-Displayed Order, such an order can rest at a locking price because the Non-Displayed Order is not displayed. Similarly, although ranked at the locking price, a price slid order is expressly displayed at one minimum price variation above (below) the NBB (NBO).

Non-Displayed Orders

Consistent with the Exchange's rule regarding priority of orders, Rule 11.12, certain Non-Displayed Orders cannot be executed by the Exchange pursuant to Rule 11.13 when such orders would be executed at prices equal to displayed orders on the opposite side of the market (the "locking price"). Specifically, if incoming orders were allowed to execute against the resting Non-Displayed Order at the locking price, such orders would receive a priority advantage over the resting, displayed order at the locking price; accordingly, such executions at the locking price are disallowed. The Exchange proposes to modify its handling of Non-Displayed Orders to optimize available liquidity for incoming orders and to provide price improvement for market participants, as further described below.

Below are examples describing the Exchange's current handling of Non-Displayed Orders, followed by examples describing the Exchange's proposed order handling procedures.

Example 1: Two Penny Spread—Current Handling:

Assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share, a resting Non-Displayed Order bid to buy 100 shares of a security priced at $10.12 per share, and a posted and displayed offer to sell 100 shares also at $10.12 per share. Assume the national best bid or offer ("NBBO") is also $10.10 by $10.12. The BATS Book in this situation can be depicted as follows, with "ND" identifying the Non-Displayed Order:

	Bids		Offers
BYX	$10.12 (ND) $10.10	×	$10.12

If an incoming Immediate-or-Cancel ("IOC")[6] offer to sell 100 shares at $10.11 is entered into the BATS Book, such order will be cancelled back to the User entering such order even though the resting Non-Displayed Order at $10.12 is willing to buy at a price better than the limit price of the offer.[7] Such cancellation will occur because an execution at the Non-Displayed Order's price of $10.12 would violate the Exchange's priority rule by giving the later arriving offer an execution ahead of the displayed offer at $10.12. If the incoming order was not an IOC, and thus, was eligible for posting, then the offer would be posted to the BATS Book at $10.11; the Non-Displayed bid would still remain on the BATS Book unexecuted. If instead the incoming offer was priced at $10.12 (which is the full price of the resting and displayed $10.12 offer), then, depending on the User's instructions, such offer would either cancel or post to the BATS Book behind the original offer in priority.

Example 2: One Penny Spread—Current Handling:

As a second example, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share, a resting Non-Displayed Order bid to buy 100 shares of a security priced at $10.11 per share, and a posted and displayed offer to sell 100 shares also at $10.11 per share. Assume the NBBO is also $10.10 by $10.11. The BATS Book in this situation can be depicted as follows, with "ND" identifying the Non-Displayed Order:

	Bids		Offers
BYX	$10.11 (ND) $10.10	×	$10.11

If an incoming IOC offer to sell 100 shares at $10.10 is entered into the BATS Book, such order will be executed against the bid at $10.10 even though the resting Non-Displayed Order is willing to buy at the higher price of $10.11. As in the example above, the Exchange cannot execute the incoming order against the Non-Displayed Order because an execution at the Non-Displayed Order's price of $10.11 would violate the Exchange's priority rule by giving the later arriving offer an execution ahead of the displayed offer at $10.11. Also as in the example above, an offer at the price of the resting and displayed offer would, subject to the User's instructions, either cancel or post to the BATS Book behind the original offer in priority.

Under the scenarios described above, in order to honor its priority rule, the Exchange is rejecting orders that are otherwise marketable against liquidity available on the BATS Book or is executing incoming orders at prices worse than if it executed such orders against Non-Displayed Orders that are resting but not executable at their limit price. In order to execute such otherwise marketable orders consistent with the Exchange's priority rule, the Exchange proposes to execute a resting Non-Displayed Order at, in the case of a Non-Displayed bid, one-half minimum price variation less than the locking price, and, in the case of a Non-Displayed offer, at one-half minimum price variation more than the locking price, in the event that an order submitted to the Exchange on the side opposite such a Non-Displayed Order is a market order or limit order priced

[4] As defined in Rule 1.5(e), the BATS Book is "the System's electronic file of orders."

[5] Rule 610(d) of Regulation NMS requires policies and procedures to avoid the display of quotations that lock or cross protected quotations. 17 CFR 242.610(d).

[6] As defined in Rule 11.9(b)(1), an IOC Order is a "limit order that is to be executed in whole or in part as soon as such order is received, and the portion not so executed is to be treated as cancelled."

[7] Because the example assumes an NBBO of $10.10 (bid) by $10.12 (offer), the Exchange would not route an offer at $10.11 away from the Exchange even if it was eligible for routing, as there is no displayed liquidity to which the Exchange can route. If another market center did have a posted $10.11 bid, a $10.11 offer eligible for routing would route to that away market center.

more aggressively than the locking price. For bids or offers under $1.00 per share, Non-Displayed Orders priced at the locking price will not be executed by the Exchange.[8]

Example 3: Two Penny Spread—Proposed Handling:

To demonstrate the proposed functionality as compared to the first example above, again assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share, a resting Non-Displayed Order bid to buy 100 shares of a security priced at $10.12 per share, and a posted and displayed offer to sell 100 shares also at $10.12 per share. Assume the NBBO is also $10.10 by $10.12. The BATS Book in this situation can be depicted as follows, with "ND" identifying the Non-Displayed Order:

	Bids		Offers
BYX	$10.12 (ND) $10.10	×	$10.12

If an incoming offer to sell 100 shares at $10.11 is entered into the BATS Book, the resting Non-Displayed Order at the locking price will be executed against the incoming offer at $10.115 per share, thus providing the resting Non-Displayed bid a half-penny of price improvement from its limit price of $10.12 and the incoming offer a half-penny of price improvement from its limit price of $10.11. If an incoming offer to sell 100 shares, priced instead at $10.10, is entered into the BATS Book, the resting Non-Displayed Order at the locking price will be executed against the incoming offer at $10.115 per share, thus providing the resting Non-Displayed bid a half-penny of price improvement from its limit price of $10.12 and the incoming offer a full penny and a half of price improvement from its limit price of $10.10. The result would be the same for an incoming market order to sell or any other incoming limit order offer priced at $10.11 or below, which would execute against the Non-Displayed bid at a price of $10.115 per share. An offer at the full price of the resting and displayed $10.12 offer would not execute against the resting Non-Displayed bid, as such execution would still violate the original offer's priority. Instead, depending on the entering User's instructions, a later arriving offer at $10.12 would either cancel or post to the BATS Book behind the original offer in priority.

Example 4: One Penny Spread—Proposed Handling:

To demonstrate the proposed functionality as compared to the second example above, again assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share, a resting Non-Displayed Order bid to buy 100 shares of a security priced at $10.11 per share, and a posted and displayed offer to sell 100 shares also at $10.11 per share. Assume the NBBO is also $10.10 by $10.11. The BATS Book in this situation can be depicted as follows, with "ND" identifying the Non-Displayed Order:

	Bid		Offer
BYX	$10.11 (ND) $10.10	×	$10.11

If an incoming offer to sell 100 shares at $10.10 is entered into the BATS Book, the resting Non-Displayed Order at the locking price will be executed at $10.105 per share, thus providing the resting Non-Displayed bid a half-penny of price improvement from its limit price of $10.11 and the incoming offer a half-penny of price improvement from its limit price of $10.10. The result would be the same for an incoming market order to sell or any other incoming limit order offer priced at $10.10 or below, which would execute against the Non-Displayed bid at a price of $10.105 per share. As above, an offer at the full price of the resting and displayed $10.11 offer would not execute against the resting Non-Displayed bid, but would instead either cancel or post to the BATS Book behind the original $10.11 offer in priority.

Orders Subject to Price Sliding

The Exchange also proposes to make clear in its rules, both through amending Rule 11.9 and through the proposed language for Rule 11.13, that an order subject to NMS price sliding can be ranked at a price that is locking an order displayed on the other side of the Exchange. In addition, the Exchange proposes to apply the proposed order handling procedures for Non-Displayed Orders that are otherwise non-executable to orders that are resting with a ranked price opposite a displayed order on the BATS Book.

Example 5: NMS Price Sliding:

As an example of NMS price sliding generally, assume the NBB is $10.10 per share, and the Exchange's best bid is $10.09. Assume the NBO is $10.11 per share, and the Exchange has a displayed offer at that price.

	Bid		Offer
National best	$10.10	×	$10.11
BYX best	$10.09	×	$10.11

Next, assume the Exchange received an incoming BATS Post Only Order bid to buy at $10.11. The BATS Post Only Order would not remove the posted offer on the BATS Book at $10.11, and could not post as a bid at that price because it would lock the NBO. Such bid, assuming price sliding is enabled,[9] would instead be ranked at $10.11 and displayed by BYX as a bid at $10.10. The Result would be depicted as follows:

	Bid		Offer
National best	$10.10	×	$10.11
BYX best	$10.09	×	$10.11

* Ranked at 10.11, but price slid and displayed at $10.10.

The BYX displayed $10.10 bid, ranked at $10.11, is not executable at $10.11 because any incoming order that would execute against it at the locking price would receive a priority advantage over the displayed offer at $10.11. Nonetheless, the best bid on the BATS Book is a buyer willing to pay up to $10.11. The Exchange proposes to modify its order handling procedures for orders subject to price sliding that are ranked at a price opposite an order displayed by the Exchange consistent with the modification described above for Non-Displayed Orders. Specifically, in the event an order submitted to the Exchange on the side opposite such a price slid order is a market order or a limit order priced more aggressively than the locking price, the Exchange will execute the resting order subject to price sliding at, in the case of a resting bid, one-half minimum price variation less than the locking price, and, in the case of a resting offer, at one-half minimum price variation more than the locking price. For bids or offers under $1.00 per share, resting orders subject to price sliding ranked at the locking price will not be executed by the Exchange.

Additional Discussion

Under all of the scenarios described above, the Non-Displayed Order or order subject to price sliding is priced at the very inside of the market but is temporarily un-executable at its full limit price due to the Exchange's

[8] With respect to securities priced below $1.00 per share, the Exchange does not believe that the proposed functionality is necessary for such securities given the ability to quote in sub-pennies. Further, market participants might have system limitations that would not recognize executions in any increment finer than $0.0001.

[9] As set forth in Rule 11.9(c)(6), BATS Post Only Orders are subject to the price sliding process by default, but User can opt-out of price sliding.

priority rule and order handling procedures. The proposed change will provide incoming orders with price improvement against such aggressively priced, resting orders. The Exchange notes that by permitting a Members Non-Displayed Order to rest at a locking price on the other side of a displayed order, the Exchange is incenting Members to post aggressively priced liquidity, rather than discouraging such liquidity by leaving it unexecuted. Incoming orders executing against aggressively priced Non-Displayed Orders and price slid orders will derive an obvious benefit from the price improvement received. In addition, if the BATS Book changes so that such orders are no longer resting or ranked opposite a displayed order, then such orders will again be executable at their full limit price, and in the case of price slid orders, will be displayed at that price.

The Exchange is proposing a solution to address specific conditions that are a current, natural consequence of other order handling procedures of the Exchange. The Exchange believes that such specific circumstances, without modification, will continue to result in fewer executions or executions with less price improvement than the Exchange could otherwise facilitate. The Exchange will conduct surveillance to ensure that Users are not intentionally seeking to create an internally locked Book for the purpose of obtaining an execution at one-half minimum price variation. As such, the Exchange proposes to add Interpretation and Policy .01 to Rule 11.13 to state that the Exchange will consider it inconsistent with just and equitable principles of trade to engage in a pattern or practice of using Non-Displayed Orders or orders subject to price sliding solely for the purpose of executing such orders at one-half minimum price variation from the locking price. Evidence of such behavior may include, but is not limited to, a User's pattern of entering orders at a price that would lock or be ranked at the price of a displayed quotation and cancelling orders when they no longer lock the displayed quotation.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[10] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[11] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The proposed change to execute marketable orders that are currently not executed under specific scenarios that can occur will only serve to improve execution quality for participants sending orders to the Exchange. Further, the proposed change will help to provide price improvement to market participants, again, in scenarios that at times, such participants are not even receiving executions from the Exchange or are receiving less price improvement than is currently available. Thus, the Exchange believes that its proposed order handling process in the scenario described in this filing will benefit market participants and their customers by allowing them greater flexibility in their efforts to fill orders and minimize trading costs.

The Exchange notes that the specific scenarios for which the Exchange is proposing an improved order handling process are possible due to the existence of orders that by definition will not remove liquidity from the BATS Book, BATS Post Only Orders. The Exchange believes that BATS Post Only Orders are consistent with the Act, particularly, Section 6(b)(5) of the Act,[12] because they help to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. BATS Post Only Orders allow Users to post aggressively priced liquidity, as such Users have certainty as to the fee or rebate they will receive from the Exchange if their order is executed. Without such ability, the Exchange believes that certain Users would simply post less aggressively priced liquidity, and prices available for market participants, including retail investors, would deteriorate. Accordingly, the Exchange believes that BATS Post Only Orders enhance the liquidity available to all market participants by allowing market makers and other liquidity providers to add liquidity to the Exchange at or near the inside of the market.

The proposed rule change is also consistent with Rule 612 of Regulation NMS.[13] Rule 612 generally prohibits a national securities exchange from displaying, ranking or accepting a bid, offer or order in any NMS stock priced in an increment smaller than $0.01 if such bid, offer or order is priced at $1.00 per share or greater. Commission Staff has specifically interpreted Rule 612 to allow a market center to provide sub-penny price improvement, compared to the NBBO in an NMS stock for which sub-penny quotations are prohibited by the Rule, provided that the execution does not result from an order, quotation, or indication of interest that was itself priced in an impermissible sub-penny increment.[14] The staff also indicated that this interpretation may not apply when unconditional price improvement guarantees are involved.[15]

The proposed rule change does exactly what the response to Question 13 of the FAQs allows. The Exchange will provide price improvement in a sub-penny increment only when circumstances dictate, *i.e.,* only: (1) When a Non-Displayed Order is resting on the opposite side of the market from a displayed order at the locking price, or (2) when an order subject to price sliding is ranked at a price opposite a displayed order.

All orders and quotations in these scenarios are accepted, displayed and/or ranked in a permissible penny increment price and are only executed in a sub-penny increment under certain limited circumstances—if the displayed order opposite the resting Non-Displayed Order or price slid order is cancelled or executed, then the Non-Displayed order or price slid order is again available at its full limit price.[16] There are also no unconditional price improvement guarantees involved.

The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, as the Exchange and multiple other exchanges allow orders to execute at

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 242.612.

[14] *See* Division of Market Regulation: Responses to Frequently Asked Questions ("FAQs") concerning Rule 612 (Minimum Pricing Increment) of Regulation NMS, Question 13 (Oct. 21, 2005).

[15] *Id.*

[16] The Exchange notes that permitting an execution in a sub-penny increment under certain limited circumstances, while never ranking the applicable orders at such sub-penny increments, has already been implemented by multiple exchanges, including the Exchange, in the form of mid-point orders. *See* BATS Rule 11.9(c)(9) ("Mid-Point Peg Orders"); *see also,* NASDAQ Rule 4751(f)(4) ("Midpoint Peg" orders); NYSE Arca Equities Rule 7.31(h)(5) ("Mid-Point Passive Liquidity Orders"); EDGX Rule 11.5(c)(7) ("Mid-Point Match Orders"). The order types listed above are not displayed but can execute at the mid-point of the NBBO, including in penny-wide markets.

half-penny prices.[17] The Exchange does not believe that there is anything novel or controversial about executing marketable orders in a fully transparent manner that is consistent with its other pre-existing rules, and under the proposed functionality, both sides to each transaction executed will receive at least one half penny price improvement on their orders. As stated above, Commission Staff has also publicly interpreted Rule 612 as allowing sub-penny executions due to price improvement, and arguably has encouraged such executions by stating that "* * * sub-penny executions due to price improvement are generally beneficial to retail investors."[18]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- 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–BYX–2011–009 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–BYX–2011–009. 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–BYX–2011–009 and should be submitted on or before June 8, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12131 Filed 5–17–11; 8:45 am]

BILLING CODE 8011–01–P

[17] *See id.*

[18] *See* Exchange Act Release No. 34–54714 at 4 (November 6, 2006), 71 FR 66352 (November 14, 2006).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64475; File No. SR–BATS–2011–015]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change by BATS Exchange, Inc. To Amend BATS Rule 11.9, Entitled "Orders and Modifiers" and BATS Rule 11.13, Entitled "Order Execution"

May 12, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 9, 2011, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BATS Rule 11.9, entitled "Orders and Modifiers" and BATS Rule 11.13, entitled "Order Execution."

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchange proposes a change to its order handling procedures to allow both Non-Displayed Orders [3] and orders subject to price sliding that are not executable at their most aggressive price to be executed at one-half minimum price variation less aggressive than that price. The reference to the most "aggressive" price, as used in this filing, means for bids the highest price the User is willing to pay, and for offers the lowest price at which the User is willing to sell. The Exchange believes that the proposed change to its order handling procedures will allow for tighter spreads on the Exchange and will provide both sides of a given transaction with price improvement not otherwise available without such change.

In addition to the proposed changes to its order handling procedures, the Exchange proposes to modify the Exchange's rules to make clear that an order subject to "NMS price sliding" (as described below) can be ranked at the same price as an order displayed on the other side of the BATS Book,[4] although temporarily not executable at that price and displayed at one minimum price variation less aggressive than its price. For bids, this means that a price slid order is displayed at one minimum price variation less than the current national best offer ("NBO"), and for offers, this means that a price slid order is displayed at one minimum price variation more than the current national best bid ("NBB").

Both of the scenarios described below, (1) Non-Displayed Orders posted opposite-side, same priced displayed orders, and (2) orders subject to price sliding that are ranked at a price equal to an opposite-side displayed order, can occur when an order on either side of the market is a BATS Post Only Order. As defined in Rule 11.9(c)(6), a BATS Post Only Order is "[a]n order that is to be ranked and executed on the Exchange pursuant to Rule 11.12 and Rule 11.13(a)(1) or cancelled, as appropriate, without routing away to another trading center except that the order will not remove liquidity from the BATS Book." Accordingly, a BATS Post Only Order does not remove liquidity, but posts to the BATS Book to the extent permissible.

The Exchange's allowance of Non-Displayed Orders or ranking of price slid orders at the locking price is not inconsistent with the locked markets provision of Regulation NMS,[5] which applies to quotations that are *displayed* at prices that lock other protected quotations. In the case of a Non-Displayed Order, such an order can rest at a locking price because the Non-Displayed Order is not displayed. Similarly, although ranked at the locking price, a price slid order is expressly displayed at one minimum price variation above (below) the NBB (NBO).

Non-Displayed Orders

Consistent with the Exchange's rule regarding priority of orders, Rule 11.12, certain Non-Displayed Orders cannot be executed by the Exchange pursuant to Rule 11.13 when such orders would be executed at prices equal to displayed orders on the opposite side of the market (the "locking price"). Specifically, if incoming orders were allowed to execute against the resting Non-Displayed Order at the locking price, such orders would receive a priority advantage over the resting, displayed order at the locking price; accordingly, such executions at the locking price are disallowed. The Exchange proposes to modify its handling of Non-Displayed Orders to optimize available liquidity for incoming orders and to provide price improvement for market participants, as further described below.

Below are examples describing the Exchange's current handling of Non-Displayed Orders, followed by examples describing the Exchange's proposed order handling procedures.

Example 1: Two Penny Spread—Current Handling:

Assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share, a resting Non-Displayed Order bid to buy 100 shares of a security priced at $10.12 per share, and a posted and displayed offer to sell 100 shares also at $10.12 per share. Assume the national best bid or offer ("NBBO") is also $10.10 by $10.12. The BATS Book in this situation can be depicted as follows, with "ND" identifying the Non-Displayed Order:

	Bids		Offers
BATS	$10.12 (ND) $10.10	×	$10.12

If an incoming Immediate-or-Cancel ("IOC") [6] offer to sell 100 shares at $10.11 is entered into the BATS Book, such order will be cancelled back to the User entering such order even though the resting Non-Displayed Order at $10.12 is willing to buy at a price better than the limit price of the offer.[7] Such cancellation will occur because an execution at the Non-Displayed Order's price of $10.12 would violate the Exchange's priority rule by giving the later arriving offer an execution ahead of the displayed offer at $10.12. If the incoming order was not an IOC, and thus, was eligible for posting, then the offer would be posted to the BATS Book at $10.11; the Non-Displayed bid would still remain on the BATS Book unexecuted. If instead the incoming offer was priced at $10.12 (which is the full price of the resting and displayed $10.12 offer), then, depending on the User's instructions, such offer would either cancel or post to the BATS Book behind the original offer in priority.

Example 2: One Penny Spread—Current Handling:

As a second example, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share, a resting Non-Displayed Order bid to buy 100 shares of a security priced at $10.11 per share, and a posted and displayed offer to sell 100 shares also at $10.11 per share. Assume the NBBO is also $10.10 by $10.11. The BATS Book in this situation can be depicted as follows, with "ND" identifying the Non-Displayed Order:

	Bids		Offers
BATS	$10.11 (ND) $10.10	×	$10.11

If an incoming IOC offer to sell 100 shares at $10.10 is entered into the BATS Book, such order will be executed against the bid at $10.10 even though the resting Non-Displayed Order is willing to buy at the higher price of

[3] As defined in Rule 11.9(c)(11), a Non-Displayed Order is "a market or limit order that is not displayed on the Exchange."

[4] As defined in Rule 1.5(e), the BATS Book is "the System's electronic file of orders."

[5] Rule 610(d) of Regulation NMS requires policies and procedures to avoid the display of quotations that lock or cross protected quotations. 17 CFR 242.610(d).

[6] As defined in Rule 11.9(b)(1), an IOC Order is a "limit order that is to be executed in whole or in part as soon as such order is received, and the portion not so executed is to be treated as cancelled."

[7] Because the example assumes an NBBO of $10.10 (bid) by $10.12 (offer), the Exchange would not route an offer at $10.11 away from the Exchange even if it was eligible for routing, as there is no displayed liquidity to which the Exchange can route. If another market center did have a posted $10.11 bid, a $10.11 offer eligible for routing would route to that away market center.

$10.11. As in the example above, the Exchange cannot execute the incoming order against the Non-Displayed Order because an execution at the Non-Displayed Order's price of $10.11 would violate the Exchange's priority rule by giving the later arriving offer an execution ahead of the displayed offer at $10.11. Also as in the example above, an offer at the price of the resting and displayed offer would, subject to the User's instructions, either cancel or post to the BATS Book behind the original offer in priority.

Under the scenarios described above, in order to honor its priority rule, the Exchange is rejecting orders that are otherwise marketable against liquidity available on the BATS Book or is executing incoming orders at prices worse than if it executed such orders against Non-Displayed Orders that are resting but not executable at their limit price. In order to execute such otherwise marketable orders consistent with the Exchange's priority rule, the Exchange proposes to execute a resting Non-Displayed Order at, in the case of a Non-Displayed bid, one-half minimum price variation less than the locking price, and, in the case of a Non-Displayed offer, at one-half minimum price variation more than the locking price, in the event that an order submitted to the Exchange on the side opposite such a Non-Displayed Order is a market order or limit order priced more aggressively than the locking price. For bids or offers under $1.00 per share, Non-Displayed Orders priced at the locking price will not be executed by the Exchange.[8]

Example 3: Two Penny Spread—Proposed Handling:

To demonstrate the proposed functionality as compared to the first example above, again assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share, a resting Non-Displayed Order bid to buy 100 shares of a security priced at $10.12 per share, and a posted and displayed offer to sell 100 shares also at $10.12 per share. Assume the NBBO is also $10.10 by $10.12. The BATS Book in this situation can be depicted as follows, with "ND" identifying the Non-Displayed Order:

	Bids		Offers
BATS	$10.12 (ND) $10.10	×	$10.12

If an incoming offer to sell 100 shares at $10.11 is entered into the BATS Book, the resting Non-Displayed Order at the locking price will be executed against the incoming offer at $10.115 per share, thus providing the resting Non-Displayed bid a half-penny of price improvement from its limit price of $10.12 and the incoming offer a half-penny of price improvement from its limit price of $10.11. If an incoming offer to sell 100 shares, priced instead at $10.10, is entered into the BATS Book, the resting Non-Displayed Order at the locking price will be executed against the incoming offer at $10.115 per share, thus providing the resting Non-Displayed bid a half-penny of price improvement from its limit price of $10.12 and the incoming offer a full penny and a half of price improvement from its limit price of $10.10. The result would be the same for an incoming market order to sell or any other incoming limit order offer priced at $10.11 or below, which would execute against the Non-Displayed bid at a price of $10.115 per share. An offer at the full price of the resting and displayed $10.12 offer would not execute against the resting Non-Displayed bid, as such execution would still violate the original offer's priority. Instead, depending on the entering User's instructions, a later arriving offer at $10.12 would either cancel or post to the BATS Book behind the original offer in priority.

Example 4: One Penny Spread—Proposed Handling:

To demonstrate the proposed functionality as compared to the second example above, again assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share, a resting Non-Displayed Order bid to buy 100 shares of a security priced at $10.11 per share, and a posted and displayed offer to sell 100 shares also at $10.11 per share. Assume the NBBO is also $10.10 by $10.11. The BATS Book in this situation can be depicted as follows, with "ND" identifying the Non-Displayed Order:

	Bids		Offers
BATS	$10.11 (ND) $10.10	×	$10.11

If an incoming offer to sell 100 shares at $10.10 is entered into the BATS Book, the resting Non-Displayed Order at the locking price will be executed at $10.105 per share, thus providing the resting Non-Displayed bid a half-penny of price improvement from its limit price of $10.11 and the incoming offer a half-penny of price improvement from its limit price of $10.10. The result would be the same for an incoming market order to sell or any other incoming limit order offer priced at $10.10 or below, which would execute against the Non-Displayed bid at a price of $10.105 per share. As above, an offer at the full price of the resting and displayed $10.11 offer would not execute against the resting Non-Displayed bid, but would instead either cancel or post to the BATS Book behind the original $10.11 offer in priority.

Orders Subject to Price Sliding

The Exchange also proposes to make clear in its rules, both through amending Rule 11.9 and through the proposed language for Rule 11.13, that an order subject to NMS price sliding can be ranked at a price that is locking an order displayed on the other side of the Exchange. In addition, the Exchange proposes to apply the proposed order handling procedures for Non-Displayed Orders that are otherwise non-executable to orders that are resting with a ranked price opposite a displayed order on the BATS Book.

Example 5: NMS Price Sliding

As an example of NMS price sliding generally, assume the NBB is $10.10 per share, and the Exchange's best bid is $10.09. Assume the NBO is $10.11 per share, and the Exchange has a displayed offer at that price.

	Bid		Offer
National best	$10.10	×	$10.11
BATS best	$10.09	×	$10.11

Next, assume the Exchange received an incoming BATS Post Only Order bid to buy at $10.11. The BATS Post Only Order would not remove the posted offer on the BATS Book at $10.11, and could not post as a bid at that price because it would lock the NBO. Such bid, assuming price sliding is enabled,[9] would instead be ranked at $10.11 and displayed by BATS as a bid at $10.10. The Result would be depicted as follows:

	Bid		Offer
National best	$10.10	×	$10.11

[8] With respect to securities priced below $1.00 per share, the Exchange does not believe that the proposed functionality is necessary for such securities given the ability to quote in sub-pennies. Further, market participants might have system limitations that would not recognize executions in any increment finer than $0.0001.

[9] As set forth in Rule 11.9(c)(6), BATS Post Only Orders are subject to the price sliding process by default, but User can opt-out of price sliding.

	Bid		Offer
BATS best	*$10.10	×	$10.11

*Ranked at 10.11, but price slid and displayed at $10.10.

The BATS displayed $10.10 bid, ranked at $10.11, is not executable at $10.11 because any incoming order that would execute against it at the locking price would receive a priority advantage over the displayed offer at $10.11. Nonetheless, the best bid on the BATS Book is a buyer willing to pay up to $10.11. The Exchange proposes to modify its order handling procedures for orders subject to price sliding that are ranked at a price opposite an order displayed by the Exchange consistent with the modification described above for Non-Displayed Orders. Specifically, in the event an order submitted to the Exchange on the side opposite such a price slid order is a market order or a limit order priced more aggressively than the locking price, the Exchange will execute the resting order subject to price sliding at, in the case of a resting bid, one-half minimum price variation less than the locking price, and, in the case of a resting offer, at one-half minimum price variation more than the locking price. For bids or offers under $1.00 per share, resting orders subject to price sliding ranked at the locking price will not be executed by the Exchange.

Additional Discussion

Under all of the scenarios described above, the Non-Displayed Order or order subject to price sliding is priced at the very inside of the market but is temporarily un-executable at its full limit price due to the Exchange's priority rule and order handling procedures. The proposed change will provide incoming orders with price improvement against such aggressively priced, resting orders. The Exchange notes that by permitting a Member's Non-Displayed Order to rest at a locking price on the other side of a displayed order, the Exchange is incenting Member's to post aggressively priced liquidity, rather than discouraging such liquidity by leaving it unexecuted. Incoming orders executing against aggressively priced Non-Displayed Orders and price slid orders will derive an obvious benefit from the price improvement received. In addition, if the BATS Book changes so that such orders are no longer resting or ranked opposite a displayed order, then such orders will again be executable at their full limit price, and in the case of price slid orders, will be displayed at that price.

The Exchange is proposing a solution to address specific conditions that are a current, natural consequence of other order handling procedures of the Exchange. The Exchange believes that such specific circumstances, without modification, will continue to result in fewer executions or executions with less price improvement than the Exchange could otherwise facilitate. The Exchange will conduct surveillance to ensure that Users are not intentionally seeking to create an internally locked Book for the purpose of obtaining an execution at one-half minimum price variation. As such, the Exchange proposes to add Interpretation and Policy .01 to Rule 11.13 to state that the Exchange will consider it inconsistent with just and equitable principles of trade to engage in a pattern or practice of using Non-Displayed Orders or orders subject to price sliding solely for the purpose of executing such orders at one-half minimum price variation from the locking price. Evidence of such behavior may include, but is not limited to, a User's pattern of entering orders at a price that would lock or be ranked at the price of a displayed quotation and cancelling orders when they no longer lock the displayed quotation.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[10] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[11] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The proposed change to execute marketable orders that are currently not executed under specific scenarios that can occur will only serve to improve execution quality for participants sending orders to the Exchange. Further, the proposed change will help to provide price improvement to market participants, again, in scenarios that at times, such participants are not even receiving executions from the Exchange or are receiving less price improvement than is currently available. Thus, the Exchange believes that its proposed order handling process in the scenario described in this filing will benefit market participants and their customers by allowing them greater flexibility in their efforts to fill orders and minimize trading costs.

The Exchange notes that the specific scenarios for which the Exchange is proposing an improved order handling process are possible due to the existence of orders that by definition will not remove liquidity from the BATS Book, BATS Post Only Orders. The Exchange believes that BATS Post Only Orders are consistent with the Act, particularly, Section 6(b)(5) of the Act,[12] because they help to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. BATS Post Only Orders allow Users to post aggressively priced liquidity, as such Users have certainty as to the fee or rebate they will receive from the Exchange if their order is executed. Without such ability, the Exchange believes that certain Users would simply post less aggressively priced liquidity, and prices available for market participants, including retail investors, would deteriorate. Accordingly, the Exchange believes that BATS Post Only Orders enhance the liquidity available to all market participants by allowing market makers and other liquidity providers to add liquidity to the Exchange at or near the inside of the market.

The proposed rule change is also consistent with Rule 612 of Regulation NMS.[13] Rule 612 generally prohibits a national securities exchange from displaying, ranking or accepting a bid, offer or order in any NMS stock priced in an increment smaller than $0.01 if such bid, offer or order is priced at $1.00 per share or greater. Commission Staff has specifically interpreted Rule 612 to allow a market center to provide sub-penny price improvement, compared to the NBBO in an NMS stock for which sub-penny quotations are prohibited by the Rule, provided that the execution does not result from an order, quotation, or indication of interest that was itself priced in an impermissible sub-penny increment.[14] The staff also indicated that this interpretation may not apply when

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 242.612.

[14] *See* Division of Market Regulation: Responses to Frequently Asked Questions ("FAQs") concerning Rule 612 (Minimum Pricing Increment) of Regulation NMS, Question 13 (Oct. 21, 2005).

unconditional price improvement guarantees are involved.[15]

The proposed rule change does exactly what the response to Question 13 of the FAQs allows. The Exchange will provide price improvement in a sub-penny increment only when circumstances dictate, *i.e.,* only: (1) When a Non-Displayed Order is resting on the opposite side of the market from a displayed order at the locking price, or (2) when an order subject to price sliding is ranked at a price opposite a displayed order.

All orders and quotations in these scenarios are accepted, displayed and/or ranked in a permissible penny increment price and are only executed in a sub-penny increment under certain limited circumstances—if the displayed order opposite the resting Non-Displayed Order or price slid order is cancelled or executed, then the Non-Displayed order or price slide order is again available at its full limit price.[16] There are also no unconditional price improvement guarantees involved.

The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, as the Exchange and multiple other exchanges allow orders to execute at half-penny prices.[17] The Exchange does not believe that there is anything novel or controversial about executing marketable orders in a fully transparent manner that is consistent with its other pre-existing rules, and under the proposed functionality, both sides to each transaction executed will receive at least one half penny price improvement on their orders. As stated above, Commission Staff has also publicly interpreted Rule 612 as allowing sub-penny executions due to price improvement, and arguably has encouraged such executions by stating that " * * * sub-penny executions due to price improvement are generally beneficial to retail investors." [18]

[15] *Id.*

[16] The Exchange notes that permitting an execution in a sub-penny increment under certain limited circumstances, while never ranking the applicable orders at such sub-penny increments, has already been implemented by multiple exchanges, including the Exchange, in the form of mid-point orders. *See* BATS Rule 11.9(c)(9) ("Mid-Point Peg Orders"); *see also,* NASDAQ Rule 4751(f)(4) ("Midpoint Peg" orders); NYSE Arca Equities Rule 7.31(h)(5) ("Mid-Point Passive Liquidity Orders"); EDGX Rule 11.5(c)(7) ("Mid-Point Match Orders"). The order types listed above are not displayed but can execute at the mid-point of the NBBO, including in penny-wide markets.

[17] *See id.*

[18] See Exchange Act Release No. 34–54714 at 4 (November 6, 2006), 71 FR 66352 (November 14, 2006).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- 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–BATS–2011–015 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–BATS–2011–015. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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–BATS–2011–015 and should be submitted on or before June 8, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12132 Filed 5–17–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64485; File No. SR–CBOE–2011–046]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Orders Qualifying for Certain Quantity-Based Fee Waivers

May 13, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 29, 2011, Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[19] 17 CFR 200.30–3(a)(12).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend its Fees Schedule regarding the waiver of customer transaction fees for orders of a certain size in options on exchange-traded funds ("ETFs"), exchange-traded notes ("ETNs") and Holding Company Depositary Receipts ("HOLDRs") and customer transaction fees for orders of a certain size that are routed in whole or in part, to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule CBOE 6.80 ("Linkage Fees"). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The Exchange proposes to institute the following fee changes effective May 2, 2011:

The Exchange currently waives transaction fees for customer orders of 99 contracts or less in ETF, ETN and HOLDRs options.[1] For the purpose of determining which orders qualify for this quantity-based fee waiver, the Exchange proposes to aggregate multiple orders from the same executing firm for itself or for a CMTA or correspondent firm in the same series on the same side of the market that are received by the Exchange within 500 milliseconds. This change is intended to discourage firms from dividing orders into multiple orders of less than 100 contracts for purposes of qualifying for the fee waiver and avoiding transaction fees.

Additionally, under Section 20 of the CBOE Fees Schedule, for each customer order with an original size of 100 or more contracts that is routed, in whole or in part, to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 6.80, the Exchange passes through the actual transaction fee assessed by the exchange(s) to which the order was routed, minus $0.05 per contract. For the same reason stated above, the Exchange proposes to aggregate multiple orders from the same executing firm for itself or for a CMTA or correspondent firm in the same series on the same side of the market that are received by the Exchange within 500 milliseconds for the purpose of determining the order quantity.

The proposed aggregation of orders is similar to a provision in the Exchange's Order Handling System ("OHS") Order Cancellation Fee that enables the Exchange to aggregate certain orders and count them as one executed order for purposes of the Cancellation Fee.[2]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[3] in general, and furthers the objectives of Section 6(b)(4)[4] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using its facilities. In particular, the Exchange believes the proposed rule change is equitable and reasonable in that it is designed to discourage firms from dividing orders into multiple smaller size orders for purposes of qualifying for quantity-based fee waivers and avoiding fees. In addition, the proposed aggregation of orders is similar to a provision in the Exchange's OHS Order Cancellation Fee that enables the Exchange to aggregate certain orders and count them as one executed order for purposes of the Cancellation Fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and subparagraph (f)(2) of Rule 19b–4[6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–046 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.

All submissions should refer to File Number SR–CBOE–2011–046. 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

[1] *See* CBOE Fees Schedule, Footnote 9.

[2] *See* CBOE Fees Schedule, Section 14 and Securities Exchange Act Release No. 59690 (April 2, 2009), 74 FR 16243 (April 9, 2009).

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. 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–CBOE–2011–046 and should be submitted on or before June 8, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12240 Filed 5–17–11; 8:45 am]

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[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64480; File No. SR–Phlx–2011–65]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX LLC Regarding Opening Index Option Months and Series

May 12, 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 May 6, 2011, NASDAQ OMX PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to clarify that the Exchange will open at least one expiration month and one series for each class of index options open for trading on the Exchange; and that the Exchange may open additional series of index options under certain circumstances. The proposed change is based directly on the recently approved rule of another options exchange, namely Chapter IV, Section 6 of the NASDAQ Options Market, as well as on Rule 1012 (Series of Options Open for Trading) of the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Exchange Rule 1101A to indicate that the Exchange will open at least one expiration month and one series for each class of index options open for trading on the Exchange; and that the Exchange may open additional series of index options under certain circumstances. The proposed change is based directly on the recently approved rules of another options exchange, namely Chapter IV, Sections 6 and 8 of the NASDAQ Options Market ("NOM"), as well as on Rule 1012 of the Exchange.[3]

In 2008, the Commission approved the establishment of NOM and rules pertaining thereto [4] that, among others, included NOM Chapter IV, Section 6 regarding series of options contracts open for trading [5] and Section 8 regarding long-term options contracts. NOM Sections 6 and 8 generally apply to options that overlay single-stocks or Exchange-Traded Funds and similar products.

In 2011, the Exchange filed an immediately effective proposal at SR–Phlx–2011–04 to conform its rule 1012 regarding the listing of months and series of options on stock or Exchange Traded Fund Shares ("ETFs") that are approved for listing and trading on the Exchange to the equivalent NOM rules at Chapter IV, Section 6 and Section 8.[6] By SR–Phlx–2011–04, the Exchange harmonized its Rule 1012 regarding opening a minimum of one option expiration month and series for trading and adding new series with similar NOM procedures.[7]

The Exchange now proposes to similarly revise its Rule 1101A

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NOM and the Exchange are each self-regulatory organizations ("SROs") that operate as independent options exchanges within the NASDAQ OMX Group.

[4] *See* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and NASDAQ–2007–080) (order approving rules for trading of options on the NASDAQ Options Market, including Chapter IV, Sections 6 and 8).

[5] NOM Chapter IV, Sec 6 states, in relevant part: (b) At the commencement of trading on NOM of a particular class of options, NOM will open a minimum of one (1) series of options in that class. The exercise price of the series will be fixed at a price per share, relative to the underlying stock price in the primary market at about the time that class of options is first opened for trading on NOM.

(c) Additional series of options of the same class may be opened for trading on NOM when Nasdaq deems it necessary to maintain an orderly market, to meet Customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices. The opening of a new series of options shall not affect the series of options of the same class previously opened. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, Nasdaq, in its discretion, may add a new series of options on an individual stock until five (5) business days prior to expiration.

[6] *See* Securities Exchange Act Release No. 63700 (January 11, 2011), 76 FR 2931 (January 18, 2011) (SR–Phlx–2011–04) (notice of filing and immediate effectiveness conforming Phlx Rule 1012 and NOM Chapter IV, Sections 6 and 8).

[7] Rule 1012 states, in relevant part: (A) At the commencement of trading on the Exchange of a particular class of stock or Exchange-Traded Fund Share options, the Exchange shall open a minimum of one expiration month and series for each class of options open for trading on the Exchange.

(B) Additional series of stock or Exchange-Traded Fund Share options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices. The opening of a new series of options shall not affect the series of options of the same class previously opened. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on an individual stock until five (5) business days prior to expiration.

regarding the listing of months and series of options on index products. The rule changes proposed by the Exchange to Phlx Rule 1101A(b) are, to the extent practicable, identical to specified rule provisions in Phlx Rule 1012(a) and NOM Chapter IV, Section 6. The Exchange believes that its proposal is proper, and indeed desirable, in light of its objective to continue to harmonize the listing rules for options products offered for trading on the Exchange, particularly in light of the symbiotic hedging and trading relationship between stock index options and other option classes such as stock and ETF options.

Rule 1101A has developed in the latter portion of the last century to discuss, among other things, price intervals for index options, quarterly options and short term options, and when the Exchange may open months and series (including long-term series) in classes of index options that have been approved for listing and trading on the Exchange. Rule 1101A(b) currently indicates how the Exchange initially fixes expiration months and series in these options.[8] The Exchange now conforms portions of its older Rule 1101A(b) to its recently-updated Rule 1012 as based on NOM Chapter IV, Section 6.

First, the Exchange proposes to state in Rule 1101A(b) that at the commencement of trading on the Exchange of a particular class of stock index options, the Exchange will open at least one expiration month and series for each class of options open for trading on the Exchange, thereby replacing the current language in subsection (b) about opening index options. The language change proposed by the Exchange in Rule 1101A(b) regarding one expiration month and series is taken directly (and is practically verbatim) from Exchange Rule 1012(a)(i)(A), as also from NOM Chapter IV, Section 6(b) and (e). The Exchange notes that the proposed change affords additional flexibility so that multiple option classes and series are not mandated if they are not needed, thereby potentially reducing the proliferation of classes and series.

Second, in light of the proposed language in Rule 1101A(b) regarding opening one month and series, the Exchange is deleting all inapposite language in Rule 1101A. As such, reference to consecutive month series in subsection (b)(i) and to cycle month series in subsection (b)(ii) is eliminated. Similarly, reference to consecutive and cycle month series is eliminated from subsection (b)(iii). This is analogous to what the Exchange did when it conformed its Rule 1012 and NOM Chapter IV, Section 6.[9]

Third, the Exchange proposes to add new language in Rule 1101A(b)(i) to state that it may open additional option series when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices. New series of options may be added until the beginning of the month in which the options contract will expire. Additionally, due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on an individual stock until five (5) business days prior to expiration. The language for this proposed rule change is likewise taken directly Exchange Rule 1012(a)(i)(B), as also from NOM Chapter IV, Section 6(c).

Fourth, the Exchange proposes to add new language into Rule 1101A(b)(i) stating that the opening of a new series of options shall not affect the series of options of the same class previously opened. The language of this proposal is taken directly from Exchange Rule 1012(a)(i)(B) (and is similar to language present in NOM Chapter IV, Section 6(c)). Moreover, the Exchange notes that similar language is present in subsections of Rule 1101A that were added more recently, such as subsection (b)(v)(D) regarding the Quarterly Options Series Program and subsection (b)(vi)(D) regarding the Short Term Options.[10]

The Exchange notes that all of the language proposed in this filing is similar to language in current Phlx Rule 1012 and NOM Chapter IV, Section 6, and to the extent practicable is taken verbatim therefrom.[11] Moreover, the proposed language has been in continual use on the Exchange since the beginning of 2011 and on NOM for over three years.[12] Finally, the proposed language is fundamental to achieving harmonization of Exchange rules across option categories used by market participants for trading and hedging on the Exchange.

For example, a retail (*e.g.,* individual) investor long Apple (APPL) call options expiring in October 2011 may wish to hedge his APPL position with a corresponding position in October put options of the Alpha Index[13] AAPL/SPY (AVSPY) that quantifies the return of AAPL stock vs. the ETF SPY. Or, a market participant with a position in options on Hovnanian Enterprises, Inc. (HOV) may wish to hedge his position with options on a proprietary index traded on the Exchange such as the PHLX Housing Sector℠ (HGX). Clearly, Exchange market participants engage in hedging and trading opportunities across various option classes listed on the Exchange, and seek the most efficient strategies. These strategies require the ability to closely coordinate the expiration dates of the options months and series involved. Because Exchange listing rules regarding months and series of options on indexes such as AVSPY and HGX currently are not the same as equivalent listing rules for single-stock options such as AAPL and HOV, however, the above-described hedges likely could not be done at all, let alone efficiently. The Exchange's proposal would remedy this situation.

The Exchange believes that harmonization of Exchange rules and the rules of the options exchanges under the NASDAQ OMX umbrella would allow more precise tailoring of hedging and trading opportunities and would thereby be beneficial to the Exchange and its traders, market participants, and public investors in general.

[8] Rule 1101A(b) states, in relevant part: (b) After a particular class of stock index options has been approved for listing and trading on the Exchange, the Exchange shall from time to time open for trading series of options therein. Within each approved class of stock index options, the Exchange may open for trading series of options expiring in consecutive calendar months ("consecutive month series"), as provided in subparagraph (i) of this paragraph (b), series of options expiring at three-month intervals ("cycle month series"), as provided in subparagraph (ii) of this paragraph (b) and/or series of options having up to thirty-six months to expiration ("long-term options series") of this paragraph (b). Prior to the opening of trading in any series of stock index options, the Exchange shall fix the expiration month and exercise price of option contracts included in each such series.

Subsections (b)(i) and (ii) discuss consecutive month series and cycle month series, respectively. Subsection (b)(iii) discusses long-term option series.

[9] In the filing that conformed Rule 1012 with NOM Chapter IV, Section 6, for example, the Exchange deleted reference to the cycle month concept. *See* supra note 6.

[10] *See* Securities Exchange Act Release Nos. 62296 (June 15, 2010), 75 FR 35115 (June 21, 2010) (SR–Phlx–2010–84) (notice of filing and immediate effectiveness regarding Short Term Options); and 55301 (February 15, 2007), 72 FR 8238 (February 23, 2007) (SR–Phlx–2007–08) (notice of filing and immediate effectiveness regarding Quarterly Option Series).

[11] Moreover, because certain proposed language, such as that regarding additional series of options, is not currently elucidated in Rule 1101A, the rule is supplemented to set forth addition of new series to an existing option class up to five business days prior to expiration. The Exchange has been following the practice of not adding new series of options on individual stocks within five days of expiration.

[12] *See* supra notes 4 and 6.

[13] *See* Securities Exchange Act Release No. 63860 (February 7, 2011), 76 FR 7888 (February 11, 2011)(SR–Phlx–2010–176)(order approving NASDAQ OMX Alpha Indexes).

In terms of housekeeping changes, the Exchange proposes to make a non-substantive change that amends subsection (b) of Rule 1101A to "60" months. This is done to conform subsection (b) with subsection (b)(3), which discusses long-term options series having up to 60 months to expiration.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [14] in general, and furthers the objectives of Section 6(b)(5) of the Act [15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange proposes to clarify that it will open at least one expiration month and one series for each class of index options open for trading on the Exchange, and under what circumstances it may open additional series of index options, and thereby harmonize its rules and the rules of Phlx and NOM. The Exchange believes that this would allow better hedging and trading opportunities and efficiency, and would be beneficial to the Exchange and its traders, market participants, and public investors in general.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–65 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2011–65 and should be submitted on or before June 8, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12192 Filed 5–17–11; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64484; File No. SR–BX–2011–026]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BX Rule 3011 To Reflect Changes to a Corresponding FINRA Rule

May 13, 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 May 9, 2011, NASDAQ OMX BX, Inc. (the "Exchange" or "BX"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by BX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

BX is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend BX Rule 3011 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority ("FINRA"). The text of the proposed rule change is available at *nasdaqomxbx.cchwallstreet.com* [sic], at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. BX has prepared

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Many of BX's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, BX has also been modifying its rulebook to ensure that BX rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it will not be possible for the rule numbers of BX rules to mirror corresponding FINRA rules, because existing or planned BX rules make use of those numbers. However, wherever possible, BX plans to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses BX Rule 3011 pertaining to anti-money laundering compliance programs. In SR–FINRA–2009–039,[3] FINRA redesignated FINRA Rule 3011 as FINRA Rule 3310 and made substantive amendments to strengthen and simplify the rule. Specifically, FINRA adopted: (1) NASD Rule 3011 (AML Compliance Program) as FINRA Rule 3310 (AML Compliance Program), without substantive change; (2) NASD IM–3011–1 (Independent Testing Requirements) as supplementary material to proposed FINRA Rule 3310, subject to certain amendments; and (3) NASD IM–3011–2 (Review of AML Compliance Person Information) as supplementary material to proposed FINRA Rule 3310, without substantive change.

Because BX's rule references the NASD rule and will now reference the FINRA rule, BX is, in effect, adopting the new FINRA rule in full. BX Rule 3011 will now refer to FINRA Rule 3310, BX's IM–3011–1 will now be BX Rule 3011.01 and reference FINRA Rule 3310.01, and BX's IM–3011–2 will now be BX Rule 3011.02.[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed changes will conform BX Rule 3011 to recent changes made to a corresponding FINRA rule in order to promote application of consistent regulatory standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, 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)[8] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2011–026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–026. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

[3] Securities Exchange Act Release No. 60645 (September 9, 2009) [sic], 74 FR 47630 (September 16, 2009) (SR–FINRA–2009–039).

[4] BX Rule 3011 will remain numbered as Rule 3011, rather than Rule 3310, like FINRA's rule, because BX already has a different rule operating as BX Rule 3310. BX is also deleting obsolete references in Rule 3011 and 3011.01 regarding FINRA being in the process of consolidating certain NASD rules into a new FINRA rulebook.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

All submissions should refer to File Number SR–BX–2011–026, and should be submitted on or before June 8, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12199 Filed 5–17–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64478; File No. SR–Phlx–2011–28]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving Proposed Rule Change To Expand the Number of Components in the PHLX Oil Service Sector℠ Known as OSX℠, and Changing the Weighting Methodology From Price-Weighted to Capitalization-Weighted

May 12, 2011.

I. Introduction

On March 2, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand the number of components in the Phlx Oil Service Sector℠ (the "Index") and to change the Index's weighting methodology. The proposed rule change was published in the **Federal Register** on March 17, 2011.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to expand the number of components in the Index from fifteen to thirty components and to change the Index weighting methodology from price-weighted to modified capitalization-weighted. No other changes are made to the Index or the options thereon.

The Exchange stated in its filing that the purpose of the proposed rule change is to expand the number of components in the Index, and to change the Index weighting methodology to modified capitalization-weighted.

Index options subsequent to the proposed rule change will be identical to Index options that are currently listed and trading and will trade pursuant to similar contract specifications (updated regarding components and weighting methodology).[4] The only post-proposal difference in Index options is that they will overlie an Index with thirty components (as opposed to fifteen) and the Index will be modified capitalization-weighted (the Index is currently price-weighted).[5]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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.[7]

The Commission believes that the proposed rule change is appropriate given the changes that have occurred to the sector of the economy that the Index overlies. The increase in the number of components from 15 to 30 will provide more depth to the Index, even as it continues to meet the definition of a narrow-based index under the Exchange's rules.[8] Likewise, the change from capitalization-weighted to price-weighted is within the parameters of the Exchange's generic rules for narrow-based indices.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12154 Filed 5–17–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64075 (March 11, 2011), 76 FR 14702. On April 8, 2011, the Commission extended the time to act on SR–Phlx–2011–28 by 45 days. *See* Securities Exchange Act Release No. 64282 (April 8, 2011), 76 FR 21084 (April 14, 2011).

[4] The contract specifications for the Index options are available at *https://www.nasdaqtrader.com/micro.aspx?id=phlxsectorscontractspecs.*

[5] For a detailed description of the Index and its components, *see* Release No. 64075, *supra* note 3.

[6] 15 U.S.C. 78f(b)(5).

[7] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] *See* Exchange Rule 1009A.

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Disaster Declaration # 12572 and # 12573

Tennessee Disaster # TN–00053

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA—1979–DR), dated 05/09/2011.

Incident: Severe Storms, Tornadoes, Straight-line, Winds, and Flooding.

Incident Period: 04/19/2011 and continuing.

Effective Date: 05/09/2011.

Physical Loan Application Deadline Date: 07/08/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/09/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/09/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Dyer, Lake, Obion, Shelby, Stewart.

Contiguous Counties (Economic Injury Loans Only):

Tennessee: Benton, Crockett, Fayette, Gibson, Henry, Houston, Lauderdale, Montgomery, Tipton, Weakley.

Arkansas: Crittenden, Mississippi.

Kentucky: Calloway, Christian, Fulton, Hickman, Trigg.

Missouri: New Madrid, Pemiscot.

Mississippi: Desoto, Marshall.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.688
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250.
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12572C and for economic injury is 125730.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–12250 Filed 5–17–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #12548 and #12549

Mississippi Disaster Number MS–00045

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1972–DR), dated 04/29/2011.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Associated Flooding.

Incident Period: 04/15/2011 through 04/28/2011.

Effective Date: 05/09/2011.

Physical Loan Application Deadline Date: 06/28/2011.

EIDL Loan Application Deadline Date: 01/30/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Mississippi, dated 04/29/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Alcorn, Attala, Clay, Coahoma, Desoto, Grenada, Holmes, Leflore, Marshall, Montgomery, Newton, Panola, Quitman, Smith, Sunflower, Tishomingo, Tunica, Winston.

Contiguous Counties: (Economic Injury Loans Only):

Mississippi: Benton, Bolivar, Carroll, Covington, Humphreys, Prentiss, Tallahatchie, Tippah, Washington,

Alabama: Colbert, Franklin, Lauderdale,

Arkansas: Crittenden, Desha, Lee, Phillips,

Tennessee: Fayette, Hardeman, Hardin, Mcnairy, Shelby.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–12254 Filed 5–17–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration # 12564 and # 12565

Texas Disaster # TX–00376

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Texas dated 05/09/2011.

Incident: Wichita County Complex Wildfires.

Incident Period: 04/15/2011 through 04/20/2011.

Effective Date: 05/09/2011.

Physical Loan Application Deadline Date: 07/08/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/09/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Wichita.

Contiguous Counties:

Texas: Archer, Baylor, Clay, Wilbarger,

Oklahoma: Cotton, Tillman.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.125
Homeowners without Credit Available Elsewhere	2.563
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12564 5 and for economic injury is 12565 0.

The States which received an EIDL Declaration # are Texas, Oklahoma.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

May 9, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–12251 Filed 5–17–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration # 12576 and # 12577

Missouri Disaster # MO–00048

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1980–DR), dated 05/09/2011.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/19/2011 and continuing.

Effective Date: 05/09/2011.

Physical Loan Application Deadline Date: 07/08/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/09/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/09/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Butler, Mississippi, New Madrid, Saint Louis, Taney.

Contiguous Counties (Economic Injury Loans Only):

Missouri: Carter, Christian, Douglas, Dunklin, Franklin, Jefferson, Ozark, Pemiscot, Ripley, Saint Charles, Saint Louis City, Scott, Stoddard, Stone, Wayne,

Arkansas: Boone, Carroll, Clay, Marion,

Illinois: Alexander, Madison, Monroe, Saint Clair,

Kentucky: Ballard, Carlisle, Fulton, Hickman,

Tennessee: Lake.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.688
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12576B and for economic injury is 125770.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–12252 Filed 5–17–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #12545 and #12546

Alabama Disaster Number AL–00036

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1971–DR), dated 04/28/2011.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 04/15/2011 and continuing.

Effective Date: 05/06/2011.

Physical Loan Application Deadline Date: 06/27/2011.

Eidl Loan Application Deadline Date: 01/30/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Alabama, dated 04/28/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Monroe.

Contiguous Counties: (Economic Injury Loans Only):

Alabama, Butler, Conecuh, Escambia.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–12256 Filed 5–17–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration # 12560 and # 12561

Arkansas Disaster Number AR–00048

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1975–DR), 05/02/2011.

Incident: Severe Storms, Tornadoes, and Associated Flooding.

Incident Period: 04/23/2011 and continuing.

Effective Date: 05/09/2011.

Physical Loan Application Deadline Date: 07/01/2011.

EIDL Loan Application Deadline Date: 02/02/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Arkansas, dated 05/02/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Boone, Jefferson, White.

Contiguous Counties: (Economic Injury Loans Only):

Arkansas: Independence, Jackson, Marion, Prairie, Searcy, Woodruff.

Missouri: Taney.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–12259 Filed 5–17–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration # 12530 and # 12531

North Carolina Disaster Number NC–00033

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Carolina (FEMA—1969–DR), dated 04/19/2011.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/16/2011.

Effective Date: 05/07/2011.

Physical Loan Application Deadline Date: 06/20/2011.

EIDL Loan Application Deadline Date: 01/20/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of North Carolina, dated 04/19/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Tyrrell.

Contiguous Counties: (Economic Injury Loans Only): North Carolina: Hyde.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–12261 Filed 5–17–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12560 and #12561]

Arkansas Disaster Number AR–00048

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1975–DR), dated 05/02/2011.

Incident: Severe Storms, tornadoes, and Associated Flooding.

Incident Period: 04/23/2011 and continuing.

Effective Date: 05/07/2011.

Physical Loan Application Deadline Date: 07/01/2011.

EIDL Loan Application Deadline Date: 02/02/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Arkansas, dated 05/02/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Crittenden, Madison, Montgomery, Phillips, Washington.

Contiguous Counties: (Economic Injury Loans Only):

Arkansas: Clark, Crawford, Cross, Franklin, Howard, Johnson, Lee, Mississippi, Monroe, Newton, Pike, Poinsett, Polk, Saint Francis, Scott.

Mississippi: Bolivar, Coahoma, Desoto, Tunica.

Tennessee: Shelby, Tipton.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–12257 Filed 5–17–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0454]

Emergence Capital Partners SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Emergence Capital Partners SBIC, L.P., 160 Bovet Road, Suite 300, San Mateo, CA 94402, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Emergence Capital Partners SBIC, L.P. proposes to provide equity financing to Genius.com, Inc., 1400 Fashion Island Blvd., Suite 500, San Mateo, CA 94404. The financing is contemplated for working capital and general operating purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Emergence Capital Partners, L.P. and Emergence Capital Associates, L.P., Associates of Emergence Capital Partners SBIC, L.P., own more than ten percent of Genius.com, Inc. Therefore, Genius.com, Inc. is considered an Associate of Emergence Capital Partners SBIC, L.P. and this transaction is considered *Financing an Associate,* requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction within 15 days of the date of this publication to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: May 3, 2011.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2011–12102 Filed 5–17–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 7405]

Meeting of Advisory Committee on International Communications and Information Policy

The Department of State's Advisory Committee on International Communications and Information Policy (ACICIP) will hold a public meeting on June 28, 2011 from 9 a.m to 12 p.m. in the Loy Henderson Auditorium of the Harry S. Truman Building of the U.S. Department of State. The Truman Building is located at 2201 C Street, NW., Washington, DC 20520.

The committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country issues.

The meeting will be led by ACICIP Chair Mr. Thomas Wheeler of Core Capital Partners and Ambassador Philip L. Verveer, U.S. Coordinator for International Communications and Information Policy. The meeting's agenda will include discussions pertaining to various upcoming international telecommunications

meetings and conferences, as well as bilateral and multilateral meetings that have taken place recently. In addition, the Committee will discuss key issues of importance to U.S. communications policy interests including information and communications technology (ICT) and international development, and recent private sector efforts focused on the ICT aspects of international disaster response.

Members of the public may submit suggestions and comments to the ACICIP. Submissions regarding an event, consultation, meeting, etc. listed in the agenda above should be received by the ACICIP Executive Secretary (contact information below) at least ten working days prior to the date of that listed event. All comments must be submitted in written form and should not exceed one page for each country (for comments on consultations) or for each subject area (for other comments). Resource limitations preclude acknowledging or replying to submissions.

While the meeting is open to the public, admittance to the Department of State building is only by means of a pre-clearance. For placement on the pre-clearance list, please submit the following information no later than 5 p.m. on Friday, June 24, 2011. (Please note that this information is not retained by the ACICIP Executive Secretary and must therefore be re-submitted for each ACICIP meeting):

I. State That You Are Requesting Pre-Clearance to a Meeting

II. Provide the Following Information

1. Name of meeting and its date and time
2. Visitor's full name
3. Date of birth
4. Citizenship
5. Acceptable forms of identification for entry into the U.S. Department of State include:
   - U.S. driver's license with photo
   - Passport
   - U.S. government agency ID
8. ID number on the form of ID that the visitor will show upon entry
9. Whether the visitor has a need for reasonable accommodation. Such requests received after June 17th might not be possible to fulfill.

Send the above information to Joseph Burton by fax (202) 647–7407 or email *BurtonKJ@state.gov*.

All visitors for this meeting must use the 23rd Street entrance. The valid ID bearing the number provided with your pre-clearance request will be required for admittance. Non-U.S. government attendees must be escorted by Department of State personnel at all times when in the building. Personal data is requested pursuant to Pub. L. 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Pub. L. 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information.

For further information, please contact Joseph Burton, Executive Secretary of the Committee, at (202) 647–5231 or *BurtonKJ@state.gov*.

General information about ACICIP and the mission of International Communications and Information Policy is available at: *http://www.state.gov/e/eeb/adcom/c667.htm*.

Dated: May 6, 2011.

Joseph Burton,

ACICIP Executive Secretary, Department of State.

[FR Doc. 2011–12212 Filed 5–17–11; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 7401]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

SUMMARY: The Advisory Committee on Historical Diplomatic Documentation will meet on June 6 and June 7 at the Department of State, 2201 "C" Street, NW., Washington, DC. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U.S. government or military ID) are required for entrance into the building. Members of the public planning to attend must notify Nick Sheldon, Office of the Historian (202–663–1123) no later than June 2, 2011 to provide date of birth, valid government-issued photo identification number and type (such as driver's license number/state, passport number/country, or U.S. government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the specified forms of ID, please consult with Nick Sheldon for acceptable alternative forms of picture identification. In addition, any requests for reasonable accommodation should be made no later than May 31, 2011. Requests for reasonable accommodation received after that time will be considered, but might be impossible to fulfill.

The Committee will meet in open session from 11 a.m. until 12 Noon on Monday, June 6, 2011, in the Department of State, 2201 "C" Street, NW., Washington, DC, in Conference Room 1205, to discuss declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series. The remainder of the Committee's sessions in the afternoon on Monday, June 6, 2011 and in the morning on Tuesday, June 7, 2011, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the *Foreign Relations* series and other declassification issues. These are matters properly classified and not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

Personal data is requested pursuant to Pub. L. 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Pub. L. 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf,* for additional information.

Questions concerning the meeting should be directed to Ambassador Edward Brynn, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123, (e-mail *history@state.gov*).

Dated: May 9, 2011.

Ambassador Edward Brynn,

Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State.

[FR Doc. 2011–12214 Filed 5–17–11; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Docket No. FHWA–2011–0044

Agency Information Collection Activities: Notice of Request for Approval of a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Request for Approval of a New Information Collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval of a new information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by July 18, 2011.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2011–0044 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery or Courier: 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. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeffrey Miller, (202) 366–0744 or jeffrey.miller@dot.gov, Office of Safety Integration, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Strategic Highway Safety Plan (SHSP).

Type of request: New information collection requirement.

Background: The Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU), 23 U.S.C. 148, established the Highway Safety Improvement Program (HSIP) as a core Federal program. A Strategic Highway Safety Plan (SHSP) is a major and mandatory component of the HSIP. A SHSP is a statewide-coordinated, data-driven, multi-year comprehensive safety plan coordinated by a State Department of Transportation. The purpose of the SHSP is to identify the State's key safety needs and guide investment decisions to achieve significant reductions in highway fatalities and serious injuries on all public roads. The SHSP is developed by each State in a cooperative process with local, State, Federal, and private sector engineering, education, enforcement, and emergency medical service stakeholders. The SHSP process allows highway safety programs in the State to work together in an effort to align and leverage resources. This coordination also allows State agencies to integrate multiple strategic safety plans, including the Highway Safety Plan (HSP) and the Commercial Vehicle Safety Plan (CVSP).

FHWA supports development of SHSPs at the State level by (1) Providing technical assistance; (2) conducting education and outreach; (3) performing and disseminating research and analysis; (4) developing and distributing technical tools, and (5) drafting and disseminating policy and guidance. The requested information collection, in the form of an on-line survey tool, will be used to evaluate the efficiency and effectiveness of these activities in supporting the development and implementation of SHSPs. Survey respondents will be asked to provide information about their use and opinion of FHWA-supplied products and services to support SHSP development and implementation as well as their perspectives on the effectiveness of the SHSP program overall. Certain survey respondents will also be asked to provide feedback on State-level coordination between the SHSP, the HSP and the CVSP annual safety plans required by the National Highway Traffic Safety Administration (NHTSA) and the Federal Motor Carrier Safety Administration (FMCSA), respectively. The information will also allow FHWA to assess the needs of State DOTs for additional products and services in support of the SHSP development, update and implementation processes, with the ultimate goal of improving highway safety outcomes across the nation.

Respondents: We estimate that 153 State-level leads responsible for development and implementation of the SHSP, the HSP and the CVSP. In some cases, an individual may be responsible for more than one plan.

Frequency: Annually.

Estimated Average Burden per Response: Approximately 30 minutes.

Estimated Total Annual Burden Hours: The total burden for this collection would be approximately 76.5 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: May 13, 2011.

Juli Huynh,

Chief, Management Programs and Analysis Division.

[FR Doc. 2011–12168 Filed 5–17–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Docket No. MARAD 2011 0062]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before July 18, 2011.

FOR FURTHER INFORMATION CONTACT: Sheila Brown, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; *Telephone:* (202) 366–5178, FAX: (202) 366–5904; or *E–Mail: sheila.brown@dot.gov.* Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title of Collection: Elements of Request for Course Approval.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2133–0535.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: Under this proposed voluntary collection, public and private maritime security training course providers may choose to provide the Maritime Administration (MARAD) with information concerning the content and operation of their courses. MARAD will use this information to evaluate whether the course meets the training standards and curriculum promulgated under Section 109 of the Maritime Transportation Security Act of 2002 (MTSA) (Pub. L. 107–295). Courses found to meet these standards will receive a course approval.

Need and Use of the Information: This information collection is needed to facilitate the approval of maritime security training courses that meet the standards and curriculum developed under the MTSA.

Description of Respondents: Respondents are public and private maritime security course training providers.

Annual Responses: 45.

Annual Burden: 450 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov./search/index.jsp.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp.*

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

Authority: 49 CFR 1.66.

Dated: May 9, 2011.

By Order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–12109 Filed 5–17–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Docket No. MARAD–2011–0052

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel THE GIFT.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0052 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 17, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0052. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel THE GIFT is:

Intended Commercial Use of Vessel: "Charter fishing for hire (6 passengers)."

Geographic Region: "Wisconsin."

Privacy Act

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

By order of the Maritime Administrator.

Dated: May 9, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–12108 Filed 5–17–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2011 0055]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PRIORITIES.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances.

A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0055 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 17, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0055. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, e-mail *Joann.Spittle@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PRIORITIES is:

Intended Commercial Use of Vessel: "Activity for our Old Manse Inn guest in conjunction with staying at our 1801 Sea Captains Manor 12 room facility. The intent is increasing our Inn occupancy rates and exposure. Berthed at Chatham's Stage Harbor Marina slip location, ideal for cruising Nantucket Sound to Martha Vineyard and Nantucket Island."

Geographic Region: "Massachusetts."

Privacy Act

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

By Order of the Maritime Administrator.
Dated: May 9, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–12111 Filed 5–17–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35498]

Adrian & Blissfield Rail Road Company—Continuance in Control—Charlotte Southern Railroad Company, Detroit Connecting Railroad Company, and Lapeer Industrial Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice of Acceptance of Application; Issuance of procedural schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the application filed by Adrian & Blissfield Rail Road Company (ADBF) seeking Board authority under 49 U.S.C. 11321–26 for continuance in control of Charlotte Southern Railroad Company (CHS), Detroit Connecting Railroad Company (DCON), and Lapeer Industrial Railroad Company (LIRR). ADBF seeks authorization for its previously consummated control, through stock ownership and management, of those 3 entities when they became Class III short line railroads.

The Board finds that this transaction is a "minor transaction" under 49 CFR 1180.2(c) and adopts a procedural schedule for consideration of the application, providing for the Board's final decision to be issued on August 19, 2011, and to become effective on September 18, 2011.

DATES: The effective date of this decision is May 18, 2011. Any person who wishes to participate in this proceeding as a party of record (POR) must file a notice of intent to participate no later than June 2, 2011. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by June 17, 2011. Any responses to such filings and rebuttal in support of the application must be filed by July 5, 2011. If a public hearing or oral argument is held, it will be on a date to be determined by the Board. The Board expects to issue a final decision on August 19, 2011. For further information respecting dates, see the Appendix (Procedural Schedule).

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's Web site at "*www.stb.dot.gov*" at the "E–FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an electronic version) to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each filing in this proceeding must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) John D. Heffner (representing ADBF), John D. Heffner, PLLC, 1750 K Street, NW., Suite 200, Washington, DC 20006; and (4) any other person designated as a POR on the service-list notice (to be issued as soon after June 2, 2011, as practicable).

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 245–0359. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: ADBF is a Class III rail carrier operating approximately 20 miles of freight lines between Adrian and Blissfield, Mich., as well as several short branches connecting with its mainline. Through a series of transactions between 1998 and 1999, ADBF purchased a 2.27-mile rail line in Detroit, Mich., a 3.22-mile rail line in Charlotte, Mich., and a 1.34-mile

rail line in Lapeer, Mich., from the Grand Trunk Western Railroad (now, part of Canadian National Railway Company).[1] According to ADBF, in October 2000, it spun off these 3 acquired lines to 3 new ADBF subsidiaries (DCON, CHS, and LIRR, respectively), in order to insulate it from any liabilities created by these subsidiaries.[2] ADBF states that it intended to continue in control of these newly formed entities, and in fact assumed control over the entities through stock ownership and management, but due to oversight of its then-general counsel, it failed to seek Board authority for continuance in control at that time.

In a separate proceeding where ADBF belatedly sought Board authority to acquire and operate the Tecumseh Branch Connecting Railroad Company, the Board noted that ADBF did not appear to have authority to have common control of its subsidiaries and that it expected ADBF to promptly seek appropriate authorization for that common control.[3] On February 15, 2011, ADBF filed a notice of exemption, seeking authority for continuance in control of the 3 carriers at issue here.[4] The notice was rejected because the notice, which listed several shareholders as petitioners, purported to be filed on behalf of a party who did not authorize and was not aware of its filing. The transaction also appeared to be controversial and raised issues that made more scrutiny and the development of a more complete record necessary. Because of the questions raised as to the proper identity of the petitioners seeking authority, as well as the significant delay in seeking authority since 2009, ADBF was directed to submit either an application or petition for exemption for continuance in control.[5]

ADBF states that it now seeks common control of the 3 Class III carriers that it has in fact controlled since 2000. According to ADBF, the purpose of the transaction was, and would continue to be, to facilitate efficient and economical operation of its short line railroad subsidiaries through centralized management, purchasing, operations, marketing, accounting, and similar functions.

Passenger Service Impacts. ADBF states that no lines handling passenger service have been or will be downgraded, eliminated, or operated on a consolidated basis. Although it provides passenger excursion service on certain lines, ADBF does not provide common carrier passenger, Amtrak, or commuter passenger service.

Discontinuances/Abandonments. ADBF states that there have been no discontinuances or abandonments of rail lines in the past and does not anticipate discontinuing service or abandoning any portion in the future.

Financial Arrangements. According to ADBF, no new securities were originally issued or need to be issued now, and no other financing was or will be required.

Time Schedule for Consummation. As stated above, ADBF assumed control of the 3 carriers in 2000 after spinning off the relevant lines to its 3 subsidiaries (which became carriers). ADBF states that it failed to realize at that time that Board authorization was required and now seeks belated approval.

Public Interest Considerations. According to ADBF, the transaction has not resulted and will not result in the lessening of competition, creation of a monopoly, or restraint of trade. The transaction's impact, ADBF states, is neutral, as it involves no changes in railroad operations. ADBF further stresses that the transaction involves a limited number of shippers, carloads, and revenues, as well as small carriers that do not compete with one another. Nor will the transaction, according to ADBF, result in a reduction in service or rail competitive options. Rather, since 2003, ADBF notes that it has experienced substantial growth with increased revenues, as well as an increase in the number of shippers served and carloads handled. ADBF also notes that it has made significant investments in track maintenance and signal upgrades.

Environmental Impacts. ADBF states that no environmental documentation is required because there will be no operational changes that would exceed the thresholds established in 49 CFR 1105.7(e)(4) or (5) for requiring environmental review, and there will be no action that would normally require environmental documentation. ADBF further indicates that an historic report is not required because the transaction does not involve any changes in operations or plans to discontinue or abandon any service. It states that there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 or more years old.

Labor Impacts. ADBF states that, because the transaction involves only Class III carriers, no labor protection would apply under 49 U.S.C. 11326(c). ADBF further notes that the transaction has not impacted and will not impact any of its employees, as the transaction does not involve any change in operations.

Application Accepted. The Board finds that the transaction would be a "minor transaction" under 49 CFR 1180.2(c), and the Board accepts the application for consideration because it is in substantial compliance with the applicable regulations governing minor transactions. *See* 49 CFR part 1180; 49 U.S.C. 11321–26. The Board reserves the right to require the filing of further information as necessary to complete the record.

The statute and Board regulations treat a transaction that does not involve 2 or more Class I railroads differently depending upon whether the transaction would have "regional or national transportation significance." 49 U.S.C. 11325. Under our regulations, at 49 CFR 1180.2, a transaction that does not involve two or more Class I railroads is to be classified as "minor"—and thus not having regional or national transportation significance—if a determination can be made based on the application either: (1) That the transaction clearly will not have any anticompetitive effects; or (2) that any anticompetitive effects will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs. A transaction not involving the control or merger of two or more Class I railroads is "significant" if neither of these determinations can clearly be made.

The Board finds the transaction to be a "minor transaction" because it appears on the face of the application that there would not be any anticompetitive effects from the transaction. The Board's findings regarding the anticompetitive impact are preliminary. The Board will give careful consideration to any claims

[1] *See Adrian & Blissfield Rail Rd.–Acquis. Exemption–Grand Trunk W. R.R.,* FD 33692 (STB served Dec. 28, 1998); *Adrian & Blissfield Rail Rd.–Acquis. Exemption–Grand Trunk W. R.R.,* FD 33718 (STB served Mar. 3, 1999); *Adrian & Blissfield Rail Rd.–Acquis. Exemption–Grand Trunk W. R.R.,* FD 33747 (STB served June 3, 1999).

[2] *See Charlotte S. R.R.—Acquis. & Operation Exemption—Adrian & Blissfield Rail Rd.,* FD 33937 (STB served Oct. 4, 2000); *Detroit Connecting R.R.—Acquis. & Operation Exemption—Adrian & Blissfield Rail Rd.,* FD 33935 (STB served Oct. 4, 2000); *Lapeer Indus. R.R.—Acquis. & Operation Exemption—Adrian & Blissfield Rail Rd.,* FD 33936 (STB served Oct. 4, 2000).

[3] *Adrian & Blissfield Rail Rd.—Acquis. & Operation Exemption—Tecumseh Branch Connecting R.R.,* FD 35035 (STB served Oct. 23, 2009).

[4] The notice of exemption included Jackson & Lansing Railroad Company in the title of the proceeding, but ADBF has sought authorization for its control in a separate proceeding. *See Adrian & Blissfield Rail Rd.—Continuance in Control Exemption—Jackson & Lansing R.R.,* FD 35410.

[5] *Arthur W. Single II—Continuance in Control Exemption—Charlotte S. R.R.,* FD 35253 (STB served Mar. 4, 2011).

that the transaction has had or will have anticompetitive effects that are not apparent from the application itself.

Environmental Matters. The National Environmental Policy Act (NEPA) requires that the Board take environmental considerations into account in its decision making.[6] Under both the Council on Environmental Quality's regulations implementing NEPA and the Board's own environmental rules, actions are separated into three classes that prescribe the level of documentation required in the NEPA process. Actions that may significantly affect the environment generally require the Board to prepare an Environmental Impact Statement (EIS).[7] Actions that may or may not have a significant environmental impact ordinarily require the Board to prepare a more limited Environmental Assessment (EA).[8] Finally, actions, the environmental effects of which are ordinarily insignificant, may be excluded from NEPA review across the board, without a case-by-case review.

As pertinent here, an acquisition transaction normally requires the preparation of an EA or EIS where certain thresholds would be exceeded.[9] Applicants indicate that the thresholds for environmental review would not be exceeded here because the transaction did not and will not involve any operational changes that exceed the thresholds under 49 CFR 1105.7(e)(4) and (5) and that there will be no action that would normally require environmental documentation. Based on this information, it appears that environmental documentation and review are not required in this proceeding.

Historic Review. In accordance with Section 106 of the National Historic Preservation Act (NHPA), the Board is required to determine the effects of its licensing actions on cultural resources.[10] The Board's environmental rules establish exceptions to the need for historic review in certain cases, including the sale of a rail line for the purpose of continued rail operations, where further Board approval is required to abandon any service and there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older.[11] Applicants state that the proposed transaction fits within this exception. They assert that they have no plans to alter or dispose of properties 50 or more years old. Based on this information, it appears that historic review under the NHPA is not required in this case.

Procedural Schedule. The Board has considered ADBF's proposed procedural schedule, under which the Board would issue its final decision on August 2, 2011, 105 days after the application has been filed. ADBF did not provide any explanation for requesting such an expedited schedule, particularly given its delay in seeking approval. Accordingly, we will adopt a procedural schedule modified to conform more closely to the statutory provisions of 49 U.S.C. 11325(d) (allowing 30 days for comments on the application to be filed and 45 days for the Board to issue a final decision after the evidentiary proceedings end). The Board also notes that its decision will be effective on September 18, 2011, 30 days after its final decision is served. For further information regarding dates, see the Appendix (Procedural Schedule).

Notice of Intent To Participate. Any person who wishes to participate in this proceeding as a POR must file with the Board, no later than June 2, 2011, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of Transportation, the Attorney General of the United States, and Mr. Heffner (representing ADBF).

If a request is made in the notice of intent to participate to have more than 1 name added to the service list as a POR representing a particular entity, the extra name will be added to the service list as a "Non-Party." The list will reflect the Board's policy of allowing only 1 official representative per party to be placed on the service list, as specified in Press Release No. 97–68 dated August 18, 1997, announcing the implementation of the Board's "One Party-One Representative" policy for service lists. Any person designated as a Non-Party will receive copies of Board decisions, orders, and notices, but not copies of official filings. Persons seeking to change their status must accompany that request with a written certification that he or she has complied with the service requirements set forth at 49 CFR 1180.4 and any other requirements set forth in this decision.

Service List Notice. The Board will serve, as soon after June 2, 2011 as practicable, a notice containing the official service list (the service list notice). Each POR will be required to serve upon all other PORs, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each POR also will be required to file with the Board, within 10 days of the service date of the service list notice, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a POR must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record and need not be served with copies of filings, unless any MOC or GOV has requested to be, and is designated as, a POR.

Service of Decisions, Orders, and Notices. The Board will serve copies of its decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, GOV, or Non-Party. All other interested persons are encouraged to secure copies of decisions, orders, and notices via the Board's Web site at "*http://www.stb.dot.gov*" under "E-LIBRARY/Decisions & Notices."

Access to Filings. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished by the filer to interested persons on request, unless subject to a protective order. 49 CFR 1180.4(a)(3). Such documents are available for inspection in the Docket File Reading Room (Room 131) at the offices of the Surface Transportation Board, 395 E Street, SW., in Washington, DC. The application and other filings in this proceeding will also be available on the Board's Web site at "*http://www.stb.dot.gov*" under "E-LIBRARY/Filings."

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

It is ordered:

1. The application in FD 35498 is accepted for consideration.

2. The parties to this proceeding must comply with the procedural schedule adopted by the Board in this proceeding as shown in the Appendix.

3. The parties to this proceeding must comply with the procedural requirements described in this decision.

[6] The Board has the authority under 49 U.S.C. 11324(c) to attach environmental conditions to its approval of § 11323 transactions, including transactions subject to approval under § 11324(d). *Village of Barrington* v. *STB,* No. 09–1002, 2011 WL 869904 (DC Cir. March 15, 2011).

[7] *See* 49 CFR 1105.4(f), 1105.10(a).

[8] *See* 49 CFR 1105.4(d), 1105.10(b).

[9] *See* 49 CFR 1105.6(b)(4), 1105.7(e)(4) and (5).

[10] *See* 49 CFR 1105.8.

[11] *See* 49 CFR 1105.8(b)(1).

4. This decision is effective on May 18, 2011.

Decided: May 12, 2011.

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

Jeffrey Herzig,

Clearance Clerk.

Appendix: Procedural Schedule

April 18, 2011	Application and Proposed Procedural Schedule filed.
May 18, 2011	Board notice of acceptance of application published in the **FEDERAL REGISTER**.
June 2, 2011	Notices of intent to participate in this proceeding due.
June 17, 2011	All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings of DOJ and DOT, due.
July 5, 2011	Responses to comments, protests, requests for conditions, and other opposition due. ADBF's rebuttal in support of the application due.
TBD	A public hearing or oral argument may be held.
August 19, 2011	Final decision to be served.
September 18, 2011	Final decision to become effective.

[FR Doc. 2011–12130 Filed 5–17–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35502]

Northern Plains Railroad, Inc.—Intra-Corporate Family Operation Exemption—Mohall Central Railroad, Inc.

Northern Plains Railroad, Inc. (NPR), a Class III rail common carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for a transaction within a corporate family. The transaction allows NPR to continue to operate the rail line of Mohall Central Railroad, Inc. (MHC), also a Class III rail carrier.[1] NPR currently operates the MHC line pursuant to an October 18, 2005 Operating Agreement with MHC;[2] however, since MHC became a Class III rail carrier, it has abandoned 2 segments of its rail line.[3] This transaction allows NPR to enter into a new agreement to continue to operate the remaining 19.31 miles of MHC's line, between milepost 48.19, near Munich, and milepost 67.5, near Calvin. NPR, MHC, and a third Class III rail carrier, Mohall Railroad, Inc., are commonly controlled by Gregg Haug, a noncarrier individual.[4]

The transaction is expected to be consummated on June 1, 2011, the effective date of this exemption (30 days after the exemption was filed).

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). According to NPR, the transaction will not result in adverse changes in service levels, significant operational changes, or changes in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than May 25, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35502, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

Board decisions and notices are available on our website at "*http://www.stb.dot.gov.*"

Decided: May 12, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–12164 Filed 5–17–11; 8:45 am]

BILLING CODE 4915–01–P

[1] *See Mohall Cent. R.R.—Acquis. & Operation Exemption—Rail Line of BNSF Ry.,* FD 34759 (STB served Oct. 25, 2005).

[2] *See N. Plains. R.R.—Operation Exemption—Rail Line of Mohall Cent. R.R.,* FD 34780 (STB served Dec. 29, 2005) (serving notice that NPR will operate 69.15 miles of rail line owned by MHC, extending from milepost 3.75, near Lakota, N.D., to milepost 72.9, at Sarles, N.D.).

[3] *See Mohall Cent. R.R.—Aban. Exemption—in Cavalier County, N.D.,* AB 1003 (Sub-No. 1X) (STB served Dec. 16, 2010) (serving notice that MHC will abandon the segment of its line between milepost 67.5, near Calvin, N.D., and milepost 72.9, at Sarles) and *Mohall Cent. R.R.—Aban. Exemption—in Nelson, Ramsey, & Cavalier Counties, N.D.,* AB 1003X (STB served Oct. 29, 2007) (serving notice that MHC will abandon the segment of its line between milepost 3.75, near Lakota, and milepost 48.19, near Munich, N.D.).

[4] *See Gregg Haug—Continuance in Control Exemption—N. Plains R.R.,* FD 34828 (STB served May 10, 2006).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 13, 2011.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before June 17, 2011 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–NEW.

Type of Review: New collection.

Title: Request for Miscellaneous Determination.

Form: 8940.

Abstract: Form 8940 will standardize information collection procedures for nine categories of individually written

requests for miscellaneous determinations now submitted to the Service by requestor letter. Respondents are exempt organizations.

Respondents: Private sector: Not-for-profit institutions.

Estimated Total Burden Hours: 28,959.

OMB Number: 1545–2196.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2011–3—Special Rules Relating to Funding Relief for Single-Employer Pension Plans under PRA 2010 and Notice 2010–83—Funding Relief for Multiemployer Defined Benefit Plans under PRA 2010.

Abstract: Notice 2010–83 provides guidance in the form of questions and answers for sponsors of multiemployer defined benefit plans with respect to the special funding rules under § 431(b)(8), as added by section 211(a)(2) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), Public Law 111 192. Notice 2011–3 provides guidance on the special rules relating to funding relief for single-employer defined benefit pension plans (including multiple employer defined benefit pension plans) under the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), Public Law 111–192.

Respondents: Private sector: Not-for-profit institutions.

Estimated Total Burden Hours: 30,530.

OMB Number: 1545–2198.

Type of Review: Extension without change of a currently approved collection.

Title: Credit for Small Employer Health Insurance Premiums.

Form: 8941.

Abstract: Form 8941 is the result of new legislation from the Patient Protection and Affordable Care Act. Form 8941 allows a small business to claim a tax credit for a percentage of the health insurance premiums paid by the employer. The tax credit became effective in 2010. Form 8941 is required by the employers as a way to claim the credit. The IRS will also need the form to gather information and process the tax credit.

Respondents: Private sector: Farms, Businesses or other for-profits, Not-for-profit institutions.

Estimated Total Burden Hours: 40,189,456.

OMB Number: 1545–2199.

Type of Review: Extension without change of a currently approved collection.

Title: Foreclosure Sale Purchaser Contact Information Request.

Form: 15597.

Abstract: This form is used to gather contact information of the purchaser from a 3rd party foreclosure sale when the IRS is considering the redemption of the property.

Respondents: Individuals or households; Private sector: Farms, Businesses or other for-profits, Not-for-profit institutions.

Estimated Total Burden Hours: 49.

Bureau Clearance Officer: Yvette Lawrence, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; (202) 927–4374.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–12239 Filed 5–17–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0629]

Proposed Information Collection (Application for Extended Care Services); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine eligibility for extended care benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 18, 2011.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Cynthia Harvey-Pryor, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *cynthia.harvey-pryor@va.gov.* Please refer to "OMB Control No. 2900–0629" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor (202) 461–5870 or FAX (202) 273–9387.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Extended Care Services, VA Form 10–10EC.

OMB Control Number: 2900–0629.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–10EC is used to gather current income and financial information from nonservice-connected veterans and their spouse when applying for extended care services and to establish a co-payment agreement for such services. VA provides extended care to non-service connected veterans who are unable to defray the necessary expenses of care if their income is not greater than the maximum annual pension rate. VA uses the data collected to establish the veteran's eligibility for extended care services, financial liability, if any, of the veteran to pay if accepted for placement or treatment in extended care services, and to determine the appropriate co-payment.

Affected Public: Individuals or Households.

Estimated Total Annual Burden: 9,000 hours.

Estimated Average Burden per Respondent: 90 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,000.

Dated: May 12, 2011.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–12137 Filed 5–17–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0606]

Agency Information Collection (Regulation for Submission of Evidence); Activity Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 17, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0606" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900–0606."

SUPPLEMENTARY INFORMATION:

Title: Regulation for Submission of Evidence—Title 38 CFR 17.101(a)(4).

OMB Control Number: 2900–0606.

Type of Review: Extension of a currently approved collection.

Abstract: Under the provisions of 38 CFR 17.101(a)(4), a third party payer that is liable for reimbursing VA for care and services VA provided to veterans with non-service-connected conditions continues to have the option of paying either the billed charges or the amount the health plan demonstrates it would pay to providers other than entities of the United States for the same care or services in the same geographic area. If the amount submitted by the health plan is less than the amount billed, VA will accept the submission as payment, subject to verification at VA's discretion. VA uses the information to determine whether the third-party payer has met the test of properly demonstrating its equivalent private sector provider payment amount for the same care or services VA provided.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 9, 2011, at pages 13022–13023.

Affected Public: Business or other for-profit.

Estimated Total Annual Burden: 800 hours.

Estimated Average Burden per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 400.

Dated: May 12, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–12138 Filed 5–17–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0129]

Agency Information Collection (Supplemental Disability Report) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 17, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0129" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0129."

SUPPLEMENTARY INFORMATION:

Title: Supplemental Disability Report, VA Form Letter 29–30a.

OMB Control Number: 2900–0129.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 29–30a is used by the insured to provide additional information required to process a claim for disability insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 9, 2011, at pages 13021–13022.

Affected Public: Individuals or households.

Estimated Annual Burden: 548 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,570.

Dated: May 12, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–12139 Filed 5–17–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0665]

Proposed Information Collection (Direct Deposit Enrollment/Change); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the

proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to start or change direct deposit of Government Life Insurance payments.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 18, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0665" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Direct Deposit Enrollment/Change, VA Form 29–0309.

OMB Control Number: 2900–0665.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 29–0309 authorizing VA to initiate or change direct deposit of insurance benefit at their financial institution.

Affected Public: Individuals or households.

Estimated Annual Burden: 10,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: May 12, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–12140 Filed 5–17–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Defense

Defense Acquisition Regulations System

48 CFR Parts 215, 234, 242 *et al.*
Defense Federal Acquisition Regulation Supplement; Business Systems—Definition and Administration; Interim Rule

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215, 234, 242, 244, 245, and 252

[DFARS Case 2009–D038]

RIN 0750–AG58

Defense Federal Acquisition Regulation Supplement; Business Systems—Definition and Administration

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to improve the effectiveness of DoD oversight of contractor business systems.

DATES: *Effective date:* May 18, 2011.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before July 18, 2011, to be considered in the formation of the final rule.

Applicability date: This rule applies to solicitations issued on or after May 18, 2011. Contracting officers are encouraged, to the extent feasible, to amend existing solicitations (including solicitations for delivery orders and task orders) in accordance with FAR 1.108(d), in order to include the clause at DFARS 252.242–7005, Contractor Business Systems, as applicable, in contracts (including delivery orders and task orders) to be awarded on or after May 18, 2011, and shall amend existing solicitations (including delivery orders and task orders) in accordance with FAR 1.108(d), in order to include the clause at DFARS 252.242–7005, Contractor Business Systems, as applicable, in contracts to be awarded on or after August 16, 2011.

ADDRESSES: You may submit comments, identified by DFARS Case 2009–D038, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2009–D038" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2009–D038." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2009–D038" on your attached document.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2009–D038 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, 703–602–0302.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an initial proposed rule for Business Systems—Definition and Administration (DFARS Case 2009–D038) in the **Federal Register** on January 15, 2010 (75 FR 2457). Based on the comments received and subsequent revisions to the proposed rule, DoD published a second proposed rule on December 3, 2010 (75 FR 75550). The public comment period closed January 10, 2011. On January 7, 2011, the Ike Skelton National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011 was signed into law (Pub. L. 111–383). NDAA section 893, Contractor Business Systems, set forth statutory requirements for the improvement of contractor business systems to ensure that such systems provide timely, reliable information for the management of DoD programs. Based on the comments received, the requirements of the NDAA, and subsequent revisions to the proposed rule, DoD is publishing this interim rule with request for comments.

Contractor business systems and internal controls are the first line of defense against waste, fraud, and abuse. Weak control systems increase the risk of unallowable and unreasonable costs on Government contracts. To improve the effectiveness of Defense Contract Management Agency (DCMA) and Defense Contract Audit Agency (DCAA) oversight of contractor business systems, DoD is clarifying the definition and administration of contractor business systems as follows:

A. DoD is defining contractor business systems as accounting systems, estimating systems, purchasing systems, earned value management systems (EVMS), material management and accounting systems (MMAS), and property management systems.

B. DoD is implementing compliance enforcement mechanisms in the form of a business systems clause which includes payment withholding that allows contracting officers to withhold a percentage of payments, under certain conditions, when a contractor's business system contains significant deficiencies. Payments could be withheld on—

- Interim payments under—
  - ○ Cost–reimbursement contracts;
  - ○ Incentive type contracts;
  - ○ Time-and-materials contracts;
  - ○ Labor-hour contracts;
- Progress payments; and
- Performance-based payments.

II. Discussion and Analysis

A. Analysis of Public Comments

The comments received in response to the second proposed rule have been analyzed and dispositioned as discussed below. The comments received were grouped under 34 general topics. A summary of the comments follows:

1. Business Systems

a. Earned Value Management Systems (EVMS)

The following comments were submitted concerning Earned Value Management Systems (EVMS):

Comment: Some respondents expressed concern over disapproval of EVM systems if the system is not validated within 16 months since DCMA is not currently able to meet this timeline.

Response: The rule requires contracting officers to determine the acceptability of the contractor's earned value management system in consultation with the functional specialist and auditor. Contracting officers are expected to consider all facts at their disposal when making such determinations. However, circumstances outside of a contractor's control may inhibit the initial validation of a contractor's EVMS. Therefore, 234.201(7)(iii)(A)(*2*)(*ii*) has been revised to state that the system will be disapproved "when initial validation is not successfully completed within the timeframe approved by the contracting officer * * *"

Comment: Conditions for disapproval of an EVM system are inconsistent where the definition of an acceptable EVMS means that the system generally complies with system criteria while the identification of a single deficiency can make a system unacceptable. Furthermore, while some respondents expressed concern that EVM system deficiencies are related to ill-defined

contractual requirements, other respondents indicated that criteria for disapproval of an EVM system are too strict and should be more subjective.

Response: The rule requires contracting officers to determine the acceptability of the contractor's earned value management system in consultation with the functional specialist and auditor. Contracting officers are expected to consider all facts at their disposal when making such determinations. Section 893 of the FY11 NDAA requires systems to be disapproved when there is a shortcoming in the system that affects materially the ability of DoD officials to rely on information produced by the system for management purposes. This interim rule is consistent with this requirement. In the case of EVM systems, this means the system has one or more significant deficiencies due to the contractor's failure to comply with the system criteria in the clause at 252.234–7002, Earned Value Management System. Since a system will only be disapproved when a significant deficiency exists, a system with deficiencies that do not materially affect the Government's ability to rely on information produced by the system is considered an acceptable system in accordance with the definition at 252.234–7002. Therefore, this rule is not inconsistent with the definition of an acceptable EVMS.

b. Estimating System

The following comments were submitted concerning estimating systems:

Comment: The respondent indicated that it is unreasonable for an acceptable estimating system to include controls for the contractor to compare projected results to actual results and analyze the differences. This is a major change in policy concerning fixed-price contracts and will open the door to wholesale Government access to contractor costs during fixed-price contract performance.

Response: This interim rule sets forth specific criteria for maintaining an acceptable estimating system. It is not unreasonable for a contractor to establish and maintain an acceptable estimating system that would include controls for the contractor to compare projected results to actual results and analyze any differences. Such controls provide a valuable metric for demonstrating the accuracy of estimates produced by the system. Systems that consistently produce accurate estimates with a reasonable degree of confidence can significantly reduce the number of Government resources required to review cost and price proposals. Accurate estimates also provide substantial advantages to the contractor by allowing a more accurate forecast of the projected rate of return. This existing requirement was relocated from 215.407–5–70 to the clause at 252.215–7002, Cost Estimating System Requirements.

c. Accounting Systems

The following comments were submitted regarding accounting systems:

Comment: The respondent recommended deleting the phrase "or functional specialist" from 242.7502(d)(2)(ii)(C). The respondent recommended that the 45 day period be extended to a 60 day period for a contractor to correct a deficiency or submit a corrective action plan as is currently in the DFARS. The policy at 242.7502(d)(2)(ii)(A) should include a requirement that the contracting officer's notification to the contractor include "sufficient detail to allow the contractor to understand the deficiencies and the potential impact to the Government" as is required in other system deficiency notifications. Finally, the respondent recommended that DCAA focus on the adequacy of a contractor's accounting system rather than the adequacy of the contractor's control environment and overall accounting system controls.

Response: The term functional specialist needs to be retained. When specialized expertise is required, the interim rule requires contracting officers to consult with auditors and other individuals with specialized experience, as necessary, to ensure a full understanding of issues. For example, certain issues relating to forecasted costs may require the expertise of engineers, price analysts, and others, to understand or evaluate the contractor's business system. It is not necessary to extend the 45 day period to 60 days. The contractor will be notified formally of deficiencies at the completion of the audit, and will be allowed 30 days to respond to the contracting officer's initial determination. The contractor will be well aware that a deficiency may need to be corrected and a corrective action plan may be needed well before that 45 day period begins. For clarity, the language pertaining to "sufficient detail" in a contracting officer's notification has been revised to state that a contracting officer's notification will provide "a description of each significant deficiency in sufficient detail to allow the contractor to understand the deficiency." DCAA will be reporting significant deficiencies in accordance with the new business systems rule.

Comment: The rule requires periodic monitoring of the accounting system but does not provide a definition of what the expectation or frequency of the accounting system reviews should be. Furthermore, the rule fails to recognize leading practices implemented in industry through continuous monitoring and exception reporting.

Response: The size and complexity of companies and their processes, operations, and accounting systems capabilities vary. Therefore, it is not feasible to establish specific requirements regarding the extent or frequency of periodic monitoring.

Comment: The respondent expressed concern that immaterial audit issues resulting from CAS 405 noncompliance audit reports will be considered significant, resulting in payment withholding and disputes. The respondent recommended eliminating accounting system criterion number 12 from the rule since remedies already exist through the application of the CAS administration clause as well as the Allowable Cost and Payment clause at FAR 52.216–7.

Response: The rule establishes criteria for an acceptable accounting system to provide reasonable assurance that applicable laws and regulations are complied with, accounting system and cost data are reliable, risk of misallocations and mischarges are minimized, and contract allocations and charges are consistent with billing procedures. An essential characteristic of an adequate accounting system for Government contract costing is the ability of the system to identify and exclude unallowable costs from costs charged to Government contracts. The remedies provided in the CAS administration clause and the Allowable Cost and Payment clause at FAR 52.216–7 do not replace the need for this essential control within a contractor's accounting system.

Comment: Accounting system criterion number 17 introduces the subjective and undefined terms "adequate" and "reliable" with regard to accounting systems providing data to be used to support follow-on acquisitions. It is not appropriate to tie the basis of estimates for proposals to the accounting system. Including this criterion in the accounting system and estimating system criteria is redundant.

Response: The variation and complexity of business systems is such that it is not practical to eliminate subjective terms entirely. While the terms "adequate" and "reliable" imply a degree of subjectivity, they are sufficiently common to enable reasonable parties to agree on the set of

necessary characteristics to meet each threshold given the unique set of circumstances. It is not inappropriate to draw a connection between the basis of estimates for proposals and the accounting system. Achieving consistent and accurate estimates is dependent on obtaining accurate and reliable information, which often includes reported information about past results produced by the accounting system. The weight assigned to past results in developing estimates will vary depending on a variety of factors, including the similarity of past circumstances and the anticipated circumstances for which the estimate is being developed. In the case of a follow-on acquisition, as noted by the respondent, the circumstances are often similar, and thus actual results produced by the accounting system are likely to play a prominent role in developing the estimate. Estimators will likely improve accuracy when they consider the accounting system results during the development of their bases of estimates whether or not the acquisition is a follow-on acquisition.

Comment: Referencing 242.7502(g)(2)(v), which identifies reducing the negotiation objective for profit or fee as a means to mitigate risk of accounting system deficiencies, the respondent expressed concern that such reductions would be punitive to contractors beyond other measures in the rule. The respondent recommended removal of this paragraph.

Response: This interim rule does not limit the contracting officer's discretion to apply any and all regulatory measures, as warranted by the circumstances, including mitigating the risk of accounting system deficiencies by reducing the negotiation objective for profit or fee.

d. Purchasing Systems

The following comments were submitted regarding purchasing systems:

Comment: DFARS 252.244–7001 requires purchasing policies that "comply with the Federal Acquisition Regulation (FAR) and the Defense FAR Supplement (DFARS)." The respondent requested that the rule clarify that requirements being imposed on contractors are done via contract clauses.

Response: All contractual requirements are identified and accomplished through contract clauses. There is no need to issue such a clarifying statement in this rule.

Comment: The definitions of subcontracts and purchase orders should be revised to exclude agreements with vendors that would normally be applied to a contractor's G&A expenses or indirect costs.

Response: Because the Government reimburses contractors for its applicable share of indirect expenses, it would be inappropriate to revise the definitions of subcontracts and purchase orders to exclude agreements with vendors that would normally be applied to a contractor's G&A expenses or indirect costs.

Comment: Purchasing system criteria under items 252.244–7001(c)(2) and (c)(19) in the purchasing system clause appear to be redundant.

Response: Purchasing system criteria under 252.244–7001(c)(2) and (c)(19) are not redundant. The criterion under (c)(2) requires the contractor to include all flowdown clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract, in all applicable purchase orders and subcontracts, while the criterion under (c)(19) requires the contractor to establish and maintain policies and procedures to ensure the requirements of (c)(2) are accomplished.

Comment: The rule should establish a threshold under purchasing system criterion (c)(4) for the documentation of purchase orders (*e.g.,* $3,000).

Response: Since certain requirements should apply to all purchases, no threshold has been added in (c)(4).

Comment: The purchasing system criterion under item (c)(8) should be revised to be consistent with FAR part 15.

Response: This rule does not conflict with the extensive language under FAR part 15. The wording in (c)(8) and FAR part 15 is not inconsistent.

Comment: Purchasing system criteria under items (c)(10) and (c)(22) appear to be redundant.

Response: Purchasing system criteria under 252.244–7001(c)(10) and (c)(22) are not redundant. The criterion under (c)(10) requires the contractor to perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices, while the criterion under (c)(22) requires the contractor to establish and maintain procedures to ensure the requirements of (c)(10) are accomplished.

Comment: Notification of subcontract awards that contain FAR and DFARS clauses allowing for Government audits should not be required in the purchasing system criterion under item (c)(16) since these clauses are required flowdowns on all direct-funded subcontracts.

Response: The notification requirement under purchasing system criterion (c)(16) is appropriate. This criterion does not require flowdown of FAR and DFARS clauses, but instead establishes the requirement that the contractor notify the Government of the award of all subcontracts that contain the FAR and DFARS flowdown clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts.

Comment: The purchasing system criterion under item (c)(23) should be clarified so that the requirements are applicable to first-tier subcontractors.

Response: The suggested change to (c)(23) would make it inconsistent with the definition in FAR 44.101. Therefore, no change has been made.

e. Property Systems

The following comments were submitted regarding property systems:

Comment: Replace the phrase "previously unapproved" property management systems with the phrase "disapproved" for consistency.

Response: The phrase "previously unapproved property management system" in 245.105(e) has been replaced with the phrase "previously disapproved property management system" for consistency.

Comment: The proposed rule property system terminology is inconsistent with current FAR part 45. The proposed rule provides for "approval/disapproval" of a system while FAR part 45 and FAR clause 52.245–1 use the verbiage "adequate/inadequate."

Response: The language in DFARS 245 supplements the FAR language, and is consistent with other business system sections as well as with section 893 of the NDAA.

Comment: One respondent stated that it is unclear whether the proposed rule uses a two-step process for approval/disapproval of a property system where the Government property administrator initially determines if a deficiency exists that would make the system "inadequate" and then works with the contracting officer to determine if the system is "approved/disapproved" and whether payment withholding is required, or if the Government property administrator is acting as an agent of the cognizant contracting officer using a one-step process. Another respondent suggested that property administrators should have the authority to approve contractor property management systems, and report system deficiencies to the cognizant contracting officer recommending disapproval.

Disapproval authority should reside with the cognizant contracting officer.

Response: DFARS 245.105 is clear that Government property administrators are responsible for providing recommendations and reporting system deficiencies to the cognizant contracting officer, including recommendations regarding contractor property management system approval or disapproval. However, system approval or disapproval authority shall remain with the cognizant contracting officer.

2. Resources and Resolution Timing

Comment: DCMA and DCAA are under-resourced to execute the requirements of the rule. DCAA does not have resources to perform timely follow-up audits/system reviews or coordinate in a timely manner with contracting officers to remove payment withholdings, and contracting officers do not have the training to determine if a deficiency makes a system inadequate. There must be accountability within DCAA to conduct timely follow-up audits. Respondents recommended that contractors should be allowed to request follow-up audits when deficiencies are corrected; it should be mandated that DCAA and DCMA perform follow-up audits within 30 days of contractor notification that a deficiency has been corrected; and that the rule should permit qualified third party auditors to provide various accreditations and audits, as is the case with ISO standards or CMMI approvals.

Response: The need to have effective oversight mechanisms is unrelated to resources. This rule does not add additional oversight responsibilities onto DCAA and DCMA; it merely provides provisions to help protect the Government from the contractor's failure to maintain business systems, as is required by the terms and conditions of their contracts. Contracting personnel will make appropriate determinations in accordance with this rule. DCMA and DCAA have been working closely to align their resources and ensure work is complementary. The increased cooperation and coordination between DCAA and DCMA will enable us to employ audit resources where they are needed. Further, the rule has been revised to require the contracting officer to reduce the payment withholding by at least 50 percent if the contracting officer has not made a determination whether the contractor has corrected all significant deficiencies as directed by the contracting officer's final determination, or has not made a determination whether there is a reasonable expectation that the corrective actions have been implemented.

3. Contractor Appeals

Comment: DoD needs a contractor appeals process for implementing the payment withholding. The rule should be modified to require discussion with the PEO and/or SAE before any payment withholding action is taken. Due to the vague nature of the system criteria and subjective nature of the audit assessments, it will be difficult for contractors to challenge payment withholding determinations under the Contract Disputes Act.

Response: The final deficiency determination is at the sole discretion of the contracting officer. However, prior to making a final deficiency determination, contractors are afforded an opportunity to respond in writing within 30 days to an initial determination of deficiencies from the contracting officer that identifies significant deficiencies in any of the contractor's business systems. It is not necessary or appropriate to develop a dispute resolution process beyond that which is already available by statute and regulation. Additionally, other avenues of dispute resolution outside of the Contract Disputes Act are available for resolving disputes that may arise over determinations of system deficiencies. The policy set forth in FAR 33.204 still applies, so that informal negotiation and alternate dispute resolution remain available, and, in fact, are encouraged as alternative methods of resolving disputes.

4. Risk of Harm and Materiality of Deficiencies

Comment: "Risk of harm" must be substantiated and verified. The final rule should define the phrase "potential risk of harm to the Government" which incorporates a nexus between the amount withheld and the specific harm that may accrue to the Government based on the system deficiency, and require that a deficiency be "material" or "significant." It is impossible to determine whether the proposed controls and remedial actions of this rule are reasonable and commensurate with the Government's risks. Payment withholdings are liquidated damages in disguise and, if excessive to the Government's risk, will be viewed as punitive.

Response: The intent of the rule is to authorize payment withholding when the contracting officer finds that there are one or more significant deficiencies due to the contractor's failure to meet one or more of the system criteria. The rule has been revised to consider significant deficiencies in determining the adequacy of a contractor's business system and potential payment withholding in accordance with section 893 of the FY11 NDAA. Contract terms explicitly require contractors to maintain the business systems in question as a condition of contracting responsibility and, in some cases, eligibility for award. Contract prices are negotiated on the basis that contractors will maintain such systems, so that the Government does not need to maintain far more extensive inspection and audit functions than it already does. Failure of the contractor to maintain acceptable systems during contract performance deprives the Government of assurances for which it pays fair value. While not "deliverable" services under specific contract line items, these business systems are material terms, performance of which is required to ensure contracts will be performed on time, within cost estimates, and with appropriate standards of quality. The payment withholding remedy provides a measure of the overall contract performance of which the Government is deprived during the performance period, and for which the contractor should not receive the full financing payments. DoD is relying on the temporary payment withholding amounts, not as a penalty for a deficiency, but as representing a good-faith estimate sufficient to mitigate the Government's risk where the actual amounts are difficult to estimate or quantify. Deficiencies that do not directly relate to unallowable or unreasonable costs still pose risks to the Government, and may lead to harm that may not be calculated readily when the deficiencies are discovered. In most cases, the financial impact of a system deficiency cannot be quantified because the system produces unreliable information. When the financial impact of a deficiency is quantifiable, DoD expects contracting officers to take appropriate actions to reduce fees, recoup unallowable costs, or take legal action if fraudulent activity is involved.

5. Definition of Deficiency

Comment: The term "deficiency" is not clearly defined. The rule should define the terms "deficiency," "significant deficiency," and "material weakness." One respondent suggested these definitions be set forth in accordance with the definitions utilized by the Public Company Accounting Oversight Board (PCAOB).

Response: The interim rule has been revised to implement payment withholding procedures only for "significant deficiencies," therefore, it is not necessary to define "deficiency".

The rule is has been revised to define "significant deficiency" as a shortcoming in the business system that affects materially the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes, in accordance with section 893 of the NDAA. DoD will use the definition of "significant deficiency" in section 893 over the PCAOB definition. The term "material weakness" is not used in this rule.

6. System Approval Duration and Narrowly Focused Follow-up Audits

Comment: The rule should implement an approval duration for each business system, and require follow-up audits to narrowly focus on previously-identified deficiencies.

Response: While DCAA may perform a narrowly focused follow-up audit, imposing a required business system approval duration and/or specifically limiting the scope of the DCAA follow-up audit in this rule would not be appropriate since, at any time after approval, contractor conditions could change rendering the previously-reported opinion as not current. DCAA policy is to report only deficiencies determined to be significant deficiencies in accordance with the definition of significant deficiency set forth in this rule and generally accepted Government auditing standards.

7. Contracting Officer/ACO References

Comment: The rule should reference "ACO" in lieu of "contracting officer" since ACOs will have the primary responsibility to approve contractor business systems.

Response: The contract administration functions in FAR 42.302 are sometimes performed by procurement contracting offices. Since procurement contracting offices are sometimes responsible for the approval and disapproval of contractor business systems, the term "ACO" has been replaced by "contracting officer" for accuracy.

8. Subjective Assessments and Vague Standards

Comment: The revised proposed rule includes incomplete and ambiguous definitions of acceptable business systems, and fails to address the concern with subjective assessments and vague standards, which will lead to inconsistent treatment within DCAA and DCMA.

Response: The rule incorporates criteria that are already used by the Government under existing authority to evaluate the adequacy of contractor business systems. For example, the criteria for estimating systems are currently located in the DFARS at 215.407–5–70(d)(2). Given that these system criteria have been used for many years to assess contractor business systems, a reasonable person should be able to easily interpret and understand what is required to maintain an acceptable system. Each significant deficiency must be determined on its own set of facts and ultimately decided by the contracting officer. Inconsistent treatment of deficiencies is speculative.

9. Approval To Withhold Payments

Comment: The authority to order a payment withholding should be vested at a higher level than the contracting officer because many contracting officers do not have sufficient training or expertise in the full spectrum of business systems covered by the rule. Furthermore, contracting officers should be allowed to make independent business judgments without fear of DCAA elevating the matter to a formal disputes resolution board, unless the contracting officer has ignored or disregarded DCAA egregiously.

Response: The contracting officer is the only person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. DoD contracting personnel are skilled professionals. All contracting personnel are required by law to obtain a certification to ensure they have the requisite skills in contracting. When specialized expertise is required, contracting officers consult with auditors and other individuals with specialized experience, as necessary, to ensure a full understanding of issues. In fact, the interim rule requires such consultations. Accordingly, the contracting officer is the appropriate authority for making decisions regarding contractor business systems.

10. Other Remedies

Comment: The DCAA audit report should recommend whether a payment withholding is necessary, and if not, what other protections are available. DoD already has numerous other contracting tools available to protect itself from any actual loss associated with business system deficiencies. The proposed clause should state that a payment withholding under the clause is in lieu of, and not in addition to, other sanctions and remedies.

Response: The existing regulatory remedies are not an effective substitute for a contract clause that will mitigate the Government's risk while contractors correct business system deficiencies. The interim rule is required to supplement existing enforcement mechanisms and protect the Government's interests while the contractor completes correction of system deficiencies. DoD does not want to limit the contracting officer's discretion to apply any and all regulatory measures, as warranted by the circumstances. For example, if a contractor has a deficiency in its property management system, the contracting officer may implement a payment withholding to protect the Government's risk of the contractor failing to perform on the contract, and may also revoke the Government's assumption of liability to protect the Government from risk of loss of the Government's furnished property.

11. "Inadequate in Part"

Comment: The final rule should provide for "inadequate in part" determinations when minor system deficiencies will not affect the entire business system.

Response: "Inadequate in part" determinations when minor system deficiencies are found are not necessary. Contractor business systems will only be disapproved when the contracting officer determines that one or more significant deficiencies materially affect the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

12. Payment Withholdings Applied Per System or Per Deficiency

Comment: The rule is unclear whether a 5% payment withholding is applied against a single deficient business system or can be applied for each deficiency within a single system.

Response: Payment withholding procedures will be implemented on the basis of contractor business systems. While multiple payment withholdings may be implemented due to significant deficiencies in multiple contractor business systems, for clarity, the interim rule sets forth that the total percentage of payments withheld on amounts due under each progress payment, performance-based payment, or interim cost voucher, shall not exceed five percent for one or more significant deficiencies in any single contractor business system, and 10 percent for significant deficiencies in multiple contractor business systems.

13. DCAA/Functional Specialist Consultation

Comment: It is unclear what is meant by "consultation with the auditor or functional specialist" in terms of a

contracting officer's determination to discontinue withholding payments prior to audit verification. The language in DFARS 242.70X1 and 252.242–7XXX should explicitly state that the contracting officer may discontinue withholding payments without the need to wait for a final audit report from DCAA.

Response: The contracting officer is the only person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. However, when specialized expertise is required, the interim rule requires contracting officers to consult with auditors and other individuals with specialized experience, as necessary, to ensure a full understanding of issues. The interim rule explicitly states that prior to the receipt of verification, the contracting officer may discontinue withholding payments pending receipt of verification, and release any payments previously withheld, if the contractor submits evidence that the deficiencies have been corrected, and the contracting officer, in consultation with the auditor or functional specialist, determines that there is a reasonable expectation that the corrective actions have been implemented and that the deficiencies no longer affect materially the ability of the Government to rely upon information produced by the system.

14. Risk Management vs. Risk Avoidance

Comment: The proposed rule's focus on risk avoidance rather than risk management has the potential of significantly increasing the cost of business systems without corresponding benefits. To make systems deficiency-proof in order to avoid significant payment withholdings, contractors may be forced to incur unnecessary costs that would be disproportionate to the incremental benefits of having near perfect systems. DoD has failed to consider the concept of causal or beneficial relationships between the costs to bring business systems into compliance with the rule, and the benefits of protecting the Government from perceived risk.

Response: DoD will only withhold payments in cases where there are significant deficiencies in the contractor's business systems. In such cases, the ability of the contractor to manage risk is questionable and the potential risk of harm to the Government is increased. Under the rule, a contractor business system may contain deficiencies that do not affect materially the ability of DoD officials to rely on information produced by the system. Accordingly, the standard for withholding payments is commensurate with the risk of harm to the Government. In the long run, both the contractor's and Government's administrative costs should be reduced with the reliance on efficient contractor business systems.

15. Large Businesses

Comment: The revised rule improperly targets large businesses due to the $50M dollar contract threshold.

Response: The $50 million contract threshold has been removed from the interim rule. The threshold for application of the contractor business systems clause is set forth in section 893 of the NDAA, which defines a covered contractor as one that is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201–1 (see the FAR Appendix).

16. DCAA Audit Standards

Comment: DCAA auditors apply a higher standard for identifying a deficiency in an accounting system ("less than a remote possibility that potential unallowable costs would be immaterial") than set forth in the rule. DCAA is not able to distinguish systemic errors or significant deficiencies from normal human errors or minor deficiencies. The rule may state that it is DCAA policy to report only deficiencies determined to be significant deficiencies or material weaknesses, however the DCAA December 19, 2008 MRD (titled Audit Guidance on Significant Deficiencies/Material Weaknesses and Audit Opinions on Internal Control Systems) instructs auditors that anything which is subject to DCAA review should be considered significant.

Response: DCAA will report significant deficiencies in accordance with the definition of significant deficiency in this rule, as set forth in section 893 of the NDAA and the Generally Accepted Government Auditing Standards (GAGAS). Based on the definition in GAGAS, a significant deficiency is a deficiency, or combination of deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report data reliably. The GAGAS definition is consistent with the definition of significant deficiency in the contractor business systems clause. Additionally, contracting officers will administer this rule according to the requirements in section 893 of the NDAA.

17. Arbitrary and Punitive Payment Withholdings

Comment: The payment withholding percentages are punitive in nature and represent an arbitrary estimate based on pressure to incorporate business systems payment withholdings into the DFARS. The amount of the payment withholding should be commensurate with the level of risk to the Government and not set at arbitrary and punitive levels.

Response: When contractors fail to maintain business systems, as is required by the terms and conditions of their contracts, the payment withholding provisions help to protect the Government from the risks of overpayment, increased property losses, or nonconforming goods, among others, against which contractor business systems are designed to ensure. The interim rule would protect the Government by reducing contract payments temporarily during performance in an amount sufficient to mitigate the Government's risk. DoD is relying on the payment withholding amounts, not as a penalty for a deficiency, but as representing a good-faith estimate of the potential loss that is at risk where the actual amounts are difficult to estimate or quantify. The percentage of progress payments, performance-based payments, and interim payments set forth in this rule is in accordance with section 893 of the NDAA.

18. Release of Payment Withholdings

Comment: DCAA does not issue audits addressing "reasonable expectation that the corrective actions have been implemented." The only existing audit solution is to complete the entire follow-up audit, which will not be performed in a timely manner due to DCAA's backlog. Furthermore, the rule should provide guidance to avoid perpetual payment withholdings when deficiencies in multiple business systems overlap and the timing of corrective action plans differ.

Response: There is no requirement that DCAA issue audits addressing "reasonable expectation that the corrective actions have been implemented." The interim rule explicitly states that prior to the receipt of verification, the contracting officer may discontinue withholding payments pending receipt of verification, and release any payments previously withheld, if the contractor submits evidence that the significant deficiencies have been corrected, and the contracting officer, in consultation with the auditor or functional specialist,

determines that there is a reasonable expectation that the corrective actions have been implemented. Since payment withholding procedures will be implemented on the basis of contractor business systems, if prior to the correction of one or more significant deficiencies, other significant deficiencies are identified in another business system, the contracting officer may revise the original final determination or issue a subsequent determination to disapprove the latter business system and implement additional payment withholdings. Contracting officers will provide direction in their determination(s), identify the significant deficiencies that need to be corrected in order to approve each disapproved business system, and discontinue the withholding of payments and release any payments previously withheld. If one previously disapproved contractor business system is approved, but significant deficiencies remain in another system, the contracting officer will continue to withhold payments relating to the remaining disapproved business system until the significant deficiencies relating to that business system have been determined to have been corrected.

19. Multiple Compliance Regimes

Comment: The rule provides a different set of contractor business systems requirements for DoD and NASA contractors than are required for civilian contractors.

Response: The business systems criteria contained in the business systems clauses have been used in practice for several decades by Government personnel to assess the reliability and accuracy of management information produced by the applicable system. Because they are designed to be consistent with GAGAS, which are based on standards developed by the American Institute of Certified Public Accountants (AICPA), the system criteria are applicable equally to DoD, NASA, and civilian contractors.

20. NDAA Compliance

A number of respondents, citing section 893 of the NDAA, provided the following recommendations:

Comment: Contractor business system disapproval should be based on "significant deficiencies" as defined in section 893 of the NDAA, and the maximum cap should be reduced to 10 percent in accordance with the NDAA.

Response: The interim rule has been revised to reflect the language in section 893 of the NDAA by incorporating the statutory language regarding "significant deficiencies" and reducing the cumulative payment withholding percentage from 20 percent to 10 percent.

Comment: The proposed rule mandates payment withholdings on all contracts, including firm-fixed price contract types, while the NDAA language makes payment withholdings discretionary, and permits them to be applied only to CAS-covered contracts and not fixed-price contract types. The rule should be adjusted to exclude those contract types, including firm-fixed-price contracts that have been discretely excluded by the Authorization Act.

Response: Section 893 requires the Secretary of Defense to develop and initiate a program for the improvement of contractor business systems to ensure that such systems provide timely, reliable information for the management of Department of Defense programs. Furthermore, the statute sets forth that an appropriate official of the Department of Defense may withhold up to 10 percent of progress payments, performance-based payments, and interim payments under covered contracts from a covered contractor, as needed, to protect the interests of the Department and ensure compliance, if one or more of the contractor business systems of the contractor has been disapproved. To comply with this requirement, under the mandated DoD program for the improvement of contractor business systems, which includes the implementation of this interim rule, DoD has interpreted the definition of "covered contract" to mean a contract that is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201–1 (see the FAR Appendix), which includes CAS–covered fixed-price type contracts and performance-based contracts, as well as cost type contracts.

Comment: In accordance with the NDAA, the rule should identify DoD officials who are responsible for the approval or disapproval of contractor business systems. Furthermore, DoD officials must be made available to work with the contractor to develop corrective action plans and schedules for implementation.

Response: The interim rule continues to identify cognizant contracting officers as the DoD officials who are responsible for the approval or disapproval of contractor business systems.

21. Contract Applicability

Comment: A number of respondents questioned the application of this rule against cost type contracts while other respondents questioned the application of this rule against fixed-price contracts. Additionally, some respondents expressed concern about the application of the rule to commercial contracts and construction contracts. Other respondents suggested that payment withholdings should only be applied to contracts which fall under the business system found to be deficient, and only to contracts administered by the contracting officer making the determination decision.

Response: The Government is at risk when a contractor's business systems contain significant deficiencies, regardless of contract type. Accordingly, it is appropriate for the contracting officer to withhold payments to protect the interest of the Government. Contracts awarded under FAR part 12 regulations will generally be exempt from the requirements of this rule. A system deficiency may result in application of a payment withholding against all contracts that contain the business systems clause. The rule has been tailored to comply with section 893 of the FY11 NDAA. DoD has interpreted the definition of "covered contract" to include CAS-covered cost type contracts as well as CAS-covered fixed-price type contracts and performance-based contracts since section 893 also allows up to 10 percent of progress payments and performance-based payments to be withheld. The interim rule provides the contracting officer with the sole discretion to withhold payments from one or more contracts containing the clause at 252.242–7005, Contractor Business Systems. To ensure consistency, it is DoD policy that only one contracting officer, normally an ACO, has the responsibility and authority for approval, disapproval, and general oversight of contractor business systems. When the cognizant contracting officer renders a determination to approve or disapprove a system and withhold payments, all contracting officers with contracts affected by the determination are required to abide by the cognizant contracting officer's decision. The rule complies with this long-established practice.

22. DCAA/DCMA Internal Policies

Comment: By allowing DCMA/DCAA to determine the criteria by which contractor business systems will be measured through their internal policies and procedures, it should make those internal policies and procedures subject to the OFPP Act public comment process.

Response: This rule does not contain references to DCAA/DCMA internal policies to determine the criteria by

which contractor business systems will be measured. Rather, as defined in each of the individual business system clauses in the rule, the definition of an acceptable system means a system that complies with the system criteria set forth in each clause, which have been published for public comment.

23. Cumulative Payment Withholdings

Comment: The respondent questioned whether the 20 percent withhold in the proposed rule is in addition to other withholding remedies a contracting officer may assess.

Response: In accordance with section 893 of the NDAA, the cumulative payment withholding percentage set forth under this interim rule is reduced from 20 percent to 10 percent. This interim rule does not limit the contracting officer's discretion to apply any and all regulatory measures, as warranted by the circumstances, including other applicable payment withholdings. The withholding of any amount or subsequent payment to the contractor shall not be construed as a waiver of any rights or remedies the Government has under this contract.

24. CAS

Comment: The respondent expressed concern that there is no adjudication process prior to implementation of payment withholdings for disagreements or disputes regarding interpretation and implementation of CAS. Contractors should not be subject to payment withholdings on matters which await the decision of the judiciary.

Response: The finding of a significant deficiency in a business system results in only a temporary withholding from certain payments to protect the Government from potential harm. This does not constitute a permanent contractual decrement stemming from a CAS noncompliance. A contractor is not precluded from challenging any underlying CAS or other determinations through the contract disputes or other resolution processes. An additional adjudication process is not warranted for this rule. Furthermore, a deficiency that causes a CAS noncompliance may impact other business systems.

25. Dollar Limitations

Comment: The lack of dollar limitations at the contract level will lead to payment withholdings that exceed the amount required to protect the government. The value withheld at the contract level should be limited to $100,000 (and at subsequent thresholds of $250,000, $500,000, and $1,000,000) until authorization is received from DCMA headquarters. The approval of payment withholdings above the thresholds should be based on evidence that actual risk or harm in excess of the limit exists.

Response: To ensure sufficient mitigation of the Government's risk, the interim rule provides the contracting officer with the sole discretion to withhold payments from one or more contracts containing the clause at 252.242–7005, Contractor Business Systems. Contracting officers will select one or more contracts from which payments will be withheld. In selecting the contract or contracts from which to withhold payments, the contracting officer shall ensure that the total amount of payment withholding does not exceed 10 percent of the total amount billed.

26. Standard of Risk

Comment: The respondent recommended that any final rule establish a clear, simple, and uniform standard of risk to the Government in the procedures that are applicable across all of the business systems.

Response: The definition of a significant deficiency establishes a uniform standard of risk. A significant deficiency is defined as a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

27. Payment Withholding Process

Comment: Respondents suggested that the final rule should require direct communication between the contracting officer, DCAA, and the contractor to allow discussion relating to an identified deficiency before payment is withheld. The proposed clause should provide sufficient time for the contracting officer and contractor to address potential system deficiencies. The respondents recommended that the rule require the contracting officer to work collaboratively with the contractor in determining whether deficiencies exist, whether there is a material risk of harm, and how to resolve the deficiencies without resorting to a payment withholding; and allow the contractor 90 days to address the potential deficiencies and submit a response documenting its position before the contracting officer can issue a final determination and impose a payment withholding. Otherwise, the rule denies a contractor due process by allowing the contracting officer to issue initial determinations prior to receiving all the facts from the contractor.

Response: The rule provides adequate opportunities for communication between the contracting officer and the contractor prior to the implementation of payment withholdings. The contractor will be notified of a preliminary finding of a deficiency during the course of formal system reviews and audits. This occurs before the auditor or functional specialist releases a report to the contractor and contracting officer. After receiving a report, the contracting officer will promptly evaluate and issue an initial determination. The contractor is then allowed 30 days to respond to any significant deficiencies. Contractors are given ample opportunity to present their position during system reviews. Accordingly, the requirement for a contractor to respond within 30 days of an initial determination is adequate.

28. Simplify Administrative Burden

Comment: The rule should simplify the administrative burden for the accounting for payment withholdings against numerous invoices.

Response: The interim rule provides the contracting officer with the sole discretion to withhold payments from one or more contracts containing the clause at 252.242–7005, Contractor Business Systems. The administrative burden for the accounting for payment withholdings against numerous invoices is thus simplified by not mandating that payment withholdings be applied against all of a contractor's available contracts.

29. DCAA/DCMA Roles

Comment: One respondent suggested that the wording in 215.407–5–70(c)(3) should be revised to state "the auditor, on behalf of the cognizant contracting officer, conducts estimating system reviews" to establish that the contracting officer is the lead Federal official, not the auditor. Respondents questioned the ability of DCAA and DCMA to resolve audit recommendations, and further questioned the ability of DCAA and DCMA to execute their duties effectively in the absence of a procedure for resolving different judgments regarding a deficiency.

Response: FAR 1.6 sets forth contracting officer authority and responsibilities. The addition of language to DFARS 215.407–5–70 stating that the contracting officer is the lead Federal official is unnecessary. The DoD memorandum dated December 4, 2009, "Resolving Contract Audit Recommendations," clearly defines the roles and responsibilities of DCAA and DCMA and provides procedures for adjudicating differences.

30. Functional Specialist

Comment: Reference to a functional specialist under estimating systems should be deleted.

Response: The contracting officer is the only person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. However, when specialized expertise is required, the interim rule requires contracting officers to consult with auditors and other individuals with specialized experience, as necessary, to ensure a full understanding of issues. Certain issues relating to forecasted costs may require the expertise of engineers, price analysts, and others to understand or evaluate the contractor's estimating system.

31. Policies and Procedures

Comment: The proposed rule contains inconsistent, ill-defined system criteria for policies and procedures. The requirement for policies and/or procedures is the same for all business systems and, therefore, the proposed rule should be consistent by using the terms "policies and procedures" in all sections defining system criteria. The proposed rule should be revised to specify that a business system's criteria for policies and procedures should be in writing.

Response: System criteria are consistent with well-established Government practices and procedures for assessing the contractor business systems. For some business systems, the DFARS language supplements established FAR criteria, while other business systems criteria are established or revised by this interim rule. Therefore, it would be inappropriate to attempt to force incorrect terminology into business systems criteria for the sake of consistency. The systems criteria contained in the business systems clauses have been used for many years by Government personnel to assess the reliability and accuracy of management information produced by the applicable system.

32. Impact to Industry

Comment: One respondent commented that the proposed payment withholding regime will threaten the solvency of contractors and preclude many companies from contracting with the Government. The respondent indicated that the payment withholding regime will be particularly harsh on small businesses.

Response: In the long run, both the contractor's and the Government's administrative cost should be reduced with the reliance on efficient contractor business systems. The rule has been revised to exclude small businesses in accordance with section 893 of the FY2011 NDAA.

33. Effectiveness of This Rule

Comment: The respondent indicated that the proposed payment withholding is not tailored reasonably to address the Department's intended goal of preventing unallowable and unreasonable costs and waste, fraud, and abuse and improving the effectiveness of DCAA and DCMA.

Response: As noted by the respondent, contractor business systems play an important role in preventing waste, fraud, and abuse. Significant systems deficiencies place a substantial resource burden on DCMA and DCAA due to the increased oversight needed to protect the interests of the Government. The rule provides contracting officers with an additional tool to mitigate the Government's risk while contractors correct business systems deficiencies. Reliable contractor business systems employ internal controls to prevent unallowable and unreasonable costs, as well as waste, fraud, and abuse. Additionally, it reduces burden on Government resources, thereby allowing DCMA and DCAA resources to be employed more effectively.

34. Minor Corrections

Comment: For 252.215–7002, the lead-in reference to the prescription should be 215.407–5–70.

Response: Referencing 215.407–5–70 as the prescription for the clause at 252.215–7002 would be incorrect. DFARS 215.408(2) prescribes the use of the clause at 252.215–7002.

Comment: For 252.215–7002(e) and 252.242–7004(e), change from "on any system deficiency" to "of any system deficiency."

Response: Correction has been made in the interim rule.

Comment: The respondent recommended making the phrase "consultation with the auditor or functional specialist" consistent throughout the rule.

Response: Where appropriate, the phrase "consultation with the auditor or functional specialist" has been made consistent throughout the rule.

Comment: The respondent recommended making the phrase "all findings and recommendations" consistent throughout the rule.

Response: Where appropriate, the phrase "all findings and recommendations" has been made consistent throughout the rule.

Comment: The proposed rule intends to add new paragraphs (d) and (e) to revised 242.7203, but the text of the additional paragraphs denominates them at paragraphs (c) and (d).

Response: Correction has been made in the interim rule.

B. Summary of Proposed Rule Changes

As a result of public comments received in response to the revised proposed rule and the requirements set forth under section 893 of the NDAA, the following changes have been made to the interim rule:

1. The term "significant deficiency" is defined, in accordance with section 893, as a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes. The definition of the term "significant deficiency" provides for associated changes to the rule as follows:

(a) The term "significant deficiency" is used in lieu of phrases such as "deficiency that adversely affects the system" and "deficiency that adversely affects the system, leading to a potential risk of harm to the Government" as the basis for business systems disapprovals and payment withholdings.

(b) The phrases "the potential adverse impact to the Government" and "its potential harm to the Government" are no longer required to describe the detail to which significant deficiencies are described by auditors and functional specialists to contracting officers, and by contracting officers to contractors.

2. While the proposed rule allowed for the implementation of payment withholdings with or without disapproval of system deficiencies that adversely affect the contractor's business systems, this interim rule sets forth requirements that a contracting officer's final determination shall include a disapproval of the contractor's business system and the implementation of payment withholdings if a significant deficiency still exists after the contracting officer's evaluation of the contractor's response to the initial significant deficiency determination.

3. Where the proposed rule allowed for system approval after the contracting officer determines that the contractor has substantially corrected the system deficiencies removing the potential risk of harm to the Government, this interim rule requires that there are no remaining significant deficiencies before a system is approved.

4. The contracting officer will be required to reduce a payment

withholding by at least 50 percent if the contracting officer has not made a determination whether the contractor has corrected all significant deficiencies as directed by the contracting officer's final determination, or has not made a determination whether there is a reasonable expectation that the corrective actions have been implemented.

5. The 16-month timeframe for completion of a contractor's initial Earned Value Management System validation has been revised to allow for a timeframe that is approved by the contracting officer to allow for flexibility in the initial validation process.

6. The term "covered contract" has been defined, in accordance with section 893, as a contract that is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201–1 (see the FAR Appendix). The definition of the term "covered contract" provides for associated changes to the rule as follows:

(a) The clause prescription for the clause at 252.242–7005, Contractor Business Systems, requires that the resulting contract will be a "covered contract," which exempts small business contracts. Consequently, all language pertaining to payment withholdings for small business has been struck from the rule.

(b) While the proposed rule set forth a $50 million contract threshold for the incorporation of the clause at 252.242–7005, Contractor Business Systems, this interim rule prescribes the incorporation of the clause for covered contracts in accordance with the established definition.

7. The proposed rule applied payment withholdings against all contracts that contained the clause at 252.242–7005, Contractor Business Systems. This interim rule allows the contracting officer the discretion to withhold payments from one or more contracts containing the clause.

8. This rule revises procedures for the implementation of payment withholdings by replacing the requirement for contracting officers to issue unilateral modifications with the requirement to issue written notifications. Therefore, references to unilateral modifications for payment withholding as well as the sample language for the unilateral modifications have been deleted from this rule.

9. The clause prescription at 242.7002 for the clause at 252.242–7005, Contractor Business Systems, is revised to exempt contracts with educational institutions or Federally Funded Research and Development Centers (FFRDCs) operated by educational institutions.

10. The references to construction contracts that include the clause at FAR 52.232–27, Prompt Payment for Construction Contracts, under 242.7502(a), 242.7503, and 252.242–7005 have been removed as unnecessary.

11. The initial written determination language under 242.7502(d)(2)(ii)(A) has been revised to provide a description of each significant deficiency in sufficient detail to allow the contractor to understand the deficiency.

12. In accordance with section 893, the term "business system" is replaced with the term "contractor business system."

13. In accordance with section 893, the total percentage of payments that may be withheld on a contract shall not exceed 10 percent. Additionally, while multiple payment withholdings may be implemented due to significant deficiencies in multiple contractor business systems, for clarity, the interim rule limits the total percentage of payments withheld to five percent for one or more significant deficiencies in any single contractor business system.

14. The accounting system criteria under 252.242–7006(a)(1) has been revised to delete the unnecessary phrase "that is adequate for producing accounting data that is reliable and costs that are recorded, accumulated, and billed on Government contracts in accordance with contract terms."

15. The purchasing system criteria under paragraph (c) of the clause at 252.244–7001, Contractor Purchasing System Administration, has been revised to add paragraph (24) requiring contractors to establish and maintain procedures to notify the Contracting Officer in writing if—

(a) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

(b) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

III. Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a "significant regulatory action" and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of the rule is to establish a definition for contractor business systems and implement compliance mechanisms to improve DoD oversight of those contractor business systems. The requirements of the rule will apply to solicitations and contracts that are subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201–1 (see the FAR Appendix), other than in contracts with educational institutions or Federally Funded Research and Development Centers (FFRDCs) operated by educational institutions, and include one or more of the defined contractor business systems.

Since contracts and subcontracts with small businesses are exempt from CAS requirements, DoD estimates that this rule will have no impact on small businesses. However, DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2009–D038) in correspondence.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies because this

interim rule contains information collection requirements requiring the approval of the Office of Management and Budget. DoD invites comments on the following aspects of the interim rule: (a) Whether the collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the information collection; (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 the use of automated collection techniques or other forms of information technology.

DoD received one comment regarding the information collection estimate that was included with the initial proposed rule published on January 15, 2010, at 75 FR 2457. The respondent asserted that DoD's estimates were substantially understated. However, the supporting data referenced by the respondent exceeded the information collection requirements established under this rule. The hours and costs cited by the respondent with regard to EVMS did not reflect the Paperwork Reduction Act requirements of this rule. DoD received no comments regarding the information collection estimate in response to the second proposed rule published on December 3, 2010 at 75 FR 75550. With no further specific Paperwork Reduction Act comments received, and no further revisions in this interim rule to the information collection requirements, DoD concludes that the estimates published with the proposed rule accurately reflect the contractors' costs to fulfill the information collection requirements of this rule. The following is a summary of the information collection requirements.

The business systems clauses in this interim rule contain requirements for contractors to respond to initial and final determinations of deficiencies. The information contractors will be required to submit to respond to deficiencies in four of the six business systems defined in this rule have been approved by the Office of Management and Budget as follows:

(1) Accounting Systems—OMB Clearance 9000–0011;

(2) Estimating Systems—OMB Clearance 0704–0232;

(3) Material Management and Accounting Systems—OMB Clearance 0704–0250;

(4) Purchasing Systems– OMB Clearance 0704–0253;

(5) Earned Value Management Systems—OMB Control Number 0704–0479; and

(6) Contractors Property Management System—OMB Control Number 0704–0480.

The information contractors will be required to submit to respond to deficiencies in contractors' EVMS is estimated as follows:

Number of respondents—186.

Responses per respondent—48.

Annual responses—8,928.

Burden per response—40 hours.

Annual burden hours—357,120 hours.

The information contractors will be required to submit to respond to deficiencies in contractors' property management systems is estimated as follows:

Number of respondents: 2,646.

Responses per respondent: 1.

Annual responses: 2,646.

Average burden per response: 1.2 hours.

Annual burden hours: 3,200 hours.

Needs and Uses: DoD needs the information required by the business systems clause in this interim rule to mitigate the risk of unallowable and unreasonable costs on Government contracts when a contractor has one or more deficiencies in a business system.

Affected public: The business systems clause will be used in solicitations and contracts that include any of the following clauses:

(1) 252.215–7002, Cost Estimating System Requirements;

(2) 252.234–7002, Earned Value Management System;

(3) 252.242–7004, Material Management and Accounting System;

(4) 252.242–7006, Accounting System Administration;

(5) 252.244–7001, Contractor Purchasing System Administration;

(6) 252.245–7003, Contractor Property System Administration.

Frequency: On occasion.

VI. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements section 893 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011. Section 893 requires the improvement of contractor business systems to ensure that such systems provide timely, reliable information for the management of DoD programs. Contractor business systems and internal controls are the first line of defense against waste, fraud, and abuse. Weak control systems increase the risk of unallowable and unreasonable costs on Government contracts.

In implementing section 893, this rule will improve the effectiveness of DoD oversight for contractor business systems. More effective and efficient management of DoD programs is key to achieving greater efficiency and productivity in defense spending. It is essential that DoD immediately commence to require these improvements to contractor business systems, and to undertake the enhanced oversight necessary for expenditures of taxpayer dollars. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 215, 234, 242, 244, 245, and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 215, 234, 242, 244, 245, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 215, 234, 242, 244, 245, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

■ 2. Amend section 215.407–5–70 by revising paragraphs (a)(4), (c), and (e) through (g) to read as follows:

215.407–5–70 Disclosure, maintenance, and review requirements.

(a) * * *

(4) *Significant deficiency* is defined in the clause at 252.215–7002, Cost Estimating System Requirements.

(c) *Policy.* (1) The contracting officer shall—

(i) Through use of the clause at 252.215–7002, Cost Estimating System Requirements, apply the disclosure, maintenance, and review requirements to large business contractors meeting the criteria in paragraph (b)(2)(i) of this section;

(ii) Consider whether to apply the disclosure, maintenance, and review requirements to large business contractors under paragraph (b)(2)(ii) of this section; and

(iii) Not apply the disclosure, maintenance, and review requirements to other than large business contractors.

(2) The cognizant contracting officer, in consultation with the auditor, for

contractors subject to paragraph (b)(2) of this section, shall—

(i) Determine the acceptability of the disclosure and approve or disapprove the system: and

(ii) Pursue correction of any deficiencies.

(3) The auditor conducts estimating system reviews.

(4) An acceptable system shall provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures.

(5) In evaluating the acceptability of a contractor's estimating system, the contracting officer, in consultation with the auditor, shall determine whether the contractor's estimating system complies with the system criteria for an acceptable estimating system as prescribed in the clause at 252.215–7002, Cost Estimating System Requirements.

* * * * *

(e) *Disposition of findings*—(1) *Reporting of findings.* The auditor shall document findings and recommendations in a report to the contracting officer. If the auditor identifies any significant estimating system deficiencies, the report shall describe the deficiencies in sufficient detail to allow the contracting officer to understand the deficiencies.

(2) *Initial determination.* (i) The contracting officer shall review all findings and recommendations and, if there are no significant deficiencies, shall promptly notify the contractor, in writing, that the contractor's estimating system is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more significant deficiencies (as defined in the clause at 252.215–7002, Cost Estimating System Requirements) due to the contractor's failure to meet one or more of the estimating system criteria in the clause at 252.215–7002, the contracting officer shall—

(A) Promptly make an initial written determination on any significant deficiencies and notify the contractor, in writing, providing a description of each significant deficiency in sufficient detail to allow the contractor to understand the deficiency;

(B) Request the contractor to respond in writing to the initial determination within 30 days; and

(C) Promptly evaluate the contractor's responses to the initial determination, in consultation with the auditor or functional specialist, and make a final determination.

(3) *Final determination.* (i) The contracting officer shall make a final determination and notify the contractor in writing that—

(A) The contractor's estimating system is acceptable and approved, and no significant deficiencies remain, or

(B) Significant deficiencies remain. The notice shall identify any remaining significant deficiencies, and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(*1*) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies;

(*2*) Disapprove the system in accordance with the clause at 252.215–7002, Cost Estimating System Requirements; and

(*3*) Withhold payments in accordance with the clause at 252.242–7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of significant deficiencies in PGI 215.407–5–70(e).

(f) *System approval.* The contracting officer shall promptly approve a previously disapproved estimating system and notify the contractor when the contracting officer determines that there are no remaining significant deficiencies.

(g) *Contracting officer notifications.* The cognizant contracting officer shall promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments, to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

PART 234—MAJOR SYSTEM ACQUISITION

■ 3. Add section 234.001 to read as follows:

234.001 Definition.

As used in this subpart—

Acceptable earned value management system and *earned value management system* are defined in the clause at 252.234–7002, Earned Value Management System.

Significant deficiency is defined in the clause at 252.234–7002, Earned Value Management System, and is synonymous with *noncompliance.*

■ 4. Amend section 234.201 by adding paragraphs (5) through (9) to read as follows:

234.201 Policy.

* * * * *

(5) The cognizant contracting officer, in consultation with the functional specialist and auditor, shall—

(i) Determine the acceptability of the contractor's earned value management system and approve or disapprove the system; and

(ii) Pursue correction of any deficiencies.

(6) In evaluating the acceptability of a contractor's earned value management system, the contracting officer, in consultation with the functional specialist and auditor, shall determine whether the contractor's earned value management system complies with the system criteria for an acceptable earned value management system as prescribed in the clause at 252.234–7002, Earned Value Management System.

(7) *Disposition of findings*—(i) *Reporting of findings.* The functional specialist or auditor shall document findings and recommendations in a report to the contracting officer. If the functional specialist or auditor identifies any significant deficiencies in the contractor's earned value management system, the report shall describe the deficiencies in sufficient detail to allow the contracting officer to understand the deficiencies.

(ii) *Initial determination.* (A) The contracting officer shall review all findings and recommendations and, if there are no significant deficiencies, shall promptly notify the contractor, in writing, that the contractor's earned value management system is acceptable and approved; or

(B) If the contracting officer finds that there are one or more significant deficiencies (as defined in the clause at 252.234–7002, Earned Value Management System) due to the contractor's failure to meet one or more of the earned value management system criteria in the clause at 252.234–7002, the contracting officer shall—

(*1*) Promptly make an initial written determination on any significant deficiencies and notify the contractor, in writing, providing a description of each significant deficiency in sufficient detail to allow the contractor to understand the deficiencies;

(*2*) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(*3*) Evaluate the contractor's response to the initial determination, in consultation with the auditor or

functional specialist, and make a final determination.

(iii) *Final determination.* (A) The contracting officer shall make a final determination and notify the contractor, in writing, that—

(*1*) The contractor's earned value management system is acceptable and approved, and no significant deficiencies remain, or

(*2*) Significant deficiencies remain. The notice shall identify any remaining significant deficiencies, and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(*i*) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies;

(*ii*) Disapprove the system in accordance with the clause at 252.234–7002, Earned Value Management System, when initial validation is not successfully completed within the timeframe approved by the contracting officer, or the contracting officer determines that the existing earned value management system contains one or more significant deficiencies in high-risk guidelines in ANSI/EIA–748 standards (guidelines 1, 3, 6, 7, 8, 9, 10, 12, 16, 21, 23, 26, 27, 28, 30, or 32). When the contracting officer determines that the existing earned value management system contains one or more significant deficiencies in one or more of the remaining 16 guidelines in ANSI/EIA–748 standards, the contracting officer shall use discretion to disapprove the system based on input received from functional specialists and the auditor; and

(*iii*) Withhold payments in accordance with the clause at 252.242–7005, Contractor Business Systems, if the clause is included in the contract.

(B) Follow the procedures relating to monitoring a contractor's corrective action and the correction of significant deficiencies at PGI 234.201(7).

(8) *System approval.* The contracting officer shall promptly approve a previously disapproved earned value management system and notify the contractor when the contracting officer determines that there are no remaining significant deficiencies.

(9) *Contracting officer notifications.* The cognizant contracting officer shall promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 5. Add subpart 242.70 to read as follows:

SUBPART 242.70—CONTRACTOR BUSINESS SYSTEMS

Sec.
242.7000 Contractor business system deficiencies.
242.7001 Contract clause.

SUBPART 242.70—CONTRACTOR BUSINESS SYSTEMS

242.7000 Contractor business system deficiencies.

(a) *Definitions.* As used in this subpart—

Acceptable contractor business systems and *contractor business systems* are defined in the clause at 252.242–7005, Contractor Business Systems.

Covered contract means a contract that is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201–1 (see the FAR Appendix).

Significant deficiency is defined in the clause at 252.242–7005, Contractor Business Systems.

(b) *Determination to withhold payments.* If the contracting officer makes a final determination to disapprove a contractor's business system in accordance with the clause at 252.242–7005, Contractor Business Systems, the contracting officer shall—

(1) In accordance with agency procedures, identify one or more covered contracts containing the clause at 252.242–7005, Contractor Business Systems, from which payments will be withheld. When identifying the covered contracts from which to withhold payments, the contracting officer shall ensure that the total amount of payment withholding under 252.242–7005, does not exceed 10 percent of progress payments, performance-based payments, and interim payments under cost, labor-hour, and time-and-materials contracts billed under each of the identified covered contracts. Similarly, the contracting officer shall ensure that the total amount of payment withholding under the clause at 252.242–7005, Contractor Business Systems, for each business system does not exceed five percent of progress payments, performance-based payments, and interim payments under cost, labor-hour, and time-and-materials contracts billed under each of the identified covered contracts. The contracting officer has the sole discretion to identify the covered contracts from which to withhold payments.

(2) Promptly notify the contractor, in writing, of the contracting officer's determination to implement payment withholding in accordance with the clause at 252.242–7005, Contractor Business Systems. The notice of payment withholding shall be included in the contracting officer's written final determination for the contractor business system and shall inform the contractor that—

(i) Payments shall be withheld from the contract or contracts identified in the written determination in accordance with the clause at 252.242–7005, Contractor Business Systems, until the contracting officer determines that there are no remaining significant deficiencies; and

(ii) The contracting officer reserves the right to take other actions within the terms and conditions of the contract.

(3) Provide all contracting officers administering the selected contracts from which payments will be withheld, a copy of the determination. The contracting officer shall also provide a copy of the determination to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

(c) *Monitoring contractor's corrective action.* The contracting officer, in consultation with the auditor or functional specialist, shall monitor the contractor's progress in correcting the deficiencies. The contracting officer shall notify the contractor of any decision to decrease or increase the amount of payment withholding in accordance with the clause at 252.242–7005, Contractor Business Systems.

(d) *Correction of significant deficiencies.* (1) If the contractor notifies the contracting officer that the contractor has corrected the significant deficiencies, the contracting officer shall request the auditor or functional specialist to review the correction to verify that the deficiencies have been corrected. If, after receipt of verification, the contracting officer determines that the contractor has corrected all significant deficiencies as directed by the contracting officer's final determination, the contracting officer shall discontinue the withholding of payments, release any payments previously withheld, and approve the system, unless other significant deficiencies remain.

(2) Prior to the receipt of verification, the contracting officer may discontinue withholding payments pending receipt of verification, and release any payments previously withheld, if the contractor submits evidence that the significant deficiencies have been corrected, and the contracting officer, in consultation with the auditor or functional specialist, determines that there is a reasonable expectation that the corrective actions have been implemented.

(3) Within 90 days of receipt of the contractor notification that the contractor has corrected the significant deficiencies, the contracting officer shall—

(i) Make a determination that—

(A) The contractor has corrected all significant deficiencies as directed by the contracting officer's final determination in accordance with paragraph (d)(1) of this section;

(B) There is a reasonable expectation that the corrective actions have been implemented in accordance with paragraph (d)(2) of this section; or

(C) The contractor has not corrected all significant deficiencies as directed by the contracting officer's final determination in accordance with paragraph (d)(1) of this section, or there is not a reasonable expectation that the corrective actions have been implemented in accordance with paragraph (d)(2) of this section; or

(ii) Reduce withholding directly related to the significant deficiencies covered under the corrective action plan by at least 50 percent of the amount being withheld from progress payments and performance-based payments, and direct the contractor, in writing, to reduce the percentage withheld on interim cost vouchers by at least 50 percent, until the contracting officer makes a determination in accordance with paragraph (d)(3)(i) of this section.

(4) If, at any time, the contracting officer determines that the contractor has failed to correct the significant deficiencies identified in the contractor's notification, the contracting officer will continue, reinstate, or increase withholding from progress payments and performance-based payments, and direct the contractor, in writing, to continue, reinstate, or increase the percentage withheld on interim cost vouchers to the percentage initially withheld, until the contracting officer determines that the contractor has corrected all significant deficiencies as directed by the contracting officer's final determination.

(e) For sample formats for written notifications of contracting officer determinations to initiate payment withholding, reduce payment withholding, and discontinue payment withholding in accordance with the clause at DFARS 252.242–7005, Contractor Business Systems, see PGI 242.7000.

242.7001 Contract clause.

Use the clause at 252.242–7005, Contractor Business Systems, in solicitations and contracts (other than in contracts with educational institutions or Federally Funded Research and Development Centers (FFRDCs) operated by educational institutions) when—

(a) The resulting contract will be a covered contract as defined in 242.7000(a); and

(b) The solicitation or contract includes any of the following clauses:

(1) 252.215–7002, Cost Estimating System Requirements.

(2) 252.234–7002, Earned Value Management System.

(3) 252.242–7004, Material Management and Accounting System.

(4) 252.242–7006, Accounting System Administration.

(5) 252.244–7001, Contractor Purchasing System Administration.

(6) 252.245–7003, Contractor Property Management System Administration.

■ 6. Revise sections 242.7201 and 242.7202 to read as follows:

242.7201 Definitions.

Acceptable material management and accounting system, material management and accounting system, and *valid time-phased requirements* are defined in the clause at 252.242–7004, Material Management and Accounting System.

Significant deficiency is defined in the clause at 252.242.7004, Material Management and Accounting System.

242.7202 Policy.

(a) DoD policy is for its contractors to have an MMAS that conforms to the standards in paragraph (e) of the clause at 252.242–7004, Material Management and Accounting System, so that the system—

(1) Reasonably forecasts material requirements;

(2) Ensures the costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(3) Maintains a consistent, equitable, and unbiased logic for costing of material transactions.

(b) The cognizant contracting officer, in consultation with the auditor and functional specialist, if appropriate, shall—

(1) Determine the acceptability of the contractor's MMAS and approve or disapprove the system; and

(2) Pursue correction of any deficiencies.

(c) In evaluating the acceptability of the contractor's MMAS, the contracting officer, in consultation with the auditor and functional specialist, if appropriate, shall determine whether the contractor's MMAS complies with the system criteria for an acceptable MMAS as prescribed in the clause at 252.242–7004, Material Management and Accounting System.

■ 7. Amend section 242.7203 by revising paragraphs (c) and (d) and adding paragraph (e) to read as follows:

242.7203 Review procedures.

* * * * *

(c) *Disposition of findings*—(1) *Reporting of findings.* The auditor or functional specialist shall document findings and recommendations in a report to the contracting officer. If the auditor or functional specialist identifies any significant MMAS deficiencies, the report shall describe the deficiencies in sufficient detail to allow the contracting officer to understand the deficiencies.

(2) *Initial determination.* (i) The contracting officer shall review findings and recommendations and, if there are no significant deficiencies, shall promptly notify the contractor, in writing, that the contractor's MMAS is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more significant deficiencies (as defined in the clause at 252.242–7004, Material Management and Accounting System) due to the contractor's failure to meet one or more of the MMAS system criteria in the clause at 252.242–7004, Material Management and Accounting System, the contracting officer shall—

(A) Promptly make an initial written determination on any significant deficiencies and notify the contractor, in writing, providing a description of each significant deficiency in sufficient detail to allow the contractor to understand the deficiency;

(B) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Promptly evaluate the contractor's response to the initial determination in consultation with the auditor or functional specialist, and make a final determination.

(3) *Final determination.* (i) The ACO shall make a final determination and notify the contractor that—

(A) The contractor's MMAS is acceptable and approved, and no deficiencies remain, or

(B) Significant deficiencies remain. The notice shall identify any remaining significant deficiencies, and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(*1*) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies;

(*2*) Disapprove the system in accordance with the clause at 252.242–7004, Material Management and Accounting System; and

(*3*) Withhold payments in accordance with the clause at 252.242–7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of significant deficiencies in PGI 242.7203.

(d) *System approval.* The contracting officer shall promptly approve a previously disapproved MMAS and notify the contractor when the contracting officer determines that there are no remaining significant deficiencies.

(e) *Contracting officer notifications.* The cognizant contracting officer shall promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

■ 8. Revise subpart 242.75 to read as follows:

Subpart 242.75—Contractor Accounting Systems and Related Controls

Sec.
242.7501 Definitions.
242.7502 Policy.
242.7503 Contract clause.

Subpart 242.75—Contractor Accounting Systems and Related Controls

242.7501 Definitions.

As used in this subpart—

Acceptable accounting system, and *accounting system* are defined in the clause at 252.242–7006, Accounting System Administration.

Significant deficiency is defined in the clause at 252.242–7006, Accounting System Administration.

242.7502 Policy.

(a) Contractors receiving cost-reimbursement, incentive type, time-and-materials, or labor-hour contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, shall maintain an accounting system.

(b) The cognizant contracting officer, in consultation with the auditor or functional specialist, shall—

(1) Determine the acceptability of a contractor's accounting system and approve or disapprove the system; and

(2) Pursue correction of any deficiencies.

(c) In evaluating the acceptability of a contractor's accounting system, the contracting officer, in consultation with the auditor or functional specialist, shall determine whether the contractor's accounting system complies with the system criteria for an acceptable accounting system as prescribed in the clause at 252.242–7006, Accounting System Administration.

(d) *Disposition of findings*— (1) *Reporting of findings.* The auditor shall document findings and recommendations in a report to the contracting officer. If the auditor identifies any significant accounting system deficiencies, the report shall describe the deficiencies in sufficient detail to allow the contracting officer to understand the deficiencies. Follow the procedures at PGI 242.7502 for reporting of deficiencies.

(2) *Initial determination.* (i) The contracting officer shall review findings and recommendations and, if there are no significant deficiencies, shall promptly notify the contractor, in writing, that the contractor's accounting system is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more significant deficiencies (as defined in the clause at 252.242–7006, Accounting System Administration) due to the contractor's failure to meet one or more of the accounting system criteria in the clause at 252.242–7006, the contracting officer shall—

(A) Promptly make an initial written determination on any significant deficiencies and notify the contractor, in writing, providing a description of each significant deficiency in sufficient detail to allow the contractor to understand the deficiency;

(B) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Promptly evaluate the contractor's response to the initial determination, in consultation with the auditor or functional specialist, and make a final determination.

(3) *Final determination.* (i) The contracting officer shall make a final determination and notify the contractor, in writing, that—

(A) The contractor's accounting system is acceptable and approved, and no significant deficiencies remain, or

(B) Significant deficiencies remain. The notice shall identify any remaining significant deficiencies, and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(*1*) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies;

(*2*) Make a determination to disapprove the system in accordance with the clause at 252.242–7006, Accounting System Administration; and

(*3*) Withhold payments in accordance with the clause at 252.242–7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of significant deficiencies in PGI 242.7502.

(e) *System approval.* The contracting officer shall promptly approve a previously disapproved accounting system and notify the contractor when the contracting officer determines that there are no remaining significant deficiencies.

(f) *Contracting officer notifications.* The cognizant contracting officer shall promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

(g) *Mitigating the risk of accounting system deficiencies on specific proposals.*

(1) Field pricing teams shall discuss identified accounting system deficiencies and their impact in all reports on contractor proposals until the deficiencies are resolved. (2) The contracting officer responsible for negotiation of a proposal generated by an accounting system with an identified deficiency shall evaluate whether the deficiency impacts the negotiations. If it does not, the contracting officer should proceed with negotiations. If it does, the contracting officer should consider other alternatives, *e.g.*—

(i) Allowing the contractor additional time to correct the accounting system deficiency and submit a corrected proposal;

(ii) Considering another type of contract, *e.g.,* a fixed-price incentive (firm target) contract instead of a firm-fixed-price;

(iii) Using additional cost analysis techniques to determine the reasonableness of the cost elements affected by the accounting system's deficiency;

(iv) Segregating the questionable areas as a cost-reimbursable line item;

(v) Reducing the negotiation objective for profit or fee; or

(vi) Including a contract (reopener) clause that provides for adjustment of the contract amount after award.

(3) The contracting officer who incorporates a reopener clause into the contract is responsible for negotiating price adjustments required by the clause. Any reopener clause necessitated by an accounting system deficiency should—

(i) Clearly identify the amounts and items that are in question at the time of negotiation;

(ii) Indicate a specific time or subsequent event by which the contractor will submit a supplemental proposal, including cost or pricing data, identifying the cost impact adjustment necessitated by the deficient accounting system;

(iii) Provide for the contracting officer to adjust the contract price unilaterally if the contractor fails to submit the supplemental proposal; and

(iv) Provide that failure of the Government and the contractor to agree to the price adjustment shall be a dispute under the Disputes clause.

242.7503 Contract clause.

Use the clause at 252.242–7006, Accounting System Administration, in solicitations and contracts when contemplating—

(a) A cost-reimbursement, incentive type, time-and-materials, or labor-hour contract;

(b) A fixed-price contract with progress payments made on the basis of costs incurred by the contractor or on a percentage or stage of completion.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

■ 9. Add subpart 244.1 to read as follows:

SUBPART 244.1—GENERAL

Sec.
244.101 Definitions

SUBPART 244.1—GENERAL

244.101 Definitions.

As used in this subpart——

Acceptable purchasing system and *purchasing system* are defined in the clause at 252.244–7001, Contractor Purchasing System Administration.

Significant deficiency is defined in the clause at 252.244–7001, Contractor Purchasing System Administration.

244.304 [Removed]

■ 10. Remove section 244.304.

■ 11. Revise section 244.305 to read as follows:

244.305 Granting, withholding, or withdrawing approval.

244.305–70 Policy.

Use this subsection instead of FAR 44.305–2(c) and 44.305–3(b).

(a) The cognizant contracting officer, in consultation with the purchasing system analyst or auditor, shall—

(1) Determine the acceptability of the contractor's purchasing system and approve or disapprove the system; and

(2) Pursue correction of any deficiencies.

(b) In evaluating the acceptability of the contractor's purchasing system, the contracting officer, in consultation with the purchasing system analyst or auditor, shall determine whether the contractor's purchasing system complies with the system criteria for an acceptable purchasing system as prescribed in the clause at 252.244–7001, Contractor Purchasing System Administration.

(c) *Disposition of findings*—(1) *Reporting of findings.* The purchasing system analyst or auditor shall document findings and recommendations in a report to the contracting officer. If the auditor or purchasing system analyst identifies any significant purchasing system deficiencies, the report shall describe the deficiencies in sufficient detail to allow the contracting officer to understand the deficiencies.

(2) *Initial determination.* (i) The contracting officer shall review all findings and recommendations and, if there are no significant deficiencies, shall promptly notify the contractor that the contractor's purchasing system is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more significant deficiencies (as defined in the clause at 252.244–7001, Contractor Purchasing System Administration) due to the contractor's failure to meet one or more of the purchasing system criteria in the clause at 252.244–7001, the contracting officer shall—

(A) Promptly make an initial written determination on any significant deficiencies and notify the contractor, in writing, providing a description of each significant deficiency in sufficient detail to allow the contractor to understand the deficiency;

(B) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Evaluate the contractor's response to the initial determination in consultation with the auditor or purchasing system analyst, and make a final determination.

(3) *Final determination.* (i) The contracting officer shall make a final determination and notify the contractor, in writing, that—

(A) The contractor's purchasing system is acceptable and approved, and no significant deficiencies remain, or

(B) Significant deficiencies remain. The notice shall identify any remaining significant deficiencies, and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(*1*) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies;

(*2*) Disapprove the system in accordance with the clause at 252.244–7001, Contractor Purchasing System Administration; and

(*3*) Withhold payments in accordance with the clause at 252.242–7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of significant deficiencies in PGI 244.305–70.

(d) *System approval.* The contracting officer shall promptly approve a previously disapproved purchasing system and notify the contractor when the contracting officer determines that there are no remaining significant deficiencies.

(e) *Contracting officer notifications.* The cognizant contracting officer shall promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

(f) *Mitigating the risk of purchasing system deficiencies on specific proposals.*

(1) Source selection evaluation teams shall discuss identified purchasing system deficiencies and their impact in all reports on contractor proposals until the deficiencies are resolved.

(2) The contracting officer responsible for negotiation of a proposal generated by a purchasing system with an identified deficiency shall evaluate whether the deficiency impacts the negotiations. If it does not, the contracting officer should proceed with negotiations. If it does, the contracting officer should consider other alternatives, *e.g.*—

(i) Allowing the contractor additional time to correct the purchasing system deficiency and submit a corrected proposal;

(ii) Considering another type of contract, *e.g.,* a fixed-price incentive (firm target) contract instead of firm-fixed-price;

(iii) Using additional cost analysis techniques to determine the reasonableness of the cost elements affected by the purchasing system's deficiency;

(iv) Segregating the questionable areas as a cost-reimbursable line item;

(v) Reducing the negotiation objective for profit or fee; or

(vi) Including a contract (reopener) clause that provides for adjustment of the contract amount after award.

(3) The contracting officer who incorporates a reopener clause into the contract is responsible for negotiating price adjustments required by the clause. Any reopener clause necessitated by a purchasing system deficiency should—

(i) Clearly identify the amounts and items that are in question at the time of negotiation;

(ii) Indicate a specific time or subsequent event by which the contractor will submit a supplemental proposal, including cost or pricing data, identifying the cost impact adjustment necessitated by the deficient purchasing system;

(iii) Provide for the contracting officer to adjust the contract price unilaterally if the contractor fails to submit the supplemental proposal; and

(iv) Provide that failure of the Government and the contractor to agree to the price adjustment shall be a dispute under the Disputes clause.

244.305–71 Contract clause.

Use the clause at 252.244–7001, Contractor Purchasing System Administration, in solicitations and contracts containing the clause at FAR 52.244–2, Subcontracts.

PART 245—GOVERNMENT PROPERTY

■ 12. Revise section 245.105 to read as follows:

245.105 Contractors' property management system compliance.

(a) *Definitions*—

(1) *Acceptable property management system* and *property management system* are defined in the clause at 252.245–7003, Contractor Property Management System Administration.

(2) *Significant deficiency* is defined in the clause at 252.245–7003, Contractor Property Management System Administration.

(b) *Policy.* The cognizant contracting officer, in consultation with the property administrator, shall—

(1) Determine the acceptability of the system and approve or disapprove the system; and

(2) Pursue correction of any deficiencies.

(c) In evaluating the acceptability of a contractor's property management system, the contracting officer, in consultation with the property administrator, shall determine whether the contractor's property management system complies with the system criteria for an acceptable property management system as prescribed in the clause at 252.245–7003, Contractor Property Management System Administration.

(d) *Disposition of findings*—(1) *Reporting of findings.* The property administrator shall document findings and recommendations in a report to the contracting officer. If the property administrator identifies any significant property system deficiencies, the report shall describe the deficiencies in sufficient detail to allow the contracting officer to understand the deficiencies.

(2) *Initial determination.* (i) The contracting officer shall review findings and recommendations and, if there are no significant deficiencies, shall promptly notify the contractor, in writing, that the contractor's property management system is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more significant deficiencies (as defined in the clause at 252.245–7003, Contractor Property Management System Administration) due to the contractor's failure to meet one or more of the property management system criteria in the clause at 252.245–7003, the contracting officer shall—

(A) Promptly make an initial written determination on any significant deficiencies and notify the contractor, in writing, providing a description of each significant deficiency in sufficient detail to allow the contractor to understand the deficiency;

(B) Request the contractor to respond, in writing, to the initial determination within 30 days and;

(C) Evaluate the contractor's response to the initial determination, in consultation with the property administrator, and make a final determination.

(3) *Final determination.* (i) The contracting officer shall make a final determination and notify the contractor, in writing, that—

(A) The contractor's property management system is acceptable and approved, and no significant deficiencies remain, or

(B) Significant deficiencies remain. The notice shall identify any remaining significant deficiencies, and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(*1*) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies;

(*2*) Disapprove the system in accordance with the clause at 252.245–7003, Contractor Property Management System Administration; and

(*3*) Withhold payments in accordance with the clause at 252.242–7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of significant deficiencies in PGI 245.105.

(e) *System approval.* The contracting officer shall promptly approve a previously disapproved property management system and notify the contractor when the contracting officer determines, in consultation with the property administrator, that there are no remaining significant deficiencies.

(f) *Contracting officer notifications.* The cognizant contracting officer shall promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

■ 13. Amend section 245.107 by adding paragraph (d) to read as follows:

245.107 Contract clauses.

* * * * *

(d) Use the clause at 252.245–7003, Contractor Property Management System Administration, in solicitations and contracts containing the clause at FAR 52.245–1, Government Property.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 14. Revise section 252.215–7002 to read as follows:

252.215–7002 Cost Estimating System Requirements.

As prescribed in 215.408(2), use the following clause:

Cost Estimating System Requirements (May 2011)

(a) *Definitions.*

Acceptable estimating system means an estimating system complies with the system criteria in paragraph (d) of this clause, and provides for a system that—

(1) Is maintained, reliable, and consistently applied;

(2) Produces verifiable, supportable, documented, and timely cost estimates that are an acceptable basis for negotiation of fair and reasonable prices;

(3) Is consistent with and integrated with the Contractor's related management systems; and

(4) Is subject to applicable financial control systems.

Estimating system means the Contractor's policies, procedures, and practices for budgeting and planning controls, and generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards. Estimating system includes the Contractor's—

(1) Organizational structure;

(2) Established lines of authority, duties, and responsibilities;

(3) Internal controls and managerial reviews;

(4) Flow of work, coordination, and communication; and

(5) Budgeting, planning, estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.

Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) *General.* The Contractor shall establish, maintain, and comply with an acceptable estimating system.

(c) *Applicability.* Paragraphs (d) and (e) of this clause apply if the Contractor is a large business and either—

(1) In its fiscal year preceding award of this contract, received Department of Defense (DoD) prime contracts or subcontracts, totaling $50 million or more for which cost or pricing data were required; or

(2) In its fiscal year preceding award of this contract—

(i) Received DoD prime contracts or subcontracts totaling $10 million or more (but less than $50 million) for which cost or pricing data were required; and

(ii) Was notified, in writing, by the Contracting Officer that paragraphs (d) and (e) of this clause apply.

(d) *System requirements.* (1) The Contractor shall disclose its estimating system to the Administrative Contracting Officer (ACO), in writing. If the Contractor wishes the Government to protect the information as privileged or confidential, the Contractor must mark the documents with the appropriate legends before submission.

(2) An estimating system disclosure is acceptable when the Contractor has provided the ACO with documentation that—

(i) Accurately describes those policies, procedures, and practices that the Contractor currently uses in preparing cost proposals; and

(ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the acceptability of the Contractor's estimating practices.

(3) The Contractor shall—

(i) Comply with its disclosed estimating system; and

(ii) Disclose significant changes to the cost estimating system to the ACO on a timely basis.

(4) The Contractor's estimating system shall provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures. An acceptable estimating system shall accomplish the following functions:

(i) Establish clear responsibility for preparation, review, and approval of cost estimates and budgets;

(ii) Provide a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates and budgets;

(iii) Ensure that relevant personnel have sufficient training, experience, and guidance to perform estimating and budgeting tasks in accordance with the Contractor's established procedures;

(iv) Identify and document the sources of data and the estimating methods and rationale used in developing cost estimates and budgets;

(v) Provide for adequate supervision throughout the estimating and budgeting process;

(vi) Provide for consistent application of estimating and budgeting techniques;

(vii) Provide for detection and timely correction of errors;

(viii) Protect against cost duplication and omissions;

(ix) Provide for the use of historical experience, including historical vendor pricing information, where appropriate;

(x) Require use of appropriate analytical methods;

(xi) Integrate information available from other management systems;

(xii) Require management review, including verification of the company's estimating and budgeting policies, procedures, and practices;

(xiii) Provide for internal review of, and accountability for, the acceptability of the estimating system, including the budgetary data supporting indirect cost estimates and comparisons of projected results to actual results, and an analysis of any differences;

(xiv) Provide procedures to update cost estimates and notify the Contracting Officer in a timely manner throughout the negotiation process;

(xv) Provide procedures that ensure subcontract prices are reasonable based on a documented review and analysis provided with the prime proposal, when practicable;

(xvi) Provide estimating and budgeting practices that consistently generate sound proposals that are compliant with the provisions of the solicitation and are adequate to serve as a basis to reach a fair and reasonable price; and

(xvii) Have an adequate system description, including policies, procedures, and estimating and budgeting practices, that comply with the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement.

(e) *Significant deficiencies.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's estimating system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(f) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(g) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's estimating system, and the contract includes the clause at 252.242–7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

■ 16. Revise section 252.234–7002 to read as follows:

252.234–7002 Earned Value Management System.

As prescribed in 234.203(2), use the following clause:

EARNED VALUE MANAGEMENT SYSTEM (MAY 2011)

(a) *Definitions.* As used in this clause—

Acceptable earned value management system means an earned value management system that generally complies with system criteria in paragraph (b) of this clause.

Earned value management system means an earned value management system that complies with the earned value management system guidelines in the ANSI/EIA–748.

Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) *System criteria.* In the performance of this contract, the Contractor shall use—

(1) An Earned Value Management System (EVMS) that complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA–748); and

(2) Management procedures that provide for generation of timely, reliable, and verifiable information for the Contract Performance Report (CPR) and the Integrated Master Schedule (IMS) required by the CPR and IMS data items of this contract.

(c) If this contract has a value of $50 million or more, the Contractor shall use an EVMS that has been determined to be acceptable by the Cognizant Federal Agency (CFA). If, at the time of award, the Contractor's EVMS has not been determined by the CFA to be in compliance with the EVMS guidelines as stated in paragraph (b)(1) of this clause, the Contractor shall apply its current system to the contract and shall take necessary actions to meet the milestones in the Contractor's EVMS plan.

(d) If this contract has a value of less than $50 million, the Government will not make a formal determination that the Contractor's EVMS complies with the EVMS guidelines in ANSI/EIA–748 with respect to the contract. The use of the Contractor's EVMS for this contract does not imply a Government determination of the Contractor's compliance with the EVMS guidelines in ANSI/EIA–748 for application to future contracts. The Government will allow the use of a Contractor's EVMS that has been formally reviewed and determined by the CFA to be in compliance with the EVMS guidelines in ANSI/EIA–748.

(e) The Contractor shall submit notification of any proposed substantive changes to the EVMS procedures and the impact of those changes to the CFA. If this contract has a value of $50 million or more, unless a waiver is granted by the CFA, any EVMS changes proposed by the Contractor require approval of the CFA prior to implementation. The CFA will advise the Contractor of the acceptability of such changes as soon as practicable (generally within 30 calendar days) after receipt of the Contractor's notice of proposed changes. If the CFA waives the advance approval requirements, the Contractor shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.

(f) The Government will schedule integrated baseline reviews as early as practicable, and the review process will be conducted not later than 180 calendar days after—

(1) Contract award;

(2) The exercise of significant contract options; and

(3) The incorporation of major modifications.

During such reviews, the Government and the Contractor will jointly assess the Contractor's baseline to be used for performance measurement to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(g) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the performance criteria referenced in paragraph (b) of this clause.

(h) When indicated by contract performance, the Contractor shall submit a request for approval to initiate an over-target baseline or over-target schedule to the Contracting Officer. The request shall include a top-level projection of cost and/or schedule growth, a determination of whether or not performance variances will be retained, and a schedule of implementation for the rebaselining. The Government will acknowledge receipt of the request in a timely manner (generally within 30 calendar days).

(i) *Significant deficiencies.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, on any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's EVMS. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action;

(iii) System noncompliance, when the Contractor's existing EVMS fails to comply with the earned value management system guidelines in the ANSI/EIA–748; and

(iv) System disapproval, if initial EVMS validation is not successfully completed within the timeframe approved by the Contracting Officer, or if the Contracting Officer determines that the Contractor's earned value management system contains one or more significant deficiencies in high-risk guidelines in ANSI/EIA–748 standards (guidelines 1, 3, 6, 7, 8, 9, 10, 12, 16, 21, 23, 26, 27, 28, 30, or 32). When the Contracting Officer determines that the existing earned value management system contains one or more significant deficiencies in one or more of the remaining 16 guidelines in ANSI/EIA–748 standards, the contracting officer will use discretion to disapprove the system based on input received from functional specialists and the auditor.

(4) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(j) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's EVMS, and the contract includes the clause at 252.242–7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(k) With the exception of paragraphs (i) and (j) of this clause, the Contractor shall require its subcontractors to comply with EVMS requirements as follows:

(1) For subcontracts valued at $50 million or more, the following subcontractors shall comply with the requirements of this clause:

[Contracting Officer to insert names of subcontractors (or subcontracted effort if subcontractors have not been selected) designated for application of the EVMS requirements of this clause.]

_____

_____

_____

_____

(2) For subcontracts valued at less than $50 million, the following subcontractors shall comply with the requirements of this clause, excluding the requirements of paragraph (c) of this clause:

[Contracting Officer to insert names of subcontractors (or subcontracted effort if subcontractors have not been selected) designated for application of the EVMS requirements of this clause.]

_____

_____

_____

_____

(End of clause)

■ 17. Revise section 252.242–7004 to read as follows:

252.242–7004 Material Management and Accounting System.

As prescribed in 242.7204, use the following clause:

MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM (MAY 2011)

(a) *Definitions.* As used in this clause—

(1) *Material management and accounting system (MMAS)* means the Contractor's system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-

alone systems or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

(2) *Valid time-phased requirements* means material that is—

(i) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, *etc.;* and

(ii) Charged/billed to contracts or other cost objectives in a manner consistent with the need to fulfill the production plan.

(3) *Contractor* means a business unit as defined in section 31.001 of the Federal Acquisition Regulation (FAR).

(4) *Acceptable material management and accounting system* means a MMAS that generally complies with the system criteria in paragraph (d) of this clause.

(5) *Significant deficiency* means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) *General.* The Contractor shall—

(1) Maintain an MMAS that—

(i) Reasonably forecasts material requirements;

(ii) Ensures that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(iii) Maintains a consistent, equitable, and unbiased logic for costing of material transactions; and

(2) Assess its MMAS and take reasonable action to comply with the MMAS standards in paragraph (e) of this clause.

(c) *Disclosure and maintenance requirements.* The Contractor shall—

(1) Have policies, procedures, and operating instructions that adequately describe its MMAS;

(2) Provide to the Administrative Contracting Officer (ACO), upon request, the results of internal reviews that it has conducted to ensure compliance with established MMAS policies, procedures, and operating instructions; and

(3) Disclose significant changes in its MMAS to the ACO at least 30 days prior to implementation.

(d) *System criteria.* The MMAS shall have adequate internal controls to ensure system and data integrity, and shall—

(1) Have an adequate system description including policies, procedures, and operating instructions that comply with the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement;

(2) Ensure that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements as impacted by minimum/economic order quantity restrictions.

(i) A 98 percent bill of material accuracy and a 95 percent master production schedule accuracy are desirable as a goal in order to ensure that requirements are both valid and appropriately time-phased.

(ii) If systems have accuracy levels below these, the Contractor shall provide adequate evidence that—

(A) There is no material harm to the Government due to lower accuracy levels; and

(B) The cost to meet the accuracy goals is excessive in relation to the impact on the Government;

(3) Provide a mechanism to identify, report, and resolve system control weaknesses and manual override. Systems should identify operational exceptions, such as excess/residual inventory, as soon as known;

(4) Provide audit trails and maintain records (manual and those in machine–readable form) necessary to evaluate system logic and to verify through transaction testing that the system is operating as desired;

(5) Establish and maintain adequate levels of record accuracy, and include reconciliation of recorded inventory quantities to physical inventory by part number on a periodic basis. A 95 percent accuracy level is desirable. If systems have an accuracy level below 95 percent, the Contractor shall provide adequate evidence that—

(i) There is no material harm to the Government due to lower accuracy levels; and

(ii) The cost to meet the accuracy goal is excessive in relation to the impact on the Government;

(6) Provide detailed descriptions of circumstances that will result in manual or system generated transfers of parts;

(7) Maintain a consistent, equitable, and unbiased logic for costing of material transactions as follows:

(i) The Contractor shall maintain and disclose written policies describing the transfer methodology and the loan/pay-back technique.

(ii) The costing methodology may be standard or actual cost, or any of the inventory costing methods in 48 CFR 9904.411–50(b). The Contractor shall maintain consistency across all contract and customer types, and from accounting period to accounting period for initial charging and transfer charging.

(iii) The system should transfer parts and associated costs within the same billing period. In the few instances where this may not be appropriate, the Contractor may accomplish the material transaction using a loan/pay-back technique. The "loan/pay-back technique" means that the physical part is moved temporarily from the contract, but the cost of the part remains on the contract. The procedures for the loan/pay-back technique must be approved by the ACO. When the technique is used, the Contractor shall have controls to ensure—

(A) Parts are paid back expeditiously;

(B) Procedures and controls are in place to correct any overbilling that might occur;

(C) Monthly, at a minimum, identification of the borrowing contract and the date the part was borrowed; and

(D) The cost of the replacement part is charged to the borrowing contract;

(8) Where allocations from common inventory accounts are used, have controls (in addition to those in paragraphs (d)(2) and (7) of this clause) to ensure that—

(i) Reallocations and any credit due are processed no less frequently than the routine billing cycle;

(ii) Inventories retained for requirements that are not under contract are not allocated to contracts; and

(iii) Algorithms are maintained based on valid and current data;

(9) Have adequate controls to ensure that physically commingled inventories that may include material for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts do not compromise requirements of any of the standards in paragraphs (d)(1) through (8) of this clause. Government-furnished material shall not be—

(i) Physically commingled with other material; or

(ii) Used on commercial work; and

(10) Be subjected to periodic internal reviews to ensure compliance with established policies and procedures.

(e) *Significant deficiencies.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's MMAS. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval if the Contracting Officer determines that one or more significant deficiencies remain.

(f) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(g) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's MMAS, and the contract includes the clause at 252.242–7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

■ 18. Add section 252.242–7005 to read as follows

252.242–7005 Contractor Business Systems.

As prescribed in 242.7001, use the following clause:

CONTRACTOR BUSINESS SYSTEMS (MAY 2011)

(a) *Definitions.* As used in this clause—

Acceptable contractor business systems means contractor business systems that

comply with the terms and conditions of the applicable business system clauses listed in the definition of "contractor business systems" in this clause.

Contractor business systems means—

(1) Accounting system, if this contract includes the clause at 252.242–7006, Accounting System Administration;

(2) Earned value management system, if this contract includes the clause at 252.234–7002, Earned Value Management System;

(3) Estimating system, if this contract includes the clause at 252.215–7002, Cost Estimating System Requirements;

(4) Material management and accounting system, if this contract includes the clause at 252.242–7004, Material Management and Accounting System;

(5) Property management system, if this contract includes the clause at 252.245–7003, Contractor Property Management System Administration; and

(6) Purchasing system, if this contract includes the clause at 252.244–7001, Contractor Purchasing System Administration.

Significant deficiency, in the case of a contractor business system, means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) *General.* The Contractor shall establish and maintain acceptable business systems in accordance with the terms and conditions of this contract.

(c) *Significant deficiencies.* (1) The Contractor shall respond, in writing, within 30 days to an initial determination that there are one or more significant deficiencies in one or more of the Contractor's business systems.

(2) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the final determination as to whether the Contractor's business system contains significant deficiencies. If the Contracting Officer determines that the Contractor's business system contains significant deficiencies, the final determination will include a notice to withhold payments.

(d) *Withholding payments.* (1) If the Contracting Officer issues the final determination with a notice to withhold payments for significant deficiencies in a contractor business system required under this contract, the Contracting Officer will withhold five percent of amounts due from progress payments and performance-based payments, and direct the Contractor, in writing, to withhold five percent from its billings on interim cost vouchers on cost, labor-hour, and time-and-materials contracts until the Contracting Officer has determined that the Contractor has corrected all significant deficiencies as directed by the contracting officer's final determination. The Contractor shall, within 45 days of receipt of the notice, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies.

(2) If the Contractor submits an acceptable corrective action plan within 45 days of receipt of a notice of the Contracting Officer's intent to withhold payments, and the Contracting Officer, in consultation with the auditor or functional specialist, determines that the Contractor is effectively implementing such plan, the Contracting Officer will reduce withholding directly related to the significant deficiencies covered under the corrective action plan, to two percent from progress payments and performance-based payments, and direct the Contractor, in writing, to reduce the percentage withheld on interim cost vouchers to two percent until the Contracting Officer determines the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination. However, if at any time, the Contracting Officer determines that the Contractor has failed to follow the accepted corrective action plan, the Contracting Officer will increase withholding from progress payments and performance-based payments, and direct the Contractor, in writing, to increase the percentage withheld on interim cost vouchers to the percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination.

(3) *Payment withhold percentage limits.*

(i) The total percentage of payments withheld on amounts due under each progress payment, performance-based payment, or interim cost voucher, on this contract shall not exceed—

(A) Five percent for one or more significant deficiencies in any single contractor business system; and

(B) Ten percent for significant deficiencies in multiple contractor business systems.

(ii) If this contract contains pre-existing withholds, and the application of any subsequent payment withholds will cause withholding under this clause to exceed the payment withhold percentage limits in paragraph (d)(3)(i) of this clause, the Contracting Officer will reduce the payment withhold percentage in the final determination to an amount that will not exceed the payment withhold percentage limits.

(4) For the purpose of this clause, payment means any of the following payments authorized under this contract:

(i) Interim payments under—

(A) Cost-reimbursement contracts;

(B) Incentive type contracts;

(C) Time-and-materials contracts;

(D) Labor-hour contracts.

(ii) Progress payments.

(iii) Performance-based payments.

(5) Payment withholding shall not apply to payments on fixed-price line items where performance is complete and the items were accepted by the Government.

(6) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights or remedies the Government has under this contract.

(7) Notwithstanding the provisions of any clause in this contract providing for interim, partial, or other payment withholding on any basis, the Contracting Officer may withhold payment in accordance with the provisions of this clause.

(8) The payment withholding authorized in this clause is not subject to the interest-penalty provisions of the Prompt Payment Act.

(e) *Correction of deficiencies.* (1) The Contractor shall notify the Contracting Officer, in writing, when the Contractor has corrected the business system's deficiencies.

(2) Once the Contractor has notified the Contracting Officer that all deficiencies have been corrected, the Contracting Officer will take one of the following actions:

(i) If the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination, the Contracting Officer will, as appropriate, discontinue the withholding of progress payments and performance-based payments, and direct the Contractor, in writing, to discontinue the payment withholding from billings on interim cost vouchers under this contract associated with the Contracting Officer's final determination, and authorize the Contractor to bill for any monies previously withheld that are not also being withheld due to other significant deficiencies. Any payment withholding under this contract due to other significant deficiencies, will remain in effect until the Contracting Officer determines that those significant deficiencies are corrected.

(ii) If the Contracting Officer determines that the Contractor still has significant deficiencies, the Contracting Officer will continue the withholding of progress payments and performance-based payments, and the Contractor shall continue withholding amounts from its billings on interim cost vouchers in accordance with paragraph (d) of this clause, and not bill for any monies previously withheld.

(iii) If, within 90 days of receipt of the Contractor notification that the Contractor has corrected the significant deficiencies, the Contracting Officer has not made a determination whether the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination, or has not made a determination whether there is a reasonable expectation that the corrective actions have been implemented, the Contracting Officer will reduce withholding directly related to the significant deficiencies covered under the corrective action plan by at least 50 percent of the amount being withheld from progress payments and performance-based payments, and direct the Contractor, in writing, to reduce the percentage withheld on interim cost vouchers by at least 50 percent, until the Contracting Officer makes a determination whether the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination, or has made a determination whether there is a reasonable expectation that the corrective actions have been implemented.

(iv) At any time after the Contracting Officer reduces or discontinues the withholding of progress payments and performance-based payments, or directs the Contractor to reduce or discontinue the payment withholding from billings on

interim cost vouchers under this contract, if the Contracting Officer determines that the Contractor has failed to correct the significant deficiencies identified in the Contractor's notification, the Contracting Officer will reinstate or increase withholding from progress payments and performance-based payments, and direct the Contractor, in writing, to reinstate or increase the percentage withheld on interim cost vouchers to the percentage initially withheld, until the Contracting Officer determines that the Contractor has corrected all significant deficiencies as directed by the Contracting Officer's final determination.

(End of clause)

■ 19. Add section 252.242–7006 to read as follows:

252.242–7006 Accounting System Administration.

As prescribed in 242.7503, use the following clause:

ACCOUNTING SYSTEM ADMINISTRATION (MAY 2011)

(a) *Definitions.* As used in this clause—

(1) *Acceptable accounting system* means a system that complies with the system criteria in paragraph (c) of this clause to provide reasonable assurance that—

(i) Applicable laws and regulations are complied with;

(ii) The accounting system and cost data are reliable;

(iii) Risk of misallocations and mischarges are minimized; and

(iv) Contract allocations and charges are consistent with billing procedures.

(2) *Accounting system* means the Contractor's system or systems for accounting methods, procedures, and controls established to gather, record, classify, analyze, summarize, interpret, and present accurate and timely financial data for reporting in compliance with applicable laws, regulations, and management decisions, and may include subsystems for specific areas such as indirect and other direct costs, compensation, billing, labor, and general information technology.

(3) *Significant deficiency* means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) *General.* The Contractor shall establish and maintain an acceptable accounting system. Failure to maintain an acceptable accounting system, as defined in this clause, shall result in the withholding of payments if the contract includes the clause at 252.242–7005, Contractor Business Systems, and also may result in disapproval of the system.

(c) *System criteria.* The Contractor's accounting system shall provide for—

(1) A sound internal control environment, accounting framework, and organizational structure;

(2) Proper segregation of direct costs from indirect costs;

(3) Identification and accumulation of direct costs by contract;

(4) A logical and consistent method for the accumulation and allocation of indirect costs to intermediate and final cost objectives;

(5) Accumulation of costs under general ledger control;

(6) Reconciliation of subsidiary cost ledgers and cost objectives to general ledger;

(7) Approval and documentation of adjusting entries;

(8) Periodic monitoring of the system;

(9) A timekeeping system that identifies employees' labor by intermediate or final cost objectives;

(10) A labor distribution system that charges direct and indirect labor to the appropriate cost objectives;

(11) Interim (at least monthly) determination of costs charged to a contract through routine posting of books of account;

(12) Exclusion from costs charged to Government contracts of amounts which are not allowable in terms of Federal Acquisition Regulation (FAR) part 31, Contract Cost Principles and Procedures, and other contract provisions;

(13) Identification of costs by contract line item and by units (as if each unit or line item were a separate contract), if required by the contract;

(14) Segregation of preproduction costs from production costs, as applicable;

(15) Cost accounting information, as required—

(i) By contract clauses concerning limitation of cost (FAR 52.232–20), limitation of funds (FAR 52.232–22), or allowable cost and payment (FAR 52.216–7); and

(ii) To readily calculate indirect cost rates from the books of accounts;

(16) Billings that can be reconciled to the cost accounts for both current and cumulative amounts claimed and comply with contract terms;

(17) Adequate, reliable data for use in pricing follow-on acquisitions; and

(18) Accounting practices in accordance with standards promulgated by the Cost Accounting Standards Board, if applicable, otherwise, Generally Accepted Accounting Principles.

(d) *Significant deficiencies.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, on any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's accounting system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's accounting system, and the contract includes the clause at 252.242–7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

■ 20. Add section 252.244–7001 to read as follows:

252.244–7001 Contractor Purchasing System Administration.

As prescribed in 244.305–71, insert the following clause:

CONTRACTOR PURCHASING SYSTEM ADMINISTRATION (MAY 2011)

(a) *Definitions.* As used in this clause—

Acceptable purchasing system means a purchasing system that complies with the system criteria in paragraph (c) of this clause.

Purchasing system means the Contractor's system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.

Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) *General.* The Contractor shall establish and maintain an acceptable purchasing system. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) *System criteria.* The Contractor's purchasing system shall—

(1) Have an adequate system description including policies, procedures, and purchasing practices that comply with the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS);

(2) Ensure that all applicable purchase orders and subcontracts contain all flowdown clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;

(3) Maintain an organization plan that establishes clear lines of authority and responsibility;

(4) Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the subcontract/purchase order files which are subject to Government review;

(5) Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid;

(6) Apply a consistent make-or-buy policy that is in the best interest of the Government;

(7) Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;

(8) Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices;

(9) Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award;

(10) Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices;

(11) Document negotiations in accordance with FAR 15.406–3;

(12) Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts;

(13) Ensure proper type of contract selection and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts;

(14) Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;

(15) Document and justify reasons for subcontract changes that affect cost or price;

(16) Notify the Government of the award of all subcontracts that contain the FAR and DFARS flowdown clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts;

(17) Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of the Anti-Kickback Act;

(18) Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;

(19) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract;

(20) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources;

(21) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements;

(22) Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions;

(23) Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort; and

(24) Establish and maintain procedures to timely notify the Contracting Officer, in writing, if—

(i) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

(ii) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) *Significant deficiencies.* (1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies.

(f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's purchasing system, and the contract includes the clause at 252.242–7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

■ 21. Add section 252.245–7003 to read as follows:

252.245–7003 Contractor Property Management System Administration.

As prescribed in 245.107, insert the following clause:

CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (MAY 2011)

(a) *Definitions.* As used in this clause—

Acceptable property management system means a property system that complies with the system criteria in paragraph (c) of this clause.

Property management system means the Contractor's system or systems for managing and controlling Government property.

Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) *General.* The Contractor shall establish and maintain an acceptable property management system. Failure to maintain an acceptable property management system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) *System criteria.* The Contractor's property management system shall be in accordance with paragraph (f) of the contract clause at Federal Acquisition Regulation 52.245–1.

(d) *Significant deficiencies.* (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's property management system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's property management system, leading to a potential risk of harm to the Government, and the contract includes the clause at 252.242–7005, Contractor Business Systems,

the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

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FEDERAL REGISTER

Vol. 76 Wednesday,

No. 96 May 18, 2011

Part III

The President

Notice of May 16, 2011—Continuation of the National Emergency With Respect to Burma

Federal Register
Vol. 76, No. 96
Wednesday, May 18, 2011

Presidential Documents

Title 3—

The President

Notice of May 16, 2011

Continuation of the National Emergency With Respect to Burma

On May 20, 1997, the President issued Executive Order 13047, certifying to the Congress under section 570(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Public Law 104–208), that the Government of Burma had committed large-scale repression of the democratic opposition in Burma after September 30, 1996, thereby invoking the prohibition on new investment in Burma by United States persons contained in that section. The President also declared a national emergency to deal with the threat posed to the national security and foreign policy of the United States by the actions and policies of the Government of Burma, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706.

Because the actions and policies of the Government of Burma continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on May 20, 1997, and the measures adopted to deal with that emergency in Executive Orders 13047 of May 20, 1997, 13310 of July 28, 2003, 13348 of October 18, 2007, and 13464 of April 30, 2008, must continue in effect beyond May 20, 2011.

Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Burma. This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
May 16, 2011.

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H.R. 1308/P.L. 112–13
To amend the Ronald Reagan Centennial Commission Act to extend the termination date for the Commission, and for other purposes. (May 12, 2011; 125 Stat. 215)
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