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WHEN: Tuesday, June 14, 2011
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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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.

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. APHIS–2011–0005]

Brucellosis in Swine; Add Texas to List of Validated Brucellosis-Free States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of swine by adding Texas to the list of validated brucellosis-free States. We have determined that Texas meets the criteria for classification as a validated brucellosis-free State. This action relieves certain restrictions on the interstate movement of breeding swine from Texas.

DATES: This interim rule is effective on May 19, 2011. We will consider all comments that we receive on or before July 18, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2011-0005* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2011–0005, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2011–0005.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Troy Bigelow, Swine Health Programs, Aquaculture, Swine, Equine, and Poultry Programs, National Center for Animal Health Programs, VS, APHIS, 210 Walnut Street, Room 891, Des Moines, IA 50309; (515) 284–4121.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease caused by bacteria of the genus *Brucella.* The disease mainly affects cattle, bison, and swine, but goats, sheep, horses, and even humans are susceptible. In its principal animal hosts, it causes loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. There is no economically feasible treatment for brucellosis in livestock. In humans, brucellosis initially causes flu-like symptoms, but the disease may develop into a variety of chronic conditions, including arthritis. Humans can be treated for brucellosis with antibiotics.

The brucellosis regulations in 9 CFR part 78 (referred to below as the regulations) contain specific provisions for cattle, bison, and swine. Under the regulations, States, herds, and individual animals are classified according to their brucellosis status. Interstate movement requirements for animals are based upon the disease status of the individual animals or the herd or State from which the animal originates.

We are amending § 78.43 of the regulations, which lists validated swine brucellosis-free States, to include Texas. A State may apply for validated brucellosis-free status when:

- Any herd found to have swine brucellosis during the 2-year qualification period preceding the application has been depopulated. More than one finding of a swine brucellosis-infected herd during the qualification period disqualifies the State from validation as brucellosis-free; and
- During the 2-year qualification period, the State has completed surveillance, annually, by either complete herd testing, market swine testing, or statistical analysis.

Breeding swine originating from a validated brucellosis-free State or herd may be moved interstate without having been tested with an official test for brucellosis within 30 days prior to interstate movement, which would otherwise be required.

After reviewing the State's brucellosis program records, we have concluded that Texas meets the criteria for classification as a validated brucellosis-free State. Therefore, we are adding Texas to the list of validated brucellosis-free States in § 78.43. This action relieves certain restrictions on the interstate movement of breeding swine from Texas.

Immediate Action

Immediate action is warranted to remove restrictions that are no longer necessary on the interstate movement of swine from Texas. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

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

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. The full analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing

Regulations.gov) or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

The interim rule will benefit Texas swine producers who sell non-slaughter boars and sows interstate (other than those Texas swine farms that already have validated brucellosis-free herds). They will be able to forgo testing costs that are equivalent to between 1 and 2 percent of the average value of a breeding sow. The extent to which a particular operation will benefit from the interim rule will depend upon the number of non-slaughter sows and boars moved interstate.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS

■ 1. The authority citation for part 78 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 78.43 [Amended]

■ 2. Section 78.43 is amended by adding, in alphabetical order, the word "Texas,".

Done in Washington, DC, this 13th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–12320 Filed 5–18–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 95

[Docket No. APHIS–2006–0113]

RIN 0579–AC11

Importation of Swine Hides and Skins, Bird Trophies, and Ruminant Hides and Skins; Technical Amendment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: In a final rule that was published in the **Federal Register** on December 15, 2009, and effective on January 14, 2010, we amended the regulations governing the importation of animal byproducts to, among other things, provide specific conditions under which deer and other ruminant hides and skins from Mexico could be imported into the United States in order to protect U.S. livestock from the introduction of bovine babesiosis. It was our intent to indicate that deer and ruminant hides and skins from Mexico may not go to an approved establishment upon importation into the United States rather than comply with the specific conditions established in the final rule. This document corrects that error.

DATES: *Effective Date:* May 19, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Tracye Butler, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231; (301) 734–7476.

SUPPLEMENTARY INFORMATION:

Background

In a final rule that was published in the **Federal Register** on December 15, 2009 (74 FR 66222–66227, Docket No. APHIS–2006–0113), and effective on January 14, 2010, we amended the regulations governing the importation of animal byproducts to, among other things, provide specific conditions under which deer and other ruminant hides and skins from Mexico could be imported into the United States in order to protect U.S. livestock from the introduction of bovine babesiosis.

In the final rule, we added provisions for the importation of ruminant hides and skins from Mexico to § 95.5. We provided that hides and skins from Mexico may enter the United States without other restriction if they are hard dried (paragraph (a)(2)); have been pickled in a solution of salt containing mineral acid which has a pH of less than or equal to 5 and placed in containers while wet (paragraph (a)(4)); or have been treated with lime so as to have become dehaired and ready for preparation into rawhide products (paragraph (a)(5)).

In order to address the specific risk to U.S. livestock of bovine babesiosis, we are amending paragraph (b)(1) of § 95.5 to add the statement that ruminant hides and skins from Mexico must also be free of ticks in addition to having been subjected to any one of the treatments specified in paragraphs (a)(2), (a)(4), or (a)(5) of § 95.5.

Hides and skins from Mexico may also enter the United States without other restriction if they are found to have been frozen solid for 24 hours upon inspection by an inspector or are accompanied by a certificate attesting to that fact issued by the shipper or importer and are free from ticks; are free from ticks and are accompanied by a certificate issued by a full-time salaried veterinary officer of the Government of Mexico stating that they have been treated with an acaricide; or are bovine hides taken from cattle that were subjected to a tickicidal dip in one of the permitted dips at a Mexican facility 7 to 12 days prior to slaughter, and are free from ticks. These requirements are intended to protect U.S. livestock from the introduction of bovine babesiosis.

The introductory text of § 95.5 provides that untanned hides and skins and bird trophies may be imported into the United States if they meet the requirements of that section or are handled at an approved establishment as set forth in § 95.6. Our final rule should have indicated that ruminant hides and skins from Mexico may not be handled at approved establishments because of the risk of the hides and skins being infested with ticks carrying bovine babesiosis. Since the publication of the final rule, we have not authorized any approved establishments to receive ruminant hides and skins from Mexico.

Therefore, we are amending the introductory text of § 95.5 so that it clearly states that ruminant hides and skins from Mexico that do not meet the requirements of § 95.5 are not eligible for importation for handling at an

approved establishment as set forth in § 95.6.

To reflect this, we are also amending the introductory text of § 95.6 to exclude ruminant hides and skins from Mexico from the articles that can be offered for importation when they do not meet the conditions or requirements of § 95.5 if they are handled and treated at the port of entry under the further provisions of § 95.6.

List of Subjects in 9 CFR Part 95

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

Accordingly, we are amending 9 CFR part 95 as follows:

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

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

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

■ 2. Section 95.5 is amended as follows:

■ a. The introductory text is revised to read as set forth below.

■ b. In paragraph (b)(1), by adding the words "are free of ticks and" after the word "They".

§ 95.5 Untanned hides and skins and bird trophies; requirements for entry.

Untanned hides and skins and bird trophies [1] may be imported into the United States if they meet the requirements of this section. Except for ruminant hides or skins from Mexico, untanned hides and skins and bird trophies may also be imported if handled at an approved establishment as set forth in § 95.6.

* * * * *

■ 3. In § 95.6, the introductory text is revised to read as follows:

§ 95.6 Untanned hides, skins, and bird trophies; importation permitted subject to restrictions.

Except for ruminant hides or skins from Mexico, hides or skins or bird trophies offered for importation which do not meet the conditions or requirements of § 95.5 shall be handled and treated in the following manner after arrival at the port of entry:

* * * * *

[1] The importation of bird trophies is also subject to restrictions under § 95.30.

Done in Washington, DC, this 13th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–12319 Filed 5–18–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0432; Airspace Docket No. 11–ACE–8]

Revocation of Class E Airspace; Ozark, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E airspace at Ozark, MO. Abandonment of the former Air Park South Airport and cancellation of all Standard Instrument Approach Procedures has eliminated the need for controlled airspace in the Ozark, MO area. The FAA is taking this action to ensure the efficient use of airspace within the National Airspace System.

DATES: Effective date: 0901 UTC, August 25, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by removing Class E airspace in the Ozark, MO, area. Abandonment of the former Air Park South Airport and cancellation of all Standard Instrument Approach Procedures has eliminated the need for controlled airspace. Since this action eliminates the impact of controlled airspace on users of the National Airspace System in the vicinity of Ozark, MO, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under 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 removes controlled airspace at Air Park South Airport, Ozark, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace extending upward from 700 feet above the surface.

* * * * *

ACE MO E5 Ozark, MO [Removed]

Issued in Fort Worth, Texas, on May 11, 2011.

Walter L. Tweedy,

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

[FR Doc. 2011–12113 Filed 5–18–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0272; Airspace Docket No. 11–ASW–3]

Revocation of Class E Airspace; Gruver Cluck Ranch Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E airspace at Gruver, Cluck Ranch Airport, TX. The airport has been abandoned, thereby eliminating the need for controlled airspace in the Gruver, Cluck Ranch Airport, TX, area. The FAA is taking this action to ensure the efficient use of airspace within the National Airspace System.

DATES: Effective date: 0901 UTC, August 25, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by removing Class E airspace extending upward from 700 feet above the surface in the Gruver, Cluck Ranch Airport, TX area. Abandonment of the former Cluck Ranch Airport and cancellation of all Standard Instrument Approach Procedures eliminates the need for controlled airspace. Since this action eliminates the impact of controlled airspace on users of the National Airspace System in the vicinity of Gruver, TX, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under 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 removes controlled airspace at Cluck Ranch Airport, Gruver, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace extending upward from 700 feet above the surface.

* * * * *

ASW TX E5 Gruver Cluck Ranch Airport, TX

Issued in Fort Worth, Texas, on May 11, 2011.

Walter L. Tweedy,

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

[FR Doc. 2011–12121 Filed 5–18–11; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 202

[Release Nos. 33–9208; 34–64495; IC–29670]

Amendment to Procedures for Holding Funds in Dormant Filing Fee Accounts

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending its procedures for holding funds in any filing fee account in which there has not been a deposit, withdrawal or other adjustment. The amendment extends the holding period from 180 days to three years, after which the Commission will initiate the return of funds to the account holder without any action by the account holder. As always, account holders may request a refund of such fees at any time.

DATES: *Effective Date:* May 19, 2011.

FOR FURTHER INFORMATION CONTACT: Kenneth Johnson, (202) 551–4306, Chief Financial Officer, Office of Financial Management; Stephen Jung, (202) 551–5162, Assistant General Counsel, Office of the General Counsel; Michael Bloise,

(202) 551–5116, Senior Counsel, Office of the General Counsel, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is amending rule 3a (17 CFR 202.3a) of its Informal and Other Procedures under the Securities Act of 1933 ("Securities Act").[1]

I. Discussion

The federal securities laws impose a number of fees on filings.[2] Pursuant to rule 3a of the Commission's Informal and Other Procedures (17 CFR 202.3a), filing fees paid under the Securities Act, Exchange Act, and Investment Company Act currently are transmitted to a Treasury designated lockbox depository, where they are held in filing fee accounts maintained by the Commission for each filer who submits a filing requiring a fee on the Commission's EDGAR system or who submits funds to the Treasury designated lockbox depository in anticipation of paying a filing fee.[3] The Commission staff prepares account statements and sends these to account holders whenever a deposit, withdrawal, or other change occurs. The account holder, in turn, must maintain a current account address with the Commission to ensure timely access to such statements.[4] Pursuant to current 17 CFR 202.3a(e), the staff will initiate the return to the account holder of any funds held in any filing fee account in which there has not been a deposit, withdrawal or other adjustment for more than 180 calendar days, and account statements will not be sent again until a deposit, withdrawal or other adjustment is made with respect to the account.

The 180-day limitation on the time in which the Commission may hold such funds could lead to considerable inefficiency and administrative burden for both account holders and Commission staff. Increasing the length of time in which the funds may remain inactive in an account will allow greater flexibility to filers who still intend to pay fees and do not want to receive a mandatory disbursement only to return it to the Commission at the time a fee is due. This concern is particularly acute for those filers whose payment obligations involve fees that are due on a periodic basis in excess of 180 days, such as investment companies who submit approximately 5,800 Form 24F–2 filings annually.[5] And, while the amendment will create more flexibility for filers who wish to leave funds in their accounts, the right of an account holder to receive a disbursement of excess funds from its account any time upon request to the Commission will continue unchanged.

The amendment also will harmonize the Commission's account-clearing procedure with Securities Act Rule 415(a)(5), which allows issuers eligible to conduct primary shelf offerings to sell securities relying on an effective registration statement for up to three years before they are required to file a new one.[6] This is particularly important in connection with automatic shelf registration statements, which allow issuers to register an indeterminate amount of securities when they initially file and defer payment of required fees until they later determine the amount of securities they wish to sell. As a result of this "pay-as-you-go" feature, issuers with automatic shelf registration statements may be required to pay additional fees throughout the life of the registration statement. Adoption of a three-year inactivity period before account balances are returned will ensure that funds paid at the time a shelf registration statement is initially filed will remain available to issuers in their lockbox accounts for the life of the registration statement. This could also benefit issuers by allowing them to review the unused balances available in their lockbox accounts no more frequently than they are required to prepare and file new shelf registration statements. Issuers that review their capital-raising plans in connection with each required renewal of a shelf registration statement would be able to adjust the amounts on deposit in their lockbox accounts to match their future offering plans. Any resulting additional deposits or withdrawal requests would result in account activity, which would obviate the need for a refund until the expiration of an additional three-year time period. As a consequence, a three-year time period could help reduce the number of refund payments made to issuers who would prefer to have funds remain in their lockboxes to cover anticipated future filing needs. And, as noted above, the right of an issuer to receive a disbursement of excess funds from its account at any time upon request to the Commission will continue unchanged.

II. Administrative Procedure Act and Other Administrative Laws

The Commission has determined that this amendment to its rules relates solely to the agency's organization, procedure, or practice. Therefore, the provisions of the Administrative Procedure Act ("APA") regarding notice of proposed rulemaking and opportunity for public participation are not applicable.[7] For the same reasons, and because this amendment does not substantially affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act are not applicable.[8] In addition, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other law, are not applicable.[9] Finally, this amendment does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.[10]

III. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The rule amendment the Commission is adopting today amends the Commission's rules to extend the period in which the Commission shall hold funds in a dormant account prior to issuing an automatic refund, so as to increase the efficiency of the procedure and harmonize the Commission's account clearing procedures with Securities Act Rule 415(a)(5). The right of an account holder to receive a full refund of fees held by the Commission in a dormant account, at any time upon request, remains unchanged. The Commission does not believe that the rule amendment will impose any costs on non-agency parties, or that if there are any such costs, they are negligible.

IV. Consideration of Burden on Competition

Section 23(a)(2) of the Exchange Act requires the Commission, in making rules pursuant to any provision of the Exchange Act, to consider among other matters the impact any such rule would have on competition. The Commission does not believe that the amendment that the Commission is adopting today will have any impact on competition.

[1] 15 U.S.C. 77a.

[2] *See, e.g.,* section 6(b) of the Securities Act, sections 13(e), 14(g), and 31 of the Securities Exchange Act of 1934 ("Exchange Act"), and section 24(f) of the Investment Company Act of 1940 ("Investment Company Act").

[3] 17 CFR 202.3a(d).

[4] *Id.*

[5] Form 24F–2 is the annual notice of securities sold by certain investment companies pursuant to rule 24f–2 under the Investment Company Act of 1940 that accompanies the payment of registration fees under the Securities Act of 1933.

[6] 17 CFR 230.415.

[7] 5 U.S.C. 553(b).

[8] 5 U.S.C. 804.

[9] 5 U.S.C. 601–12.

[10] 44 U.S.C. 3501–20.

V. Statutory Basis and Text of Final Rule Amendments

The Commission is adopting amendments pursuant to sections 6(b) and 19 of the Securities Act, sections 13(e), 14(g), 23, and 31 of the Exchange Act, and sections 24(f) and 38 of the Investment Company Act.

List of Subjects in 17 CFR Part 202

Administrative practice and procedure, Securities.

In accordance with the foregoing, 17 CFR, Chapter II of the Code of Federal Regulations is amended as follows:

PART 202—INFORMAL AND OTHER PROCEDURES

■ 1. The authority citation for Part 202 continues to read in part as follows:

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

* * * * *

■ 2. Section 202.3a, paragraph (e) is amended by removing the phrase "180 calendar days", and adding in its place the phrase "three years".

By the Commission.

Dated: May 13, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12280 Filed 5–18–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9526]

RIN 1545–BG96

Treatment of Property Used To Acquire Parent Stock or Securities in Certain Triangular Reorganizations Involving Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 367 of the Internal Revenue Code (Code) relating to the treatment of property used to acquire parent stock or securities in certain triangular reorganizations involving foreign corporations. The regulations finalize proposed regulations and withdraw temporary regulations published on May 27, 2008 (TD 9400). The regulations affect corporations that engage in certain triangular reorganizations involving one or more foreign corporations.

DATES: *Effective Date:* These regulations are effective May 19, 2011.

Applicability Dates: For dates of applicability, see §§ 1.367(a)–3(g)(1)(viii) and 1.367(b)–10(e).

FOR FURTHER INFORMATION CONTACT: Robert B. Williams, Jr., (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On May 27, 2008, the IRS and Treasury Department published temporary and proposed regulations under section 367(b) that apply to certain triangular reorganizations in which a subsidiary (S) purchases, in connection with the reorganization, stock of its parent corporation (P) in exchange for property, and exchanges the P stock for the stock or property of a target corporation (T), but only if P or S (or both) is a foreign corporation (the temporary regulations or proposed regulations, as applicable, and collectively, the 2008 regulations). 73 FR 30301 (TD 9400, 2008–24 IRB 1139). Because no requests to speak were received, no public hearing was held; however, comments were received. After consideration of the comments received, the IRS and Treasury Department adopt the proposed regulations as final regulations with the modifications described herein. Although the 2008 regulations were numbered under § 1.367(b)–14, the final regulations are renumbered under § 1.367(b)–10. The temporary regulations are withdrawn.

Summary of Comments and Explanation of Revisions

A. Scope of Regulations and Priority Rule

Section 367(a)(1) provides that if, in connection with any exchange described in section 332, 351, 354, 356, or 361, a United States person transfers property to a foreign corporation, such foreign corporation shall not, for purposes of determining the extent to which gain is recognized on such transfer, be considered to be a corporation. As a result, the general rule is the United States person recognizes gain (if any) on the transfer of such property, unless an exception to section 367(a)(1) applies to the transfer. Furthermore, section 367(b)(1) provides that in the case of any exchange described in section 332, 351, 354, 355, 356, or 361 in connection with which there is no transfer of property described in section 367(a)(1), a foreign corporation shall be considered to be a corporation except to the extent provided in regulations. Thus, section 367(b)(1) will not apply to an exchange if gain is recognized on that exchange under section 367(a)(1).

Section 367(a)(1) (and the regulations under that section) and the 2008 regulations could each potentially apply to certain triangular reorganizations. For example, section 367(a)(1) and the 2008 regulations could each potentially apply to a triangular reorganization described in section 368(a)(1)(B) if S acquires P stock for property, each of P, S, and T are foreign corporations, the T stock is held by a U.S. person, and the U.S. person realizes gain on the exchange of the T stock. See § 1.367(a)–3(d)(1)(iii)(A) (providing that there is an indirect transfer by the U.S. person of the T stock to S).

The 2008 regulations include a priority rule that applies to certain transactions described in section 367(a)(1) and the 2008 regulations. The priority rule generally provides that if the amount of gain in the T stock that would otherwise be recognized under section 367(a)(1) (absent an exception) is less than the adjustment treated as a dividend under the 2008 regulations, then the 2008 regulations, and not section 367(a)(1), apply to the triangular reorganization.

One commentator noted that the priority rule applies simply based on comparing the amount of gain that would be recognized under section 367(a)(1) with the amount of the dividend that would result under the 2008 regulations, without regard to the amount of resulting U.S. tax. The commentator stated that in some cases it may be more appropriate for the priority rule to take into account the amount of resulting U.S. tax. The commentator cited, as an example, a case where P is foreign, S and T are domestic, T is owned by a U.S. person, and any dividend received by P from S under the 2008 regulations would not be subject to U.S. tax as a result of an applicable treaty. The commentator noted that if the dividend in such a case exceeds the amount of gain that would otherwise be recognized under section 367(a)(1), it may not be appropriate for the 2008 regulations to apply in lieu of section 367(a)(1) and § 1.367(a)–3(c).

The IRS and Treasury Department recognize that in some cases it may be appropriate for the priority rule to take into account the amount of resulting U.S. tax. However, the IRS and Treasury Department do not believe it would be administrable to take into account the resulting U.S. tax in all cases, because this could require consideration of

numerous tax attributes of various parties, including P, S, and the shareholders of T. To address this concern, the scope of the final regulations is modified such that the final regulations do not apply in two additional cases. First, the final regulations do not apply if P and S are foreign corporations and neither P nor S is a controlled foreign corporation (within the meaning of § 1.367(b)–2(a)) immediately before or immediately after the triangular reorganization. Second, the final regulations do not apply if: (1) P is a foreign corporation; (2) S is a domestic corporation; (3) P's receipt of a dividend from S would not be subject to U.S. tax under either section 881 (for example, by reason of an applicable treaty) or section 882; and (4) P's stock in S is not a United States real property interest (within the meaning of section 897(c)).

In addition, the final regulations modify the scope of the 2008 regulations to include the acquisition by S, in exchange for property, of P securities that are used to acquire the stock, securities, or property of T in the triangular reorganization, but only to the extent the P securities are treated by T shareholders or securityholders as "other property" under section 356(d). The scope was expanded to include P securities because the acquisition of P securities by S for property presents the same repatriation concerns as the acquisition of P stock by S for property. Furthermore, the scope of the 2008 regulations is modified to provide that the final regulations apply to the acquisition by S, in exchange for property, of P stock to the extent such P stock is received by T shareholders or securityholders in an exchange to which section 354 or 356 applies.

Finally, the final regulations modify the priority rule contained in the 2008 regulations in three ways. First, the priority rule is modified to include exchanges of T securities as well as T stock. Second, the priority rule is modified to compare the amount of gain that would be recognized under section 367(a)(1) with not only the amount of the deemed dividend but also the amount of any gain (applying section 301(c)(1) and (3), respectively). Third, the priority rule is modified to clarify its application by providing separate priority rules in § 1.367(a)–3(a) and § 1.367(b)–10.

Thus, under the § 1.367(a)–3(a) priority rule, as modified, if the amount of gain in the T stock or securities that would otherwise be recognized by the T shareholders or securityholders under section 367(a)(1) (without regard to any exceptions to section 367(a)(1)) is less than the sum of the amount of deemed dividend and the amount of gain (applying section 301(c)(1) and (3), respectively) under the final regulations, section 367(a)(1) does not apply to the section 354 or 356 exchange by the T shareholders or securityholders of the T stock or securities for P stock or securities. Under the § 1.367(b)–10 priority rule, if the amount of gain recognized by the T shareholders or securityholders under section 367(a)(1) (taking into account any exception to section 367(a)(1) that is applied) on the section 354 or 356 exchange of T stock or securities exceeds the sum of the amount of deemed dividend and the amount of gain (applying section 301(c)(1) and (3), respectively) if the final regulations otherwise applied to the triangular reorganization, then the final regulations do not apply.

B. Application If T Is Unrelated to P or S

The 2008 regulations apply regardless of whether T is related to P or S. Some commentators asserted that the 2008 regulations should not apply if T is unrelated to P or S because there is no reduction in S's net worth (that is, S replaces its cash with an equal amount of P stock). The commentators further stated that, unlike transactions in which T is related to P or S, the consideration paid for an unrelated T is delivered outside of the P group. The commentators also noted that if T is unrelated to P and S, the transaction is distinguishable from a transaction subject to section 304, the application of which may result in a distribution even if the value of the distributing corporation is not diminished as a result of the transaction.

The IRS and Treasury Department believe that transactions in which T is unrelated to P and S present the same concerns, because S's purchase of P stock (or P securities under the final regulations) in the context of a reorganization allows for a transfer of property from S to P that has the effect of a distribution regardless of whether T is related to P or S prior to the transaction. Accordingly, the comment was not adopted.

C. Adjustments Having the Effect of a Distribution or Contribution

If the 2008 regulations apply to a triangular reorganization, adjustments are made under section 367(b) having the effect of a distribution of property from S to P under section 301 (deemed distribution). In certain cases, the 2008 regulations similarly provide that adjustments are made under section 367(b) that have the effect of a contribution of property by P to S (deemed contribution). The 2008 regulations also provide for collateral adjustments to be made to take into account the deemed distribution and deemed contribution.

Some commentators questioned the extent to which these adjustments should be made. In response to these comments, the final regulations make clear that the adjustments are made based on a distribution or contribution of a notional amount, and therefore without the recognition of any built-in gain or loss on the distribution of such notional amount. The notional amount is equal to the amount of money transferred and liabilities assumed plus the fair market value of other property transferred, in connection with the triangular reorganization, by S in exchange for the P stock or securities used to acquire the stock, securities or property of T. In addition, the final regulations clarify that the adjustments that have the effect of a deemed distribution or deemed contribution do not affect the characterization of the actual transaction as provided under applicable tax provisions. Thus, for example, if S uses property with a built-in gain to acquire P stock from P, S's exchange of the property for P stock is not affected by the regulations. Instead, the regulations require adjustments based on a deemed distribution and deemed contribution of the notional amount that occur apart from, and in addition to, S exchanging the built-in gain property for the P stock. Accordingly, S would not recognize gain under section 311(b) with respect to the notional amount. Furthermore, S's exchange of the property would continue to be treated as an exchange subject to section 1001 in which S recognizes the built-in gain.

D. Timing Rules for Deemed Distributions

The 2008 regulations provide rules that address the timing of the deemed distribution resulting from the application of the general rule. The 2008 regulations contain separate timing rules for transactions involving acquisitions of P stock from P and for acquisitions of P stock from persons other than P. The IRS and Treasury Department do not believe separate timing rules are necessary. Thus, the final regulations combine the two timing rules set forth in the 2008 regulations into a single rule that applies regardless of the person from whom the P stock or securities are acquired.

The 2008 regulations also contain a special timing rule if P does not control

S at the time S purchases the P stock. The final regulations retain the special timing rule contained in the 2008 regulations that applies if P does not control S at the time S purchases the P stock or securities.

E. Other Modifications

1. Definition of Property

The definition of property in the 2008 regulations is modified in the final regulations to include rights (for example, options) to acquire S stock to the extent such rights are used by S to acquire P stock or securities from a person other than P.

2. Deemed Contribution When S Acquires P Stock From P

The 2008 regulations contain a deemed contribution rule only where S acquires P stock from persons other than P. The final regulations provide a similar rule in cases where S acquires the P stock or securities from P.

3. Section 1.367(a)–3(a)

In addition to including a priority rule in § 1.367(a)–3(a), the final regulations modify the format and organization of § 1.367(a)–3(a). The final regulations also clarify § 1.367(a)–3(a) to provide that exchanges that are subject to section 367(a)(1) (absent an applicable exception) result in the recognition of gain, as opposed to being "treated as a taxable exchange" (as is provided in the current regulations).

Effective/Applicability Dates

These final regulations apply to transactions occurring on or after May 17, 2011. For transactions that occur prior to May 17, 2011, see § 1.367(b)–14T as contained in 26 CFR part 1 revised as of April 1, 2011.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. This certification is based on the fact that the regulations will primarily affect large multi-national corporations that engage in triangular reorganizations subject to the regulations. The regulations apply to triangular reorganizations, involving one or more foreign corporations, to the extent that, in connection with the reorganization, the acquiring corporation purchases, in exchange for property, all or a portion of the stock or securities used to acquire the stock, securities or property of the target corporation. Therefore, the IRS and Treasury Department expect only a de minimis number of small business entities to be subject to the regulations. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Robert B. Williams, Jr. of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entries for §§ 1.367(a)–3T(b)(2)(i)(C) and 1.367(b)–14T, revising the entry for § 1.367(a)–3, and adding an entry for § 1.367(b)–10 in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *.

Section 1.367(a)–3 also issued under 26 U.S.C. 367(a). Section 1.367(b)–10 also issued under 26 U.S.C. 367(b). * * *

■ **Par. 2.** Section 1.367(a)–3 is amended by revising paragraph (a), removing paragraph (g)(1)(vii), redesignating paragraph (g)(1)(viii) as paragraph (g)(1)(vii) and adding new paragraph (g)(1)(viii) to read as follows:

§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

(a) *In general*—(1) *Overview.* This section provides rules concerning the transfer of stock or securities by a U.S. person to a foreign corporation in an exchange described in section 367(a)(1). In general, a transfer of stock or securities (including an indirect stock transfer described in paragraph (d) of this section) by a U.S. person to a foreign corporation that is described in section 351, 354 (including a section 354 exchange pursuant to a reorganization described in section 368(a)(1)(B)), 356, or section 361(a) or (b) is subject to section 367(a)(1). Therefore, gain is recognized on such a transfer unless one of the exceptions set forth in paragraph (a)(2) of this section (regarding general exceptions for certain exchanges of stock or securities), paragraph (b) of this section (regarding transfers of foreign stock or securities), paragraph (c) of this section (regarding transfers of domestic stock or securities), or paragraph (e) of this section (regarding transfers of stock or securities in a section 361 exchange) applies to the transfer. For rules applicable when, pursuant to section 304(a)(1), a U.S. person is treated as transferring stock of a domestic or foreign corporation to a foreign corporation in exchange for stock of such foreign corporation in a transaction to which section 351(a) applies, see § 1.367(a)–9T.

(2) *Exceptions for certain exchanges of stock or securities.* Unless otherwise provided, the following exchanges are not subject to section 367(a)(1) and therefore gain is not recognized under section 367(a)(1).

(i) *Section 368(a)(1)(E) reorganizations.* In an exchange under section 354 or 356, a U.S. person exchanges stock or securities of a foreign corporation in a reorganization described in section 368(a)(1)(E).

(ii) *Certain section 368(a)(1) asset reorganizations.* In an exchange under section 354 or 356, a U.S. person exchanges stock or securities of a domestic or foreign corporation pursuant to an asset reorganization that is not treated as an indirect stock transfer under paragraph (d) of this section. See paragraph (d)(3) *Example 16* of this section. For purposes of this section, an *asset reorganization* is defined as a reorganization described in section 368(a)(1) involving a transfer of property under section 361.

(iii) *Certain reorganizations described in sections 368(a)(1)(A) and (a)(2)(E).* If, in an exchange described in section 361, a domestic merging corporation transfers stock of a controlling corporation to a foreign surviving corporation in a reorganization described in section 368(a)(1)(A) and (a)(2)(E), the stock of the controlling corporation transferred in such section 361 exchange is not subject to section 367(a)(1) if the stock of the controlling corporation is provided to the merging corporation by the controlling corporation pursuant to the plan of reorganization. However, a section 361 exchange of other property, including stock of the controlling corporation not provided by the controlling corporation pursuant to the plan of reorganization, by the domestic merging corporation to

the foreign surviving corporation pursuant to such a reorganization is described in section 367(a)(1) and therefore subject to section 367(a)(1) unless an exception to section 367(a)(1) applies.

(iv) *Certain triangular reorganizations described in § 1.367(b)–10.* If, in an exchange under section 354 or 356, one or more U.S. persons exchange stock or securities of T (as defined in § 1.358–6(b)(1)(iii)) in connection with a transaction described in § 1.367(b)–10 (applying to certain acquisitions of parent stock or securities for property in triangular reorganizations), section 367(a)(1) shall not apply to such U.S. persons with respect to the exchange of the stock or securities of T if the condition specified in this paragraph (iv) is satisfied. The condition specified in this paragraph (iv) is that the amount of gain in the T stock or securities that would otherwise be recognized under section 367(a)(1) (without regard to any exceptions thereto) pursuant to the indirect stock transfer rules of paragraph (d) of this section is less than the sum of the amount of the deemed distribution under § 1.367(b)–10 treated as a dividend under section 301(c)(1) and the amount of such deemed distribution treated as gain from the sale or exchange of property under section 301(c)(3). See § 1.367(b)–10(a)(2)(iii) (providing a similar rule that excludes certain transactions from the application of § 1.367(b)–10).

(3) *Cross-references.* For rules regarding other indirect or constructive transfers of stock or securities subject to section 367(a)(1) (unless an exception applies) see § 1.367(a)–1T(c). For additional rules regarding a transfer of stock or securities in an exchange described in section 361(a) or (b), see section 367(a)(5) and any regulations under that section. For special basis and holding period rules involving foreign corporations that are parties to certain triangular reorganizations under section 368(a)(1), see § 1.367(b)–13. For additional rules relating to certain nonrecognition exchanges involving a foreign corporation, see section 367(b) and the regulations under that section. For rules regarding reporting requirements with respect to transfers described under section 367(a), see section 6038B and the regulations thereunder. For rules related to expatriated entities, see section 7874 and the regulations thereunder.

* * * * *

(g) * * *

(1) * * *

(viii) Paragraph (a)(2)(iv) of this section applies to exchanges occurring on or after May 17, 2011. For exchanges that occur prior to May 17, 2011, see § 1.367(a)–3T(b)(2)(i)(C) as contained in 26 CFR part 1 revised as of April 1, 2011.

* * * * *

§ 1.367(a)–3T [Removed]

■ **Par. 3.** Section 1.367(a)–3T is removed.

■ **Par. 4.** Section 1.367(b)–0 is amended by:

■ 1. Revising the introductory text.

■ 2. Removing the entry for § 1.367(b)–2(d)(3)(ii), and redesignating the entries for § 1.367(b)–2(d)(3)(iii), (d)(3)(iii)(A), and (d)(3)(iii)(B) as § 1.367(b)–2(d)(3)(ii), (d)(3)(ii)(A), and (d)(3)(ii)(B) respectively.

■ 3. Revising the entry for § 1.367(b)–4(b)(1)(i), redesignating the entry for § 1.367(b)–4(b)(1)(ii) as the entry for § 1.367(b)–4(b)(1)(iii), and adding a new entry for § 1.367(b)–4(b)(1)(ii).

■ 4. Revising the entries for § 1.367(b)–4(d)(1) and (2), and removing the entry for § 1.367(b)–4(d)(3).

■ 5. Adding entries for § 1.367(b)–10.

■ 6. Adding entries for § 1.367(b)–13.

The revisions and additions read as follows:

§ 1.367(b)–0 Table of contents.

This section lists the paragraphs contained in §§ 1.367(b)–1 through 1.367(b)–13.

* * * * *

§ 1.367(b)–4 Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.

* * * * *

(b) * * *

(1) * * *

(i) General rule.

(ii) Exception.

* * * * *

(d) * * *

(1) Rule.

(2) Example.

§ 1.367(b)–10 Acquisition of parent stock or securities for property in triangular reorganizations.

(a) In general.

(1) Scope.

(2) Exceptions.

(3) Definitions.

(b) General rules.

(1) Deemed distribution.

(2) Deemed contribution.

(3) Timing of deemed distribution and deemed contribution.

(4) Application of other provisions.

(5) Example.

(c) Collateral adjustments.

(1) Deemed distribution.

(2) Deemed contribution.

(d) Anti-abuse rule.

(e) Effective/applicability date.

§ 1.367(b)–13 Special rules for determining basis and holding period.

(a) Scope and definitions.

(1) Scope.

(2) Definitions.

(b) Determination of basis for exchanges of foreign stock or securities under section 354 or 356.

(c) Determination of basis and holding period for triangular reorganizations.

(1) Application.

(2) Basis and holding period rules.

(i) Portions attributable to S stock.

(ii) Portions attributable to T stock.

(d) Special rules applicable to divided shares of stock.

(1) In general.

(2) Pre-exchange earnings and profits.

(3) Post-exchange earnings and profits.

(e) Examples.

(f) Effective date.

■ **Par. 5.** Section 1.367(b)–10 is added to read as follows:

§ 1.367(b)–10 Acquisition of parent stock or securities for property in triangular reorganizations.

(a) *In general*—(1) *Scope.* Except as provided in paragraphs (a)(2)(i) through (iii) of this section, this section applies to a triangular reorganization if P or S (or both) is a foreign corporation and, in connection with the reorganization, S acquires in exchange for property all or a portion of the P stock or P securities (P acquisition) that are used to acquire the stock, securities or property of T in the triangular reorganization. This section applies to a triangular reorganization regardless of whether P controls (within the meaning of section 368(c)) S at the time of the P acquisition.

(2) *Exceptions.* This section shall not apply if—

(i) P and S are foreign corporations and neither P nor S is a controlled foreign corporation (within the meaning of § 1.367(b)–2(a)) immediately before or immediately after the triangular reorganization;

(ii) S is a domestic corporation, P's stock in S is not a United States real property interest (within the meaning of section 897(c)), and P would not be subject to U.S. tax on a dividend (as determined under section 301(c)(1)) from S under either section 881 (for example, by reason of an applicable treaty) or section 882; or

(iii) In an exchange under section 354 or 356, one or more U.S. persons exchange stock or securities of T and the amount of gain in the T stock or securities recognized by such U.S. persons under section 367(a)(1) is equal to or greater than the sum of the amount of the deemed distribution that would be treated by P as a dividend under section 301(c)(1) and the amount of such deemed distribution that would be treated by P as gain from the sale or exchange of property under section 301(c)(3) if this section would otherwise

apply to the triangular reorganization. See § 1.367(a)–3(a)(2)(iv) (providing a similar rule that excludes certain transactions from the application of section 367(a)(1)).

(3) *Definitions.* For purposes of this section, the following definitions apply:

(i) The terms *P, S,* and *T* have the meanings set forth in § 1.358–6(b)(1)(i), (ii), and (iii), respectively.

(ii) The term *property* has the meaning set forth in section 317(a), except that the term property also includes—

(A) A liability assumed by S to acquire the P stock or securities; and

(B) S stock (or any rights to acquire S stock) to the extent such S stock (or rights to acquire S stock) is used by S to acquire P stock or securities from a person other than P.

(iii) The term *security* means an instrument that constitutes a security for purposes of section 354 or 356.

(iv) The term *triangular reorganization* has the meaning set forth in § 1.358–6(b)(2).

(b) *General rules*—(1) *Deemed distribution.* If this section applies, adjustments shall be made that have the effect of a distribution of property (with no built-in gain or loss) from S to P under section 301 (deemed distribution). The amount of the deemed distribution shall equal the sum of the amount of money transferred by S, the amount of any liabilities that are assumed by S and constitute property, and the fair market value of other property transferred by S in the P acquisition in exchange for the P stock or P securities described in paragraph (i) or (ii), respectively, of this paragraph (b)(1)—

(i) P stock received by T shareholders or securityholders in an exchange to which section 354 or 356 applies.

(ii) P securities received by T shareholders or securityholders to the extent such securities are "other property" (within the meaning of section 356(d)).

(2) *Deemed contribution.* If this section applies, adjustments shall be made that have the effect of a contribution of property (with no built-in gain or loss) by P to S in an amount equal to the amount of the deemed distribution from S to P under paragraph (b)(1) of this section (deemed contribution).

(3) *Timing of deemed distribution and deemed contribution.* If P controls (within the meaning of section 368(c)) S at the time of the P acquisition, the adjustments described in paragraphs (b)(1) and (2) of this section shall be made as if the deemed distribution and deemed contribution, respectively, are separate transactions occurring immediately before the P acquisition. If P does not control (within the meaning of section 368(c)) S at the time of the P acquisition, the adjustments described in paragraphs (b)(1) and (2) of this section shall be made as if the deemed distribution and deemed contribution, respectively, are separate transactions occurring immediately after P acquires control of S, but prior to the triangular reorganization.

(4) *Application of other provisions.* Nothing in this section shall prevent the application of other provisions of the Internal Revenue Code from applying to the P acquisition. For example, section 304 may apply to the P acquisition. Furthermore, section 1001 or 267 may apply to S's transfer of property to acquire P stock or securities from P or a person other than P. In addition, generally applicable provisions that apply to triangular reorganizations, such as § 1.358–6 and § 1.1032–2, shall apply to the triangular reorganization in a manner consistent with S acquiring the P stock or securities in exchange for property from P or a person other than P, as the case may be.

(5) *Example.* The rules of this paragraph (b) are illustrated by the following example:

(i) *Facts.* P, a publicly traded domestic corporation, owns all of the outstanding stock of FS, a foreign corporation, and all of the outstanding stock of US1, a domestic corporation that is a member of the P consolidated group. US1 owns all of the outstanding stock of FT, a foreign corporation, the fair market value of which is $100x. US1's basis in the FT stock is $100x, such that there is a no built-in gain or loss in the FT stock. FS has earnings and profits in excess of $100x. FS purchases $100x of P stock from the public on the open market in exchange for $100x of cash. Pursuant to foreign law, FT merges with and into FS in a triangular reorganization that qualifies under section 368(a)(1)(A) by reason of section 368(a)(2)(D). In an exchange to which section 354 applies, US1 exchanges all the outstanding stock of FT for the $100x of P stock purchased by FS on the open market.

(ii) *Analysis.* The triangular reorganization is described in paragraph (a)(1) of this section. P is a domestic corporation and FS is a foreign corporation. In connection with FS purchasing the $100x of P stock in exchange for property (cash), FS uses the P stock to acquire the FT property in a triangular reorganization, and US1 receives the P stock in an exchange to which section 354 applies. Furthermore, none of the exceptions of paragraphs (a)(2)(i) through (iii) of this section apply. Therefore, pursuant to paragraph (b)(1) of this section, adjustments are made that have the effect of a deemed distribution of property (with no built-in gain or loss) in the amount of $100x from FS to P under section 301. Pursuant to paragraph (b)(2) of this section, adjustments are made that have the effect of a deemed contribution of property (with no built-in gain or loss) in the amount of $100x by P to FS. Pursuant to paragraph (b)(3) of this section, the adjustments described in paragraphs (b)(1) and (2) of this section are made as if the deemed distribution and deemed contribution, respectively, are separate transactions occurring immediately before FS's purchase of the P stock on the open market. Generally applicable provisions apply to FS's purchase of the P stock on the open market (see, for example, section 304) and in determining certain tax consequences to P and FS as a result of the triangular reorganization (see, for example, § 1.358–6(d) and § 1.1032–2(c)).

(c) *Collateral adjustments.* This paragraph (c) provides additional rules that apply by reason of the deemed distribution and deemed contribution described in paragraphs (b)(1) and (b)(2), respectively, of this section.

(1) *Deemed distribution.* A deemed distribution described in paragraph (b)(1) of this section shall be treated as occurring for all purposes of the Internal Revenue Code. Thus, for example, the ordering rules of section 301(c) apply to characterize the deemed distribution to P as a dividend from the earnings and profits of S, return of stock basis, or gain from the sale or exchange of property, as the case may be. Furthermore, sections 902 or 959 may apply to the deemed distribution if S is a foreign corporation, and sections 881, 882, 897, 1442, or 1445 may apply to the deemed distribution if S is a domestic corporation. Appropriate corresponding adjustments shall be made to S's earnings and profits consistent with the principles of section 312.

(2) *Deemed contribution.* A deemed contribution described in paragraph (b)(2) of this section shall be treated as occurring for all purposes of the Internal Revenue Code. Thus, for example, appropriate adjustments shall be made to P's basis in the S stock.

(d) *Anti-abuse rule.* Appropriate adjustments shall be made pursuant to this section if, in connection with a triangular reorganization, a transaction is engaged in with a view to avoid the purpose of this section. For example, if S is created, organized, or funded to avoid the application of this section with respect to the earnings and profits of a corporation related (within the meaning of section 267(b)) to P or S, the earnings and profits of S will be deemed to include the earnings and profits of such related corporation for purposes of determining the consequences of the adjustments provided in this section, and appropriate corresponding adjustments will be made to account for the application of this section to the earnings and profits of such related corporation.

(e) *Effective/applicability date.* This section applies to triangular reorganizations occurring on or after May 17, 2011. For triangular reorganizations that occur prior to May 17, 2011, see § 1.367(b)-14T as contained in 26 CFR part 1 revised as of April 1, 2011.

§ 1.367(b)-14T [Removed]

■ **Par. 6.** Section 1.367(b)-14T is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: May 11, 2011.

Michael Mundaca,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–12279 Filed 5–17–11; 11:15 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0253]

RIN 1625–AA00

Safety Zone; Ohio River, Sewickley, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on specified waters of the Ohio River in Sewickley, Pennsylvania. The safety zone is needed to protect the public from the hazards associated with the Borough of Sewickley fireworks display. Entry into, movement within, and departure from this Coast Guard safety zone, while it is activated and enforced, is prohibited, unless authorized by the Captain of the Port Pittsburg or a designated representative.

DATES: This rule is effective from 8:30 p.m. until 10:15 p.m. on May 27, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0253 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0253 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Ensign Robyn Hoskins, Marine Safety Unit Pittsburgh, Coast Guard; telephone 412–644–5808, e-mail *Robyn.G.Hoskins@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Publishing a NPRM would be impracticable because immediate action is needed to protect the public due to the Borough of Sewickley fireworks display that will occur in the city of Sewickley, PA.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be impracticable based on the short notice received for the event and the short period that the safety zone will be in place. Immediate action is needed to provide safety and protection during the Borough of Sewickley fireworks display that will occur in the city of Sewickley, Pennsylvania.

Basis and Purpose

The Coast Guard is establishing a temporary safety zone on the Ohio River from mile marker 11.7 to mile marker 12.0, extending the entire width of the river. The safety zone is needed to protect the public from the hazards associated with the Borough of Sewickley fireworks display.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone on the Ohio River from mile marker 11.7 to mile marker 12.0, extending the entire width of the river. Vessels shall not enter into, depart from, or move within this safety zone without permission from the Captain of the Port Pittsburgh or his authorized representative. Persons or vessels requiring entry into or passage through a safety zone must request permission from the Captain of the Port Pittsburgh, or a designated representative. They may be contacted on VHF–FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1–800–253–7465. This rule is effective from 8:30 p.m. until 10:15 p.m. on May 27, 2011. The Captain of the Port Pittsburgh will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This rule will be in effect for a short period of time and notifications to the marine community will be made through broadcast notices to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit that portion of the waterways on the Ohio River from mile marker 11.7 to mile marker 12.0.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for a short period of time, on

a weekend day, and during a time when vessel traffic is low.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0253 to read as follows:

§ 165.T08–0253 Safety Zone; Ohio River, Sewickley, PA.

(a) *Location.* The following area is a safety zone: All waters of the Ohio River from mile marker 11.7 to mile marker 12.0, extending the entire width of the river. These markings are based on the USACE's *Ohio River Navigation Charts* (Chart 1, January 2003).

(b) *Effective date.* This rule is effective from 8:30 p.m. until 10:15 p.m. on May 27, 2011.

(c) *Periods of Enforcement.* This rule will only be enforced from 8:30 P.M. until 10:15 P.M. on May 27, 2011. The Captain of the Port Pittsburgh or a

designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Pittsburgh.

(2) Persons or vessels requiring entry into or passage through a safety zone must request permission from the Captain of the Port Pittsburgh or a designated representative. They may be contacted on VHF–FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1–800–253–7465.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Pittsburgh and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel includes Commissioned, Warrant, and Petty Officers of the U.S. Coast Guard.

Dated: April 12, 2011.

R.V. Timme,

Commander, U.S. Coast Guard Captain of the Port Pittsburgh.

[FR Doc. 2011–12281 Filed 5–18–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 110311192–1279–02]

RIN 0648–BA01 and 0648–BA95

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures

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

ACTION: Final rule; Pacific whiting harvest specifications and tribal allocation.

SUMMARY: This final rule establishes the 2011 fishery harvest specifications for Pacific whiting in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). These specifications include the overfishing level (OFL), catch limits, and allocations for the non-tribal commercial sectors. This final rule also announces the tribal allocation of Pacific whiting for 2011.

DATES: This rule is effective May 16, 2011, and is applicable beginning May 15, 2011.

FOR FURTHER INFORMATION CONTACT: Kevin C. Duffy (Northwest Region, NMFS), *phone:* 206–526–4743, *fax:* 206–526–6736 and *e-mail: kevin.duffy@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpoaccess.gov/fr/index.html.* Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

Copies of the final environmental impact statement (FEIS) for the 2011–2012 Groundfish Specifications and Management Measures are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220, *phone:* 503–820–2280.

Copies of additional reports referred to in this document may also be obtained from the Council. Copies of the Record of Decision (ROD), final regulatory flexibility analysis (FRFA), and the Small Entity Compliance Guide are available from William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, Seattle, WA 98115–0070.

Background

On November 3, 2010, NMFS published a proposed rule to implement the 2011–2012 specifications and management measures for the Pacific Coast groundfish fishery (75 FR 67810). A final rule was published on May 11, 2011 (76 FR 27508) that responded to public comments and codified the specifications and management measures in the CFR (50 CFR part 660, subparts C through G), except for the final Pacific whiting harvest specifications because the information necessary for the annual updated stock assessment for Pacific whiting was not available until January or February, which necessarily delays the preparation of the stock assessment until February.

Due to the inability to establish the final Pacific whiting harvest specifications during the preparation of the proposed and final rules, both rules announced a range of Pacific whiting harvest specifications that were being considered for 2011 and 2012, and also announced the intent to adopt final specifications for whiting on an annual basis after the Council's March 2011 and 2012 meetings. Because the stock assessment is now available, this final rule establishes the 2011 harvest specifications for Pacific whiting. The Council's adoption of Pacific whiting harvest specifications in March is consistent with the U.S.-Canada agreement for Pacific whiting. The U.S.-Canada agreement for Pacific whiting was signed in November 2003. This agreement addresses the conservation, research, and catch sharing of Pacific whiting. Presently, both countries are taking steps to fully implement the agreement. Until full implementation occurs, the negotiators recommended that each country apply the agreed-upon provisions to their respective fisheries. In addition to the time frame in which stock assessments are to be considered and harvest specifications established, the U.S.-Canada agreement specifies how the catch is to be shared between the two countries. The Pacific whiting catch sharing arrangement provides 73.88 percent of the coastwide total catch to the U.S. fisheries, and 26.12 percent to the Canadian fisheries. This action accounts for this division of catch share allocation between the U.S. and Canada.

This final rule also establishes the tribal allocation of Pacific whiting for 2011. NMFS issued a proposed rule for the allocation and management of the 2011 tribal Pacific whiting fishery on April 5, 2011 (75 FR 18709). This action finalizes the allocation and management measures published in the April 5, 2011 proposed rule. A summary of the comments received during the comment period and NMFS' responses are provided below.

Pacific Whiting Stock Status

The joint U.S.-Canada Stock Assessment Review (STAR) panel met February 7–11, 2011, in Seattle, Washington to review a draft stock assessment (Stewart *et al.,* 2011) that had been prepared by the joint Canada-U.S. stock assessment team (STAT). Two draft stock assessment models were evaluated by the STAT: One prepared by Stewart (Stock Synthesis III model, 2011) and a second prepared by Martell (TINSS, 2011). The Joint STAT and STAR Panel discussed features of the new TINSS and SS base models. Specifically, comparisons of the updated TINSS and SS model revealed that: (1) Agreement in fit to the acoustic survey biomass was better between the models than in previous years; (2) there was a closer alignment in the spawning biomass trajectories and their associated

confidence intervals; (3) depletion at the beginning of the time series became closer (while depletion at the end of the time series became more divergent); (4) the agreement in the recruitment time series was much improved; (5) recruitment deviations in log space showed much closer agreement; and (6) the fishing intensity time series showed much closer agreement. Overall, it was observed that current spawning biomass estimates and the associated confidence intervals showed good agreement between the two models, although uncertainty remained large for both models. The Joint STAT and the STAR Panel generally concluded that the current configurations of the TINSS and SS models represented the best base-case models for development of management advice. There was recognition, however, that uncertainty in the strength of the 2008 year class was very high and alternative model structures (such as parameterizations with time-varying selectivity) could be put forward that would very likely give less optimistic characterizations of current stock status.

At the March 2011 Council meeting, the Council's Scientific and Statistical Committee (SSC) reviewed the Pacific whiting stock assessment, which was based on the two models identified above. The SSC recommended both model results as equally plausible and recommended key management quantities such as the maximum sustainable yield harvest level and stock depletion in 2011 (126 percent of virgin biomass) be derived using model-averaging with equal weight. Using this approach, the stock assessment estimated that the Pacific whiting biomass was at 126 percent of its unfished biomass in 2011.

Harvest Specification Recommendations

The U.S. harvest levels analyzed in the FEIS for 2011 and 2012 specifications and management measures varied between a low of 96,969 mt and a high of 290,903 mt. This range represents 50 to 150 percent of the 2010 U.S. Optimum Yield (OY) of 193,935 mt. These broad ranges in Pacific whiting harvest levels were analyzed in order to assess the potential range of the effects of the harvest of Pacific whiting on incidentally-caught overfished species, and the economic effects to coastal communities.

The Council adopted the Pacific whiting stock assessment (Stewart *et al.,* 2011) recommended by the STAR panel and the SSC. After consideration of additional input from Council advisory bodies and public comment, the Council adopted a coastwide (U.S. plus Canada) OFL of 973,700 mt for 2011 and a coastwide ACL of 393,751 mt.

The final Overfishing Level (OFL) and ACL values recommended by the Council for 2011 are based on the new stock assessments, and are consistent with the U.S.-Canada agreement and the impacts considered in the FEIS for the 2011 and 2012 management measures.

The U.S. share of the OFL is 719,370 mt (or 73.88 percent of the coastwide OFL). The U.S. share of the ACL is 290,903 mt (or 73.88 percent of the coastwide ACL).

Tribal Fishery Allocations

This final rule establishes the tribal allocation of Pacific whiting for 2011. Since 1996, NMFS has been allocating a portion of the U.S. OY of Pacific whiting to the tribal fishery using the process established in 50 CFR 660.50(d)(1). The tribal allocation is subtracted from the total U.S. Pacific whiting OY before it is allocated to the non-tribal sectors. The tribal Pacific whiting fishery is a separate fishery, and is not governed by the limited entry or open access regulations or allocations. To date, only the Makah Tribe has prosecuted a tribal fishery for Pacific whiting. For 2011, both the Makah and Quileute have stated their intent to participate in the Pacific whiting fishery. The Quinault Nation has indicated that they do not plan to participate in the 2011 fishery, unless their circumstances change.

This final rule is not intended to establish any precedent for future Pacific whiting seasons, or for the long-term tribal allocation of whiting. Based on the formula for the tribal allocation used in the proposed rule, and taking into account public comments received on the proposed rule, the tribal allocation of Pacific whiting in 2011 is [17.5 percent * (U.S. ACL)] + 16,000 mt. With a U.S. ACL of 290,903 mt, the tribal allocation for the 2011 tribal Pacific whiting fishery is 66,908 mt.

Non-Tribal Allocations

The 2011 commercial (non-tribal) harvest guideline (HG) for Pacific whiting is 220,995 mt. This amount was determined by deducting from the total U.S. ACL of 290,903 mt, the 66,908 mt tribal allocation, along with 3,000 mt for research catch and bycatch in non-groundfish fisheries. These Pacific whiting fishery allocations are described in regulations at Table 1a to Part 660, subpart C, and footnote e/ and are being revised with this final rule. Regulations at 50 CFR 660.55(i)(2) allocate the commercial HG among the non-tribal catcher/processor, mothership, and shorebased sectors of the Pacific whiting fishery. The catcher/processor sector is allocated 34 percent (75,138 mt for 2011), the mothership sector is allocated 24 percent (53,039 mt for 2011), and the shorebased sector is allocated 42 percent (92,818 mt for 2011). The fishery south of 42° N. lat. may not take more than 4,641 mt (5 percent of the shorebased allocation) prior to the start of the primary Pacific whiting season north of 42° N. lat.

Regarding the shorebased sector, NMFS issued a temporary rule under emergency authority on December 30, 2010 (75 FR 82296) implementing interim measures for the Pacific coast groundfish fisheries beginning in January, 2011. The measures were necessary due to a delay in the finalization of the 2011–2012 harvest specifications and management measures. As part of the December 30, 2010 emergency action, 18,467 mt of Pacific whiting was allocated to the shorebased sector. Therefore, this final rule provides an additional 74,351 mt of Pacific whiting to the shorebased sector, so that the total 2011amount is 92,818 mt.

Allocations of Pacific Ocean perch, canary rockfish, darkblotched rockfish, and widow rockfish to the whiting fishery were published in the 2011–2012 Biennial Harvest Specifications and Management Measures Final rule, on May 11, 2011 (76 FR 27508). The Pacific whiting fishery allocations for these species are described in § 660.55(c)(1)(i) and in Table 1b, subpart C.

Comments and Responses

On April 5, 2011, NMFS issued a proposed rule for the allocation and management of the 2011 tribal Pacific whiting fishery (75 FR 18709). The comment period on this proposed rule closed on April 19, 2011. During the comment period, NMFS received four letters of comment. The U.S. Department of Interior submitted a letter of "no comment" associated with their review of the proposed rule. The Washington Department of Fish and Wildlife, American Seafoods Company, and Pacific Whiting Conservation Cooperative also submitted comments. Comments received on the proposed rule for the allocation and management of the 2011 tribal Pacific whiting fishery are addressed below.

Washington Department of Fish and Wildlife

Comment 1: The Washington Department of Fish and Wildlife (WDFW) expressed concern that the NMFS implementing regulations for

Fishery Management Plan (FMP) Amendment 20, the trawl rationalization program, inadvertently removed the regulatory provisions allowing for the rollover of unused tribal whiting to the non-tribal whiting sectors. They state that the Council discussions regarding whiting rollover provisions during development of Amendment 20 focused solely on unused whiting among the non-tribal sectors, with the expectation that non-tribal whiting would be fully harvested under the trawl rationalization program.

Response: NMFS disagrees with the WDFW interpretation of events leading to regulations implementing FMP Amendment 20 that do not authorize "reapportionment" (regulatory term used historically) of whiting between the tribal sector and the non-tribal sector. This issue was broadly addressed in Appendix B of the Amendment 20 FEIS (Section B–1.2, p. B–15), which describes two options in front of the Council.

Option 1 stated that there would not be a rollover of unused whiting from one sector to another. Option 2 described how each year, rollovers to other sectors may occur if sector participants are surveyed by NMFS and no participants intend to harvest remaining sector allocations in that year. Option 2 would have maintained existing provisions for NMFS to reallocate unused sector allocations of whiting from sectors no longer active in the fishery to other sectors still active in the fishery. This option included reference to the regulations at former 50 CFR 660.323(c) on reapportionments, which stated "[t]hat portion of a sector's allocation that the Regional Administrator determines will not be used by the end of the fishing year shall be made available for harvest by the other sectors, if needed, in proportion to their initial allocations, on September 15 or as soon as practicable thereafter. NMFS may release whiting again at a later date to ensure full utilization of the resource. Whiting not needed in the fishery authorized under 50 CFR 660.324 may also be made available." The regulations at former 50 CFR 660.324, Pacific Coast treaty Indian fisheries, included the tribal whiting fishery. However, the Council chose Option 1, which did not include a rollover or reapportionment mechanism. NMFS concluded that this Council decision included the tribal sector as well, since reapportionment from the tribal to the non-tribal sector was included in Option 2. In addition, the regulations implementing Amendment 20 were deemed as necessary and appropriate under the MSA through the Council process, with many industry and agency representatives reviewing the regulations in great detail, paragraph by paragraph.

Comment 2: WDFW states that the roll-over or reapportionment unused tribal whiting to the non-tribal fishery allows for full utilization of the harvestable yield, consistent with the groundfish FMP and National Standards. WDFW also expresses a desire for a mechanism for "fixing" the rollover issue by the fall of 2011.

Response: As described above, the Council adopted a motion during the process of adopting Amendment 20 that there would be no rollover of whiting between sectors. NMFS interpreted the motion to include the tribal fishery and worked through a very public process, which included representatives from the whiting sectors, for the Council to deem the regulations not including reapportionment between the tribal and non-tribal fisheries. If the Council decides to recommend a reapportionment mechanism through the Council process, the regulations may be modified if appropriate.

Comment 3: WDFW expresses concern about lack of communication on the part of NMFS with WDFW regarding tribal whiting set asides, fishing plans and bycatch avoidance measures.

Response: NMFS acknowledges that interagency communications can be improved, and will work towards establishing more frequent and effective dialogue. NMFS, the treaty tribes, and the States of Washington and Oregon have initiated a process to determine a potential long term tribal allocation of Pacific whiting, and NMFS anticipates improved communications with all parties as that process moves forward.

American Seafoods Company

Comment 4: American Seafoods states that the 66,908 mt tribal allocation amount identified in the proposed rule is approximately 50,000 mt higher than the actual 2010 tribal harvest of Pacific whiting. American Seafoods states that the agency should conduct a good-faith evaluation of the realistic harvest by the tribes in 2011 in order to avoid unnecessarily limiting the allocation to the non-tribal whiting fishery.

Response: The tribal allocation identified in the proposed rule was based on the specific requests from the Makah and Quileute tribes. No comments were received from the two tribes during the comment period, and therefore NMFS has concluded that the tribal requests for 2011 have not changed. The allocation in the proposed rule is 23 percent of the U.S. OY. The proposed allocation, although higher than the absolute amounts of prior tribal allocations, is well within the range of past percentages (12.08–36.78 percent). While further negotiation on the long-term tribal allocation of Pacific whiting will occur among NMFS, the states, and the treaty Indian tribes, NMFS believes that current knowledge on the distribution and abundance of the coastal Pacific whiting stock supports a conclusion that the proposed tribal allocation of 66,908 mt lies within the range of the tribal treaty right to Pacific whiting.

The harvest of Pacific whiting by the Makah Tribe in 2010 was 18,255 mt. Although the final tribal allocation for 2011 is significantly higher than the 2010 harvest by the Makah tribe, there is no available information on which to base a conclusion that the 2011 tribal harvests, assuming participation by both the Makah and Quileute tribes, will be similar to the 2010 tribal whiting harvest.

Comment 5: American Seafoods also notes that the ability to rollover unused tribal whiting to the non-tribal sector was eliminated in the rulemaking process for FMP Amendments 20 and 21. They urge NMFS to promptly reinstate its rollover authority, stating their belief that there was no intent by the Council to remove that authority.

Response: See response to comments 1 and 2 above.

Comment 6: The combination of the proposed tribal allocation for 2011 and lack of a rollover procedure almost guarantees that the fisheries, collectively, will not achieve optimum yield. American Seafoods disagrees with NMFS' preliminary determination that management measures for the tribal fishery are consistent with MSA National Standards and other applicable laws. They state the proposed allocation and removal of rollover authority violates National Standards 1 and 8, preventing overfishing while achieving optimum yield, and taking into account the importance of fishery resources to fishing communities.

Response: NMFS disagrees with this comment. NMFS is obligated to establish a tribal allocation that is consistent with treaty rights as well as MSA national standards. As discussed in the proposed rule preamble, the tribal allocation in this rule is based on tribal requests and is within the likely amount of the total treaty right based on the best available scientific information regarding the migration of whiting through the tribes' usual and accustomed fishing grounds. NMFS believes that the tribal allocation in this final rule reflects a reasonable balance

that provides for the tribes' exercise of their treaty right and complies with the MSA national standards. NMFS is not "limiting" the non-tribal harvest by allowing a higher tribal allocation in 2011 than in the past.

Comment 7: American Seafoods disagrees with the values of whiting NMFS used in the proposed rule ($160.00/mt), stating that Pacific whiting produces gross revenue of $1,000/mt. They state that if the tribal harvest remains similar to 2010, up to 50,000 mt of Pacific whiting would go unharvested, resulting in a direct revenue loss to the nation of approximately $50 million.

Response: American Seafoods is a major at-sea catcher-processor company. This response is tailored to some of the issues with establishing an ex-vessel price for at-sea companies and recognition that ex-vessel prices do not reflect wholesale or export prices. In the economic analysis to support this rulemaking, ex-vessel values were used to establish the value of the fishery. This is a fairly standard practice for Pacific Fishery Management Council economic analyses, as well as other documents. For example, the following is taken from a report by Northern Economics, Inc. "*The Seafood Industry in Alaska's Economy*" prepared for the Marine Conservation Alliance, At-Sea Processors Association, and Pacific Seafood Processors Association (January 2009.) "Ex-vessel value: This term nominally means the value of harvested but unprocessed fish as it transferred off of the harvesting vessel. Typically the ex-vessel value equals the amount of money that fishing vessels receive for unprocessed fish or shellfish; ex-vessel value is equal to the quantity of fish or shellfish retained for processing multiplied by the ex-vessel (dockside) per-unit price. Catcher processors do not technically generate an ex-vessel value, but a value may be imputed from catcher processor harvested fish." Elsewhere this report states "Catcher processors, because their fish are fed directly into their on-board processing lines do not generate a financial transaction in which fish are bought or sold. Technically, therefore, there is no ex-vessel price associated with the raw/unprocessed fish. In order to account for the value of this fish, so that it can be compared to other fisheries, an ex-vessel value is often imputed for them. The imputed ex-vessel value is equal to the price per pound of shore based fish of the same species caught in a similar location with a similar gear multiplied by the amount of catcher processor harvests." However, the commenter is correct in that use of ex-vessel values understates the total sales values (domestic or export). To impute a total sales value, several types of data are needed, including: total production of finished product by finished product; the average amount of raw fish used to make finished product (product recovery rate), and the average price of the finished product. For example, during 2010, according to U.S. foreign trade statistics, approximately 36,197 mt of headed and gutted product was exported at a value of $73.8 million. If the product recovery rate is 0.65 percent (1 lb of raw fish yields 0.65 lbs of finished product), 55,688 mt of raw hake yields 36,197 mt of headed and gutted product. (Headed and gutted fish is a major hake item. Unfortunately, export prices for surimi and fillets, the other major hake products, cannot be estimated as U.S. trade statistic categories on surimi and fillets do not distinguish between hake and other species such as pollock.) With a total finished value of $73.8 million, the imputed export price per ton of raw fish processed is $1,325 per mt ($73,800/55,688 mt).

At this time NMFS does not have very good data on the amount of finished products by sector (shoreside, tribal, mothership, and catcher-processor) or wholesale values and product recovery rates by finished product (headed and gutted, surimi, or fillets). NMFS anticipates that the industry will provide, possibly through the economic data collection processes associated with Amendment 20 to the Pacific Fishery Groundfish FMP, the data needed to develop wholesale values of industry production. For now, using the above example, NMFS will revise its analysis to include a statement that indicates that the use of ex-vessel values understates the total wholesale or export values associated with Pacific whiting products.

Pacific Whiting Conservation Cooperative (PWCC)

Comment 8: The PWCC urges NMFS to develop a remedy for 2011 that provides regulatory authority to reapportion unharvested whiting from the tribal to the non-tribal fishery, stating that Council intent during the Amendment 20 trawl rationalization process was that the decision to not allow reapportionment was applied solely to the non-tribal fishery. They feel that Council intent, past NMFS practice, and recent experience where tribal whiting has been stranded creates a situation where authority to reapportion potentially unharvested whiting should be reinstituted. They suggest action by NMFS to reassert and/or reinstitute its reapportionment authority.

Response: See response to comments 1 and 2 above.

Comment 9: PWCC urges NMFS to work with the states of Oregon, Washington, and the coastal treaty tribes, as well as consult with the fishing industry, to develop a long-term tribal whiting set aside.

Response: NMFS agrees with this suggestion, and intends to continue work on development of a long-term tribal whiting allocation for the future.

Comment 10: PWCC believes the proposed 2011 tribal whiting set aside is too high. PWCC points out that the proposed rule acknowledged that the tribal whiting set aside can unnecessarily limit the non-tribal fishery if set too high. Given past performance and lack of demonstrated fishing operations from the Quileute and Quinault tribes, whiting will be stranded, potentially foregoing tens of millions of dollars in gross revenue, in contravention of MSA National Standard 1. They suggest a realistic 2011 tribal whiting set aside.

Response: NMFS is obligated to establish a tribal allocation that is consistent with treaty rights as well as MSA national standards. NMFS believes that the tribal allocation in this final rule reflects a reasonable balance that provides for the tribes' exercise of their treaty right while maintaining compliance with the MSA national standards. See also response to comment 6 above.

Comment 11: PWCC acknowledges the Makah tribe's history in the fishery, including management plans, monitoring, and enforcement mechanisms, as compared to the Quileute and Quinault tribes, which have no experience or management plans. NMFS has provided no evidence that the Quileute and Quinault will have viable fishing operations with management plans addressing their potential fisheries, including plans for how bycatch and impacts on protected species will be minimized. PWCC suggests tangible fishing plans from each tribe.

Response: As discussed above, NMFS based its decision regarding the tribal allocation on the tribes' requests and statements of intent regarding participation in the fishery. During late 2010 and early 2011, NMFS held individual meetings with the Quileute and Makah tribes, as well as the Quinault Indian Nation. NMFS has discussed the tribes' fishing plans and preparations with them and understands that both the Makah and Quileute tribes have fishing plans that

address operations, bycatch management, and catch reporting.

Classification

The final Pacific whiting specifications and management measures for 2011 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and the Pacific Whiting Act of 2006, and are in accordance with 50 CFR part 660, subparts C through G, the regulations implementing the FMP. The Administrator, Northwest Region, NMFS, has determined that this rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(B), NMFS finds good cause to waive prior public notice and comment on the 2011 Pacific whiting specifications as delaying this rule would be contrary to the public interest. The FMP requires that fishery specifications be evaluated periodically using the best scientific information available. The annual harvest specifications for Pacific whiting must be implemented by the start of the primary Pacific whiting season, which begins on May 15, 2011 or the primary whiting season will effectively remain closed. Pacific whiting differs from other groundfish species in that it has a shorter life span and the population fluctuates more swiftly. Thus, it is important to use the most recent stock assessment for Pacific whiting when determining OFLs and ACLs.

Every year, NMFS conducts a Pacific whiting stock assessment in which U.S. and Canadian scientists cooperate. The 2011 stock assessment for Pacific whiting was prepared in early 2011, which is the optimal time of year to conduct stock assessments for this species because the new 2010 data for the assessment are not available until January, 2011. The new data that were analyzed in the assessment include: Updated total catch; length and age data from the U.S. and Canadian fisheries; and biomass indices from the Joint U.S.-Canadian acoustic/midwater trawl surveys. Because of the delay in obtaining the new data and conducting the assessment, the results of Pacific whiting stock assessments are not available for use in developing the new harvest specifications until just before the Council's annual March meeting.

The primary Pacific whiting season begins on May 15, 2011. Because of the delay in obtaining the best available data for the assessment, it was not possible to provide for notice and comment before the start of the Pacific whiting season on May 15.

A delay in implementing the higher Pacific whiting harvest specifications to allow for notice and comment would shorten the primary whiting season and could prevent the tribal and non-tribal fisheries from attaining their higher 2011 allocations, and thus would result in unnecessary short-term adverse economic effects for the Pacific whiting fishing vessels and the associated fishing communities.

NMFS also finds good cause to waive the 30-day delay in effectiveness 2011 Pacific whiting specifications and the 2011 tribal allocation of Pacific whiting pursuant to 5 U.S.C. 553(d)(3). A delay in implementing the higher Pacific whiting harvest specifications to allow for the 30-day delay in effectiveness would further shorten the primary whiting season and could prevent the tribal and non-tribal fisheries from attaining their higher 2011 allocations, and thus would result in unnecessary short-term adverse economic effects for the Pacific whiting fishing vessels and the associated fishing communities. For these reasons, this final rule is made effective upon publication.

The environmental impacts associated with the Pacific whiting harvest levels that are adopted by this action are within the impacts in the FEIS for the 2011–2012 specification and management measures. In approving the 2011–2012 groundfish harvest specifications and management measures, NMFS issued a Record of Decision (ROD). The ROD was signed on April 27, 2011. Copies of the FEIS and the ROD are available from the Council (see **ADDRESSES**).

Pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) and FRFA for the 2011–2012 harvest specifications and management measures. These analyses included the regulatory impacts of this action on small entities. The IRFA was summarized in the proposed rule published on November 3, 2010 (75 FR 67810). A summary of the FRFA analysis, which covers the entire groundfish regulatory scheme of which this is a part, was published in the final rule on May 11, 2011. An IRFA was also prepared for the proposed rule on the tribal fishery for Pacific whiting in 2011. This proposed rule was published on April 5, 2011 (76 FR 18709). A FRFA for that rule was also prepared, and a summary of that FRFA is contained below. A copy of this analysis is available from NMFS (see **ADDRESSES**). The need for and objectives of this final rule are contained in the **SUMMARY** and in the Background section under **SUPPLEMENTARY INFORMATION.**

The final 2011–2012 specifications and management measures were intended to allow West Coast commercial and recreational fisheries participants to fish the harvestable surplus of more abundant stocks, while also ensuring that those fisheries do not exceed the allowable catch levels intended to rebuild and protect overfished stocks. The harvest specifications are consistent with and based on the guidance of the Magnuson-Stevens Act, the National Standard guidelines, and the FMP for protecting and conserving fish stocks. Fishery management measures include trip and bag limits, size limits, time/area closures, gear restrictions, and others intended to allow year-round West Coast groundfish landings, without compromising overfished species rebuilding measures.

In recent years, the number of participants engaged in the Pacific whiting fishery has varied with changes in the Pacific whiting OY and economic conditions. Pacific whiting shoreside vessels (26 to 29), mothership processors (4 to 6), mothership catcher vessels (11–20), catcher/processors (5 to 9), Pacific whiting shoreside first receivers (8–16), and five tribal trawlers are the major units of this fishery. Additional tribal trawlers may enter the fishery. NMFS records suggest the gross annual revenue for each of the catcher/processor and mothership operations on the Pacific coast exceeds $4,000,000. Therefore, they are not considered small businesses. NMFS records also show that 10–43 catcher vessels have taken part in the mothership fishery yearly since 1994. These companies are all assumed to be small businesses as defined by the RFA (although some of these vessels may be affiliated with larger processing companies). Since 1994, 26–31 catcher vessels participated in the shoreside fishery annually. These companies are all assumed to be small businesses, although some of these vessels may be affiliated with larger processing companies. This is the first year of the new trawl rationalization program where: The shorebased trawler sector is managed by an individual fishing quota program; the catcher-processor sector will continue to be managed by a co-op; and all participants in the mothership program will be fishing under a single mothership co-op. Therefore, it is expected that through rationalization, the number of participants in these sectors will decrease from previous levels. Based on a review of the available data, tribal trawlers impacted by this rule are small

entities, and the Tribes are small government jurisdictions.

Pacific whiting has grown in importance, especially in recent years. Through the 1990s the volume of Pacific whiting landed in the fishery increased. In 2002 and 2003, landings of Pacific whiting declined due to information showing the stock was depleted and the subsequent regulations that restricted harvest in order to rebuild the species. Over the years 2003–2007 estimated Pacific whiting ex-vessel values averaged about $29 million. In 2008, these participants harvested about 248,000 mt of whiting worth about $63 million in ex-vessel value, based on shoreside ex-vessel prices of $254 per mt—the highest ex-vessel revenues and prices on record. In comparison, the 2007 fishery harvested about 224,000 mt worth $36 million at an average ex-vessel price of about $160 per mt. In 2009, tribal and non-tribal fleets harvested about 122,000 mt of whiting worth about $14 million. During 2009, ex-vessel prices declined to about $119 per mt, presumably due to the worldwide recession. For 2010, the preliminary ex-vessel price returned to $160 per mt, leading to about $27 million in revenues in 2010, based on a total harvest of 170,000 mt. All sectors should see increased revenues as the total allowable level of harvest has increased from 193,935 mt in 2010 to 290,903 mt in 2011.

However, the use of ex-vessel values as a means to impute the value of the fishery does not take into account the wholesale or export value of the fishery or the costs of harvesting and processing whiting into a finished product. NMFS does not have adequate data to make a full assessment of these values. However, there are two indicators that show current trends: The export price of headed and gutted whiting and the price of fuel. Seafood processors convert Pacific whiting into surimi, fillets, fish meal, and headed and gutted products. Besides high OY levels in recent years, increased prices for headed and gutted Pacific whiting have contributed to the increase in ex-vessel revenues. From 2004–2007, wholesale prices for headed and gutted Pacific whiting product increased from about $1,200 per mt to $1,600 per mt. In 2008, wholesale prices averaged $1,980 per mt, according to U.S. Export Trade statistics, and in 2009, prices fell slightly to $1,950 per mt. In 2010, prices increased to almost $2,040 per mt. Fuel prices, a major expense for Pacific whiting vessels, also increased dramatically. For example, at the start of the primary fishery in June 2008 fuel prices were about $4.30 per gallon, compared to June 2007 levels of $2.70 per gallon. However, by 2009, these prices fell from their June, 2008 high to about $2.32 per gallon. As indicated by Newport, Oregon fuels prices, prices are increasing. In July of 2009, Newport, Oregon fuel prices were about $2.20 a gallon. In July of 2010 they increased to $2.50 per gallon, and as of April 2011, the price of fuel is $3.75 per gallon.

The fisheries' ability to harvest the entire 2011 Pacific whiting ACL will depend on how well the industry limits the bycatch of overfished species, as well as the ability of each sector to harvest their Pacific whiting allocation. For example, in 2008 the Pacific whiting shoreside fishery was closed prematurely because of overfished species bycatch issues, leaving a major portion of its allocation unharvested. Although NMFS transferred the unharvested allocations to the other nontribal fleets, by year's end, 7 percent of the 2008 Pacific whiting OY remained unharvested. Under this final rule, there is no legal mechanism to reapportion any sector's unutilized allocation. (See response to Comment 1.)

NMFS did not consider a broad range of alternatives to the tribal allocation because the allocation is based primarily on the requests of the tribes for a level of participation in the fishery that will allow them to exercise their treaty right to fish for whiting. Consideration of amounts lower than the tribal requests is not appropriate here, where based on the information available to NMFS the requested amount appears to be within the amount to which the tribes are entitled. A higher amount would arguably be within the scope of the treaty right, but would unnecessarily limit the non-tribal fishery. A no action alternative was considered, but the regulatory structure provides for a tribal allocation on an annual basis only. Therefore, no action would result in no allocation of Pacific whiting to the tribal sector in 2011, inconsistent with NMFS' obligation to manage the fishery consistent with the tribes' treaty rights. Given that the Makah and Quileute tribes have made specific requests for allocations in 2011, this alternative received no further consideration.

With the implementation of Fishery Management Plan amendments 20 and 21, the ability to reapportion Pacific whiting from tribal to non-tribal fisheries was eliminated. Similarly, unharvested whiting allocated to the non-tribal shoreside, mothership, and catcher-processor sectors cannot be reapportioned among these sectors. So, unlike 2010, the regulations do not provide NMFS a specific mechanism to reapportion unharvested tribal whiting to the non-tribal sectors, and will not be able to reapportion among the non-tribal sectors. Pending markets, available bycatch, and the ability of tribal fleets to develop the capacity to harvest the tribal allocation may result in unharvested Pacific whiting because there is no regulatory mechanism to reapportion. Similarly, there may be unharvested Pacific whiting in the other sectors as well.

Pursuant to Executive Order 13175, this action was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act, 16 U.S.C. 1852(b)(5), one of the voting members of the Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the FMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the FMP request, in writing, new allocations or regulations specific to the tribes before the first of the two meetings at which the Council considers groundfish management measures. Both the Makah and Quileute Tribes requested a Pacific whiting allocation for 2011. The regulations at 50 CFR 660.50(d)(2) further state that, "the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus." Over the last eight months, NMFS has met with each of the tribes and have had additional discussions regarding their plans for 2011.

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

There are no reporting, recordkeeping or other compliance requirements in the final rule.

No Federal rules have been identified that duplicate, overlap, or conflict with this action.

NMFS issued Biological Opinions under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the PCGFMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal

summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the PCGFMP was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999 Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000.

Since 1999, annual Chinook bycatch has averaged about 8,450. The Chinook ESUs most likely affected by the whiting fishery have generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior "no jeopardy" conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the PCGFMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

The Southern Distinct Population Segment (DPS) of green sturgeon was listed as threatened under the ESA (71 FR 17757, April 7, 2006). The southern DPS of Pacific eulachon was listed as threatened on March 18, 2010, under the ESA (75 FR 13012). NMFS has reinitiated consultation on the fishery, including impacts on green sturgeon, eulachon, marine mammals, and turtles. After reviewing the available information, NMFS has concluded that, consistent with sections 7(a)(2) and 7(d) of the ESA, the proposed action would not jeopardize any listed species, would not adversely modify any designated critical habitat, and would not result in any irreversible or irretrievable commitment of resources that would have the effects of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: May 16, 2011.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 USC 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.50 paragraph (f)(4) is revised to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) * * *

(4) *Pacific whiting.* The tribal allocation for 2011 is 66,908 mt.

* * * * *

■ 3. In part 660, subpart C,

■ a. Revise Table 1a,

■ b. Revise Table 1b to read as follows:

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Table 1a. To Part 660, Subpart C - 2011, Specifications of OFL, ABC, ACL, ACT and Fishery Harvest guidelines(weights in metric tons).

Species	OFL	ABC	ACL a/	ACT	Fishery HG a/
ROUNDFISH:					
Lingcod	2,438	2,330	2,330		2,059
	2,523	2,102	2,102		2,095
Pacific Cod d/	3,200	2,222	1,600		1,200
Pacific Whiting e/	719,370		290,903		220,995
Sablefish	8,808	8,418	5,515	See Table 1c	
			1,298		1,264
Cabezon	52	50	50		50
	187	179	179		179
FLATFISH:					
Dover sole j/	44,400	42,436	25,000		23,410
English sole k/	20,675	19,761	19,761		19,661
Petrale sole l/	1,021	976	976		910.6
Arrowtooth flounder m/	18,211	15,174	15,174		13,096
Starry Flounder n/	1,802	1,502	1,352		1,345
Other flatfish o/	10,146	7,044	4,884		4,686
ROCKFISH:					
Pacific Ocean Perch p/	1,026	981	180	157	144.2
Shortbelly q/	6,950	5,789	50		49
Widow r/	5,097	4,872	600		539.1
Canary s/	614	586	102		82
Chilipepper t/	2,073	1,981	1,981		1,966
Bocaccio u/	737	704	263		249.6
Splitnose v/	1,529	1,461	1,461		1,454
Yellowtail w/	4,566	4,364	4,364		3857
Shortspine thornyhead x/	2,384	2,279	1,573		1,528
			405		363
Longspine thornyhead y/	3,577	2,981	2,119		2,075
			376		373
Cowcod z/	13	10	3		2.7
Darkblotched aa/	508	485	298		279.3
Yelloweye bb/	48	46	17		11.1
California Scorpionfish cc/	141	135	135		133
Black North of 40 10' N. lat.	445	426	426		412
	1,217	1,163	1,000		1,000
Minor Rockfish North ff/	3,767	3,363	2,227		2,116
Nearshore	116	99	99		99
Shelf	2,188	1,940	968		925
Slope	1,462	1,324	1,160		1,092
Minor Rockfish South gg/	4,302	3,723	2,341		2,301
Nearshore	1,156	1,001	1,001		1,001
Shelf	2,238	1,885	714		701
Slope	907	836	626		599
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:					
Longnose Skate hh/	3,128	2,990	1,349		1,220
Other fish ii/	11,150	7,742	5,575		5,575

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a/ ACLs and HGs are specified as total catch values. Fishery harvest guidelines (HGs) means the harvest guideline or quota after subtracting from the ACL or ACT any allocation for the Pacific Coast treaty Indian Tribes, projected research catch, deductions for fishing mortality in non-groundfish fisheries, as necessary, and set-asides for EFPs.

b/ Lingcod north (Oregon and Washington). A new lingcod stock assessment was prepared in 2009. The lingcod north biomass was estimated to be at 62 percent of its unfished biomass in 2009. The OFL of 2,438 mt was calculated using an FMSYproxy of F45%. The ABC of 2,330 mt was based on a 4 percent reduction from the OFL ($\sigma = 0.36/P^* = 0.45$) as it's a category 1 species. Because the stock is above B40% coastwide, the ACL is set equal to the ABC.

ACL is further reduced for the Tribal fishery (250 mt), incidental open access fishery (16 mt) and research catch (5 mt), resulting in a fishery HG of 2,059 mt.

c/ Lingcod south (California). A new lingcod stock assessment was prepared in 2009. The lingcod south biomass was estimated to be at 74 percent of its unfished biomass in 2009. The OFL of 2,523 mt was calculated using an FMSYproxy of F45%. The ABC of 2,102 mt was based on a 17 percent reduction from the OFL ($\sigma = 0.72/P^* = 0.40$) as it's a category 2 species. Because the stock is above B40% coastwide, the ACL is set equal to the ABC. An incidental open access set-aside of 7 mt is deducted from the ACL, resulting in a fishery HG of 2,095 mt.

d/ Pacific Cod. The 3,200 mt OFL is based on the maximum level of historic landings. The ABC of 2,222 mt is a 31 percent reduction from the OFL ($\sigma = 1.44/P^* = 0.40$) as it's a category 3 species. The 1,600 mt ACL is the OFL reduced by 50 percent as a precautionary adjustment. A set-aside of 400 mt is deducted from the ACL for the Tribal fishery resulting in a fishery HG of 1,200 mt.

e/Pacific whiting. The most recent stock assessment was prepared in January 2011. The stock assessment estimated the Pacific whiting biomass to be at 126 percent (50th percentile estimate of depletion, using two equally plausible models that were averaged together) of its unfished biomass in 2011. The U.S.-Canada coastwide OFL is 973,700 mt. The U.S. share of the OFL is 719,370 mt (73.88 percent of the coastwide OFL). The U.S.-Canada coastwide ACL is 393,751 mt, with a corresponding U.S. ACL (73.88 percent of the coastwide ACL) of 290,903 mt. The ACL is reduced by 66,908 mt for the tribal allocation, and a set-aside of 3,000 mt is deducted for the incidental open access fishery and research catch, resulting in a fishery HG of 220,995 mt.

f/Sablefish north. A coastwide sablefish stock assessment was prepared in 2007. The coastwide sablefish biomass was estimated to be at 38.3 percent of its unfished biomass in 2007. The coastwide OFL of 8,808 mt was based on the 2007 stock assessment with a FMSYproxy of F45%. The ABC of 8,418 mt is a 4 percent reduction from the OFL ($\sigma = 0.36/P^* = 0.45$) as it's a category 1 species. The 40–10 harvest policy was applied to the ABC to derive the coastwide ACL and then the ACL was apportioned north and south of 36° N. lat, using the average of annual swept area biomass (2003–2008) from the NMFS NWFSC trawl survey, between the northern and southern areas with 68 percent going to the area north of 36° N. lat. and 32 percent going to the area south of 36° N. lat. The northern portion of the ACL is 5,515 mt and is reduced by 552 mt for the Tribal allocation (10 percent of the ACL north of 36° N. lat.) The 552 mt Tribal allocation is reduced by 1.5 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

g/Sablefish South. That portion of the coastwide ACL apportioned to the area south of 36° N. lat. is 2,595 mt (32 percent). An additional 50 percent reduction was made for uncertainty resulting in an ACL of 1,298 mt. A set-aside of 34 mt is deducted from the ACL for EFP catch (26 mt), the incidental open access fishery (6 mt) and research catch (2 mt), resulting in a fishery HG of 1,264 mt.

h/Cabezon (Oregon). A new cabezon stock assessment was prepared in 2009. The cabezon biomass in Oregon was estimated to be at 51 percent of its unfished biomass in 2009. The OFL of 52 mt was calculated using an FMSYproxy of F45%. The ABC of 50 mt was based on a 4 percent reduction from the OFL ($\sigma = 0.36/P^* = 0.45$) as it's a category 1 species. Because the stock is above B40% coastwide, the ACL is set equal to the ABC. No set-asides were removed so the fishery HG is also equal to the ACL at 50 mt. Cabezon in waters off Oregon were removed from the "other fish" complex, while cabezon of Washington will continue to be managed within the "other fish" complex.

i/Cabezon (California). A new cabezon stock assessment was prepared in 2009. The cabezon south biomass was estimated to be at 48 percent of its unfished biomass in 2009. The OFL of 187 mt was calculated using an FMSYproxy of F45%. The ABC of 179 mt was based on a 4 percent reduction from the OFL ($\sigma = 0.36/P^* = 0.45$) as it's a category 1 species. Because the stock is above B40% coastwide, the ACL is set equal to the ABC. No set-asides were removed so the fishery HG is also equal to the ACL at 179 mt.

j/Dover sole. A 2005 Dover sole assessment estimated the stock to be at 63 percent of its unfished biomass in 2005. The OFL of 44,400 mt is based on the results of the 2005 stock assessment with an FMSYproxy of F30%. The ABC of 42,436 mt is a 4 percent reduction from the OFL ($\sigma = 0.36/P^* = 0.45$) as it's a category 1 species. Because the stock is above B25% coastwide, the ACL could be set equal to the ABC. However, the ACL of 25,000 mt is set at a level below the ABC and higher than the maximum historical landed catch. A set-aside of 1,590 mt is deducted from the ACL for the Tribal fishery (1,497 mt), the incidental open access fishery (55 mt) and research catch (38 mt), resulting in a fishery HG of 23,410 mt.

k/English sole. A stock assessment update was prepared in 2007 based on the full assessment in 2005. The stock was estimated to be at 116 percent of its unfished biomass in 2007. The OFL of 20,675 mt is based on the results of the 2007 assessment update with an FMSYproxy of F30%. The ABC of 19,761 mt is a 4 percent reduction from the OFL ($\sigma=0.36/P^*=0.45$) as it's a category 1 species. Because the stock is above B25%, the ACL was set equal to the ABC. A set-aside of 100 mt is deducted from the ACL for the Tribal fishery (91 mt), the incidental open access fishery (4 mt) and research catch (5 mt), resulting in a fishery HG of 19,661 mt.

l/Petrale sole. A petrale sole stock assessment was prepared for 2009. In 2009 the petrale sole stock was estimated to be at 12 percent of its unfished biomass coastwide, resulting in the stock being declared as overfished. The OFL of 1,021 mt is based on the 2009 assessment with a F30% FMSYproxy. The ABC of 976 mt is a 4 percent reduction from the OFL ($\sigma=0.36/P^*=0.45$) as it's a category 1 species. The ACL is set equal to the ABC and corresponds to an SPR harvest rate of 31 percent. A set-aside of 65.4 mt is deducted from the ACL for the Tribal fishery (45.4 mt), the incidental open access fishery (1 mt), EFP catch (2 mt) and research catch (17 mt), resulting in a fishery HG of 911 mt.

m/Arrowtooth flounder. The stock was last assessed in 2007 and was estimated to be at 79 percent of its unfished biomass in 2007. The OFL of 18,211 mt is based on the 2007 assessment with a F30% FMSYproxy. The ABC of 15,174 mt is a 17 percent reduction from the OFL ($\sigma=0.72/P^*=0.40$) as it's a category 2 species. Because the stock is above B25%, the ACL is set equal to the ABC. A set-aside of 2,078 mt is deducted from the ACL for the Tribal fishery (2,041 mt), the incidental open access fishery (30 mt), and research catch (7 mt), resulting in a fishery HG of 13,096 mt.

n/Starry Flounder. The stock was assessed for the first time in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. For 2011, the coastwide OFL of 1,802 mt is based on the 2005 assessment with a FMSYproxy of F30%. The ABC of 1,502 mt is a 17 percent reduction from the OFL ($\sigma=0.72/P^*=0.40$) as it's a category 2 species. Because the stock is above B25%, the ACL could have been set equal to the ABC. As a precautionary measure, the ACL of 1,352 mt is a 25 percent reduction from the OFL, which is a 10 percent reduction from the ABC. A set-aside of 7 mt is deducted from the ACL for the Tribal fishery (2 mt), the incidental open access fishery (5 mt), resulting in a fishery HG of 1,345 mt.

o/"Other flatfish" are the unassessed flatfish species that do not have individual OFLs/ABC/ACLs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, and sand sole. The other flatfish OFL of 10,146 mt is based on the summed contribution of the OFLs determined for the component stocks. The ABC of 7,044 mt is a 31 percent reduction from the OFL ($\sigma=1.44/P^*=0.40$) as all species in this complex are category 3 species. The ACL of 4,884 mt is equivalent to the 2010 OY, because there have been no significant changes in the status or management of stocks within the complex. A set-aside of 198 mt is deducted from the ACL for the Tribal fishery (60 mt), the incidental open access fishery (125 mt), and research catch (13 mt), resulting in a fishery HG of 4,686 mt.

p/POP. A POP stock assessment update was prepared in 2009, based on the 2003 full assessment, and the stock was estimated to be at 29 percent of its unfished biomass in 2009. The OFL of 1,026 mt for the Vancouver and Columbia areas is based on the 2009 stock assessment update with an F50% FMSYproxy. The ABC of 981 mt is a 4 percent reduction from the OFL ($\sigma=0.36/P^*=0.45$) as it's a category 1 species. The ACL of 180 mt is based on a rebuilding plan with a target year to rebuild of 2020 and an SPR harvest rate of 86.4 percent. An ACT of 157 mt is being established to address management uncertainty and increase the likelihood that total catch remains within the ACL. A set-aside of 12.8 mt is deducted from the ACT for the Tribal fishery (10.9 mt), EFP catch (0.1 mt) and research catch (1.8 mt), resulting in a fishery HG of 144.2 mt.

q/Shortbelly rockfish. A non-quantitative assessment was conducted in 2007. The

spawning stock biomass of shortbelly rockfish was estimated at 67 percent of its unfished biomass in 2005. The OFL of 6,950 mt was recommended for the stock in 2011 with an ABC of 5,789 mt (σ=0.72 with a P* of 0.40). The 50 mt ACL is slightly higher than recent landings, but much lower than previous OYs in recognition of the stock's importance as a forage species in the California Current ecosystem. A set-aside of 1 mt for research catch results in a fishery HG of 49 mt.

r/Widow rockfish. The stock was assessed in 2009 and was estimated to be at 39 percent of its unfished biomass in 2009. The OFL of 5,097 mt is based on the 2009 stock assessment with an F50% FMSYproxy. The ABC of 4,872 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. A constant catch strategy of 600 mt, which corresponds to an SPR harvest rate of 91.7 percent, will be used to rebuild the widow rockfish stock consistent with the rebuilding plan and a TTARGETof 2010. A set-aside of 61 mt is deducted from the ACL for the Tribal fishery (45 mt), the incidental open access fishery (3.3 mt), EFP catch (11 mt) and research catch (1.6 mt), resulting in a fishery HG of 539.1 mt.

s/Canary rockfish. A canary rockfish stock assessment update, based on the full assessment in 2007, was completed in 2009 and the stock was estimated to be at 23.7 percent of its unfished biomass coastwide in 2009. The coastwide OFL of 614 mt is based on the new assessment with a FMSYproxy of F50%. The ABC of 586 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL of 102 mt is based on a rebuilding plan with a target year to rebuild of 2027 and a SPR harvest rate of 88.7 percent. A set-aside of 20 mt is deducted from the ACL for the Tribal fishery (9.5 mt), the incidental open access fishery (2 mt), EFP catch (1.3 mt) and research catch (7.2 mt) resulting in a fishery HG of 82 mt. Recreational HGs are being specified as follows: Washington recreational, 2.0; Oregon recreational 7.0 mt; and California recreational 14.5 mt.

t/Chilipepper rockfish. The coastwide chilipepper stock was assessed in 2007 and estimated to be at 71 percent of its unfished biomass coastwide in 2006. Given that chilipepper rockfish are predominantly a southern species, the stock is managed with stock-specific harvest specifications south of 40°10′ N. lat. and within minor shelf rockfish north of 40°10′ N. lat. South of 40°10′ N. lat., the OFL of 2,073 mt is based on the 2007 assessment with an FMSYproxy of F50%. The ABC of 1,981 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the biomass is estimated to be above 40 percent of the unfished biomass, the ACL was set equal to the ABC. The ACL is reduced by the incidental open access fishery (5 mt), and research catch (9 mt), resulting in a fishery HG of 1,966 mt.

u/Bocaccio. A bocaccio stock assessment was prepared in 2009 from Cape Mendocino to Cape Blanco (43° N. lat.) Given that bocaccio rockfish are predominantly a southern species, the stock is managed with stock-specific harvest specifications south of 40°10′ N. lat. and within minor shelf rockfish north of 40°10′ N. lat. The bocaccio stock was estimated to be at 28 percent of its unfished biomass in 2009. The OFL of 737 mt is based on the 2009 stock assessment with an FMSYproxy of F50%. The ABC of 704 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The 263 mt ACL is based on a rebuilding plan with a target year to rebuild of 2022 and a SPR harvest rate of 77.7 percent. A set-aside of 13.4 mt is deducted from the ACL for the incidental open access fishery (0.7 mt), EFP catch (11 mt) and research catch (1.7 mt), resulting in a fishery HG of 249.6 mt.

v/Splitnose rockfish. A new coastwide assessment was prepared in 2009 that estimated the stock to be at 66 percent of its unfished biomass in 2009. Splitnose in the north is managed under the minor slope rockfish complex and south of 40°10′ N. lat. with species-specific harvest specifications. South of 40°10′ N. lat. the OFL of 1,529 mt is based on the 2009 assessment with an FMSYproxy of F50%. The ABC of 1,461 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the unfished biomass is estimated to be above 40 percent of the unfished biomass, the ACL is set equal to the ABC. A set-aside of 7 mt is deducted from the ACL for research catch, resulting in a fishery HG of 1,454 mt.

w/Yellowtail rockfish. A yellowtail rockfish stock assessment was last prepared in 2005 for the Vancouver, Columbia, and Eureka areas. Yellowtail rockfish was estimated to be at 55 percent of its unfished biomass in 2005. The OFL of 4,566 mt is based on the 2005 stock assessment with the FMSYproxy of F50%. The ABC of 4,364 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set equal to the ABC, because the stock is above B40%. A set-aside of 507 mt is deducted from the ACL for the Tribal fishery (490 mt), the incidental open access fishery (3 mt), EFP catch (10 mt) and research catch (4 mt), resulting in a fishery HG of 3,857 mt.

x/Shortspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 63 percent of its unfished biomass in 2005. A coastwide OFL of 2,384 mt is based on the 2005 stock assessment with a F50% FMSYproxy. The coastwide ABC of 2,279 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 1,573 mt, 66 percent of the coastwide OFL. A set-aside of 45 mt is deducted from the ACL for the Tribal fishery (38 mt), the incidental open access fishery (2 mt), and research catch (5 mt) resulting in a fishery HG of 1,528 mt for the area north of 34°27′ N. lat. For that portion of the stock south of 34°27′ N. lat. the ACL is 405 mt which is 34 percent of the coastwide OFL, reduced by 50 percent as a precautionary adjustment. A set-aside of 42 mt is deducted from the ACL for the incidental open access fishery (41 mt), and research catch (1 mt) resulting in a fishery HG of 363 mt for the area south of 34°27′ N. lat. The sum of the northern and southern area ACLs (1,978 mt) is a 13 percent reduction from the coastwide ABC.

y/Longspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 71 percent of its unfished biomass in 2005. A coastwide OFL of 3,577 mt is based on the 2005 stock assessment with a F50% FMSYproxy. The ABC of 2,981 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 species. For the portion of the stock that is north of 34°27′ N. lat., the ACL is 2,119 mt, and is 79 percent of the coastwide OFL for the biomass found in that area reduced by an additional 25 percent as a precautionary adjustment. A set-aside of 44 mt is deducted from the ACL for the Tribal fishery (30 mt), the incidental open access fishery (1 mt), and research catch (13 mt) resulting in a fishery HG of 2,075 mt. For that portion of the stock south of 34°27′ N. lat. the ACL is 376 mt and is 21 percent of the coastwide ABC reduced by 50 percent as a precautionary adjustment. A set-aside of 3 mt is deducted from the ACL for the incidental open access fishery (2 mt), and research catch (1 mt) resulting in a fishery HG of 373 mt. The sum of the northern and southern area ACLs (2,495 mt) is a 16 percent reduction from the coastwide ABC.

z/Cowcod. A stock assessment update was prepared in 2009 and the stock was estimated to be 5 percent (bounded between 4 and 21 percent) of its unfished biomass in 2009. The OFLs for the Monterey and Conception areas were summed to derive the south of 40°10 N.′ lat. OFL of 13 mt. The ABC for the area south of 40°10′ N. lat. is 10 mt. The assessed portion of the stock in the Conception Area was considered category 2, with a Conception Area contribution to the ABC of 5 mt, which is a 17 percent reduction from the OFL (σ=0.72/P*=0.35). The unassessed portion of the stock in the Monterrey area was considered a category 3 stock, with a contribution to the ABC of 5 mt, which is a 29 percent reduction from the OFL (σ=1.44/P*=0.40). A single ACL of 3 mt is being set for both areas combined. The ACL of 3 mt is based on a rebuilding plan with a target year to rebuild of 2068 and an SPR rate of 82.7 percent. The amount anticipated to be taken during research activity is 0.1 mt and the amount expected to be taken during EFP activity is 0.2 mt, which results in a fishery HG of 2.7 mt.

aa/Darkblotched rockfish. A stock assessment update was prepared in 2009, based on the 2007 full assessment, and the stock was estimated to be at 27.5 percent of its unfished biomass in 2009. The OFL is projected to be 508 mt and is based on the 2009 stock assessment with an FMSYproxy of F50%. The ABC of 485 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL of 298 mt is based on a rebuilding plan with a target year to rebuild of 2025 and an SPR harvest rate of 64.9 percent. A set-aside of 18.7 mt is deducted from the ACL for the Tribal fishery (0.1 mt), the incidental open access fishery (15 mt), EFP catch (1.5 mt) and research catch (2.1 mt), resulting in a fishery HG of 279.3 mt.

bb/Yelloweye rockfish. The stock was assessed in 2009 and was estimated to be at 20.3 percent of its unfished biomass in 2009. The 48 mt coastwide OFL was derived from

the base model in the new stock assessment with an FMSYproxy of F50%. The ABC of 46 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The 17 mt ACL is based on a rebuilding plan with a target year to rebuild of 2074 and an SPR harvest rate of 76 percent. A set-aside of 5.9 mt is deducted from the ACT for the Tribal fishery (2.3 mt), the incidental open access fishery (0.2 mt), EFP catch (0.1 mt) and research catch (3.3 mt) resulting in a fishery HG of 11.1 mt. Recreational HGs are being established as follows: Washington recreational, 2.6; Oregon recreational 2.4 mt; and California recreational 3.1 mt.

cc/California Scorpionfish was assessed in 2005 and was estimated to be at 80 percent of its unfished biomass in 2005. The OFL of 141 mt is based on the new assessment with a harvest rate proxy of F50%. The ABC of 135 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above B40%, the ACL is set equal to the ABC. A set-aside of 2 mt is deducted from the ACL for the incidental open access fishery, resulting in a fishery HG of 133 mt.

dd/Black rockfish north (Washington). A stock assessment was prepared for black rockfish north of 45°56′ N. lat. (Cape Falcon, Oregon) in 2007. The biomass in the north was estimated to be at 53 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of F50%. The resulting OFL for the area north of 46°16′ N. lat. (the Washington/Oregon Border) is 445 mt and is 97 percent of the OFL from the assessed area. The ABC of 426 mt for the north of 46°16′ N. Lat. is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set equal to the ABC, since the stock is above B40%. A set-aside of 14 mt for the Tribal fishery results in a fishery HG of 412 mt.

ee/Black rockfish south (Oregon and California). A 2007 stock assessment was prepared for black rockfish south of 45°56′ N. lat. (Cape Falcon, Oregon) to the southern limit of the stock's distribution in Central California in 2007. The biomass in this area was estimated to be at 70 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of F50%. Three percent of the OFL from the stock assessment prepared for black rockfish north of 45°56′ N. lat. is added to the OFL from the assessed area south of 45° 56′ N. lat. The resulting OFL for the area south of 46°16′ N. lat. is 1,217 mt. The ABC of 1,163 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL was set at 1,000 mt, which is a constant catch strategy designed to keep the stock biomass above B40%. There are no set-asides thus the fishery HG is equal to the ACL. The black rockfish ACL in the area south of 46°16′ N. lat., is subdivided with separate HGs being set for the area north of 42° N. lat. (580 mt/58 percent) and for the area south of 42° N. lat. (420 mt/42 percent).

ff/Minor rockfish north is comprised of three minor rockfish sub-complexes: Nearshore, shelf, and slope rockfish. The OFL of 3,767 mt is the sum of OFLs for nearshore (116 mt), shelf (2,188 mt) and slope (1,462 mt) north sub-complexes. Each sub-complex OFL is the sum of the OFLs of the component species within the complex. The ABCs for the minor rockfish complexes and sub-complexes are based on a sigma value of 0.36 for category 1 stocks (splitnose and chilipepper rockfish), 0.72 for category 2 stocks (greenstriped rockfish and blue rockfish in California) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting minor rockfish north ABC, which is the summed contribution of the ABCs for the contributing species in each sub-complex (nearshore, shelf, and slope) is 3,363 mt. The ACL of 2,227 mt for the complex is the sum of the sub-complex ACLs. The sub-complex ACLs are the sum of the component stock ACLs, which are less than or equal to the ABC contribution of each component stock. There are no set-asides for the nearshore sub-complex, thus the fishery HG is equal to the ACL, which is 99 mt. The set-aside for the shelf sub-complex is 43 mt—Tribal fishery (9 mt), the incidental open access fishery (26 mt), EFP catch (4 mt) and research catch (4 mt) resulting in a shelf fishery HG of 925 mt. The set-aside for the slope sub-complex is 68 mt—Tribal fishery (36 mt), the incidental open access fishery (19 mt), EFP catch (2 mt) and research catch (11 mt), resulting in a slope fishery HG of 1,092 mt.

gg/Minor rockfish south is comprised of three minor rockfish sub-complexes: Nearshore, shelf, and slope. The OFL of 4,302 mt is the sum of OFLs for nearshore (1,156 mt), shelf (2,238 mt) and slope (907 mt) south sub-complexes. Each sub-complex OFL is the sum of the OFLs of the component species within the complex. The ABCs for the minor rockfish complexes and sub-complexes are based on a sigma value of 0.36 for category 1 stocks (gopher rockfish north of 34°27′ N. lat., blackgill), 0.72 for category 2 stocks (blue rockfish in the assessed area, greenstriped rockfish, and bank rockfish) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting minor rockfish south ABC, which is the summed contribution of the ABCs for the contributing species in each sub-complex, is 3,723 mt (1,001 mt nearshore, 1,885 mt shelf, and 836 mt slope). The ACL of 2,341 mt for the complex is the sum of the sub-complex ACLs. The sub-complex ACLs are the sum of the component stock ACLs, which are less than or equal to the ABC contribution of each component stock. There are no set-asides for the nearshore sub-complex, thus the fishery HG is equal to the ACL, which is 1,001 mt. The set-aside for the shelf sub-complex is 13 mt for the incidental open access fishery (9 mt), EFP catch (2 mt) and research catch (2 mt), resulting in a shelf fishery HG of 701 mt. The set-aside for the slope sub-complex is 27 mt for the incidental open access fishery (17 mt), EFP catch (2 mt) and research catch (8 mt), resulting in a slope fishery HG of 599 mt.

hh/Longnose skate. A stock assessment was prepared in 2007 and the stock was estimated to be at 66 percent of its unfished biomass. The OFL of 3,128 mt is based on the 2007 stock assessment with an FMSYproxy of F45%. The ABC of 2,990 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. The ACL of 1,349 is equivalent to the 2010 OY and represents a 50% increase in the average 2004–2006 mortality (landings and discard mortality). The set-aside for longnose skate is 129 mt for the Tribal fishery (56 mt), incidental open access fishery (65 mt), and research catch (8 mt), resulting in a fishery HG of 1,220 mt.

ii/ "Other fish" contains all unassessed groundfish FMP species that are neither rockfish (family Scorpaenidae) nor flatfish. These species include big skate, California skate, leopard shark, soupfin shark, spiny dogfish, finescale codling, Pacific rattail, ratfish, cabezon off Washington, and kelp greenling. The OFL of 11,150 mt is equivalent to the 2010 MSY harvest level minus the 50 mt contribution made for cabezon off Oregon, which is a newly assessed stock to be managed with stock-specific specifications. The ABC of 7,742 mt is a 31 percent reduction from the OFL (σ = 1.44/P* = 0.40) as all of the stocks in the "other fish" complex are category 3 species. The ACL of 5,575 mt is equivalent to the 2010 OY, minus half of the OFL contribution for Cabezon off of Oregon (25 mt). The fishery HG is equal to the ACL.

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Table 1b. To Part 660, Subpart C - 2011, Allocations by Species or Species Group. (Weights in Metric Tons)

Species	Fishery HG	Allocations			
		Trawl		Non-trawl	
		%	Mt	%	Mt
ROUNDFISH:					
Lingcod					
N of 42° N. lat.	2,059	45%	927	55%	1,132
S of 42° N. lat.	2,095	45%	943	55%	1,152
Pacific cod	1,200	95%	1,140	5%	60
Pacific whiting	220,995	100%	220,995	0%	0
Sablefish					
N of 36° N. lat.	See Table 1c of this subpart				
S of 36° N. lat.	1,264	42%	531	58%	733
FLATFISH:					
Dover sole	23,410	95%	22,240	5%	1,170
English sole	19,661	95%	18,678	5%	983
Petrale sole a/	910.6		876		35
Arrowtooth flounder	13,096	95%	12,441	5%	655
Starry Flounder	1,345	50%	673	50%	672
Other flatfish	4,686	90%	4,217	10%	469
ROCKFISH:					
Pacific Ocean Perch b/	144.2	95%	137	5%	7
Widow e/	539.1	91%	491	9%	49
Canary a/ c/	82		34.1		29.8
Chilipepper - S of 40°10 N. Lat.	1,966	75%	1,475	25%	492
Bocaccio - S of 40°10 N. Lat. a/	249.6		60		189.6
Splitnose - S of 40°10 N. Lat.	1,454	95%	1,381	5%	73
Yellowtail - N of 40°10 N. Lat.	3857	88%	3394	12%	463
Shortspine thornyhead					
N of 34°27' N. lat.	1,528	95%	1,452	5%	76
S of 34°27' N. lat.	363	NA	50	NA	313
Longspine thornyhead					
N of 34°27' N. lat.	2,075	95%	1,971	5%	104
Cowcod - S of 40°10 N. Lat. a/	2.7		1.8		0.9
Darkblotched d/	279.3	95%	265	5%	14
Yelloweye a/	11.1		0.6		10.5
Minor Rockfish North					
Shelf a/	925	60.2%	557	39.8%	368
Slope	1,092	81%	885	19%	207
Minor Rockfish South					
Shelf a/	701	12.2%	86	87.8%	615
Slope	599	63%	377	37%	222
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:					
Longnose Skate a/	1,220	95%	1,159	5%	61

BILLING CODE 3510–22–C

a/ Allocations decided through the biennial specification process.

b/ 30 mt of the total trawl allocation for POP is allocated to the whiting fisheries, as follows: 12.6 mt for the shorebased IFQ fishery, 7.2 mt for the mothership fishery, and 10.2 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

c/ 14.1 mt of the total trawl allocation of canary rockfish is allocated to the whiting fisheries, as follows: 5.9 mt for the shorebased IFQ fishery, 3.4 mt for the mothership fishery, and 4.8 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

d/ 25 mt of the total trawl allocation for darkblotched rockfish is allocated to the whiting fisheries, as follows: 10.5 mt for the shorebased IFQ fishery, 6.0 mt for the mothership fishery, and 8.5 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

e/ 52 percent (255 mt) of the total trawl allocation for widow rockfish is allocated to the whiting fisheries, as follows: 107.1 mt for the shorebased IFQ fishery, 61.2 mt for the mothership fishery, and 86.7 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

■ 4. In § 660.140, paragraph (d)(1)(ii)(D) is revised as follows:

§ 660.140 Shorebased IFQ program.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) For the 2011 trawl fishery, NMFS will issue QP based on the following shorebased trawl allocations:

IFQ Species	Management area	Shorebased trawl allocation (mt)
Lingcod		1,863.30
Pacific cod		1,135.00
Pacific Whiting		92,817.90
Sablefish	North of 36° N. lat.	2,546.34
Sablefish	South of 36° N. lat.	530.88
Dover sole		22,234.50
English sole		18,672.95
PETRALE SOLE		871.00
Arrowtooth flounder		12,431.20
Starry flounder		667.50
Other flatfish		4,197.40
PACIFIC OCEAN PERCH	North of 40°10′ N. lat.	119.36
WIDOW ROCKFISH		342.62
CANARY ROCKFISH		25.90
Chilipepper rockfish	South of 40°10′ N. lat.	1,475.25
BOCACCIO ROCKFISH	South of 40°10′ N. lat.	60.00
Splitnose rockfish	South of 40°10′ N. lat.	1,381.30
Yellowtail rockfish	North of 40°10′ N. lat.	3,094.16
Shortspine thornyhead	North of 34°27′ N. lat.	1,431.60
Shortspine thornyhead	South of 34°27′ N. lat.	50.00
Longspine thornyhead	North of 34°27′ N. lat.	1,966.25
COWCOD	South of 40°10′ N. lat.	1.80
DARKBLOTCHED ROCKFISH		250.84
YELLOWEYE ROCKFISH		0.60
Minor shelf rockfish complex	North of 40°10′ N. lat.	522.00
Minor shelf rockfish complex	South of 40°10′ N. lat.	86.00
Minor slope rockfish complex	North of 40°10′ N. lat.	829.52
Minor slope rockfish complex	South of 40°10′ N. lat.	377.37

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[FR Doc. 2011–12335 Filed 5–16–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 97
Thursday, May 19, 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 AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71, 77, 78, and 90

[Docket No. APHIS–2010–0125]

Secretary's Advisory Committee on Animal Health; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This document informs the public of the next meeting of the Secretary's Advisory Committee on Animal Health. In this document, we provide a new date for the July 2011 meeting, which had been scheduled for the previous week. The meeting is being organized by the Animal and Plant Health Inspection Service to discuss matters of animal health, including the pending proposed rule implementing USDA's traceability framework and establishing an aquaculture subcommittee.

DATES: The meeting will be held July 22, 2011, from noon to 5 p.m. (eastern daylight time).

ADDRESSES: The meeting will be conducted as a multisite teleconference. Opportunities for public attendance are described in the Supplementary Information section of this document.

FOR FURTHER INFORMATION CONTACT: Mr. Michael R. Doerrer, Chief Operating Officer, Veterinary Services, APHIS, USDA, 4700 River Road, Unit 37, Riverdale, MD 20737; (301) 734–5665; e-mail: *SACAH.Management@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Animal Health (the Committee) advises the Secretary of Agriculture on means to prevent, conduct surveillance on, monitor, control, or eradicate animal diseases of national importance. In doing so, the Committee will consider public health, conservation of natural resources, and the stability of livestock economies.

In this document, we are notifying the public of the next meeting of the Committee, which will be conducted as a multisite teleconference. We note that the date of this July 2011 meeting has changed from that provided in our prior notice (76 FR 9537, published February 18, 2011). The agenda for the July 22, 2011, meeting has not yet been finalized, but will be made available on the Committee's Web site as details become available. Additional details regarding the meeting, including the preliminary and final agendas, will be posted on the Committee's Web site at *http://www.aphis.usda.gov/animal_health/acah/* in advance of each meeting. APHIS will publish another document in advance of the July 2011 meeting which will provide information on the meeting's agenda.

Public Attendance

The meeting will be open to the public, although public attendees will be joined to the meeting in "observation" or "listen-only" mode. Members of the public who wish to join the teleconference may do so by dialing 1–888–790–3291, followed by a public passcode, 1411045.

Questions and written statements for the meeting may be submitted up to 5 working days in advance of the meeting for the Committee's consideration. Questions and written statements may be sent via e-mail to *SACAH.Management@aphis.usda.gov* or mailed to the person listed under **FOR FURTHER INFORMATION CONTACT** at the beginning of this document. Statements may also be filed with the Committee after the meeting by sending them to *SACAH.Management@aphis.usda.gov.*

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act (5 U.S.C. App. 2).

Done in Washington, DC, this 13th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–12311 Filed 5–18–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 94, and 98

[Docket No. APHIS–2009–0093]

Importation of Live Swine, Swine Semen, Pork, and Pork Products From Liechtenstein and Switzerland

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of animals and animal products to add Liechtenstein and Switzerland to the region of Europe that we recognize as low risk for classical swine fever (CSF). We are also proposing to add Liechtenstein to the list of regions we consider free from swine vesicular disease (SVD) and to the list of regions considered free from foot-and-mouth disease (FMD) and rinderpest. These proposed actions would relieve some restrictions on the importation into the United States of certain animals and animal products from those regions, while continuing to protect against the introduction of CSF, SVD, FMD, and rinderpest into the United States.

DATES: We will consider all comments that we receive on or before July 18, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2009–0093* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2009–0093, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0093.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and

Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. Kelly Rhodes, Regionalization Evaluation Services, Import, Sanitary Trade Issues Team, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations in 9 CFR parts 93, 94, and 98 (referred to below as the regulations) prohibit or restrict the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including classical swine fever (CSF), swine vesicular disease (SVD), foot-and-mouth disease (FMD), and rinderpest. These are dangerous and destructive communicable diseases of ruminants and swine.

Sections 94.9 and 94.10 of the regulations list regions of the world that are declared free of or low-risk for CSF. Switzerland and Liechtenstein are not currently listed in these sections. However, the surrounding APHIS-defined European Union (EU) CSF region, which is composed of the 19 Member States of the EU that we currently recognize as a single region with regard to CSF, is listed as low-risk for CSF. Sections 94.24 and 98.38 specify restrictions necessary to mitigate the risk of introducing CSF into the United States via the importation of pork, pork products, live swine, and swine semen from that region.

Section 94.12 of the regulations lists regions that are declared free of SVD. Section 94.13 of the regulations lists regions that have been determined to be free of SVD, but that are subject to certain restrictions because of their proximity to or trading relationships with SVD-affected regions. Switzerland is currently listed in these sections, but Liechtenstein is not.

Section 94.1 of the regulations lists regions of the world that are declared free of rinderpest or free of both rinderpest and FMD. Section 94.11 of the regulations lists regions that have been determined to be free of rinderpest and FMD, but that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. Switzerland is currently listed in these sections, but Liechtenstein is not.

Switzerland and Liechtenstein entered into a customs union treaty that took effect in 1924. Under the treaty, Switzerland formulates trade policy measures affecting imports and the agricultural policy of the customs union. In January 2009, Switzerland, Liechtenstein, and the European Commission (EC) fully implemented an agreement to eliminate barriers to trade in agricultural products, including live animals and animal products. As a result, trade between these entities now occurs under the same conditions as trade between EU Member States.

Risk Evaluation

In 2006, the Government of Switzerland requested that APHIS evaluate the animal health status of Switzerland and Liechtenstein with respect to CSF and provided information in support of this request in accordance with 9 CFR part 92, "Importation of Animals and Animal Products; Procedures for Requesting Recognition of Regions." Under § 92.2, each request for approval to export animals or animal products to the United States from a foreign country must include information concerning the authority, organization, and infrastructure of the veterinary services in the region; the status of the region and adjacent regions with regard to the disease(s) under evaluation; the degree to which the region is separated from regions of higher risk; and livestock demographics and marketing practices. The foreign region must also provide information regarding vaccination against the disease(s) of interest (if practiced); the extent of an active disease control program; movement controls and biosecurity for movement from higher risk regions; disease surveillance; diagnostic laboratory capabilities; and emergency response capacity.

In response to Switzerland's request, APHIS evaluated the risk of introducing CSF virus into the United States via the importation of swine and swine products from Switzerland and Liechtenstein. This evaluation was completed in August of 2009 and may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) The evaluation, as well as the information evaluated, may also be viewed at *http://www.aphis.usda.gov/import_export/animals/reg_request.shtml* by following the link for "Information previously submitted by Regions requesting export approval and their supporting documentation."

Our evaluation found no evidence that CSF currently exists in Switzerland or Liechtenstein and demonstrated no immediate and significant risks associated with this disease. Nonetheless, there is a potential for introduction of CSF virus into Switzerland and/or Liechtenstein. This is primarily because Switzerland and Liechtenstein import substantial quantities of pork and pork products from Germany and France, without prohibiting sourcing from restricted areas established due to CSF. In addition, most road and rail traffic from EU Member States into Switzerland is not subject to customs inspection. It is therefore easy for travelers to enter with commodities for personal consumption that are derived from domestic swine or wild boar, from both restricted and nonrestricted areas of EU Member States.

Switzerland and Liechtenstein have adopted EC regulations and controls regarding animal health and abolished border veterinary controls, thereby facilitating free trade in live animals and animal products. These two countries are situated in the middle of a region that APHIS recognizes as low risk for CSF, currently referred to in the regulations as the APHIS-defined EU CSF region. APHIS considers the EU Member States comprising this region to have the same low level of risk due to harmonized EC legislation and free trade on the internal common market, factors that now apply to Switzerland and Liechtenstein as well.

The APHIS-defined EU CSF region is subject to the import conditions specified in § 94.24 for breeding swine, pork, and pork products, and § 98.38 for swine semen. Section 94.24 prohibits sourcing of live swine, pork, and pork products for export to the United States from areas of the EU that are restricted due to CSF in wild boar or domestic swine. The regulations also prohibit commingling of live swine, pork, and pork products for export with such commodities from restricted areas. Section 98.38 prohibits sourcing of swine semen for export to the United

States from areas of the EU that are restricted due to CSF in wild boar or domestic swine, as well as commingling of donor boars with live swine from restricted regions.

The prohibition on sourcing from areas of the APHIS-defined EU CSF region that are restricted due to CSF in domestic swine extends until at least 6 months after cleaning and disinfection of the last affected premises. This addresses the possibility of reoccurrence of CSF in domestic swine if restrictions are removed after 30 days, as allowed by EC regulations. The regulations also address the risk associated with potential commingling of pork and pork products for export to the United States with such commodities sourced from restricted areas within the APHIS-defined EU CSF region.

In the risk evaluation, APHIS concludes that the risk profile for the common veterinary area formed by Switzerland and Liechtenstein is similar to that of the APHIS-defined EU CSF region. Applying the provisions of §§ 94.24 and 98.38 to Switzerland and Liechtenstein would address the risk issues discussed above and result in a level of risk that is equivalent to, or less than, that portion of the EU authorized to export breeding swine, swine semen, and pork and pork products to the United States.

Summary of Proposed Changes

Based on the finding of the risk evaluation, we are proposing to add Switzerland and Liechtenstein to the region of Europe (currently referred to in the regulations as the APHIS-defined EU CSF region) that we currently recognize as a low-risk region for CSF and from which breeding swine, swine semen, and pork and pork products may be imported into the United States under certain conditions. In order to add Switzerland and Liechtenstein to this region and provide flexibility in the event that other non-EU countries in Europe may be added to this region in the future, we would amend the regulations to refer to this region as the "APHIS-defined European CSF region." These proposed actions would relieve some restrictions on the importation into the United States of certain animals and animal products from Switzerland and Liechtenstein, while continuing to protect against the introduction of CSF into the United States.

In a related matter, certain conditions in the regulations for importation of breeding swine, swine semen, and pork and pork products from the APHIS-defined EU CSF region refer to the roles and responsibilities of the competent veterinary authority of EU Member States within the region. However, since neither Switzerland nor Liechtenstein are Member States of the EU, we are proposing to remove such references from the regulations and instead simply refer to the competent veterinary authority.

Finally, as noted above, the regulations currently list Switzerland, but not Liechtenstein, as free of SVD, FMD, and rinderpest, subject to the restrictions described in §§ 94.11 and 94.13 of the regulations. FMD was last detected in Liechtenstein in 1964. Neither SVD nor rinderpest has ever been reported in Liechtenstein. Switzerland and Liechtenstein formed a common veterinary area with an integrated veterinary system in 1924 and have effectively been a single region with regard to veterinary controls on animal health since that time. For these reasons, we are also proposing to add Liechtenstein to the list of regions recognized as free of SVD, and to the list of SVD-free regions whose exports of pork and pork products to the United States are subject to certain restrictions to prevent the introduction of SVD into this country. In addition, we are proposing to add Liechtenstein to the list of regions recognized as free of FMD and rinderpest and also to the list of FMD- and rinderpest-free regions whose exports of ruminant and swine meat and products to the United States are subject to certain restrictions to prevent the introduction of FMD and rinderpest into this country.

These proposed actions would ensure that Liechtenstein is afforded the same status as Switzerland with regard to these diseases, while continuing to protect against the introduction of CSF, SVD, FMD, and rinderpest into the United States.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

Our analysis identifies U.S. swine producers as the small entities potentially affected by the provisions of the rule, but also notes that Switzerland and Liechtenstein have, historically, exported a minimal amount of swine or swine products. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov)

Under these circumstances, the Administrator of the Animal and Plant Health Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 93

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

9 CFR Part 94

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

9 CFR Part 98

Animal diseases, Imports.

Accordingly, we propose to amend 9 CFR parts 93, 94, and 98 as follows:

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

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

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

2. In § 93.500, the definition of *APHIS-defined EU CSF region* is removed and a definition of *APHIS-defined European CSF region* is added, in alphabetical order, to read as follows:

§ 93.500 Definitions.

* * * * *

APHIS-defined European CSF region. The regions of Austria, Belgium, the

Czech Republic, Denmark, Finland, France, Germany, Greece, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Republic of Ireland, Spain, Sweden, Switzerland, and the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland).

* * * * *

§ 93.505 [Amended]

3. In § 93.505, paragraph (a), the words "APHIS-defined EU CSF region" are removed and the words "APHIS-defined European CSF region" are added in their place.

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

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

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

5. In § 94.0, the definition of *APHIS-defined EU CSF region* is removed and a definition of *APHIS-defined European CSF region* is added, in alphabetical order, to read as follows:

§ 94.0 Definitions.

* * * * *

APHIS-defined European CSF region. The regions of Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Republic of Ireland, Spain, Sweden, Switzerland, and the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland).

* * * * *

§ 94.1 [Amended]

6. In § 94.1, paragraph (a)(2) is amended by adding the word "Liechtenstein," immediately after the word "Latvia,".

§ 94.9 [Amended]

7. In § 94.9, paragraphs (b) and (c) introductory text, the words "APHIS-defined EU CSF region" are removed each time they appear and the words "APHIS-defined European CSF region" are added in their place.

§ 94.10 [Amended]

8. In § 94.10, paragraphs (b) and (c), the words "APHIS-defined EU CSF region" are removed each time they appear and the words "APHIS-defined European CSF region" are added in their place.

§ 94.11 [Amended]

9. In § 94.11, paragraph (a) is amended by adding the word "Liechtenstein," immediately after the word "Latvia,".

§ 94.12 [Amended]

10. In § 94.12, paragraph (a) is amended by adding the word "Liechtenstein," immediately after the word "Latvia,".

§ 94.13 [Amended]

11. In § 94.13, in the introductory text of the section, the first sentence is amended by adding the word "Liechtenstein," immediately after the word "Latvia,".

§ 94.24 [Amended]

12. Section 94.24 is amended as follows:

a. In the section heading, by removing the words "APHIS-defined EU CSF region" and adding the words "APHIS-defined European CSF region" in their place.

b. In paragraph (a) introductory text and paragraph (a)(1)(i), by removing the words "APHIS-defined EU CSF region" each time they appear and adding the words "APHIS-defined European CSF region" in their place.

c. In paragraph (a)(1)(ii) and (a)(1)(iii), by removing the words "APHIS-defined EU CSF region" each time they appear and adding the words "APHIS-defined European CSF region" in their place, and by removing the words "of the Member State" each time they appear.

d. In paragraph (a)(5), by removing the words "of the APHIS-defined EU CSF region Member State".

e. In paragraph (b) introductory text and paragraph (b)(2)(i), by removing the words "APHIS-defined EU CSF region" each time they appear and adding the words "APHIS-defined European CSF region" in their place.

f. In paragraph (b)(2)(ii) and (b)(2)(iii), by removing the words "the APHIS-defined EU CSF region" each time they appear and adding the words "the APHIS-defined European CSF region" in their place, and by removing the words "of the Member State" each time they appear.

g. In paragraph (b)(6), by removing the words "of the APHIS-defined EU CSF region Member State".

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

13. The authority citation for part 98 continues to read as follows:

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

14. In § 98.30, the definition of *APHIS-defined EU CSF region* is removed and a definition of *APHIS-defined European CSF region* is added, in alphabetical order, to read as follows:

§ 98.30 Definitions.

* * * * *

APHIS-defined European CSF region. The regions of Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Republic of Ireland, Spain, Sweden, Switzerland, and the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland).

* * * * *

§ 98.38 [Amended]

15. Section 98.38 is amended as follows:

a. In the section heading, by removing the words "APHIS-defined EU CSF region" and adding the words "APHIS-defined European CSF region" in their place.

b. In the introductory text, by removing the words "APHIS-defined EU CSF region" and adding the words "APHIS-defined European CSF region" in their place.

c. In paragraph (a), by removing the words "of the APHIS-defined EU CSF region Member State".

d. In paragraph (b)(1), by removing the words "APHIS-defined EU CSF region" and adding the words "APHIS-defined European CSF region" in their place.

e. In paragraphs (b)(2) and (b)(3), by removing the words "APHIS-defined EU CSF region" each time they appear and adding the words "APHIS-defined European CSF region" in their place, and by removing the words "of the Member State" each time they appear.

f. In paragraph (i), by removing the words "of the APHIS-defined EU CSF region Member State".

Done in Washington, DC, this 13th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–12316 Filed 5–18–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0518; Directorate Identifier 2010–NM–150–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes); and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD was prompted by events of excessive rudder pedal inputs and consequent high loads on the vertical stabilizer on several airplanes. High loads on the vertical stabilizer that exceed ultimate design loads could cause failure of the vertical stabilizer and consequent reduced controllability of the airplane. The proposed AD would require actions that are intended to address this unsafe condition.

DATES: We must receive comments on this proposed 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0518; Directorate Identifier 2010–NM–150–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of events of excessive rudder pedal inputs that resulted in high vertical stabilizer loads on Airbus Model A300–600 and A310 series airplanes. In one case, the in-flight separation of the vertical stabilizer resulted from loads beyond ultimate design that were created by the pilot making excessive rudder pedal reversals. In another incident, during stall recovery, the airplane accelerations were so high that the rudder travel limiter was not capable of appropriately limiting rudder travel. Rudder pedal inputs in this case also resulted in high vertical stabilizer loads. Contributing to these rudder pedal inputs were characteristics of the rudder system design. Rudder pedal sensitivity on Model A300–600 and A310 series airplanes is greater than that of other transport category airplane designs. Such rudder control sensitivity could result in rudder over-control and contribute to hazardous rudder pedal inputs such as rudder reversals. Hazardous rudder pedal inputs could result in loads that exceed ultimate design loads, potentially causing failure of the vertical stabilizer and consequent reduced controllability of the airplane.

Currently, there are no service instructions to address this unsafe condition. However, one option under consideration consists of a modification to the rudder control system that is called the pedal travel limiter unit (PTLU). The PTLU limits rudder pedal stroke and allows the yaw damper to decrease the rudder deflection. The PTLU also provides limiting rates that ensure that rudder travel is appropriately limited during high acceleration maneuvers. Other potential design changes are also under review. We anticipate that one of these design changes will be approved within three years and will meet the requirements of this proposed AD.

FAA's Determination and Requirements of This Proposed AD

These airplanes are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

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

The proposed AD would require actions to address this unsafe condition.

Costs of Compliance

We estimate that this proposed AD would affect 215 airplanes of U.S. registry.

One way, but not the only way, to modify the rudder control system is to install a PTLU. The following table provides the estimated costs for U.S. operators to comply with this proposed AD if a PTLU is installed based on preliminary information provided by the manufacturer.

ESTIMATED COSTS FOR PTLU INSTALLATION

Work hours	Average labor rate per hour	Parts	Cost per product	Fleet cost
100	$85	$190,000	$198,500	$42,677,500

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2011–0518; Directorate Identifier 2010–NM–150–AD.

Comments Due Date

(a) We must receive comments by July 5, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; A300 B4–605R and B4–622R airplanes; A300 F4–605R and F4–622R airplanes; A300 C4–605R Variant F airplanes; and A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

Unsafe Condition

(e) This AD was prompted by events of excessive rudder pedal inputs and consequent loads on the vertical stabilizer that exceed ultimate design loads. Such events could lead to failure of the vertical stabilizer and consequent reduced controllability 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.

Modification

(g) Within 48 months after the effective date of this AD, incorporate a design change to the rudder control system and/or other systems to address the unsafe condition identified in paragraph (e) of this AD, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, International Branch, ANM–116, 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

(i) For more information about this AD, contact Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2125; fax 425–227–1149.

Issued in Renton, Washington, on April 26, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–12309 Filed 5–18–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0403; Airspace Docket No. 11–AWP–3]

Proposed Modification of Class E Airspace; Alturas, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Alturas Municipal Airport, Alturas, CA. Controlled airspace is necessary to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Alturas Municipal Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at Alturas Municipal Airport, Alturas, CA.

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, M–30, West Building Ground Floor, Room

W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2011–0403; Airspace Docket No. 11–AWP–3, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

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 (FAA Docket No. FAA 2011–0403 and Airspace Docket No. 11–AWP–3) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2011–0403 and Airspace Docket No. 11–AWP–3". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

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 the **ADDRESSES** section for the 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 Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by creating additional Class E airspace extending upward from 700 feet above the surface at Alturas, CA, to accommodate aircraft using RNAV (GPS) standard instrument approach procedures at Alturas Municipal Airport. This action would enhance the safety and management of aircraft operations at Alturas Municipal Airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would 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 for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would create additional controlled airspace at Alturas Municipal Airport, Alturas, CA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, 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 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

AWP CA E5 Alturas, CA [Modified]

Alturas Municipal Airport, CA
(Lat. 41°28′59″ N., long. 120°33′55″ W.)

That airspace extending upward from 700 feet above the surface beginning at lat. 41°34′00″ N., long. 120°46′24″ W.; to lat. 41°36′50″ N., long. 120°30′19″ W.; to lat. 41°14′20″ N., long. 120°23′49″ W.; to lat. 41°11′35″ N., long. 120°39′34″ W., thence to the point of beginning. That airspace extending upward from 1,200 feet above the surface beginning at lat. 41°31′00″ N., long.

121°02′00″ W.; to lat. 41°41′00″ N., long. 120°41′04″ W.; to lat. 41°41′00″ N., long. 120°20′00″ W.; to lat. 41°14′00″ N., long. 120°15′00″ W., to lat. 41°02′00″ N., long. 120°39′30″ W.; to lat. 41°05′00″ N., long. 121°03′00″ W.; to lat. 41°22′00″ N., long. 121°15′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on May 12, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–12360 Filed 5–18–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN80

Medical Foster Homes

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) "Medical" regulations to add rules relating to medical foster homes. Currently, VA's medical foster home program, whenever possible and appropriate, relies upon existing regulations that govern community residential care facilities; however, these existing regulations do not adequately or appropriately cover all aspects of medical foster homes, which provide community based care in a smaller, residential facility and to a more medically complex and disabled population. The proposed rules reflect current VA policy and practice, and generally conform to industry standards and expectations.

DATES: Comments on the proposed rule must be received by VA on or before July 18, 2011.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–AN80, Medical Foster Homes." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. This is not a toll-free number. In addition, during the comment period, comments may be viewed online at *http://www.Regulations.gov* through the Federal Docket Management System (FDMS).

FOR FURTHER INFORMATION CONTACT: Rick Greene, Office of Patient Care Services (114), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–6786. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

General Background

Many veterans who are disabled due to complex chronic disease or traumatic injury may be unable to live safely and independently, or may have health care needs that exceed the capabilities of their families. Many of these veterans are placed in nursing homes. However, with the proper support, many veterans who previously would have been placed in nursing homes can continue to live in a home and delay, or totally avoid, the need for nursing home care. VA's community residential care program, specifically authorized by 38 U.S.C. 1730 and implemented at 38 CFR 17.61 through 17.72, has provided health care supervision to eligible veterans who are not able to live independently and have no suitable family or significant others to provide needed supervision and supportive care.

A medical foster home is a specific type of community residential care facility that provides home-based care to a small number of residents with serious chronic disease and disability. Under 38 U.S.C. 1730 as implemented by 38 CFR 17.61(b), community residential care is not a substitute for nursing home care. A medical foster home provides a greater level of care than a community residential care facility (and in this respect a medical foster home is more analogous to nursing home care), while allowing veterans to live in a home-like setting and maintain a greater degree of independence. VA interprets 38 U.S.C. 1730 as authorizing a medical foster home program, as a subset of the community residential care program. In particular, we believe medical foster homes fit within the type of facility authorized by section 1730(f), since they provide "room and board and * * * limited personal care." The medical foster home program is targeted to the needs of veterans who meet the eligibility criteria, which we would establish in proposed 38 CFR 17.73(c).

Through the medical foster home program, VA recognizes and approves certain medical foster homes for the placement of veterans. When a veteran is placed in an approved medical foster home, VA will provide inspections of the home, oversight, and medical foster home caregiver training. If a medical foster home does not meet our criteria for approval, VA will not provide these benefits and services, which, in turn, may discourage veterans from seeking to be placed in that home. Thus, the process of obtaining and maintaining VA approval has a substantial and vital impact on the lives of veterans, and is useful to medical foster homes.

Currently, VA does not have regulations specifically targeted at governing medical foster homes, and, when necessary and appropriate, we have relied upon the regulations that govern all community residential care facilities, industry standards, and VA policy and practice to ensure the safety and quality of approved VA medical foster homes. However, many of our current regulations governing community residential care cannot or should not apply to medical foster homes. For example, the life safety provisions in 38 CFR 17.63 refer to industry standards that specifically govern facilities with four or more residents, while medical foster homes, by definition, provide care to three or fewer residents. By establishing these regulations, we intend to make clear to the public the criteria which VA will use when deciding whether to approve a medical foster home. Moreover, our current regulations applicable to community residential care facilities do not adequately protect bedridden patients. The current regulations are only intended to address homes where personal care services are provided to veterans and are not intended to address bedridden patients.

This proposed rule would reflect current practice and policy and would require approved facilities to conform with applicable state and local regulations. The proposed rule is also based, as much as possible, on our current regulations governing community residential care. Because the proposed rule would reflect industry standards and current VA policy and procedures, we do not expect that it would have a significant or adverse impact on medical foster homes that are currently approved by VA, or on those that are not approved but who would seek approval under the proposed rule.

Section 17.73 Medical Foster Homes—General

Proposed § 17.73(a) would briefly describe the purpose of the medical foster home program, and clarify that a choice to become a resident in a medical foster home is a voluntary decision on

the part of the veteran. The proposed regulation would note that VA's role is limited to referring veterans to approved medical foster homes, and that only veteran residents placed in approved homes can depend on VA to provide ongoing oversight and inspections of the home.

Proposed § 17.73(b) would contain definitions applicable to the medical foster homes program. These proposed definitions are consistent with current practice and policy.

"Labeled" would have a definition consistent with the definition established in the 2009 edition of the National Fire Protection Association (NFPA) 101, Life Safety Code, Chapter 3, 3.2.4. Although proposed § 17.74(a)(3) would make chapter 3 of the NFPA 101 applicable to medical foster homes, we believe it would be useful to include a definition of this term in our regulations. Defining "labeled" this way would ensure that medical foster homes adhere to certain standards when utilizing equipment.

We would define "medical foster home" as "a private home in which a medical foster home caregiver provides care to a veteran resident and: (1) The medical foster home caregiver lives in the medical foster home; (2) the medical foster home caregiver owns or rents the medical foster home; and (3) there are not more than three residents receiving care (including veteran and non-veteran residents)." This definition would adequately identify and distinguish medical foster homes from other types of community residential care facilities that are governed by current §§ 17.61 through 17.72. In addition, this definition reflects the intended purpose of a medical foster home, which is to provide care in a small, privately owned, residential-type facility.

The proposed definition of "medical foster home caregiver" would be "the primary person who provides care to a veteran resident." This would typically entail providing a safe environment, room and board, supervision, and personal assistance, as appropriate for each veteran. We would use the phrase "primary person" because relief caregivers may assist the medical foster home caregiver, as noted in the proposed definition.

We would include a definition of "placement" that clarifies that VA does not "place" veterans in medical foster homes; rather, placement "refers to the voluntary decision by a veteran to become a resident in an approved medical foster home."

We would define a "veteran resident" to be an eligible veteran residing in an approved medical foster home. This definition is necessary to clarify that only veterans placed in approved homes can depend on VA to provide ongoing oversight and inspections of the home.

Proposed § 17.73(c) would outline eligibility criteria that must be met before VA will refer a veteran to a medical foster home. We propose to condition eligibility on three criteria.

In proposed § 17.73(c)(1), we would condition eligibility on the veteran being unable to live independently safely, or being in need of nursing home level care. These alternate criteria are necessary because medical foster homes are intended to provide a higher level of care than most community residential care facilities. Medical foster homes are designed to be alternatives to nursing home care, or to provide support for veterans who do not live with a family member who is able to provide needed care and assistance. These alternate criteria will ensure that the medical foster home program reaches these types of veterans.

In proposed § 17.73(c)(2), we would condition eligibility on enrollment in either a VA Home Based Primary Care or VA Spinal Cord Injury Homecare program. VA Home Based Primary Care (HBPC) is a home care program designed to meet the longitudinal, primary care needs of an aging veteran population with complex, chronic, disabling disease. In contrast to the episodic, time-limited and focused skilled-care services reimbursed by other funding mechanisms such as Medicare, HBPC provides comprehensive longitudinal care of patients often for the remainder of their lives. HBPC provides cost effective primary care services in the home and includes palliative care, rehabilitation, disease management, and coordination of care. One of the principle requirements of VA HBPC program is an interdisciplinary team that includes a physician medical director, a program director, and staff from nursing, social work, rehabilitation, dietetics, and pharmacy. Other services frequently needed include pastoral care and mental health.

Similar to the HBPC, the Spinal Cord Injury (SCI) Homecare program consists of interdisciplinary services as an integral part of SCI outpatient services. The SCI Homecare program supports the transition and medical needs of patients in the home setting, decreasing the need for hospitalization when possible. The program provides a full range of care for all enrolled veterans who have sustained a spinal cord injury or have a stable neurologic impairment of the spinal cord.

Requiring participation in either HBPC or SCI Homecare Program is necessary because these are currently the only two VA programs through which we can use an interdisciplinary medical team to treat, or supervise the treatment of, medically complex veterans placed in the community. The criterion is consistent with current practice; currently, any veteran who wishes to be placed in a medical foster home must enroll in either a VA Home Based Primary Care or VA Spinal Cord Injury Homecare program. Similarly, when VA identifies veterans who might benefit from placement in a medical foster home, we require them first to enroll in one of these care programs, and then refer them to an approved medical foster home for placement. Again, as of the publication of this proposed rule, all veterans placed in medical foster homes are enrolled in one of the two programs identified in proposed paragraph (c)(2), and these are currently the only two VA programs that service the population of veterans who could benefit from medical foster home placement. Because VA may establish programs similar to the HBPC or SCI Homecare program in the future, we would also include as part of the eligibility criteria "similar VA interdisciplinary program designed to assist medically complex veterans living in the home." Such programs would have similar missions (*i.e.,* offering clinically sufficient care in a secure home environment) to HBPC and SCI Homecare program, and similar clinical staff dedicated to fulfill that mission.

In proposed § 17.73(c)(3) we would require VA approval of the medical foster home in accordance with proposed § 17.73(d). This would premise eligibility on the medical foster home having met the standards in proposed § 17.74.

Proposed § 17.73(d) would make the procedures for approving medical foster homes identical to the procedures for approving community residential care facilities. We have determined that current approval procedures for community residential care facilities would be adequate, irrespective of the smaller, less institutionalized nature of medical foster homes and the differing criteria for approval. This is because the salient concerns in the approval of medical foster homes are very similar to the factors to be considered in the approval of community residential care facilities, namely, the fitness of the facility for providing a safe and comfortable environment for veteran residents. Accordingly, proposed paragraph (d) is substantively identical to the first (undesignated) paragraph of

current § 17.63. Additionally, proposed § 17.73(d) would prescribe that the approval process is governed by the approval process for community residential care facilities in current §§ 17.65 through 17.72.

Proposed § 17.73(e) would establish the duties of medical foster home caregivers. We propose to require that the medical foster home caregiver, with assistance from relief caregivers, provide a safe environment, room and board, supervision, and personal assistance, as appropriate for each veteran.

Section 17.74 Standards Applicable to Medical Foster Homes

Due to the fact that the Medical Foster Home program pre-dates this proposed rule, and that proposed §§ 17.73 and 17.74 conform to current practice and enforcement policy, VA does not believe there are any approved medical foster homes that are not presently in compliance with the requirements of this proposed rule.

Proposed § 17.74(a) is based on current § 17.63(a). Proposed § 17.74(a)(1) and (2) are substantively identical to § 17.63(a)(1) and (3), except that we would add in proposed paragraph (a)(2) that "[v]entilation for cook stoves is not required." We have determined that it is not necessary to impose this requirement on these smaller, home-based facilities that provide food for a small number of residents. Proposed § 17.74(a)(3) is similar to current § 17.63(a)(2), except that it would make chapters 1 through 11, 24, and section 33.7 of the NFPA 101 applicable to medical foster homes.

Proposed § 17.74(b) would prescribe the community residential care facility standards that also would be applicable to medical foster homes. We note that we would make current § 17.63(k), regarding the cost of community residential care, applicable to medical foster homes, but the reference would be to § 17.63(k) as it is proposed to be amended.

Beginning with proposed § 17.74(c), we would set forth unique standards applicable to medical foster homes. Proposed paragraph (c), and most of the paragraphs that follow, would adopt and/or modify existing regulatory or NFPA standards to make them appropriate for medical foster homes, or would address safety standards imposed by VA because we believe that they are appropriate for such homes. We believe that the standards set forth in the proposed rule are clear and straightforward, and plainly necessary for the safety and comfort of medical foster home residents, but a few of these paragraphs warrant specific discussion. Moreover, all medical foster homes currently recognized by VA conform to these NFPA standards.

Proposed paragraph (c) would require the medical foster home to plan and facilitate appropriate recreational and leisure activities because this requirement will help ensure the quality of life of the veteran resident(s). It is consistent with the current practice of all medical foster homes currently recognized by VA.

Proposed § 17.74(d) would contain standards for bedrooms in medical foster homes, just as current § 17.63(e) establishes such standards for other community residential care facilities. We propose to require each veteran resident to have a bedroom (1) with a door that closes and latches; (2) that contains a suitable bed and appropriate furniture; and (3) that is single occupancy, unless the veteran agrees to a multi-occupant bedroom. We have determined that these requirements are necessary for the comfort of those who reside in medical foster homes, but due to the size of most medical foster homes, ordinarily a single family dwelling, we decline to set a minimum bedroom size as in § 17.63(e).

Proposed § 17.74(e) would establish a temporary exception to chapter 24 of the NFPA 101, which is made applicable by paragraph (a)(3), concerning windows used as a secondary means of escape. Due to their small size and residential character, we expect some medical foster homes may not initially have windows that are in compliance with the requirements of chapter 24. Rather than failing to approve an otherwise acceptable medical foster home on this basis, we propose to provisionally approve a medical foster home, provided that the secondary means of escape is brought into compliance no later than 60 days after a veteran resident is placed in the home. While current § 17.65 provides for a 12-month provisional approval period, or such time as the parties determine is reasonably necessary for correcting deficiencies in community residential care facilities, that section provides a maximum length of time for all potential deficiencies, including deficiencies more problematic than issues with windows. We have determined that 60 days is a reasonable period of time to achieve compliance with this important, but relatively straightforward, requirement.

Proposed § 17.74(f) would permit special locking devices that do not conform to section 7.2.1.5 of NFPA 101 where the clinical needs of the veteran require specialized security measures, so long as there is written approval for the alternate device from both the VA clinician, as well as the VA fire/safety specialist or the Director of the VA Medical Center of jurisdiction. Nonstandard locking devices might be used for patient safety—particularly, to address concerns caused by "wandering" patients. The Life Safety Code does not allow such locking devices, which is why we need to establish this exception.

Proposed § 17.74(g) would concern smoke and carbon monoxide (CO) detectors. Due to their small size and residential character, some medical foster homes may not have detection systems that specifically meet the requirements of the proposed paragraph. We therefore propose to allow a 60-day provisional approval period for a medical foster home that mitigates risk through the use of battery-operated single station alarms for smoke and CO detection. In proposed paragraph (g)(1), we would require that homes install smoke detectors or smoke alarms in accordance with sections 24.3.4.1 or 24.3.4.2 of NFPA 101. We recognize that a UL985-listed household fire warning system or a UL864-listed fire alarm system would be permissible in these facilities, and note that the cited NFPA 101 sections are consistent with this recognition.

Proposed § 17.74(h) concerns sprinkler systems. Sprinkler systems would not be required in all medical foster homes. Rather, we would require sprinkler systems only when they are required by the NFPA, which only requires sprinkler systems for new construction pursuant to NFPA 13. However, when a medical foster home contains a sprinkler system, whether it was installed to comply with NFPA 13 or simply due to the wishes of the medical foster home caregiver, we would require it to be inspected, tested, and maintained in accordance with NFPA 25. This is to ensure that sprinkler systems in medical foster homes are in good working order and can safely be relied upon.

In § 17.74(o)(1), we would prescribe that "[u]se of extension cords must be limited" without prescribing any specific standard. It is not possible to prescribe a specific requirement, such as limiting the use to four or less extension cords, because different facilities will have different needs. By stating that the use must be limited, we intend to discourage the use of extension cords and to allow our field inspectors to use their expertise to determine whether a particular medical foster home is relying inappropriately on the use of extension cords. Extension cords could become

overloaded if users attach equipment that draws more amperage (current) than the amperage for which the cord is rated. Drawing more current than the cord is rated for could result in overheating of the cord and presents a fire hazard. Extension cords should not be used as a branch circuit of the home electrical system. Rather, fixed circuits should be installed. If the extension cords are run through doorways, the action of the door over time could wear off the outer insulation of the cord, resulting in a shock hazard. The insulation could also become worn off if the extension cord is run under the carpeting. Extension cords could also create a tripping hazard.

In proposed § 17.74(o)(2), we would require that flammable or combustible liquids and other hazardous material be safely and properly stored in either the original, labeled container, or in a safety can as defined by NPFA 30 (2008 edition). This is to ensure that dangerous materials are only kept in containers that are specifically designed to store them as safely as possible, rather than in ordinary household containers which might increase fire risk associated with those materials.

In proposed § 17.74(p), we would prescribe special requirements for emergency egress and relocation drills in order to ensure that medical foster homes have a workable plan to be able to evacuate all residents in case of an emergency. In particular, in paragraph (p)(2), we would require that the medical foster home caregiver "demonstrate the ability to evacuate all occupants within three minutes to a point of safety outside of the medical foster home that has access to a public way." The term "all occupants" means every person in the home at the time of the emergency egress and relocation drill, including non-residents. Although the purpose of the proposed rule is to establish requirements for the approval of medical foster homes for use by veteran residents, we do not believe that it is realistic merely to demonstrate the ability to evacuate all veteran-residents. In a real emergency, the medical foster home caregiver will need to ensure the timely evacuation of up to three residents and any other persons inside the home. As such, we would require a demonstration of such ability. For any home that fails to meet the evacuation requirements of proposed paragraph (p)(2), we would in paragraph (p)(3) allow a 60-day provisional approval during which time the medical foster home must establish an alternative to such evacuation. During that provisional approval period, VA inspectors would be authorized to require the home to increase its fire protection measures. Facilities that are unable to comply with paragraph (p)(2) would be required to implement one of the remedial options outlined in paragraph (p)(3), both of which are reasonable ways to ensure the safety of veteran residents in the event of a fire at the home.

In proposed § 17.74(q), we would incorporate all records requirements contained in current § 17.63(i), except for the "statement of needed care" requirement, because no such statement is required for medical foster homes. The statement is not needed because interdisciplinary VA clinical teams provide direct assistance to the veteran and medical foster home caregiver pursuant to the requirement that the veteran be enrolled in one of the programs identified in the proposed definition of veteran resident in § 17.73.

In proposed § 17.74(s), we would authorize approval of equivalencies in extremely rare circumstances, and only when the equivalencies are in accordance with NFPA 101, section 1.4.3, and with the approval of the appropriate Veterans Health Administration, Veterans Integrated Service Network (VISN) Director. These criteria are designed to ensure that equivalencies are only granted when the equivalency will not endanger resident safety, the medical foster home cannot comply with all requirements of this part without prohibitive expense, and when VA's decision not to approve the medical foster home in question would lead to a shortage of approved medical foster homes in a given area. Further, we would require that a veteran placed in the home be given notice of the equivalencies and the reasons for them. This notice would describe the equivalency with particularity, including identifying the exempted requirement and explaining why the exemption is necessary. We intend that veterans would make informed choices when they decide to live in a medical foster home that has been granted an equivalency. We would limit the authority to grant an equivalency to circumstances where the technical requirements of the proposed rule would cause an undue expense, there is no other nearby home to provide an adequate alternative, and the equivalency is in the best interest of the veteran. This might occur, *e.g.,* when a veteran wishes to be placed in a home located near his or her family's residence, but that home fails to meet a requirement such as that the windows are a quarter of an inch too small to meet the proposed § 17.74(e) standard. If such a defect can be remedied without imposing a cost on the medical foster home that the VISN Director considers undue expense, an equivalency would not be authorized. If there is no adequate alternative to the equivalency and the VISN Director determines the equivalency is in the best interest of the veteran, it would be authorized.

Proposed § 17.74(u)(1) would clarify that payment for the charges to veterans for the cost of medical foster home care is not the responsibility of the U.S. Government. However, paragraphs (u)(2) and (3) would prescribe requirements designed to ensure that medical foster homes approved by VA do not charge usurious rates or rates that are not comparable to the rates charged to non-veterans in the same or comparable medical foster homes. We also want to ensure that we do not approve a home that dramatically increases the rates charged to a veteran resident after the veteran has moved into the home, without a reasonable basis for such increase (such as a worsening of the veteran's condition requiring an increased level of care). These provisions are designed to allow the medical foster home to charge an appropriate rate based on the level of care and supervision required by the particular veteran, but are also designed to ensure that VA does not approve a home that charges unfair rates. They are also designed to be flexible, based on the resources of the particular medical foster home. We note that it is only in very rare cases that VA would use costs as a reason to not approve a medical foster home. We also note that this "costs" paragraph is significantly different from the one applicable to other community residential care facilities, *i.e.,* current § 17.63(k), because of the higher degree of medical complexity and care required by medical foster home residents. It is not feasible to apply an across-the-board base rate for each facility as we did with Community Residential Care facilities in § 17.63(k) because the higher degree of medical complexity associated with each veteran means that appropriate levels of care and therefore costs will vary widely between medical foster home patients.

Incorporations by Reference

Proposed § 17.74(t) would incorporate by reference the NFPA standards identified in proposed §§ 17.73 and 17.74. Because of the unique nature of medical foster homes, we cannot rely solely on particular, existing NFPA publications, as we do with other community residential care and housing regulations. On February 24, 2011, VA published in the **Federal Register**, at 76

FR 10246, a final rule to establish a centralized regulation (38 CFR 17.1) for incorporations by reference in part 17 of title 38 CFR. This proposed rule would incorporate by reference the versions of the NFPA standards that are current as of the date of publication of the proposed rule. In the future, we will amend this regulation if and when the incorporated NFPA standards are changed in a way that we believe is relevant to medical foster homes. We believe that this will assist medical foster homes in clearly identifying whether any changes are required based on changes to the NFPA codes cited herein.

Approval of Incorporations by Reference

We propose to amend our regulations to require medical foster homes seeking VA approval to meet the requirements of the following NFPA codes and standards: NFPA 10, Standard for Portable Fire Extinguishers (2010 edition); NFPA 13, Standard for the Installation of Sprinkler Systems (2010 edition); NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes (2010 edition); NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies Up To and Including Four Stories in Height (2010 edition); NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems (2008 edition); NFPA 30, Flammable and Combustible Liquids Code (2008 edition); NFPA 72, National Fire Alarm and Signaling Code (2010 edition); and NFPA 720, Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment (2009 edition). We also propose to amend our regulations to require medical foster homes seeking VA approval to meet the requirements of the following chapters and/or sections of NFPA 101, National Fire Protection Association's Life Safety Code (NFPA 101) (2009 edition): Chapters 1 through 11, 24, and section 33.7.

This action is necessary to ensure that medical foster homes meet current industry-wide safety standards. We will request that the Office of the Federal Register approve our incorporation by references.

These materials for which we are seeking incorporation by reference are available for inspection at the Department of Veterans Affairs, Office of Regulations Management (02REG), 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420, 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/code--of--federal--regulations/ibr--locations.html*. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555.)

Currently § 17.1 contains the materials that are incorporated by reference (IBR) for part 17. The Office of the Federal Register requires that if an agency has established an IBR section, then all approvals must be listed in that part. We, therefore, propose to amend § 17.1(b) to add the new IBR approvals contained in this proposed rulemaking.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. The proposed rule would have no such effect on state, local, and Tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule includes a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521) that requires approval by the Office of Management and Budget (OMB). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking to OMB for review. OMB assigns a control number for each collection of information it approves. Except for emergency approvals under 44 U.S.C. 3507(j), VA 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. Proposed § 17.74(q) contains a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

Comments on the collection of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to: Director, Office of Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or through *http://www.Regulations.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AN80–Medical Foster Homes."

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

VA considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of VA, including whether the information will have practical utility;
- Evaluating the accuracy of VA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The proposed amendments to title 38 CFR chapter 17 contain collections of information under the Paperwork Reduction Act for which we are requesting approval by OMB.

Title: Medical Foster Homes.

Summary of collection of information: Paragraph (q) would require medical foster homes to comply with the recordkeeping requirements of 38 CFR 17.63(i) regarding facility records, and must document all inspection, testing, drills and maintenance activities required by this section. Such documentation must be maintained for 3 years or for the period specified by the applicable NFPA standard, whichever is longer. Documentation of emergency egress and relocation drills must include the date, time of day, length of time to evacuate the home, the name of each medical foster home caregiver who participated, the name of each resident,

whether the resident participated, and whether the resident required assistance.

Description of the need for information and proposed use of information: The information is needed to ensure the safety of veteran residents because medical foster homes operate in a residential setting in the community.

Description of likely respondents: Medical foster homes who seek to be approved by VA.

Estimated number of respondents per year: 300 medical foster homes.

Estimated frequency of responses per year: 6 times per year.

Estimated total annual reporting and recordkeeping burden: 600 hours.

Executive Order 12866

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 Executive Order classifies a "significant regulatory action," requiring review by OMB unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action planned or taken by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, legal, and policy implications of this proposed rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. In addition to having an effect on individuals (veterans), the proposed rule would have an insignificant economic impact on a few small entities. Most of the minimum standards that would be established by this rulemaking are already required by state and local regulations, and medical foster homes should already be in compliance with those regulations or with the current NFPA codes. Any additional costs for compliance with the proposed rule would constitute an inconsequential amount of the operational costs of such facilities. Accordingly, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on May 11, 2011, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Incorporation by reference, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: May 13, 2011.

Robert C. McFetridge,

Director, Regulations Policy and Management, Department of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 17 as follows:

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501, 1721, and as noted in specific sections.

2. Revise § 17.1(b) to read as follows:

§ 17.1 Incorporation by reference.

* * * * *

(b) The following materials are incorporated by reference into this part.

(1) NFPA 10, Standard for Portable Fire Extinguishers (2010 edition), Incorporation by Reference (IBR) approved for §§ 17.63, 17.74, and 17.81.

(2) NFPA 101, Life Safety Code (2009 edition), IBR approved for §§ 17.63, 17.74 (chapters 1 through 11, 24, and section 33.7), 17.81, and 17.82.

(3) NFPA 101A, Guide on Alternative Approaches to Life Safety (2010 edition), IBR approved for § 17.63.

(4) NFPA 13, Standard for the Installation of Sprinkler Systems (2010 edition), IBR approved for § 17.74.

(5) NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes (2010 edition), IBR approved for § 17.74.

(6) NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies Up To and Including Four Stories in Height (2010 edition), IBR approved for § 17.74.

(7) NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems (2008 edition), IBR approved for § 17.74.

(8) NFPA 30, Flammable and Combustible Liquids Code (2008 edition), IBR approved for § 17.74.

(9) NFPA 72, National Fire Alarm and Signaling Code (2010 edition), IBR approved for § 17.74.

(10) NFPA 720, Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment (2009 edition), IBR approved for § 17.74.

(Authority: 5 U.S.C. 552(a), 38 U.S.C. 501, 1721)

3. Sections 17.73 and 17.74 are added to read as follows:

§ 17.73 Medical foster homes—general.

(a) *Purpose.* Through the medical foster home program, VA recognizes and approves certain medical foster homes

for the placement of veterans. The choice to become a resident of a medical foster home is a voluntary one on the part of each veteran. VA's role is limited to referring veterans to approved medical foster homes. When a veteran is placed in an approved home, VA will provide inspections to ensure that the home continues to meet the requirements of this part, as well as oversight and medical foster home caregiver training. If a medical foster home does not meet VA's criteria for approval, VA will not refer any veteran to the home or provide any of these services. VA may also provide certain medical benefits to veterans placed in medical foster homes, consistent with the VA program in which the veteran is enrolled.

(b) *Definitions.* For the purposes of this section and § 17.74:

Labeled means that the equipment or materials have attached to them a label, symbol, or other identifying mark of an organization recognized as having jurisdiction over the evaluation and periodic inspection of such equipment or materials, and by whose labeling the manufacturer indicates compliance with appropriate standards or performance.

Medical foster home means a private home in which a medical foster home caregiver provides care to a veteran resident and:

(1) The medical foster home caregiver lives in the medical foster home;

(2) The medical foster home caregiver owns or rents the medical foster home; and

(3) There are not more than three residents receiving care (including veteran and non-veteran residents).

Medical foster home caregiver means the primary person who provides care to a veteran resident in a medical foster home.

Placement refers to the voluntary decision by a veteran to become a resident in an approved medical foster home.

Veteran resident means a veteran residing in an approved medical foster home who meets the eligibility criteria in paragraph (c) of this section.

(c) *Eligibility.* VA health care personnel may assist a veteran by referring such veteran for placement in a medical foster home if:

(1) The veteran is unable to live independently safely or is in need of nursing home level care;

(2) The veteran must be enrolled in, or agree to be enrolled in, either a VA Home Based Primary Care or VA Spinal Cord Injury Homecare program, or a similar VA interdisciplinary program designed to assist medically complex veterans living in the home; and

(3) The medical foster home has been approved in accordance with paragraph (d) of this section.

(d) *Approval of medical foster homes.* Medical foster homes will be approved by a VA Medical Foster Homes Coordinator based on the report of a VA inspection and on any findings of necessary interim monitoring of the medical foster home, if that home meets the standards established in § 17.74. The approval process is governed by the process for approving community residential care facilities under §§ 17.65 through 17.72 except as follows:

(1) Where §§ 17.65 through 17.72 reference § 17.63.

(2) Because VA does not physically place veterans in medical foster homes, VA also does not assist veterans in moving out of medical foster homes as we do for veterans in other community residential care facilities under § 17.72(d)(2); however, VA will assist such veterans in locating an approved medical foster home when relocation is necessary.

(e) *Duties of Medical foster home caregivers.* The medical foster home caregiver, with assistance from relief caregivers, provides a safe environment, room and board, supervision, and personal assistance, as appropriate for each veteran.

(Authority: 38 U.S.C. 501, 1730)

§ 17.74 Standards applicable to medical foster homes.

(a) *General.* A medical foster home must:

(1) Meet all applicable state and local regulations, including construction, maintenance, and sanitation regulations.

(2) Have safe and functioning systems for heating, hot and cold water, electricity, plumbing, sewage, cooking, laundry, artificial and natural light, and ventilation. Ventilation for cook stoves is not required.

(3) Except as otherwise provided in this section, meet the applicable provisions of chapters 1 through 11 and 24, and section 33.7 of NFPA 101, National Fire Protection Association's Life Safety Code (NFPA 101) (2009 edition) (incorporated by reference, see § 17.1), and the other codes and chapters identified in this section, as applicable.

(b) *Community residential care facility standards applicable to medical foster homes.* Medical foster homes must comply with § 17.63(c), (d), (f), (h), (j) and (k).

(c) *Activities.* The facility must plan and facilitate appropriate recreational and leisure activities.

(d) *Residents' bedrooms.* Each veteran resident must have a bedroom:

(1) With a door that closes and latches;

(2) That contains a suitable bed and appropriate furniture; and

(3) That is single occupancy, unless the veteran agrees to a multi-occupant bedroom.

(e) *Windows.* VA may grant provisional approval for windows used as a secondary means of escape that do not meet the minimum size and dimensions required by chapter 24 of NFPA 101 (incorporated by reference, see § 17.1) if the windows are a minimum of 5.0 square feet (and at least 20 inches wide and at least 22 inches high). The secondary means of escape must be brought into compliance with chapter 24 no later than 60 days after a veteran resident is placed in the home.

(f) *Special locking devices.* Special locking devices that do not comply with section 7.2.1.5 of NFPA 101 (incorporated by reference, see § 17.1) are permitted where the clinical needs of the veteran resident require specialized security measures and with the written approval of:

(1) The responsible VA clinician; and

(2) The VA fire/safety specialist or the Director of the VA Medical Center of jurisdiction.

(g) *Smoke and carbon monoxide (CO) detectors and smoke and CO alarms.* Medical foster homes must comply with this paragraph (g) no later than 60 days after the first veteran is placed in the home. Prior to compliance, VA inspectors will provisionally approve a medical foster home for the duration of this 60-day period if the medical foster home mitigates risk through the use of battery-operated single station alarms, provided that the alarms are installed before any veteran is placed in the home.

(1) Smoke detectors or smoke alarms must be provided in accordance with sections 24.3.4.1 or 24.3.4.2 of NFPA 101 (incorporated by reference, see § 17.1); section 24.3.4.3 of NFPA 101 will not be used. In addition, smoke alarms must be interconnected so that the operation of any smoke alarm causes an alarm in all smoke alarms within the medical foster home. Smoke detectors or smoke alarms must not be installed in the kitchen or any other location subject to causing false alarms.

(2) CO detectors or CO alarms must be installed in any medical foster home with a fuel-burning appliance, fireplace, or an attached garage, in accordance with NFPA 720, Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment (2009 Edition) (NFPA 720) (incorporated by reference, see § 17.1).

(3) Combination CO/smoke detectors and combination CO/smoke alarms are permitted.

(4) Smoke detectors and smoke alarms must initiate a signal to a remote supervising station to notify emergency forces in the event of an alarm.

(5) Smoke and/or CO alarms and smoke and/or CO detectors, and all other elements of a fire alarm system, must be inspected, tested, and maintained in accordance with NFPA 72, National Fire Alarm and Signaling Code (2010 edition) (incorporated by reference, see § 17.1) and NFPA 720 (incorporated by reference, see § 17.1).

(h) *Sprinkler systems.* (1) If a sprinkler system is installed, it must be inspected, tested, and maintained in accordance with NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems (2008 edition) (incorporated by reference, see § 17.1), unless the sprinkler system is installed in accordance with NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes (2010 Edition) (NFPA 13D) (incorporated by reference, see § 17.1). If a sprinkler system is installed in accordance with NFPA 13D (incorporated by reference, see § 17.1), it must be inspected annually by a competent person.

(2) If sprinkler flow or pressure switches are installed, they must activate notification appliances in the medical foster home, and must initiate a signal to the remote supervising station.

(i) *Fire extinguishers.* At least one 2–A:10–B:C rated fire extinguisher must be visible and readily accessible on each floor, including basements, and must be maintained in accordance with the manufacturer's instructions. Portable fire extinguishers must be inspected, tested, and maintained in accordance with NFPA 10, Standard for Portable Fire Extinguishers (2010 edition) (incorporated by reference, see § 17.1).

(j) *Emergency lighting.* Each occupied floor must have at least one plug-in rechargeable flashlight, operable and readily accessible, or other approved emergency lighting. Such emergency lighting must be tested monthly and replaced if not functioning.

(k) *Fireplaces.* A non-combustible hearth, in addition to protective glass doors or metal mesh screens, is required for fireplaces. Hearths and protective devices must meet all applicable state and local fire codes.

(l) *Portable heaters.* Portable heaters may be used if they are maintained in good working condition and:

(1) The heating elements of such heaters do not exceed 212 degrees Fahrenheit (100 degrees Celsius);

(2) The heaters are labeled; and

(3) The heaters have tip-over protection.

(m) *Oxygen safety.* Any area where oxygen is used or stored must not be near an open flame and must have a posted "No Smoking" sign. Oxygen cylinders must be adequately secured or protected to prevent damage to cylinders. Whenever possible, trans-filling of liquid oxygen must take place outside of the living areas of the home.

(n) *Smoking.* Smoking must be prohibited in all sleeping rooms, including sleeping rooms of non-veteran residents. Ashtrays must be made of noncombustible materials.

(o) *Special/other hazards.* (1) Extension cords must be three-pronged, grounded, sized properly, and not present a hazard due to inappropriate routing, pinching, damage to the cord, or risk of overloading an electrical panel circuit.

(2) Flammable or combustible liquids and other hazardous material must be safely and properly stored in either the original, labeled container or a safety can as defined by section 3.3.44 of NFPA 30, Flammable and Combustible Liquids Code (2008 edition) (incorporated by reference, see § 17.1).

(p) *Emergency egress and relocation drills.* Operating features of the medical foster home must comply with section 33.7 of NFPA 101 (incorporated by reference, see § 17.1), except that section 33.7.3.6 of NFPA 101 does not apply. Instead, VA will enforce the following requirements:

(1) Before placement in a medical foster home, the veteran will be clinically evaluated by VA to determine whether the veteran is able to participate in emergency egress and relocation drills. Within 24 hours after arrival, each veteran resident must be shown how to respond to a fire alarm and evacuate the medical foster home, unless the veteran resident is unable to participate.

(2) The medical foster home caregiver must demonstrate the ability to evacuate all occupants within three minutes to a point of safety outside of the medical foster home that has access to a public way, as defined in NFPA 101 (incorporated by reference, see § 17.1).

(3) If all occupants are not evacuated within three minutes or if a veteran resident is either permanently or temporarily unable to participate in drills, then the medical foster home will be given a 60-day provisional approval, after which time the home must have established one of the following remedial options or VA will terminate the approval in accordance with § 17.65.

(i) The home is protected throughout with an automatic sprinkler system in accordance with section 9.7 of NFPA 101 (incorporated by reference, see § 17.1) and whichever of the following apply: NFPA 13, Standard for the Installation of Sprinkler Systems (2010 edition) (incorporated by reference, see § 17.1); NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies Up To and Including Four Stories in Height (2010 edition) (incorporated by reference, see § 17.1); or NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes (2010 edition) (incorporated by reference, see § 17.1).

(ii) Each veteran resident who is permanently or temporarily unable to participate in a drill or who fails to evacuate within three minutes must have a bedroom located at the ground level with direct access to the exterior of the home that does not require travel through any other portion of the residence, and access to the ground level must meet the requirements of the Americans with Disabilities Act. The medical foster home caregiver's bedroom must also be on ground level.

(4) The 60-day provisional approval under paragraph (p)(3) of this section may be contingent upon increased fire prevention measures, including but not limited to prohibiting smoking or use of a fireplace. However, each veteran resident who is temporarily unable to participate in a drill will be permitted to be excused from up to two drills within one 12-month period, provided that the two excused drills are not consecutive, and this will not be a cause for VA to not approve the home.

(5) For purposes of paragraph (p), the term *all occupants* means every person in the home at the time of the emergency egress and relocation drill, including non-residents.

(q) *Records of compliance with this section.* The medical foster home must comply with § 17.63(i) regarding facility records, and must document all inspection, testing, drills and maintenance activities required by this section. Such documentation must be maintained for 3 years or for the period specified by the applicable NFPA standard, whichever is longer. Documentation of emergency egress and relocation drills must include the date, time of day, length of time to evacuate the home, the name of each medical foster home caregiver who participated, the name of each resident, whether the resident participated, and whether the resident required assistance.

(r) *Local permits and emergency response.* Where applicable, a permit or license must be obtained for occupancy or business by the medical foster home caregiver from the local building or business authority. When there is a home occupant who is incapable of self-preservation, the local fire department or response agency must be notified by the medical foster home within 7 days of the beginning of the occupant's residency.

(s) *Equivalencies.* Any equivalencies to VA requirements must be in accordance with section 1.4.3 of NFPA 101 (incorporated by reference, see § 17.1), and must be approved in writing by the appropriate Veterans Health Administration, Veterans Integrated Service Network (VISN) Director. A veteran living in a medical foster home when the equivalency is granted or who is placed there after it is granted must be notified in writing of the equivalencies and that he or she must be willing to accept such equivalencies. The notice must describe the exact nature of the equivalency, the requirements of this section with which the medical foster home is unable to comply, and explain why the VISN Director deemed the equivalency necessary. Only equivalencies that the VISN Director determines do not pose a risk to the health or safety of the veteran may be granted. Also, equivalencies may only be granted when technical requirements of this section cannot be complied with absent undue expense, there is no other nearby home which can serve as an adequate alternative, and the equivalency is in the best interest of the veteran.

(t) *Incorporation by reference.* The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, VA will publish a notice of proposed rulemaking regarding the change in the **Federal Register** and the material will be made available to the public. All approved material is available for inspection at the Department of Veterans Affairs, Office of Regulation Policy and Management (02REG), Room 1068, 810 Vermont Avenue, NW., Washington, DC 20420, 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/code_of_federal_regulations/ibr_locations.html.* Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555). The NFPA home page is: *http://www.nfpa.org/.* For information on NFPA codes or standards see the NFPA Web site at: *http://www.nfpa.org/aboutthecodes/list_of_codes_and_standards.asp.* The VA-controlled Web site that provides access to all NFPA codes and standards is: *http://vaww.ceosh.med.va.gov/01FS/pages/NFPAWarning.shtml.*

(u) *Cost of medical foster homes.* (1) Payment for the charges to veterans for the cost of medical foster home care is not the responsibility of the United States Government.

(2) The resident or an authorized personal representative and a representative of the medical foster home facility must agree upon the charge and payment procedures for medical foster home care.

(3) The charges for medical foster home care must be comparable to prices charged by other assisted living and nursing home facilities in the area based on the veteran's changing care needs and local availability of medical foster homes.

(Authority: 38 U.S.C. 501, 1730)

[FR Doc. 2011–12253 Filed 5–18–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 39

RIN 2900–AN90

Tribal Veterans Cemetery Grants

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulations governing Federal grants for the establishment, expansion, and improvement of veterans cemeteries. We propose to implement through regulation new statutory authority to provide grants for the establishment, expansion, and improvement of Tribal Organization veterans cemeteries, as authorized by Section 403 of the "Veterans Benefits, Health Care, and Information Technology Act of 2006" (the Act). The Act requires VA to administer grants to Tribal Organizations in the same manner and under the same conditions as grants to States. The proposed rule would make non-substantive changes to the part heading of part 39 and the name of the State Cemetery Grants Service to more accurately reflect that VA awards veteran cemetery grants to States and Tribal Organizations. The proposed rule would establish criteria to guide VA's decisions on granting Tribal Organization requests to obtain grants for establishing, expanding, and improving veterans cemeteries that are or will be owned and operated by a Tribal Organization. The proposed rule would also expand VA's preapplication requirement to all veterans cemetery grants as a means to promote consistency and communication in the grant application process. Further, the proposed rule would revise VA regulations to address structural differences between Tribal Organizations and States.

DATES: Comments must be received by VA on or before July 18, 2011.

ADDRESSES: Written comments may be submitted through *http://www.regulations.gov;* by mail or hand-delivery to: Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026 (this is not a toll free number). Comments should indicate that they are submitted in response to "RIN 2900–AN90—Tribal Veterans Cemetery Grants." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For grant issues, contact Frank Salvas, Director of Veterans Cemetery Grants Service, National Cemetery Administration (41E), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. *Telephone:* (202) 461–8947 (this is not a toll-free number). For regulatory issues, contact Jane Kang, Program Analyst, Legislative and Regulatory Division, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. *Telephone:* (202) 461–6216 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The goal of the National Cemetery Administration (NCA) is to ensure that the burial needs of veterans and eligible family members are met by providing a burial opportunity in veterans cemeteries. In the past, NCA has done

this by building and maintaining national veterans cemeteries and by providing, through the State Cemetery Grants Service, grants to States to establish, expand or improve State veterans cemeteries. Research indicates that veterans and their families use veterans cemeteries when they are located a reasonable distance from their residence. Thus, VA's current regulations encourage States to provide burial service to our Nation's veterans by operating veterans cemeteries in areas where the most number of veterans would benefit. State veterans cemeteries complement VA national cemeteries and are critical to meeting VA's goal of providing burial access to over 90 percent of veterans and their eligible family members. Under VA's cemetery grants service, the Federal government provides up to 100 percent of the cost of development associated with the establishment, expansion, and improvement of a veterans cemetery, as well as the cost of initial operating equipment.

We propose to expand VA's regulations to address the eligibility to apply for VA cemetery grants of the approximately 565 Federally-recognized Tribal Organizations that reside on trust lands. In coordination with the expansion of eligibility, we propose to change the part heading of part 39 to "AID FOR THE ESTABLISHMENT, EXPANSION, AND IMPROVEMENT, OR OPERATION AND MAINTENANCE, OF VETERANS CEMETERIES" and the name of the "State Cemetery Grants Service" to the hereinafter, "Veterans Cemetery Grants Service" or "VCGS". These revisions are necessary to more accurately describe VA's cemetery grant service and to clarify the purpose of this service to the public, which is to provide veterans cemetery grants to States and Tribal Organizations.

Subsection 2408(f), of Title 38, of the United States Code, as added by section 403 of the "Veterans Benefits, Health Care, and Information Technology Act of 2006" establishes eligibility for Tribal Organizations to apply for grants for veterans cemeteries on trust lands. 38 U.S.C. 2408(f); Public Law 109–461, 120 Stat. 3403 (Dec. 22, 2006). For the purposes of subsection 2408(f), the term "trust land" is defined as "any land that (A) is held in trust by the United States for Native Americans; (B) is subject to restrictions on alienation imposed by the United States on Indian lands (including native Hawaiian homelands); (C) is owned by a Regional Corporation or a Village Corporation as such terms are defined in * * * the Alaska Native Claims Settlement Act * * *; or (D) is on any island in the Pacific Ocean if such land is, by cultural tradition, communally-owned land, as determined by the Secretary." *See* 38 U.S.C. 2408(f)(3)(B); 38 U.S.C. 3765(1). Similarly, the term "[T]ribal [O]rganization" is defined for purposes of subsection 2408(f) as "the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities," and includes "the Department of Hawaiian Homelands * * * and such other organizations as the Secretary may prescribe." *See* 38 U.S.C. 2408(f)(3)(A); 38 U.S.C. 3765(4); *see also* 25 U.S.C. 450b(l). VA proposes to add these terms to the definition section included in part 39 of Title 38 for consistency purposes. We also propose to include the definition of "Indian Tribe" found in 25 U.S.C. 450b(e).

Further, we note that the proposed definition of "Tribal Organization" is subject to the caveat mentioned in 25 U.S.C. 450b(l), which provides that, "in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant." 25 U.S.C. 450b(l). VA proposes to add explanatory notes to § 39.31(c)(3) and § 39.81(c)(3) to clarify how this caveat would apply in the context of Veterans Cemetery Grants. Under the proposed § 39.31(c)(3) and § 39.81(c)(3), States and Tribal Organizations are required to provide written assurance that they possess the legal authority to apply for grants. The explanatory notes would further provide that: "In any case where a Tribal Organization is applying for a grant for a cemetery on land held in trust for more than one Indian Tribe, written assurance that the Tribal Organization possesses the legal authority to apply for the grant includes certification that the Tribal Organization has obtained approval of each such Indian Tribe." Without such approval the Tribal Organization would lack legal authority because it would not be in compliance with 25 U.S.C. 450b(l).

Prior to the enactment of subsection 2408(f), Tribal Organizations were not eligible to apply for VA cemetery grants. This expanded statutory authority allows VA to award grants to Tribal Organizations in the same manner and under the same conditions as it does to States. Based on this authority, VA encourages Tribal Organizations to provide burial service to our Nation's veterans by operating veterans cemeteries on trust lands in areas where the most number of veterans would benefit. VA recognizes that Tribes are sovereign nations with a unique legal status and a relationship to the Federal government that is different than that of States. VA believes that Congress did not intend to alter this relationship when it authorized veteran cemetery grants to Tribal Organizations to be made in the same manner, and under the same conditions, as veteran cemetery grants to States. Rather, the purpose was to reflect an intent that, insofar as possible, Tribal Organizations should assume a role in participating in the veterans cemetery grant program on trust lands comparable to the role States play outside of trust lands. By awarding VA cemetery grants to Tribal Organizations through the Veterans Cemetery Grant Service, VA will partner with Tribal Organization recipients who are committed to serve the burial needs of veterans and their eligible family members.

This proposed rule would amend 38 CFR part 39 and place in regulation the statutory authority of VA to grant awards to Tribal Organizations for establishing, expanding, and improving veterans cemeteries on trust lands. The proposed rule adheres as closely as possible to the procedures and requirements for States to apply for cemetery grants. For purposes of clarity, we propose to revise the regulatory text in part 39, subparts A, B, C, and D, to incorporate references to Tribal Organizations in the current regulations.

This proposed rule would expand the preapplication requirement to all VCGS grants by removing the phrase "more than $100,000" from 38 CFR 39.31(a). The preapplication requirements would be applicable to both States and Tribal Organizations. The preapplication process serves as a means of validating the need for a project, and opening lines of communication between NCA and potential participating States and Tribal Organizations for VCGS grants. Congress mandated, through the Federal Financial Assistance Management Improvement Act of 1999, the streamlining and simplification of Federal grant administrative procedures and reporting requirements to relieve burdens associated with the grant application process and to improve the delivery of services to the public. Public Law 106–107, 113 Stat. 1486 (Nov. 20, 1999). In efforts to comply with this mandate VA now processes all VCGS grant applications and awards through Grants.gov, which does not differentiate

between applications that exceed $100,000 and those below this threshold. To make VA's regulations consistent with the functions of Grants.gov and to improve communication throughout the grant application process, we propose to expand section 39.31(a) to require preapplications for all cemetery grants. Also, by making the preapplication requirement uniform for all applicants VA would further streamline the VCGS grant application process in accordance with the Federal Financial Assistance Management Improvement Act of 1999.

In addition, VA proposes to revise 38 CFR 39.31(d) to allow for the differences in the structure of Tribal Organizations and States. We propose to no longer require in all cases the submission of "legislation, as enacted into law, authorizing the establishment, maintenance, and operation of the facility as a veterans cemetery" as a preapplication requirement. We acknowledge that Tribal Organizations, and even some States, may establish authorization to apply for a veterans cemetery grant and to comply with VA requirements by some other means than by enacting legislation. Thus, we propose to revise § 39.31(d) to require that, "[t]he State or Tribal Organization must submit a copy of the State or Tribal Organization action authorizing the establishment, maintenance, and operation of the facility as a veterans cemetery in accordance with 38 CFR 39.10(a). If the State or Tribal Organization action is based on legislation, enacted into law, then the legislation must be submitted."

The proposed rule would not change the existing grant prioritization process and retains the same four priority groups as the current part 39. Thus, in accordance with 38 U.S.C. 2408, Tribal Organizations will compete with States in the prioritization process. Given that there are no existing Tribal veteran cemeteries, we anticipate that the initial grant applications from Tribal Organizations will likely fall into Priority Group 2 (projects for the establishment of new veterans cemeteries).

Once a project is approved for funding, VA may award a grant up to 100 percent of the amount requested, provided that sufficient funds are available. The entire VCGS annual budget is allocated to grants for projects that would establish, expand, and improve State and Tribal veterans cemeteries. Any funds remaining at the end of the year are carried into the next year and allocated to grants for projects the following year.

This proposed rule requires all States or Tribal Organizations seeking a grant to submit a preapplication through *http://www.cem.va.gov/cem/scg_grants.asp.* All forms are available and downloadable at *http://www.cem.va.gov/cem/scg_grants.asp.*

Executive Order 12866

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 Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined that it would not be a significant regulatory action under the Executive Order.

Executive Order 13175

Executive Order 13175 provides that Federal agencies may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs on Tribal governments, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal Organizations or the Federal agency consults with Tribal officials early in the process of developing the proposed regulation and develops a Tribal summary impact statement. VA's cemetery grant program for Tribal Organizations is required by statute, which specifically provides that the grants shall be "made in the same manner, and under the same conditions, as grants to States are made." In addition, participation is voluntary and 100 percent of the development costs for an approved project are provided by VA. Thus, Executive Order 13175 requirements are not applicable. However, in the spirit of the Executive Order, VA has communicated with the Tribal Organizations regarding the proposed regulatory grant application process. On January 28, 2008, an informational letter was sent to each of the Federally-recognized Indian Tribes informing them that "American Indian Tribal grants will be considered in the same manner as State veterans cemetery grants under the authority of title 38 Code of Federal Regulations (CFR) Part 39." Further, on February 22, 2008, a conference call took place between senior VA officials and representatives designated by Tribal leadership of Federally-recognized Tribes to discuss the grant application process. Senior NCA officials and representatives continue to meet with and communicate with Tribal Organizations that are interested in the grant program. VA has not received any written comments regarding the subject of this proposed regulation from Tribal Organizations, but welcomes their input during the 60-day comment period following publication of the proposed rule.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The Secretary acknowledges that this proposed rule may affect some Tribal governments that may be considered small entities; however, the economic impact is not significant. This proposed rule will not impose any mandatory requirements or costs on Tribal governments as a whole and will only affect those that choose to apply for veterans cemetery grants. To the extent that small entities are affected, the impact of this amendment is both minimal and entirely beneficial. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or Tribal governments, in the aggregate, or by the

private sector, of $100 million or more (adjusted annually for inflation) in any year. This proposed rule would have no such effect on State and local governments, or on the private sector. While the proposed rule may result in some expenditures by Tribal governments, the aggregate amount of such expenditures is estimated to be significantly less than $100 million.

Paperwork Reduction Act

This proposed rule would require Tribal Organizations to submit information to obtain grants under VA's Veterans Cemetery Grants Service. The collections of information referenced in this proposed rule have been approved by OMB and have been assigned OMB control numbers 0348–0002, 4040–0004, 4040–0008, 4040–0009, and 2900–0559 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance Number and Title

The Catalog of Federal Domestic Assistance program number and title for this proposed rule is 64.203, Tribal Organizations Cemetery Grants.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on May 13, 2011, for publication.

List of Subjects in 38 CFR Part 39

Cemeteries, Grants programs—Veterans, Veterans.

Dated: May 16, 2011.

William F. Russo,

Deputy Director, Office of Regulations Policy & Management, Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 39 as follows:

PART 39—AID FOR THE ESTABLISHMENT, EXPANSION, AND IMPROVEMENT, OR OPERATION AND MAINTENANCE, OF VETERANS CEMETERIES

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

Authority: 25 U.S.C. 450b(l); 38 U.S.C. 101, 501, 2408, 2411, 3765.

2. Revise part 39 heading as shown above.

3. Revise § 39.1 to read as follows:

§ 39.1 Purpose.

This part sets forth the mechanism for States or Tribal Organizations to obtain a grant to establish, expand, or improve a veterans cemetery that meets VA's national shrine standards of appearance that is or will be owned by the State, or operated by a Tribal Organization on trust land, or to obtain a grant to operate or maintain a State or Tribal veterans cemetery to meet VA's national shrine standards of appearance.

(Authority: 38 U.S.C. 501, 2408)

4. Revise § 39.2 to read as follows:

§ 39.2 Definitions.

Establishment means the process of site selection, land acquisition, design and planning, earth moving, landscaping, construction, and provision of initial operating equipment necessary to convert a tract of land to an operational veterans cemetery.

Establishment, expansion and improvement project means an undertaking to establish, expand, or improve a site for use as a State or Tribal veterans cemetery.

Expansion means an increase in the burial capacity or acreage of an existing cemetery through the addition of gravesites and other facilities, such as committal service shelters, crypts (preplaced grave liners), and columbaria, necessary for the functioning of a cemetery.

Improvement means the enhancement of a cemetery through landscaping, construction, or renovation of cemetery infrastructure, such as building expansion and upgrades to roads and irrigation systems that is not directly related to the development of new gravesites: nonrecurring maintenance; and the addition of other features appropriate to cemeteries.

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or Regional or Village Corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Operation and Maintenance Project means a project that assists a State or Tribal Organization to achieve VA's national shrine standards of appearance in the key cemetery operational areas of cleanliness, height and alignment of headstones and markers, leveling of gravesites, and turf conditions.

Secretary means the Secretary of the United States Department of Veterans Affairs.

State means each of the States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Tribal Organization means:

(1) The recognized governing body of any Indian Tribe;

(2) Any legally established organization of Indians that is controlled, sanctioned, or chartered by such governing body or is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities;

(3) The Department of Hawaiian Homelands; and

(4) Such other organizations as the Secretary may prescribe.

Trust land means any land that:

(1) Is held in trust by the United States for Native Americans;

(2) Is subject to restrictions on alienation imposed by the United States on Indian lands, including native Hawaiian homelands;

(3) Is owned by a Regional Corporation or a Village Corporation as defined in 43 U.S.C. 1602(g) and (j); or

(4) Is on any island in the Pacific Ocean if such land is, by cultural tradition, communally-owned land, as determined by the Secretary.

VA means the United States Department of Veterans Affairs or the Veterans Cemetery Grants Service.

Veteran means a person who served in the active military, naval, or air service who dies in line of duty while in service or was discharged or released under conditions other than dishonorable.

Veterans Cemetery Grants Service (VCGS) means the Veterans Cemetery Grants Service within VA's National Cemetery Administration.

(Authority: 25 U.S.C. 450b(l), 38 U.S.C. 101, 501, 2408, 3765)

5. Revise § 39.4 to read as follows:

§ 39.4 Decision makers, notifications, and additional information.

Decisions required under this part will be made by the VA Director, Veterans Cemetery Grants Service (VCGS), National Cemetery Administration, unless otherwise specified in this part. The VA decisionmaker will provide notice to affected States and Tribal Organizations of approvals, denials, or requests for additional information under this part.

(Authority: 38 U.S.C. 501, 2408)

6. Revise § 39.5 to read as follows:

§ 39.5 Submission of information and documents to VA.

All information and documents required to be submitted to VA must be submitted to the Director of the Veterans Cemetery Grants Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All forms cited in this part are available at *http://www.cem.va.gov/cem/scg_grants.asp.*

(Authority: 38 U.S.C. 501, 2408)

7. Revise § 39.6 to read as follows:

§ 39.6 Amendments to grant application.

A State or Tribal Organization seeking to amend a grant application must submit revised Standard Forms 424 (Application for Federal Assistance) and 424C (Budget Information) with a narrative description of, and justification for, the amendment. Any amendment of an application that changes the scope of the application or increases the amount of the grant requested, whether or not the application has already been approved, shall be subject to approval by VA in the same manner as an original application.

(Authority: 38 U.S.C. 501, 2408)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 4040–0004 and 4040–0008.)

8. Revise § 39.7 to read as follows:

§ 39.7 Line item adjustment to grants.

After a grant has been awarded, upon request from the State or Tribal Organization representative, VA may approve a change in one or more line items (line items are identified in Standard Form 424C) of up to 10 percent (increase or decrease) of the cost of each line item if the change would be within the scope or objective of the project and the aggregate adjustments would not increase the total amount of the grant.

(Authority: 38 U.S.C. 501, 2408)

9. Revise § 39.8 to read as follows:

§ 39.8 Withdrawal of grant application.

A State or Tribal Organization representative may withdraw an application by submitting to VA a written document requesting withdrawal.

(Authority: 38 U.S.C. 501, 2408)

10. Amend § 39.10 by:

a. Revising paragraph (a).

b. Revising paragraph (b) introductory text.

c. Revising paragraphs (c) and (d).

The revisions read as follows:

§ 39.10 Cemetery requirements and prohibitions and recapture provisions.

(a) In order to qualify for a grant, a State or Tribal veterans cemetery must be operated solely for the interment of veterans, their spouses, surviving spouses, minor children, unmarried adult children who were physically or mentally disabled and incapable of self-support, and eligible parents of certain deceased service members.

(b) Any grant under this part made on or after November 21, 1997, is made on the condition that, after the date of receipt of the grant, the State or Tribal Organization receiving the grant, subject to requirements for receipt of notice in 38 U.S.C. 2408 and 2411, will prohibit in the cemetery for which the grant is awarded the interment of the remains or the memorialization of any person:

* * * * *

(c) If a State or Tribal Organization which has received a grant under this part ceases to own the cemetery for which the grant was made, ceases to operate such cemetery as a veterans cemetery in accordance with paragraph (a) of this section, violates the prohibition in paragraph (b) of this section, or uses any part of the funds provided through such grant for a purpose other than that for which the grant was made, the United States shall be entitled to recover from the State or Tribal Organization the total of all grants made to the State or Tribal Organization under this part in connection with such cemetery.

(d) If, within 3 years after VA has certified to the Department of the Treasury an approved grant application, not all funds from the grant have been used by the State or Tribal Organization for the purpose for which the grant was made, the United States shall be entitled to recover any unused grant funds from the State or Tribal Organization.

* * * * *

11. Revise § 39.11 to read as follows:

§ 39.11 State or Tribal Organization to retain control of operations.

Neither the Secretary nor any employee of VA shall exercise any supervision or control over the administration, personnel, maintenance, or operation of any State or Tribal veterans cemetery that receives a grant under this program except as prescribed in this part.

(Authority: 38 U.S.C. 501, 2408)

§§ 39.12 through 39.29 [Reserved]

12. Add reserved §§ 39.12 through 39.29 to subpart A.

13. In § 39.30, revise paragraphs (a) introductory text and (a)(4) to read as follows:

§ 39.30 General requirements for a grant.

(a) For a State or Tribal Organization to obtain a grant for the establishment, expansion, or improvement of a State or Tribal veterans cemetery:

* * * * *

(4) The State or Tribal Organization must meet the application requirements in § 39.34; and

* * * * *

14. Amend § 39.31 by:

a. Revising paragraph (a).

b. Revising paragraphs (b) introductory text, (b)(5), (6), and (8).

c. Revising paragraphs (c) introductory text and (c)(2) through (7).

d. Revising paragraphs (d) and (e).

e. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 39.31 Preapplication requirements.

(a) A State or Tribal Organization seeking a grant for the establishment, expansion, or improvement of a State or Tribal veterans cemetery must submit a preapplication to the Director, Veterans Cemetery Grants Service, through *http://www.cem.va.gov/cem/scg_grants.asp.*

(b) No detailed drawings, plans, or specifications are required with the preapplication. As a part of the preapplication, the State or Tribal Organization must submit each of the following:

* * * * *

(5) Any comments or recommendations made by the State's or Tribal Organization's "Single Point of Contact" reviewing agency.

(6) VA Form 40–0895–2 (Certification of Compliance with Provisions of the Davis-Bacon Act) to certify that the State or Tribal Organization has obtained the latest prevailing wage rates for Federally funded projects. Any construction project fully or partially funded with Federal dollars must comply with those rates for specific work by trade employees (*e.g.,* electricians, carpenters).

* * * * *

(8) VA Form 40–0895–6 (Certification of State or Tribal Government Matching Architectural and Engineering Funds to Qualify for Group 1 on the Priority List) to provide documentation that the State or Tribal Organization has authority to support the project and the resources necessary to initially fund the architectural and engineering portion of the project development. Once the grant is awarded, VA will reimburse the

applicant for all allowable architectural and engineering costs.

* * * * *

(c) In addition, the State or Tribal Organization must submit written assurance of each of the following conditions:

* * * * *

(2) Title to the site is or will be vested solely in the State or held in trust for the Tribal Organization on trust land.

(3) The State or Tribal Organization possesses legal authority to apply for the grant and to finance and construct the proposed facilities; *i.e.,* legislation or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the State or Tribal Organization to act in connection with the application and to provide such additional information as may be required.

Note to paragraph (c)(3): In any case where a Tribal Organization is applying for a grant for a cemetery on land held in trust for more than one Indian Tribe, written assurance that the Tribal Organization possesses legal authority to apply for the grant includes certification that the Tribal Organization has obtained the approval of each such Indian Tribe.

(4) The State or Tribal Organization will assist VA in assuring that the grant complies with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 *et seq.*).

(5) The State or Tribal Organization will obtain approval by VA of the final construction drawings and specifications before the project is advertised or placed on the market for bidding; it will construct the project, or cause the project to be constructed, to completion in accordance with the application and approved plans and specifications; it will submit to the Director of the Veterans Cemetery Grants Service, for prior approval, changes that alter any cost of the project, use of space, or functional layout; and it will not enter into a construction contract for the project or undertake other activities until the requirements of the grant program have been met.

(6) The State or Tribal Organization will comply with the Federal requirements in 2 CFR parts 180 and 801 and 38 CFR part 43 and submit Standard Form 424D (Assurances—Construction Programs).

(7) The State or Tribal Organization will prepare an Environmental Assessment to determine whether an Environmental Impact Statement is necessary, and certify that funds are available to finance any costs related to preparation of the Environmental Assessment.

(d) The State or Tribal Organization must submit a copy of the State or Tribal Organization action authorizing the establishment, maintenance, and operation of the facility as a veterans cemetery in accordance with 38 CFR 39.10(a). If the State or Tribal Organization action is based on legislation, enacted into law, then the legislation must be submitted.

(e) Upon receipt of a complete preapplication for a grant, including all necessary assurances and all required supporting documentation, VA will determine whether the preapplication conforms to all requirements listed in paragraphs (a) through (d) of this section, including whether it contains sufficient information necessary to establish the project's priority. VA will notify the State or Tribal Organization of any nonconformity. If the preapplication does conform, VA shall notify the State or Tribal Organization that the preapplication has been found to meet the preapplication requirements, and the proposed project will be included in the next scheduled ranking of projects, as indicated in § 39.3(d).

(Authority: 25 U.S.C. 450b(l); 38 U.S.C. 501, 2408, 2411)

15. Amend § 39.32 by:

a. Revising the introductory text.

b. Revising paragraph (a).

c. Revising paragraphs (b) introductory text, (b)(1) introductory text, and (b)(2) introductory text.

d. Revising paragraph (c).

e. Revising paragraph (d) introductory text.

f. Revising paragraphs (e) introductory text, (e)(1) through (3), (e)(4) introductory text, (e)(5), (e)(6) introductory text, (e)(7) introductory text, and (e)(9).

The revisions read as follows:

§ 39.32 Plan preparation.

The State or Tribal Organization must prepare Establishment, Expansion, and Improvement Project plans and specifications in accordance with the requirements of this section for review by the VCGS. The plans and specifications must be approved by the VCGS prior to the State's or Tribal Organization's solicitation for construction bids. Once the VCGS approves the plans and specifications, the State or Tribal Organization must obtain construction bids and determine the successful bidder prior to submission of the application. The State or Tribal Organization must establish procedures for determining that costs are reasonable and necessary and can be allocated in accordance with the provisions of Office of Management and Budget (OMB) Circular No. A–87. Once the Establishment, Expansion, and Improvement Project preapplication and the project's plans and specifications have been approved, an application for assistance must be submitted in compliance with the uniform requirements for grants-in-aid to State and local governments prescribed by OMB Circular No. A–102, Revised.

(a) *General.* These requirements have been established for the guidance of the State or Tribal Organization and the design team to provide a standard for preparation of drawings, specifications, and estimates.

(b) *Technical requirements.* The State or Tribal Organization should meet these technical requirements as soon as possible after VA approves the Establishment, Expansion, and Improvement Project preapplication.

(1) *Boundary and site survey.* The State or Tribal Organization shall provide a survey of the site and furnish a legal description of the site. A boundary and site survey need not be submitted if one was submitted for a previously approved project and there have been no changes. Relevant information may then be shown on the site plan. If required, the site survey shall show each of the following items:

* * * * *

(2) *Soil investigation.* The State or Tribal Organization shall provide a soil investigation of the scope necessary to ascertain site characteristics for construction and burial or to determine foundation requirements and utility service connections. A new soil investigation is not required if one was done for a previously approved project on the same site and information from the previous investigation is adequate and unchanged. Soil investigation, when done, shall be documented in a signed report.

The investigation shall be adequate to determine the subsoil conditions. The investigation shall include a sufficient number of test pits or test borings as will determine, in the judgment of the architect, the true conditions. The

following information will be covered in the report:

* * * * *

(c) *Master plan.* A master plan showing the proposed layout of all facilities—including buildings, roadways, and burial sections—on the selected site shall be prepared for all new cemetery establishment projects for approval by the VCGS. If the project is to be phased into different year programs, the phasing shall be indicated. The master plan shall analyze al factors affecting the design, including climate, soil conditions, site boundaries, topography, views, hydrology, environmental constraints, transportation access, *etc.* It should provide a discussion of alternate designs that were considered. In the case of an expansion project or improvement project, the work contemplated should be consistent with the VA-approved master plan or a justification for the deviation should be provided.

(d) *Preliminary or* "*design development*" *drawings.* Following VA approval of the master plan, the State or Tribal Organization must submit design development drawings that show all current phase construction elements to be funded by the grant. The drawings must comply with the following requirements:

* * * * *

(e) *Final construction drawings and specifications.* Funds for the construction of any project being assisted under this program will not be released until VA approves the final construction drawings and specifications. If VA approves them, VA shall send the State or Tribal Organization a written letter of approval indicating that the project's plans and specifications comply with the terms and conditions as prescribed by VA. This does not constitute approval of the contract documents. It is the responsibility of the State or Tribal Organization to ascertain that all State and Federal requirements have been met and that the drawings and specifications are acceptable for bid purposes.

(1) *General.* The State or Tribal Organization shall prepare final working drawings so that clear and distinct prints may be obtained. These drawings must be accurately dimensioned to include all necessary explanatory notes, schedules, and legends. Working drawings shall be complete and adequate for VA review and comment. The State or Tribal Organization shall prepare separate drawings for each of the following types of work: architectural, equipment, layout, structural, heating and ventilating, plumbing, and electrical.

(2) *Architectural drawings.* The State or Tribal Organization shall submit drawings which include: All structures and other work to be removed; all floor plans if any new work is involved; all elevations which are affected by the alterations; building sections; demolition drawings; all details to complete the proposed work and finish schedules; and fully dimensioned floor plans at 1/8" or 1/4" scale.

(3) *Equipment drawings.* The State or Tribal Organization shall submit a list of all equipment to be provided under terms of the grant in the case of an Establishment Project. Large-scale drawings of typical special rooms indicating all fixed equipment and major items of furniture and moveable equipment shall be included.

(4) *Layout drawings.* The State or Tribal Organization shall submit a layout plan that shows:

* * * * *

(5) *Structural drawings.* The State or Tribal Organization shall submit complete foundation and framing plans and details, with general notes to include: governing code, material strengths, live loads, wind loads, foundation design values, and seismic zone.

(6) *Mechanical drawings.* The State or Tribal Organization shall submit:

* * * * *

(7) *Electrical drawings.* The State or Tribal Organization shall submit separate drawings for lighting and power, including drawings of:

* * * * *

(9) *Cost estimates.* The State or Tribal Organization shall show in convenient form and detail the estimated total cost of the work to be performed under the contract, including provisions of fixed equipment shown by the plans and specifications, if applicable, to reflect the changes of the approved financial plan. Estimates shall be summarized and totaled under each trade or type of work. Estimates shall also be provided for each building structure and other important features such as the assembly area and shall include burial facilities.

* * * * *

16. Revise § 39.33 to read as follows:

§ 39.33 Conferences.

(a) *Predesign conference.* A predesign conference is required for all Establishment, Expansion, and Improvement Projects requiring major construction, primarily to ensure that the State or Tribal Organization becomes oriented to VA procedures, requirements, and any technical comments pertaining to the project. This conference will take place at an appropriate location near the proposed site and should include a site visit to ensure that all parties to the process, including NCA staff, are familiar with the site and its characteristics.

(b) *Additional conferences.* At any time, VA may recommend an additional conference (such as a design development conference) be held in VA Central Office in Washington, DC, to provide an opportunity for the State or Tribal Organization and its architects to discuss with VA officials the requirements for a grant.

(Authority: 38 U.S.C. 501, 2408)

17. In § 39.34, revise paragraphs (a) introductory text, (b) introductory text, and (c) to read as follows:

§ 39.34 Application requirements.

(a) For an Establishment, Expansion, and Improvement Project to be considered for grant funding under this subpart, the State or Tribal Organization must submit an application (as opposed to a preapplication) consisting of the following:

* * * * *

(b) Prior to submission of the application, the State or Tribal Organization must submit a copy of an Environmental Assessment to determine if an Environmental Impact Statement is necessary for compliance with section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4332). The Environmental Assessment must briefly describe the project's possible beneficial and harmful effects on the following impact categories:

* * * * *

(c) If an adverse environmental impact is anticipated, the State or Tribal Organization must explain what action will be taken to minimize the impact. The assessment shall comply with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

* * * * *

§§ 39.36 through 39.49 [Reserved]

18. Add reserved §§ 39.36 through 39.49 to subpart B.

19. In § 39.50, revise paragraphs (b)(3) and (b)(4) introductory text to read as follows:

§ 39.50 Amount of grant.

* * * * *

(b) * * *

(3) In the case of an establishment grant, the cost of equipment necessary for the operation of the State or Tribal veterans cemetery. This may include the

cost of non-fixed equipment such as grounds maintenance equipment, burial equipment, and office equipment.

(4) In the case of an improvement or expansion grant, the cost of equipment necessary for operation of the State or Tribal veterans cemetery, but only if such equipment:

* * * * *

20. In § 39.51, revise the introductory text and paragraph (d) to read as follows:

§ 39.51 Payment of grant award.

The amount of an Establishment, Expansion, and Improvement Project grant award will be paid to the State or Tribal Organization or, if designated by the State or Tribal Organization representative, the State or Tribal veterans cemetery for which such project is being carried out, or to any other State or Tribal Organization agency or instrumentality. Such amount shall be paid by way of reimbursement and in installments that are consistent with the progress of the project, as the Director of the Veterans Cemetery Grants Service may determine and certify for payment to the appropriate Federal institution. Funds paid under this section for an approved Establishment, Expansion, and Improvement Project shall be used solely for carrying out such project as approved. As a condition for the final payment, the representative of the State or Tribal Organization must submit to VA the following:

* * * * *

(d) Evidence that the State or Tribal Organization has met its responsibility for an audit under the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*) and § 39.122, if applicable.

* * * * *

§§ 39.52 through 39.59 [Reserved]

21. Add reserved §§ 39.52 through 39.59 to subpart B.

22. Revise § 39.60(a) to read as follows:

§ 39.60 General requirements for site selection and construction of veterans cemeteries.

(a) The various codes, requirements, and recommendations of State or Tribal Organization and local authorities or technical and professional organizations, to the extent and manner in which those codes, requirements, and recommendations are referenced in this subpart, are applicable to grants involving construction of veterans cemeteries. Additional information concerning these codes, requirements, and recommendations may be obtained from VA, National Cemetery Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

* * * * *

23. Revise § 39.63 introductory text to read as follows:

§ 39.63 Architectural design standards.

The publications listed in this section are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 522(a) and 1 CFR part 51. Copies of these publications may be inspected at the office of the Veterans Cemetery Grants Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 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/code_of_federal_regulations/ibr_locations.html.* Copies of the 2003 edition of the National Fire Protection Association Life Safety Code and Errata (NFPA 101), the 2003 edition of the NFPA 5000, Building Construction and Safety Code, and the 2002 edition of the National Electrical Code, NFPA 70, may be obtained from the National Fire Protection Association, Inc. (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101, 800–844–6058 (toll free). Copies of the 2003 edition of the Uniform Mechanical Code and the 2003 edition of the Uniform Plumbing Code may be obtained from the International Association of Plumbing and Mechanical Officials, 5001 E. Philadelphia Street, Ontario, CA 91761–2816. 909–472–4100 (this is not a toll-free number). The 2002 and 2003 NFPA and IAPMO code publications can be inspected at VA by calling 202–461–4902 for an appointment.

* * * * *

§§ 39.64 through 39.79 [Reserved]

24. Add reserved §§ 39.64 through 39.79 to subpart B.

25. In § 39.80, revise paragraphs (a) introductory text and (a)(4) to read as follows:

§ 39.80 General requirements for a grant.

(a) For a State or Tribal Organization to obtain a grant for the operation or maintenance of a State or Tribal veterans cemetery:

* * * * *

(4) The State or Tribal Organization must meet the application requirements in § 39.84; and

* * * * *

26. Amend § 39.81 by:

a. Revising paragraph (a).

b. Revising paragraphs (b) introductory text, (b)(1) through (3), (b)(9), (b)(10) introductory text, and (b)(11).

c. Revising paragraph (c).

d. Revising paragraph (d) introductory text.

E. Revising paragraph (e).

The revisions read as follows:

§ 39.81 Preapplication requirements.

(a) A State or Tribal Organization seeking a grant for the operation or maintenance of a State or Tribal veterans cemetery must submit a preapplication to the Director, Veterans Cemetery Grants Service, through *http://www.cem.va.gov/cem/scg_grants.asp.*

(b) No detailed drawings, plans, or specifications are required with the preapplication. As a part of the preapplication, the State or Tribal Organization must submit each of the following:

(1) Standard Form 424 (Application for Federal Assistance) and Standard Form 424C (Budget Information) signed by the authorized representative of the State or Tribal Organization. These forms document the amount of the grant requested, which may not exceed 100 percent of the estimated cost of the project to be funded with the grant.

(2) VA Form 40–0895–2 (Certification of Compliance with Provisions of the Davis-Bacon Act) to certify that the State or Tribal Organization has obtained the latest prevailing wage rates for Federally funded projects. Any construction project fully or partially funded with Federal dollars must comply with those rates for specific work by trade employees (*e.g.,* electricians, carpenters).

(3) VA Form 40–0895–6 (Certification of State or Tribal Government Matching Architectural and Engineering Funds to Qualify for Group 1 on the Priority List) to provide documentation that the State or Tribal Organization has legal authority to support the project and the resources necessary to initially fund the architectural and engineering portion of the project development. Once the grant is awarded, VA will reimburse the applicant for all allowable architectural and engineering costs.

* * * * *

(9) A gravesite assessment survey documenting the State or Tribal cemetery's performance related to the standards outlined in paragraph (b)(10) of this section for the year in which the preapplication is submitted.

(10) A program narrative describing how the project will assist the State or Tribal Organization in meeting VA's

national shrine standards with respect to cleanliness, height and alignment of headstones and markers, leveling of gravesites, or turf conditions. Specifically, the preapplication should explain the need for the grant, how the work is to be accomplished, and the expected improvement in the State or Tribal cemetery's performance related to one or more of the following national shrine standards:

* * * * *

(11) A description of the geographic location of the existing State or Tribal veteran cemetery and any other supporting documentation, as requested by the VCGS Director.

* * * * *

(c) In addition, the State or Tribal Organization must submit written assurance of each of the following conditions:

(1) Any cemetery in receipt of a grant under this subpart will be used exclusively for the interment or memorialization of eligible persons, as set forth in § 39.10(a), whose interment or memorialization is not contrary to the conditions of the grant (see §§ 39.10(b) and 38 U.S.C. 2408(d) and 2411).

(2) Title to the site is or will be vested solely in the State or held in trust for the Tribal Organization on trust land.

(3) The State or Tribal Organization possesses legal authority to apply for the grant.

Note to paragraph (c)(3): In any case where a Tribal Organization is applying for a grant for a cemetery on land held in trust for more than one Indian Tribe, written assurance that the Tribal Organization possesses legal authority to apply for the grant includes certification that the Tribal Organization has obtained the approval of each such Indian Tribe.

(4) The State or Tribal Organization will obtain approval by VA of the final specifications before the project is advertised or placed on the market for bidding; the project will achieve VA's national shrine standards with respect to cleanliness, height and alignment of headstones and markers, leveling of gravesites, or turf conditions in accordance with the application and approved plans and specifications; the State or Tribal Organization will submit to the Director of the Veterans Cemetery Grants Service, for prior approval, changes that alter any cost of the project; and the State or Tribal Organization will not enter into a contract for the project or undertake other activities until all the requirements of the grant program have been met.

(d) Depending on the scope of the project, the VCGS will work with the State or Tribal Organization to determine which, if any, of the following are required:

* * * * *

(e) Upon receipt of a complete preapplication for a grant, including all necessary assurances and all required supporting documentation, VA will determine whether the preapplication conforms to all requirements listed in paragraphs (a) through (d) of this section, including whether it contains sufficient information necessary to establish the project's priority. VA will notify the State or Tribal Organization of any nonconformity. If the preapplication does conform, VA shall notify the State or Tribal Organization that the preapplication has been found to meet the preapplication requirements, and the proposed project will be included in the next scheduled ranking of projects, as indicated in § 39.3(d).

(Authority: 25 U.S.C. 450b(l); 38 U.S.C. 501, 2408, 2411)

* * * * *

27. Amend § 39.82 by:

a. Revising paragraphs (a) introductory text and (a)(3).

b. Revising paragraphs (b) introductory text and (b)(1).

c. Revising paragraph (c).

The revisions read as follows:

§ 39.82 Plan preparation.

(a) The State or Tribal Organization must successfully complete its plan preparation under this section before submitting a grant application for an Operation and Maintenance Project. The State or Tribal Organization may be required to undertake some or all of the following requirements of this section. After submitting all necessary plans and specifications to the VCGS and obtaining approval for the State or Tribal Organization to solicit for the Operation and Maintenance Project contract bids, the State or Tribal Organization shall:

* * * * *

(3) Comply with the uniform requirements for grants-in-aid to State, Tribal and local governments prescribed by OMB Circular No. A–102, Revised.

(b) Depending on the scope of the project, the VCGS will work with the State or Tribal Organization to determine which of the following will be required prior to submission of an application. As determined by VA, these may include:

(1) A boundary and site survey comprising a survey and legal description of the existing State or Tribal cemetery site;

* * * * *

(c) If VA determines that the project's plans and specifications comply with the terms and conditions prescribed by VA, VA will send the State or Tribal Organization a written letter of approval indicating that the project's plans and specifications comply with the terms and conditions as prescribed by VA. This does not constitute approval of the contract documents. It is the responsibility of the State or Tribal Organization to ascertain that all State and Federal requirements have been met and that the drawings and specifications are acceptable for bid purposes.

* * * * *

28. Revise § 39.83 to read as follows:

§ 39.83 Conferences.

(a) *Planning conference.* The VCGS may require planning conferences for Operation and Maintenance Projects, primarily to ensure that the State or Tribal Organization becomes oriented to VA's national shrine standards, procedures, requirements, and any technical comments pertaining to the project. These conferences will normally occur over the telephone.

(b) *Additional conferences.* At any time, VA may recommend an additional telephone conference to provide an opportunity for the State or Tribal Organization to discuss with VA officials the requirements for an Operation and Maintenance Project grant.

(Authority: 38 U.S.C. 501, 2408)

29. Revise § 39.84 introductory text to read as follows:

§ 39.84 Application requirements.

For an Operation and Maintenance Project to be considered for grant funding under this subpart, the State or Tribal Organization must submit an application (as opposed to a preapplication) consisting of the following:

* * * * *

§§ 39.86 through 39.99 [Reserved]

30. Add reserved §§ 39.86 through 39.99 to subpart C.

31. Revise § 39.101 introductory text and paragraph (d) to read as follows:

§ 39.101 Payment of grant award.

The amount of an Operation and Maintenance Project grant award will be paid to the State or Tribal Organization or, if designated by the State or Tribal Organization representative, the State or Tribal veterans cemetery for which such project is being carried out, or to any other State or Tribal Organization agency or instrumentality. Such amount shall be paid by way of reimbursement

and in installments that are consistent with the progress of the project, as the Director of the Veterans Cemetery Grants Service may determine and certify for payment to the appropriate Federal institution. Funds paid under this section for an approved Operation and Maintenance Project shall be used solely for carrying out such project as approved. As a condition for the final payment, the State or Tribal representative must submit to VA each of the following:

* * * * *

(d) Evidence that the State or Tribal Organization has met its responsibility for an audit under the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*) and § 39.122.

* * * * *

§§ 39.102 through 39.119 [Reserved]

32. Add reserved §§ 39.102 through 39.119 to subpart C.

33. Revise § 39.120 to read as follows:

§ 39.120 Documentation of grant accomplishments.

Within 60 days of completion of an Operation and Maintenance Project, the State or Tribal Organization must submit to VCGS a written report regarding the work performed to meet VA's national shrine standards. This report must be based on the original justification for the grant as noted in § 39.81(b)(10) and must include statistical data and detailed pictures of the work accomplished.

(Authority: 38 U.S.C. 501, 2408)

34. Amend § 39.121 by:

a. Revising the section heading.

b. Revising paragraph (a).

c. Revising paragraph (b) introductory text.

d. Revising paragraphs (c) and (d).

The revisions read as follows:

§ 39.121 State or Tribal Organization responsibilities following project completion.

(a) A State or Tribal Organization that has received an Establishment, Expansion, and Improvement Project grant or an Operation and Maintenance Project grant shall monitor use of the cemetery by various subgroups and minority groups, including women veterans. If VA determines that under-utilization by any of these groups exists, the State or Tribal Organization shall establish a program to inform members of these groups about benefits available to them. If a significant number or portion of the population eligible to be served or likely to be directly affected by the grant program needs benefits information in a language other than English, the State or Tribal Organization shall make such information available in the necessary language.

(b) A State or Tribal veterans cemetery that has received an Establishment,

Expansion, and Improvement Project grant or an Operation and Maintenance Project grant shall be operated and maintained as follows:

* * * * *

(c) VA, in coordination with the State or Tribal Organization, shall inspect the project for compliance with the standards set forth in subpart B of this part for Establishment, Expansion, and Improvement Projects and with the standards set forth in subpart C of this part for Operation and Maintenance Projects at the project's completion and at least once in every 3-year period following completion of the project throughout the period the facility is operated as a State or Tribal veterans cemetery. The State or Tribal Organization shall forward to the Director, Veterans Cemetery Grants Service, a copy of the inspection report, giving the date and location the inspection was made and citing any deficiencies and corrective action to be taken or proposed.

(d) Failure of a State or Tribal Organization to comply with any of paragraphs (a) through (c) of this section shall be considered cause for VA to suspend any payments due the State or Tribal Organization on any project until the compliance failure is corrected.

* * * * *

35. Revise § 39.122 to read as follows:

§ 39.122 Inspections, audits, and reports.

(a) A State or Tribal Organization will allow VA inspectors and auditors to conduct inspections as necessary to ensure compliance with the provisions of this part. The State or Tribal Organization will provide to VA evidence that it has met its responsibility under the Single Audit Act of 1984 (see part 41 of this chapter).

(b) A State or Tribal Organization will make an annual report on VA Form 40–0241 (State Cemetery Data) signed by the authorized representative of the State or Tribal Organization. These forms document current burial activity at the cemetery, use of gravesites, remaining gravesites, and additional operational information intended to answer questions about the status of the grant program.

(c) A State or Tribal Organization will complete and submit to VA a VA Form 40–0895–13 (Certification Regarding Documents and Information Required for State or Tribal Government Cemetery Construction Grants-Post Grant Requirements) to ensure that the grantee is aware of and complies with all grant responsibilities and to properly and timely close out the grant.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0559)

[FR Doc. 2011–12285 Filed 5–18–11; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2010–0298; FRL–9308–5]

Approval and Disapproval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards; Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove the State Implementation Plan (SIP) submission from the State of Montana 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 Montana submitted two certifications of their infrastructure SIP for the 1997 ozone NAAQS, dated November 28, 2007, which was determined to be complete on March 27, 2008 (73 FR 16205), and December 22, 2009.

EPA does not propose to act on the State's November 28, 2007 and December 22, 2009, submissions 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 on February 26, 2008 (73 FR 10150).

DATES: Written comments must be received on or before June 20, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2010–0298, 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–2010–0298. 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.

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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 the State of Montana 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, which 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 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). In a separate action, EPA approved the State's submission to meet the requirements of 110(a)(2)(D)(i) for the 1997 ozone NAAQS (73 FR 10150).

IV. How did the State of Montana 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. *Montana's response to this requirement:* Enforceable control measures exist to protect the ozone NAAQS throughout the State. Montana implements a stationary source permit program which requires subject sources to demonstrate emissions will not cause or contribute to a violation of any NAAQS (Administrative Rules of Montana (ARM) 17.8.749). Subject sources are further required to utilize best available control technology (BACT) when installing emission controls (ARM 17.8.752). Montana also regulates open burning and subjects those conducting open burning to BACT requirements as well (Title 17, Chapter 8, Subchapter 6).

Except for specific control measures adopted in Montana Board of Environmental Review (BER) orders, the emission limits and other air pollution control regulations are contained in the following subchapters of Title 17, Chapter 8, ARM: Subchapter 1—General Provisions; Subchapter 2—Emission Standards; Subchapter 4—Stack Heights and Dispersion Techniques; Subchapter 6—Open Burning; Subchapter 7—Permit, Construction and Operation of Air Contaminant Sources; Subchapter 8—Prevention of Significant Deterioration of Air Quality; Subchapter 9—Permit Requirements for Major Stationary Sources or Major Modifications Locating within Nonattainment Areas; Subchapter 10—Preconstruction Permit Requirements for Major Stationary Sources or Major Modifications Locating within Attainment or Unclassified Areas; Subchapter 16—Emission Control Requirements for Oil and Gas Well Facilities Operating Prior to Issuance of a Montana Air Quality Permit.

State rule(s)	Federal action[2]	Action reference
ARM 17.8.101 *et seq*	approved	60 FR 3615.
ARM 17.8.301 *et seq*	approved	44 FR 14036.
ARM 17.8.401 *et seq*	approved	60 FR 36715.
ARM 17.8.601 *et seq*	approved	61 FR 54947.
ARM 17.8.701 *et seq*	approved	60 FR 36715.
ARM 17.8.801 *et seq*	approved	60 FR 36715.
ARM 17.8.901 *et seq*	approved	60 FR 36715.
ARM 17.8.1001 *et seq*	approved	60 FR 36715.

[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).

State rule(s)	Federal action [2]	Action reference
ARM 17.8.1601 *et seq*	approved	60 FR 36715.

b. *EPA analysis:* Montana's SIP meets the requirements of CAA section 110(a)(2)(A) for the 1997 ozone NAAQS, subject to the following clarifications. First, this infrastructure element does not require the submittal of regulations or emission limitations developed specifically for attaining the 1997 ozone NAAQS. Furthermore, Montana has no areas designated as nonattainment for the 1997 ozone NAAQS. Montana primarily regulates emissions of ozone and ozone precursors through its SIP-approved major and minor source permitting programs. The SIP also contains limitations for emissions of hydrocarbons from storage and processing of petroleum products. See ARM 17.8.324. This suffices, in the case of Montana, to meet the requirements of 110(a)(2)(A) for the 1997 ozone NAAQS.

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 SIP 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 [3] 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. *Montana's response to this requirement:* On an annual basis, the Department of Environmental Quality ("Department" or "DEQ") evaluates trends in industrial and economic development, meteorology, and population growth and makes other scientific, social, and geographic observations regarding areas of the State which may be adversely affected by the impact of criteria pollutants. Based on this information, the Department identifies potential air pollution "hotspots." The Department, with participation and input from local control program staff and other interested persons, makes decisions regarding monitor type, location, and schedules for monitoring air quality in these hotspots. The Department makes the product of this decision making process, the annual monitoring network plan, available for public inspection prior to submission to EPA.

Pursuant to its Quality Assurance Project Plans, the Department makes arrangements to operate and maintain Federal reference monitors and establishes Federally-approved protocols for sample collection, handling, and analysis. Ambient air monitoring data is subject to strict quality assurance/quality control processes. Air monitoring data is included in the AIRS database.

Montana has monitored the Billings area for ambient ozone levels since June 2005. No exeedences have been recorded.

The provisions in state law for the collection and analysis of ambient air quality data are contained in the CAA of Montana (MT CAA), 75–2–101 *et seq.,* MCA, and, specifically, 75–2–112, MCA, Powers and Responsibilities of Department.

b. *EPA analysis:* Montana's air monitoring programs and data systems meet the requirements of CAA section 110(a)(2)(B) for the 1997 ozone NAAQS. The 2009–2010 Montana Annual Monitoring Network Plan (AMNP), dated June 2009, was approved by EPA Region 8 on August 24, 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. *Montana's response to this requirement:* Congress directed states to develop and implement measures to prevent significant deterioration (PSD) of air quality pursuant to 42 U.S.C. 7470, *et seq.* and 7501, *et seq.* Pursuant to ARM 17.8.130, sources subject to the provisions of Title 17, Chapter 8, subchapters 8, 9, and 10, ARM, regulating construction of new or modified stationary sources consistent with PSD and NSR requirements, shall be subject to enforcement. The Department has the authority to issue a notice of violation, complaint regarding the source violation, and an order to take corrective action.

State rule(s)	Federal action	Action reference
ARM 17.8.130	Approved	71 FR 3770.
ARM 17.8.801 *et seq*	Approved	60 FR 36715.
ARM 17.8.901 *et seq*	Approved	60 FR 36715.
ARM 17.8.1001 *et seq*	Approved	60 FR 36715.

[2] In its certification, Montana noted here and elsewhere that EPA has subsequently approved revisions to the cited provisions and in some instances Montana has submitted revisions to the provisions but EPA has not yet taken action on them.

[3] 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).

The provisions in state law for the enforcement of emission limitations and other control measures, means or techniques is contained in the MT CAA, 75–2–101 *et seq.,* MCA, and specifically, 75–2–111, MCA, Powers of the Board and 75–2–112, MCA, Powers and Responsibilities of Department.

b. *EPA analysis:* To generally meet the requirements of section 110(a)(2)(C), the State is required to have SIP-approved PSD, nonattainment 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. In addition, Montana has no nonattainment areas for the 1997 ozone NAAQS and is therefore not required at this point to have a corresponding nonattainment NSR program. 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).

Montana has a SIP-approved PSD program that generally meets the requirements of part C of the Act. However, 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, which includes requirements for PSD programs to treat nitrogen oxides as a precursor for ozone (72 FR 71612). The State's approved PSD program does not satisfy the requirements of the phase 2 implementation rule.[4] Furthermore, the State has not submitted a revision to the program to address this deficiency. As a result, the SIP does not satisfy, for the 1997 ozone NAAQS, the requirement of element 110(a)(2)(C) for the SIP to include a permit program as required in part C of Title I of the Act. EPA therefore proposes to disapprove the Montana infrastructure SIP for the 1997 ozone NAAQS for this requirement.

Turning to minor NSR, EPA is proposing to approve Montana'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. (See ARM Chapter 17.8, Subchapter 7.) 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. *EPA Analysis:* EPA approved the State's Interstate Transport provisions for the 1997 ozone and $PM_{2.5}$ NAAQS on February 26, 2008 (73 FR 10150). 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. *Montana's response to this requirement:* Although Montana certified that its SIP met the requirements of sections 110(a)(1) and (2) generally and 110(a)(2)(D) specifically, Montana did not identify particular provisions to meet this requirement.

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.

As required by 40 CFR 51.166(q)(2)(iv), Montana's SIP-approved PSD program requires notice to states whose lands may be affected by the emissions of sources subject to PSD. See ARM 17.8.826(2)(d). This suffices to meet the notice requirement of section 126(a).

Montana has no pending obligations under sections 126(c) or 115(b); therefore, its SIP currently meets the requirements of those sections. In summary, the SIP 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.

a. *Montana's response to this requirement:* No state or Federal provisions prohibit the implementation of any provision of the Montana SIP. Montana devotes adequate resources to SIP development and maintenance sufficient to ensure attainment and maintenance of the NAAQS for ozone.

Montana receives from EPA grant monies intended to fund programs to protect NAAQS. Montana allocates a portion of the EPA grant money to fund SIP activities for attainment and maintenance of the NAAQS. Montana imposes and collects fees from permit applicants. Montana allocates all of the permit fee revenue to activities associated with permitting and compliance of regulated sources of air pollutants, including criteria pollutant emissions. Montana also receives state general funds to conduct state air

[4] In particular, the State's definitions of "major stationary source," ARM 17.8.801(22)(b), "net emissions increase," ARM 17.8.801(24), and "significant," ARM 17.8.801(27)(a), do not meet the corresponding requirements in, respectively, 40 CFR 51.166(b)(1)(i)(c)(ii), 51.166(b)(2)(ii), and 51.166(b)(23)(i) with regard to treating nitrogen oxides as an ozone precursor. In addition, the definition of "air pollutant" used in the State's PSD program does not meet the requirements of 40 CFR 51.166(49)(i)(a) regarding identifying nitrogen oxides as an ozone precursor. See 72 FR at 71699.

quality program activities. Montana allocates all state general funding to non-permit air program activities including SIP programs for attainment and maintenance of the NAAQS.

The Air Resources Management Bureau has 50 fulltime equivalent positions with an annual budget of $6.3 million for fiscal year 2010. The program funding is broken down as follows: $163,536 from state general funds, $1,643,940 from Federal grants, and $4,546,047 from stationary source fees.

The provisions in State law providing for adequate resources are contained in the MT CAA, 75–2–101 *et seq.,* MCA. More specifically, those provisions are contained in 75–2–102, MCA, Intent—Policy and Purpose; 75–2–111, MCA, Powers of the Board and 75–2–112, MCA, Powers and Responsibilities of Department.

The Montana Board of Environmental Review (BER) oversees the Montana DEQ, including actions taken by the State air program. The composition and requirements of the BER are detailed in 2–15–3502, MCA, 2–15–121, MCA, and 2–15–124, MCA. Laws related to conflict of interest in Montana state government are found in 2–2–201, MCA, and 2–2–202, MCA.

b. *EPA Analysis:* The provisions contained in 75–2–102, MCA, 75–2–111, MCA, and 75–2–112, MCA, provide adequate authority for the State of Montana and the DEQ to carry out its SIP obligations with respect to the 1997 ozone NAAQS. 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 Montana's SIP requirements. EPA therefore proposes to approve the Montana infrastructure SIP with regards to the requirements of section 110(a)(2)(E) for the 1997 ozone NAAQS.

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) periodic 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. *Montana's response to this requirement:* Montana requires stationary sources subject to State regulation to annually submit all information necessary to complete a source emissions inventory. Affected permits require emissions monitoring from stationary sources of air pollution. Further, on an annual basis the Department compiles a State emissions inventory of all regulated sources for the evaluation of compliance with applicable standards and inclusion in EPA databases.

State rule(s)	Federal action	Action reference
ARM 17.8.105	Approved	66 FR 42427.
ARM 17.8.106	Approved	66 FR 42427.
ARM 17.8.505	Not submitted	State only rule.

b. *EPA Analysis:* The provisions cited by Montana (ARM 17.8.105 and 17.8.106) pertain to testing requirements and protocols. Montana also incorporates by reference 40 CFR part 51, appendix P, regarding minimum monitoring requirements. (See ARM 17.8.103(1)(D)). In addition, Montana provides for monitoring, recordkeeping, and reporting requirements for sources subject to minor and major source permitting. EPA therefore proposes to approve Montana's infrastructure SIP with regards to 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. *Montana's response to this requirement:* On January 3, 2006, EPA approved Montana's Emergency Episode Avoidance Plan (EEAP) in 71 FR 19. Montana's EEAP made provision for emergency control of all criteria pollutants. Under authority granted by section 75–2–402, MCA, Emergency Procedures, and the Montana's EEAP, the Department may order sources of pollution to limit or cease emissions. The Montana CAA is not subject to approval by EPA.

b. *EPA analysis:* Section 75–2–402 of the MCA provides DEQ with general emergency authority comparable to that in section 303 of the Act. EPA last approved revisions to the EEAP on January 3, 2006 (71 FR 19). The EEAP meets the requirements of 40 CFR part 51, Subpart H. 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. *Montana's response to this requirement:* The Montana CAA invests in the BER the authority to adopt, amend, and repeal rules for administering implementing, and enforcing rules promulgated to regulate emissions of air pollutants, including rules necessary to establish measures to attain and maintain the NAAQS. The Governor submits, for inclusion into the SIP, rules determined to be necessary to attain and maintain the NAAQS.

The provisions in state law providing for adoption of rules and regulations are contained in the Montana CAA, 75–2–101 *et seq.,* MCA. More specifically, those provisions are contained in 75–2–102, MCA, Intent—Policy and Purpose; 75–2–111, MCA, Powers of the Board, and 75–2–112, MCA, Powers and Responsibilities of Department.

b. *EPA analysis:* Montana's statutory provisions in the Montana CAA at 75–2–101 *et seq.,* give the BER 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 title I of the Act (relating to nonattainment areas).

a. *Montana's response to this requirement:* All control plans for non-attainment areas in Montana are

prepared in accordance with the applicable requirements of 42 U.S.C. 7501–7505. There are no ozone nonattainment areas in Montana.

b. *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 title I of the Act (relating to PSD of air quality and visibility protection).

a. *Montana's response to this requirement:* Montana satisfies EPA's requirements for intergovernmental relations, see 59 FR 2988. Montana has not changed or revoked consultation processes since that time. Montana holds public meetings and hearings on all SIP revisions in accordance with 40 CFR part 51, Appendix V and Montana's open meeting laws. See 3–2–203, MCA.[5]

On January 3, 2006, EPA approved Montana's EEAP in 71 FR 19. Montana's EEAP provides for all criteria pollutants, including ozone. The EEAP contains provisions for disseminating information regarding an exeedence of the NAAQS to appropriate news media, health officials, law enforcement, and others. The Department notice includes recommendations for actions citizens may take to reduce the impact of their activities and reduce their exposure. Montana also complies with 40 CFR 51.930 during exceptional events.

Congress directed states to develop and implement measures to prevent significant deterioration of air quality pursuant to 42 U.S.C. 7471. Montana adopted permitting requirements for major sources proposing to modify or construct; PSD rules in subchapter 8 and nonattainment New Source Review rules in subchapter 10 of Title 17, Chapter 8, ARM. Montana continues to implement and enforce these rules. Montana consults with Federal Land Managers as needed and/or required.

State rule(s)	Federal action	Action reference
ARM 17.8.801 *et seq.*	Approved	60 FR 36715.
ARM 17.8.1001 *et seq.*	Approved	60 FR 36715.

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, Montana's EEAP, approved into the SIP, meets the requirements of CAA section 127.

Turning to the requirement in section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I of the Act, EPA has evaluated this requirement in the context of infrastructure element (C) in section IV.3 above. As discussed there, EPA proposes to disapprove Montana's infrastructure SIP for the requirement in 110(a)(2)(C) that the SIP include a permit program as required in part C, on the basis that Montana's SIP-approved PSD program does not properly regulate nitrogen oxides as an ozone precursor. For the same reason, EPA proposes to disapprove Montana's infrastructure SIP with regards to the requirement in section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I the Act.

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 Montana SIP meets the requirements of section 110(a)(2)(J) for the 1997 ozone NAAQS with regards to sections 121 and 127 of the Act, and does not meet the requirements of section 110(a)(2)(J) for the 1997 ozone NAAQS with regards to meeting the applicable requirements of part C relating to PSD.

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. *Montana's response to this requirement:* Montana requires an applicant proposing to construct or modify a source of criteria pollutants to demonstrate the facility can be expected to operate in compliance with applicable law and that it will not cause or contribute to a violation of any NAAQS. Sources subject to the provisions of Title 17, Chapter 8, Subchapters 7, 8, 9, and 10, ARM (regulating construction of new or modified major stationary sources consistent with PSD and New Source Review (NSR) requirements) shall demonstrate the facility can be expected to operate in compliance with applicable law and that it will not cause or contribute to a violation of any NAAQS.

State rule(s)	Federal action	Action reference
ARM 17.8.701 *et seq.*	Approved	60 FR 36715.
ARM 17.8.801 *et seq.*	Approved	60 FR 36715.
ARM 17.8.901 *et seq.*	Approved	60 FR 36715.
ARM 17.8.1001 *et seq.*	Approved	60 FR 36715.

[5] Montana's certification cited MCA 2–2–203, which appears to be a typographical error.

Absent any privacy restrictions regarding the release of proprietary business information, all preconstruction data and analysis regarding the results of source predictive modeling for purposes of NAAQS compliance is public information available for anyone, including EPA, to review upon request.

b. *EPA Analysis:* Montana's SIP meets the requirements of CAA section 110(a)(2)(K) for the 1997 ozone NAAQS. In particular, Montana's PSD program (see ARM 17.8.821(1)) requires estimates of ambient air concentrations to be based on the applicable air quality models, data bases, and other requirements specified in Appendix W of 40 CFR part 51, pertaining to the Guidelines on Air Quality Models. 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. *Montana's response to this requirement:* Montana has an approved Title V permitting program. Montana requires an applicant proposing to construct or modify an air pollution source to pay an application fee. See ARM 17.8.504. Pursuant to ARM 7.8.505, Montana assesses an annual air quality operation fee against the owner or operator of any source issued a Montana air quality permit or an operating permit or which is registered with the Department as an oil and gas facility under ARM 17.8.1701, *et seq.*

State rules(s)	Federal action	Action reference
ARM 17.8.504	Not Submitted	State only rule.
ARM 17.8.505	Not submitted	State only rule.
ARM 17.8.1701, *et seq.*	Pending	MT submitted 11/1/06.

b. *EPA Analysis:* Montana's approved title V operating permit program meets the requirements of CAA section 110(a)(2)(L) for the 1997 ozone NAAQS. As discussed in the Direct Final Rule approving the State's title V program (65 FR 37049, June 13, 2000), 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. *Montana's response to this requirement:* As a matter of practice, the Department consults with the local agencies when necessary to implement a control plan for a nonattainment area. The Department also meets with county air pollution control program staff and discusses monitoring issues, including ozone, prior to making decisions regarding monitoring needs, monitor type, locations, and monitoring schedules.

Section 75–2–112(2)(j) of the Montana CAA requires the Department to "* * * advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups; * * *"

Parties affected by Department actions, including local political subdivisions, may petition the BER for a hearing and address of their grievances, see ARM 17.8.140, 17.8.141, and 17.8.142.

State rule(s)	Federal action	Action reference
ARM 17.8.140	Approved	66 FR 42427.
ARM 17.8.141	Approved	66 FR 42427.
ARM 17.8.142	Approved	66 FR 42427.

b. *EPA Analysis:* Montana'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 the following infrastructure elements for the 1997 ozone NAAQS: (A), (B), (C) with regards to the requirement to have a SIP-approved minor NSR program, (D)(ii), (E), (F), (G), (H), (J) with regards to the requirements of sections 121 and 127 of the Act, (K), (L), and (M).

In this action, EPA is proposing to disapprove the following infrastructure elements for the 1997 ozone NAAQS: (C) with regards to the requirement for the SIP to include a permit program as required in part C of title I of the Act, and (J) with regards to the requirement for the SIP to meet the applicable requirements of part C relating to PSD.

In this action, 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 12, 2011.

James B. Martin,

Acting Regional Administrator, Region 8.

[FR Doc. 2011–12357 Filed 5–18–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0460; FRL–9309–5]

Revisions to the California State Implementation Plan, Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing both an approval and a limited approval and limited disapproval of permitting rules submitted for the Sacramento Metropolitan Air Quality Management District (SMAQMD or District) portion of the California State Implementation Plan (SIP). The District is required under Parts C and D of title I of the Clean Air Act (CAA) to adopt and implement SIP-approved New Source Review (NSR) and Prevention of Significant Deterioration (PSD) permit programs. These rules update and revise the District's NSR and PSD permitting programs for new and modified major sources of air pollution. If EPA finalizes the limited approval and limited disapproval action, as proposed, then a sanctions clock would be triggered. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by June 20, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0460, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: R9airpermits@epa.gov.*

3. *Mail or deliver:* Gerardo Rios (Air-3), 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: EPA has established a docket for this action under EPA–R09–OAR–2011–0460. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents 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, multi-volume reports), 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: Laura Yannayon, EPA Region IX, (415) 972–3534, *yannayon.laura@epa.gov.*

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal, including the dates they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
SMAQMD	214	Federal New Source Review	10/28/10	12/07/10
SMAQMD	203	Prevention of Significant Deterioration	1/27/11	1/28/11

On January 13, 2011 and May 12, 2011, EPA determined that the submittals for SMAQMD Rules 214 and 203, respectively, met the completeness criteria in 40 CFR Part 51, Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

There are no previous versions of Rules 203 or 214 in the SIP, but SIP approved Rule 202 (New Source Review), which these rules will replace in the SIP, was approved on June 19, 1985 (50 FR 25417).

The SMAQMD originally adopted new Rule 203 on February 26, 1991, and CARB submitted the rule to EPA on October 30, 2001, however EPA has not taken action on this submittal. While we can act on only the most recently submitted version, we have reviewed materials provided with the previous submittal.

C. What is the purpose of the submitted rules?

Section 110(a) of the CAA requires states to submit regulations that include a pre-construction permit program for certain new or modified stationary sources of pollutants, including a permit program as required by Parts C and D of Title I of the CAA.

The purpose of District Rule 214 (Federal New Source Review) and Rule 203 (Prevention of Significant Deterioration) is to implement a federal preconstruction permit program for new and modified sources. These two new rules will replace in its entirety, the existing SIP approved NSR/PSD programs contained in Rule 202. The basic NSR program requirements from Rule 202 have been included in Rule 214, with revisions made to clarify that the rule only applies to major sources and all modifications at such sources, major agricultural sources and only applies to pollutants for which the District is designated as nonattainment. In accordance with the District's May 5, 2010 (75 FR 24409) reclassification as a severe ozone nonattainment area, the rule lowers the BACT [1] and offset applicability thresholds to 25 tpy or less, and increases the required offset ratio to 1.3 to 1. Pursuant to the 2002 NSR Reforms adopted by EPA (67 FR 80186), the rule adds provisions for calculating emission increases from proposed modifications by adding a definition for "Federal Major Modifications" which incorporates the necessary provisions to perform this calculation. The rule does not contain a provision for the implementation of Plantwide Applicability Limits (PALs) as required by 40 CFR 51.165(f).

The basic PSD program requirements from Rule 202 have been included in Rule 203. This rule mainly incorporates by reference the federal PSD program as codified in 40 CFR 52.21 which only applies to new major sources and major modifications at existing major sources. The rule also revises several terms used within 40 CFR 52.21 to replace NSR Reform provisions with pre-reform language and requirements. (67 FR 80186)

[1] While the District uses the term BACT as the level of control required, a review of the definition has shown that it is equivalent to the requirements for federal LAER.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

The relevant statutory provisions for our review of the submitted rules include Parts C and D of Title I of the CAA, section 110(a)(2)(C), section 110(l) and section 182(d). Section 110(a) requires a pre-construction permit programs for certain new or modified stationary sources of pollutants, including a permit program as required by Parts C and D of Title I, while section 110(l) precludes EPA approval of SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. Section 182(d) (together with section 182(f) for NO_X), requires NSR SIPs in "severe" nonattainment areas to define "major sources" and "major modifications" to be sources that emit 25 tpy or more of VOC or NO_X, and have an offset ratio of at least 1.3 to 1. In addition, we have reviewed the submitted rules for compliance with EPA implementing regulations for NSR, including 40 CFR 51.160 through 40 CFR 51.166.

B. Do the rules meet the evaluation criteria?

EPA has reviewed the submitted rules in accordance with the Rule Evaluation criteria described above. The TSD for this action contains a complete discussion of our evaluation. EPA is proposing to find that these rules meet the statutory requirements for SIPs as specified in sections 110(a), 110(l), 182(d) and 193 of the CAA. In addition, except for the deficiencies noted in the TSD and summarized in the Proposed Action section of this notice, we are proposing to find that the rules meet the regulatory requirements of 40 CFR 51.160 through 40 CFR 51.166. EPA is proposing to find that it is acceptable for SMAQMD to not incorporate the NSR Reform provisions of 40 CFR 51.165 and 51.166 into their SIP approved NSR programs because the same level of control will be required for modified sources, with or without inclusion of these provisions in the SIP, and SMAQMD's program will not be any less stringent than the federal program.

The TSD has more information on our evaluation.

C. Public Comment and Proposed Action

For the reasons given above, under CAA section 110(k)(3) and 301(a), we are proposing a limited approval and limited disapproval of Rule 214 because, although it would strengthen the SIP and meets the applicable requirements for SIPs in general, it contains certain deficiencies related to NSR SIPs in particular that prevent our full approval. The primary deficiencies pertain to missing definitions, the removal of public notice requirements for the minor source program from the SIP, and missing provisions pursuant to 40 CFR 51.165(a)(5)(ii) and 40 CFR 51.307(b)(2). Please refer to the TSD for this action for additional information. The deficiencies in Rule 214 can be remedied by the District by revising Rule 214 to provide the missing definitions, and necessary provisions pursuant to the 40 CFR part 51 sections cited above. The minor source public notice program deficiency can be remedied by either adding such provisions to Rule 201 or 214, submitting an analysis showing why a

minor NSR program for minor sources is not needed, submitting an approvable justification for why a chosen level of public notice is appropriate, or submitting local District Rule 202 (State New Source Review) to EPA for SIP approval. If EPA finalizes the limited approval and limited disapproval action, as proposed, then a sanctions clock, and EPA's obligation to promulgate a Federal implementation plan, would be triggered because the revisions to the District rule for which a limited approval and limited disapproval is proposed is required under the 8-hour ozone standard.

Because EPA has determined that Rule 203 fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final action that will incorporate these rules into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 13, 2011.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 2011–12443 Filed 5–18–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0461; FRL–9309–4]

Revisions to the California State Implementation Plan, Placer County Air Pollution Control District and Feather River Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of permitting rules submitted for the Placer County Air Pollution Control District (PCAPCD) and Feather River Air Quality Management District (FRAQMD) portion of the California State Implementation Plan (SIP). The districts are required under Part D of title I of the Clean Air Act (CAA) to adopt and implement a SIP-approved New Source Review (NSR) permit program. These rules update and revise the District's NSR permitting program for new and modified sources of air pollution. If EPA finalizes the limited approval and limited disapproval action, as proposed, then a sanctions clock would be triggered. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by June 20, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0461, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: R9airpermits@epa.gov.*

3. *Mail or deliver:* Gerardo Rios (Air-3), 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: EPA has established a docket for this action under EPA–R09–OAR–2011–0461. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents 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, multi-volume reports), 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: Laura Yannayon, EPA Region IX, (415) 972–3534, yannayon.laura@epa.gov.

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal, including the date it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Amended	Submitted
PCAPCD	502	New Source Review	10/28/10	7/20/10
FRAQMD	10.1	New Source Review	10/5/09	7/20/10

On August 25, 2010, EPA determined that the submittal for PCAPCD Rule 502 and FRAQMD Rule 10.1, met the completeness criteria in 40 CFR part 51, Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

There are no previous versions of Rule 502 in the SIP, but SIP approved Rule 508 (New Source Review), which this rule will replace in the SIP, was approved into the Mountain Counties and Lake Tahoe air basin portions of the Placer County SIP, on June 23, 1982 (47 FR 27065) and May 18, 1981 (46 FR 27115), respectively. The PCAPCD originally adopted new Rule 502 on May 24, 1977 and has revised the rule several times since that date, but there are no other pending SIP submittals of Rule 502.

There are no previous versions of Rule 10.1 in the SIP. The FRAQMD originally adopted new Rule 10.1 on February 8, 1993, and submitted the rule to EPA on March 23, 1993, however EPA has not taken action on this submittal. While we can act on only the most recently submitted version, we have reviewed materials provided with the previous submittal.

C. What is the purpose of the submitted rules?

Section 110(a) of the CAA requires states to submit regulations that include a pre-construction permit program for certain new or modified stationary sources of pollutants, including a permit program as required by Part D of Title I of the CAA.

The purpose of Rule 502 (New Source Review) and Rule 10.1 (New Source Review) is to implement a federal preconstruction permit program for new and modified sources located in nonattainment areas. Rule 502 will replace the existing SIP approved NSR programs contained in Rule 508, as approved for the Mountain Counties and Lake Tahoe air basin potions of Placer County. These versions of Rule 508 were approved into the SIP in 1981 and 1982 respectively. Rather than try to update these rules, the District has instead adopted an entirely new rule to carry out the NSR program—Rule 502. Rule 10.1 will be a new SIP rule. In accordance with both District's May 5, 2010 (75 FR 24409) reclassification as a severe ozone nonattainment area, the rules establish BACT [1] and offset applicability thresholds at 25 tpy or more, and sets the required offset ratio at 1.3 to 1, or greater. The rules do not contain any of the 2002 NSR Reform provisions adopted by EPA. (67 FR 80186)

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

The relevant statutory provisions for our review of the submitted rules include Part D of Title I of the CAA, section 110(a)(2)(C), section 110(l) and section 182(d). Section 110(a) requires a pre-construction permit programs for certain new or modified stationary sources of pollutants, including a permit program as required by Part D of Title I, while section 110(l) precludes EPA approval of SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. Section 182(d) (together with section 182(f) for NO_X), requires NSR SIPs in "severe" nonattainment areas to define "major sources" and "major modifications" to be sources that emit 25 tpy or more of VOC or NO_X, and have an offset ratio of at least 1.3 to 1. In addition, we have reviewed the submitted rules for compliance with EPA implementing regulations for NSR, including 40 CFR 51.160 through 40 CFR 51.165.

B. Do the rules meet the evaluation criteria?

EPA has reviewed the submitted rules in accordance with the Rule Evaluation criteria described above. The TSDs (one for each District) for this action contain a complete discussion of our evaluation. EPA is proposing to find that these rules meet the statutory requirements for SIPs as specified in sections 110(a), 110(l), 182(d) and 193 of the CAA. In addition, except for the deficiencies noted in the TSDs and summarized in the Proposed Action section of this notice, we are proposing to find that the rules meet the regulatory requirements of 40 CFR 51.160 through 40 CFR 51.165. EPA is proposing to find that it is acceptable for PCAPCD and FRAQMD to not incorporate the NSR Reform provisions of 40 CFR 51.165 into their SIP approved NSR programs, because the same level of control will be required for modified sources, with or without inclusion of these provisions in the SIP, and neither of the PCAPCD and FRAQMD programs will be any less stringent than the federal program.

[1] While the District uses the term BACT as the level of control required, a review of the definition has shown that it is equivalent to the requirements for federal LAER.

C. Public Comment and Proposed Action

For the reasons given above, under CAA section 110(k)(3) and 301(a), we are proposing a limited approval and limited disapproval of Rule 502 and Rule 10.1 because, although each rule would strengthen the SIP and they meet the applicable requirements for SIPs in general, they contain certain deficiencies related to NSR SIPs in particular that prevent our full approval. The primary deficiencies pertain to missing definitions and missing provisions pursuant to 40 CFR 51.165(a)(5)(ii) and 40 CFR 51.307(b)(2). Please refer to the TSD for this action for additional information. The deficiencies can be remedied by each District by revising their rule to provide the missing definitions, and necessary provisions pursuant to the 40 CFR part 51 sections cited above. If EPA finalizes the limited approval and limited disapproval action, as proposed, then a sanctions clock, and EPA's obligation to promulgate a Federal implementation plan, would be triggered because the revisions to the District rule for which a limited approval and limited disapproval is proposed is required under the 8-hour ozone standard.

We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final action that will incorporate these rules into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 13, 2011.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 2011–12445 Filed 5–18–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 11–74, RM–11630; DA 11–746]

Television Broadcasting Services; El Paso, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by NPG of Texas, LP ("NPG"), licensee of station KVIA–TV, El Paso, Texas, requesting the substitution of channel 17 for channel 7 at El Paso. NPG states that the proposed channel substitution will serve the public interest by significantly improving the public's digital signal reception from KVIA–TV.

DATES: Comments must be filed on or before June 20, 2011, and reply comments on or before July 5, 2011.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Robert Lewis Thompson, Esq., Smithwick & Belendiuk, PC, 5028 Wisconsin Ave., NW, #301, Washington, DC 20016.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, *adrienne.denysyk@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 11–74, adopted April 26, 2011, and released April 27, 2011. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs

Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Texas, is amended by removing channel 7 and adding channel 17 at El Paso.

[FR Doc. 2011–12262 Filed 5–18–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 665

[Docket No. FTA–2011–0015]

RIN 2132–AB01

Bus Testing: Calculation of Average Passenger Weight and Test Vehicle Weight, and Public Meeting and Extension of Comment Period

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice announcing conference call and extension of comment period of proposed rulemaking.

SUMMARY: The Federal Transit Administration (FTA) is hosting a conference call to address issues concerning its notice of proposed rulemaking (NPRM) regarding the calculation of average passenger weights and test vehicle weights. The purpose of this conference call is to allow the public to ask questions and to clarify any misunderstandings regarding the NPRM published on March 14, 2011 (76 FR 13580). Furthermore, due to the complexity of the issues proposed in the NPRM, FTA is extending the comment period to June 15, 2011, to allow interested parties time to carefully review the actual changes proposed in the NPRM and the information presented during the conference call.

DATES: Comments should be submitted before June 15, 2011. Late-filed comments will be considered to the extent practicable.

Conference Call Date: FTA will hold the conference call on Wednesday, June 1, 2011, commencing at 2 p.m., Eastern Daylight Time. Interested parties are invited to call 1–877–407–0183 and enter Participant Code 681759. Note that the conference call is only for information purposes and commenters must submit their comments to the official docket in order to have them considered by FTA.

ADDRESSES: You may submit comments to DOT Docket ID Number FTA–2011–0015 by any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Fax: 202–493–2251.

FOR FURTHER INFORMATION CONTACT: For technical information, Gregory Rymarz, Bus Testing Program Manager, Office of Research, Demonstration, and Innovation (TRI), (202) 366–6410, *gregory.rymarz@dot.gov.* For legal information, Richard Wong, Office of the Chief Counsel (TCC), (202) 366–0675, *richard.wong@dot.gov.*

SUPPLEMENTARY INFORMATION: On March 14, 2011, FTA published an NPRM in the **Federal Register** (76 FR 13850) proposing to amend its bus testing procedures to more accurately reflect average passenger weights and actual transit vehicle loads. Specifically, FTA proposed to change the average passenger weight from 150 lbs to 175 lbs. In addition, FTA proposed to change the floor space occupied per standing passenger from 1.5 to 1.75 square feet, and update the Structural Strength and Distortion test procedures.

FTA is aware that the proposal has been the subject of some mischaracterizations, causing interested parties to have misperceptions regarding the NPRM's actual impact and intent. During the conference call, FTA staff will summarize its proposals in the NPRM and will be available to answer questions regarding those proposals. This is an opportunity for affected parties to receive clarification regarding the content of the NPRM. The conference call is not, however, an opportunity to submit comments to FTA regarding the proposals contained in the NPRM. Rather, interested parties should submit their comments to the docket for this rulemaking as described in the **ADDRESSES** section of this notice.

In addition, because of the scheduling of the conference call and the apparent confusion regarding the issues proposed in the NPRM, FTA is extending the comment period until June 15, 2011. This additional time should be sufficient to allow interested parties to review and submit final comments following information conveyed during the conference call.

Issued this 12th day of May 2011.

Therese McMillan,

Deputy Administrator.

[FR Doc. 2011–12292 Filed 5–18–11; 8:45 am]

BILLING CODE P

Notices

Federal Register
Vol. 76, No. 97
Thursday, May 19, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0034]

Notice of Request for Extension of Approval of an Information Collection; Importation of Gypsy Moth Host Material From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations to prevent the introduction of gypsy moth from Canada into noninfested areas of the United States.

DATES: We will consider all comments that we receive on or before July 18, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2011-0034* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2011–0034, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2011–0034.

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

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

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of gypsy moth host material from Canada, contact Mr. David Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 734–4312. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Gypsy Moth Host Material from Canada.

OMB Number: 0579–0142.

Type of Request: Extension of Approval of an Information Collection.

Abstract: As authorized by the Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, means of conveyance, or other article if the Secretary determines that the prohibition or restriction is necessary to prevent a plant pest or noxious weed from being introduced into or disseminated within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS), which administers regulations to implement the PPA. Regulations governing the importation of gypsy moth host material into the United States from Canada are contained in 7 CFR 319.77 through 319.77–5.

These regulations are intended to prevent the introduction of gypsy moth into noninfested areas of the United States by placing certain inspection and documentation requirements on gypsy moth host material (*i.e.,* regulated articles) imported from Canada. These regulated articles are: Trees without roots (*e.g.,* Christmas trees), trees with roots, shrubs with roots and persistent woody stems, logs and pulpwood with back attached, outdoor household articles, and mobile homes and their associated equipment. Under the regulations, phytosanitary certificates, certificates of origin, or signed homeowner statements will be required for some of these regulated articles, depending on their place of origin in Canada and their destination in the United States. These requirements necessitate the use of information collection activities.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.0363228 hours per response.

Respondents: Canadian plant health authorities; growers, exporters, or shippers of Christmas trees, shrubs, logs, pulpwood, and other articles from gypsy moth-infested provinces in Canada; and private individuals entering the United States with mobile home or outdoor household articles.

Estimated annual number of respondents: 147.

Estimated annual number of responses per respondent: 15.170068.

Estimated annual number of responses: 2,230.

Estimated total annual burden on respondents: 81 hours. (Due to

averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All 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.

Done in Washington, DC, this 13th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–12325 Filed 5–18–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0027]

Notice of Request for Extension of Approval of an Information Collection; Importation of Tomatoes From Spain, Chile, France, Morocco, and Western Sahara

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations governing the importation of tomatoes from Spain, Chile, France, Morocco, and Western Sahara.

DATES: We will consider all comments that we receive on or before July 18, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2011-0027* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2011–0027, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2011–0027.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding foreign quarantine regulations, contact Ms. Donna West, Senior Import Specialist, RPM, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737; (301) 734–5298. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Tomatoes From Spain, Chile, France, Morocco, and Western Sahara.

OMB Number: 0579–0131.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests, including fruit flies, into the United States or their dissemination within the United States. Regulations authorized by the PPA concerning the importation of fruits and vegetables into the United States from certain parts of the world are contained in "Subpart-Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–50).

The regulations in § 319.56–28 allow tomatoes from Spain, Chile, France, Morocco, and Western Sahara to be imported into the United States subject to certain conditions designed to protect the tomatoes from infestation by the Mediterranean fruit fly (Medfly). Allowing tomatoes to be imported necessitates the use of certain information collection activities, including completing phytosanitary inspection certificates and maintaining records regarding trap placement and Medfly captures. The information we collect serves as the supporting documentation needed to confirm that the tomatoes meet the conditions set forth in the regulations.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.6876513 hours per response.

Respondents: Importers, foreign officials, shippers.

Estimated annual number of respondents: 34.

Estimated annual number of responses per respondent: 72.882352.

Estimated annual number of responses: 2,478.

Estimated total annual burden on respondents: 1,704 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All 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.

Done in Washington, DC, this 13th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–12321 Filed 5–18–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Kisatchie National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Kisatchie National Forest Resource Advisory Committee will meet in Pineville, Louisiana. 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.

DATES: The meeting will be held on June 2, 2011, and will begin at 6 p.m.

ADDRESSES: The meeting will be held at the Kisatchie National Forest Supervisor's Office, 2500 Shreveport Hwy, Pineville, LA. Written comments should be sent to Holly Morgan, Kisatchie National Forest, 2500 Shreveport Highway, Pineville, LA 71360. Comments may also be sent via e-mail to *hmorgan@fs.fed.us,* or via facsimile to 318–473–7117.

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 Kisatchie National Forest, 2500 Shreveport Highway, Pineville, LA 71360. Visitors are encouraged to call ahead to 318–473–7160 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Holly Morgan, RAC coordinator, USDA, Kisatchie National Forest, 2500 Shreveport Highway, Pineville, LA 71360; (318) 473–7194; E-mail *hmorgan@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Welcome; (2) Review and approval of the minutes from the last meeting; (3) Presentation, Consideration, and Approval of Parish project proposals; and (4) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: May 13, 2011.

Michael L. Balboni,

Designated Federal Officer.

[FR Doc. 2011–12284 Filed 5–18–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Sabine Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sabine Resource Advisory Committee will meet in Hemphill, Texas. 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 discuss New Title II Project Proposals.

DATES: The meeting will be held Thursday, June 2, 2011, 3:30 p.m.

ADDRESSES: The meeting will be held at the Sabine NF Office, 5050 State Hwy. 21 East, Hemphill, TX 75948. 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 5050 State Hwy. 21 East, Hemphill, TX 75948. Please call ahead to (409) 625–1940 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: William E. Taylor, Jr., Designated Federal Officer, Sabine National Forest, 5050 State Hwy. 21 E., Hemphill, TX 75948: *Telephone:* 936–639–8501 or *e-mail at: etaylor@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 accommodation for access to the facility or proceedings may be made by contacting the person listed in **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

The following business will be conducted: The purpose of the meeting is to discuss New Title II Project Proposals. 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 27, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 5050 State Hwy. 21 East, Hemphill, TX 75948 or by e-mail to *etaylor@fs.fed.us* or via facsimile to 409–625–1953.

Dated: May 10, 2011.

William E. Taylor, Jr.

Designated Federal Officer, Sabine National Forest RAC.

[FR Doc. 2011–12146 Filed 5–18–11; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

Forest Service

Lynn Canal/Icy Straits Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lynn Canal/Icy Straits Resource Advisory Committee will hold a teleconference, June 9, 2011. The purpose of this meeting is to discuss metrics and protocol in the decision-making process and review, discuss, evaluate, and prioritize proposed projects acquired to the May 18th deadline.

DATES: The meeting will be held June 9, 2011 from 9–3:30.

ADDRESSES: The meeting will be held via teleconference. Send written comments to Lynn Canal/Icy Straits Resource Advisory Committee, c/o Admiralty National Monument Ranger 8510 Mendenhall Loop Road, Juneau, Alaska 99801, or electronically to Debra Robinson, RAC Coordinator at *drobinson03@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Debra Robinson, RAC Coordinator Juneau Ranger District/Admiralty National Monument, Tongass National Forest, (907) 789–6209.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public may call 907–586–9398 to connect with the meeting. Hoonah Ranger District, 430A Airport Road, Hoonah, Alaska and Juneau Ranger District/Admiralty National Monument, 8510 Mendenhall Loop Road, Juneau Alaska will also have rooms set up for the public to come in and listen to the call. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: May 11, 2011.

Chad VanOrmer,

Admiralty National Monument Ranger.

[FR Doc. 2011–12346 Filed 5–18–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Hiawatha East Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hiawatha East Resource Advisory Committee will meet in Sault Ste. Marie, Michigan. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to review project proposals.

DATES: The meeting will be held on June 15, 2011, and will begin at 6 p.m.

ADDRESSES: The meeting will be held at the Chippewa County 911 Center, 4657 Industrial Park Drive, Kincheloe, MI. Written comments should be sent to Janel Crooks, Hiawatha National Forest, 2727 North Lincoln Road, Escanaba, MI 49829. Comments may also be sent via e-mail to *HiawathaNF@fs.fed.us,* or via facsimile to 906–789–3311.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Hiawatha National Forest, 2727 North Lincoln Road, Escanaba, MI. Visitors are encouraged to call ahead to 906–786–4062 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Janel Crooks, RAC coordinator, USDA, Hiawatha National Forest, 2727 North Lincoln Road, Escanaba, Michigan 49862; (906) 786–4062; E-mail *HiawathaNF@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Review of Project Proposals (2) Public Comment and (3) Vote, if appropriate. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: May 11, 2011.

Stevan J. Christiansen,

Designated Federal Officer.

[FR Doc. 2011–12329 Filed 5–18–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Pacific Halibut Fisheries: Special Subsistence Permits and Harvest Logs.

OMB Control Number: 0648–0512.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 33.

Average Hours per Response: Applications, 10 minutes; logs, 30 minutes; appeals, 4 hours.

Burden Hours: 17.

Needs and Uses: This information collection concerns special permits issued to participants in the Pacific halibut subsistence fishery in waters off the coast of Alaska and any appeals resulting from denials. The National Marine Fisheries Service (NMFS) designed the permits to work in conjunction with other halibut harvest assessment measures. Subsistence fishing for halibut has occurred for many years among the Alaska Native people and non-Native people. Special permits in this collection are initiated in response to the concerns of Native and community groups regarding increased restrictions in International Pacific Halibut Commission Area 2C and include Community Harvest Permits, Ceremonial Permits, and Educational Permits.

A Community Harvest Permit allows the community or Alaska Native tribe to appoint one or more individuals from its respective community or tribe to harvest subsistence halibut from a single vessel under reduced gear and harvest restrictions. Ceremonial and Educational Permits are available exclusively to Alaska Native tribes. Eligible Alaska Native tribes may appoint only one Ceremonial Permit Coordinator per tribe for Ceremonial Permits or one authorized Instructor per tribe for Educational Permits.

Except for enrolled students fishing under a valid Educational Permit, special permits require persons fishing under them to also possess a Subsistence Halibut Registration Certificate (SHARC) (see OMB Control No. 0648–0460) which identifies those persons who are currently eligible for subsistence halibut fishing. Each of the instruments is designed to minimize the reporting burden on subsistence halibut fishermen while retrieving essential information.

Affected Public: Individuals or households.

Frequency: Annually and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: May 16, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–12327 Filed 5–18–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Proposed Information Collection; Comment Request; Data Collection for Compliance With Government Performance and Results Act

AGENCY: Economic Development Administration.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before 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 and instructions should be directed to Kerstin Millius, Senior Program Analyst, Performance and National Programs Division, Room 7009, Economic Development Administration, Washington, DC 20230, or at e-mail *millius@eda.doc.gov* or telephone (202) 482–3280.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Economic Development Administration's (EDA) mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. EDA accomplishes its mission by helping our partners across the nation (states, regions, and communities) create wealth and minimize poverty by promoting a favorable business environment to attract private capital investment and jobs through world-class capacity building, planning, infrastructure, research grants, and strategic initiatives.

EDA's strategic investments in public infrastructure and local capital markets provide lasting benefits for economically disadvantaged areas. Acting as catalysts to mobilize public and private investments, EDA's investments address problems of high unemployment, low per capita income, and other forms of severe economic distress in local communities. EDA also provides special economic adjustment assistance to help communities and businesses respond to major layoffs, plant shutdowns, trade impacts, natural disasters, military facility closures, and other severe economic dislocations.

EDA must comply with the Government Performance and Results Act of 1993 which requires Federal agencies to develop performance measures, and report to Congress and stakeholders the results of the agency's performance. EDA must collect specific data from grant recipients to report on its performance in meeting its stated goals and objectives.

II. Method of Collection

Respondents will submit forms to the appropriate EDA regional office for compilation and transmission to EDA headquarters.

III. Data

OMB Control Number: 0610–0098.

Form Number(s): ED–915, ED–916, ED–917, and ED–918.

Type of Review: Regular submission (extension of currently approved information collection).

Affected Public: EDA-funded grantees: State, local and tribal governments; community organizations; not-for-profit organizations.

Estimated Number of Respondents: 1,529.

Estimated Time per Response: 7 hours.

Estimated Total Annual Burden Hours: 10,703.

Estimated Total Annual Cost to Public: $113,220.

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 16, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–12312 Filed 5–18–11; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 33–2011]

Foreign-Trade Zone 59—Lincoln, NE; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Lincoln Foreign-Trade Zone, Inc., grantee of FTZ 59, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170–1173, 01/12/09 (correction 74 FR 3987, 01/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 12, 2011.

FTZ 59 was approved by the Board on August 27, 1980 (Board Order 163,45 FR 58637, 09/04/80), and expanded on June 25, 1993 (Board Order 646, 58 FR 36389, 07/07/93). The current zone project includes the following sites: Site 1 (5.7 acres)—Lincoln Airpark West Industrial Park, 4521 NW. 36th Street, Lincoln; and, Site 2 (372 acres)—Lincoln Airpark North Industrial Park, 2400 West Adams Street, Lincoln.

The grantee's proposed service area under the ASF would be Lancaster, Otoe and Seward Counties, Nebraska. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Omaha Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include the existing sites as "magnet" sites. The ASF allows for the possible exemption of one magnet site from the "sunset" time limits that generally apply to sites under the ASF, and the applicant proposes that Site 2 be so exempted. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 59's authorized subzones.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 18, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 2, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site,

which is accessible via *http://www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: May 12, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–12094 Filed 5–18–11; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

Steel Wire Garment Hangers From the People's Republic of China: Extension of Time Limits for Preliminary Results of the Second Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 19, 2011.

FOR FURTHER INFORMATION CONTACT: Bob Palmer or Jamie Blair-Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; *telephone:* (202) 482–9068 or (202) 482–2615, respectively.

Background

On November 29, 2010, the Department of Commerce ("the Department") published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on steel wire garment hangers from the People's Republic of China ("PRC") covering the period, October 1, 2009, through September 31, 2010.[1]

On January 21, 2011, the Department selected Shanghai Wells Hanger Co., Ltd. ("Shanghai Wells") and Jiaxing Boyi Medical Device Co. ("Jiaxing Boyi") as mandatory respondents in the above referenced review.[2] On January 24, 2011, we issued our non-market economy antidumping questionnaire to Shanghai Wells and Jiaxing Boyi. As stated in the cover letter of our questionnaire, the deadlines for Section A was February 10, 2011, and for Sections C & D were February 26, 2011.[3] Jiaxing Boyi did not respond to the Department's Section A questionnaire by the stated deadline and did not request an extension.

On February 24, 2011, we selected an additional mandatory respondent, Shaoxing Liangbao Metal Manufactured Co., Ltd. ("Shaoxing Liangbao") as a replacement for Jiaxing Boyi.[4] Shaoxing Liangbao's response to Section A was due on March 26, 2011.[5] However, Shaoxing Liangbao did not submit a response by the stated deadline or request an extension.

On March 28, 2011, as a replacement for Shaoxing Liangbo, we selected another additional mandatory respondent, Pu Jiang County Command Metal Products Co., Ltd. ("Command Metal Products").[6] However, Command Metal Products did not submit a response, or request an extension, to the Department's Section A questionnaire by the deadline, April 18, 2011.[7]

On April 29, 2011, we selected an additional two mandatory respondents, Shaoxing Guochao Metal Products Co., Ltd. ("Guochao Metal Products") and Yiwu Ao-Si Metal Products Co., Ltd. ("Yiwu").[8] The current deadlines for Guochao Metal Products' and Yiwu to submit their Section A responses are May 23, 2011, and June 8, 2011, for their Section C and D questionnaire responses.[9] The preliminary results of this administrative review are currently due on July 3, 2011.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. Consistent with section 751(a)(3)(A) of the Act, the Department may extend the 245-day period to 365 days if it is not practicable to complete the review within a 245-day period.

Extension of Time Limit of Preliminary Results

The preliminary results are currently due on July 3, 2011. This administrative review now covers three mandatory respondents and requires that the Department gather and analyze a significant amount of information pertaining to each of these companies. Moreover, because several previously selected mandatory respondents were unresponsive, the Department went through numerous rounds of selecting additional replacement mandatory respondents. Thus, the Department requires additional time to fully analyze the initial questionnaire responses and issue supplemental questionnaires prior to the preliminary results. This extension is also necessary to give all parties to the proceeding adequate time to supply the Department with information related to the mandatory respondents' factors of production. The current date of the preliminary results does not afford the Department adequate time to gather, analyze, request supplementary information, and allow parties to fully participate in the proceeding.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department finds that it is not practicable to complete the preliminary results within the original time period and thus the Department is extending the time limit for issuing the preliminary results by

[1] *See* Initiation of Antidumping and Countervailing Duty Administrative Reviews, 75 FR 73036 (November 29, 2010).

[2] *See* Memorandum to Jim Doyle, Director, Office 9, Import Administration, from Irene Gorelik, Senior International Trade Compliance Analyst, Office 9, regarding the Second Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Selection of Respondents for Individual Review (January 21, 2011).

[3] *See* Letters to Shanghai Wells and Jiaxing Boyi from Catherine Bertrand, Program Manager, Office 9, Import Administration; regarding the Antidumping Duty Administrative Review of Steel Garment Wire Hangers from the People's Republic of China: Non-Market Economy Questionnaire (January 21, 2011).

[4] *See* Memorandum to Jim Doyle, Director, Office 9, Import Administration, from Jamie Blair-Walker, International Trade Compliance Analyst, Office 9, regarding the Second Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Selection of Additional Mandatory Respondent (February 24, 2011).

[5] *See* Letter to Shaoxing Liangbao from Catherine Bertrand, Program Manager, Office 9, Import Administration; regarding the Antidumping Duty Administrative Review of Steel Garment Wire Hangers from the People's Republic of China: Non-Market Economy Questionnaire (February 24, 2011).

[6] *See* Memorandum to Jim Doyle, Director, Office 9, Import Administration, from Jamie Blair-Walker, International Trade Compliance Analyst, Office 9, regarding the Second Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Selection of Additional Mandatory Respondent (March 28, 2011).

[7] *See* Letter to Command Metal Products from Catherine Bertrand, Program Manager, Office 9, Import Administration regarding the Antidumping Duty Administrative Review of Steel Garment Wire Hangers from the People's Republic of China: Non-Market Economy Questionnaire (March 28, 2011).

[8] *See* Memorandum to Jim Doyle, Director, Office 9, Import Administration, from Jamie Blair-Walker, International Trade Compliance Analyst, Office 9, regarding the Second Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Selection of Additional Mandatory Respondent (April 29, 2011).

[9] *See* Letter to Guochao Metal Products from Catherine Bertrand, Program Manager, Office 9, Import Administration regarding the Antidumping Duty Administrative Review of Steel Garment Wire Hangers from the People's Republic of China: Non-Market Economy Questionnaire (May 2, 2011); *see* also Letter to Yiwu from Catherine Bertrand, Program Manager, Office 9, Import Administration regarding the Antidumping Duty Administrative Review of Steel Garment Wire Hangers from the People's Republic of China: Non-Market Economy Questionnaire (May 2, 2011).

120 days until October 31, 2011. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to section 777(i) of the Act.

Dated: May 12, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–12341 Filed 5–18–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA324

International Conservation and Management Measures Recognized by the United States

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

ACTION: Notice.

SUMMARY: The High Sea Fishing Compliance Act (HSFCA) requires the Secretary of Commerce, in consultation with the Secretary of State, to publish from time to time in the **Federal Register** a list of international conservation and management measures recognized by the United States. To fulfill this requirement, a list of agreements resulting in international conservation and management measures was first published in the **Federal Register** in 1996. This notice provides an updated list of such agreements. The HSFCA and its implementing regulations prohibit the use of a fishing vessel on the high seas in contravention of international conservation and management measures, as well as specify the permitting and vessel identification requirements for fishing vessels of the United States operating on the high seas.

FOR FURTHER INFORMATION CONTACT: MiAe Kim, Trade and Marine Stewardship Division, Office of International Affairs, NMFS (phone 301–713–9090, fax 301–713–2313, or e-mail *mi.ae.kim@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

The HSFCA is the United States' domestic legislation implementing the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement), adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993 and ratified by the United States in 1995. One of the purposes of the Compliance Agreement is to impose on nations whose fishing vessels operate on the high seas obligations to ensure the activities of those vessels do not undermine the effectiveness of international conservation and management measures for living marine resources.

As a party to the Compliance Agreement, the United States must ensure that its fishing vessels operating on the high seas do not undermine international measures to conserve and manage species of living marine resources that are adopted by global, regional, or subregional fisheries organizations, by treaties, or by other international agreements.

The term "international conservation and management measures" is defined in HSFCA, consistent with the Compliance Agreement, as "measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law, as reflected in the 1982 United Nations Convention on the Law of the Sea, and that are recognized by the United States. Such measures may be adopted by global, regional, or subregional fisheries organizations, subject to the rights and obligations of their members, or by treaties or other international agreements."

International conservation and management measures fulfill a range of purposes, such as:

- Ensuring long-term sustainability and optimum utilization of fish stocks;
- Maintaining or restoring populations of species belonging to the same ecosystem or associated with or dependent upon target stocks;
- Minimizing catch by lost or abandoned gear and catch of non-target species; and
- Minimizing impacts on associated or dependent species through, to the extent practicable, the use of selective, environmentally safe and cost-effective fishing gear and techniques.

In the case of international conservation and management measures adopted by regional fisheries management organizations, the full text of such measures can be found on the Web sites of the respective organizations. These measures are subject to change. Measures may be adopted or modified based on information on stocks, bycatch, illegal fishing activities, and other issues. Sometimes the adoption of measures by regional fisheries management organizations is driven by study results or activities undertaken through other international bodies, such as resolutions adopted by the United Nations General Assembly and guidelines and plans of action developed under the auspices of the Food and Agriculture Organization of the United Nations. Certain international instruments can also influence the development of conservation and management measures by regional fisheries management organizations, such as the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks; the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; the Inter-American Convention for the Protection and Conservation of Sea Turtles; the Agreement on the Conservation of Albatrosses and Petrels; and instruments concluded under the framework of the Convention on the Conservation of Migratory Species of Wild Animals.

The international conservation and management measures adopted by regional fisheries management organizations of which the United States is a member are implemented in the United States, if applicable and as appropriate, through domestic legislation and corresponding regulations.

To undertake fishing operations on the high seas, the owner or operator of a United States fishing vessel must apply for a permit and follow regulations implementing HSFCA, found at 50 CFR part 300, subpart B. The Secretary has statutory and regulatory authority to include appropriate conditions and restrictions in individual permits. Taken together, the requirements of the HSFCA, as implemented by the regulations and permit conditions and restrictions, fulfill certain U.S. obligations and responsibilities under the Compliance Agreement with respect to its fishing vessels that operate on the high seas.

For purposes of the HSFCA, the Secretary, in consultation with the Secretary of State, has determined that all conservation and management measures for living marine resources set forth in, or adopted pursuant to, the following international agreements are included within the term "international conservation and management measures recognized by the United States." For those agreements to which the United States is party, the term excludes

measures to which the United States has lodged an objection or reservation, consistent with the terms of such agreement. At the time this notice was prepared, the United States had not objected to, or taken a reservation against, any such measures.

A list of agreements resulting in international conservation and management measures was first published in the **Federal Register** in 1996 (61 FR 11751, March 22, 1996). Where applicable, the updated list of agreements is organized by ocean areas and includes the organization created by the agreement.

Agreements to Which the United States Is Party

Atlantic Ocean

Convention for the Conservation of Salmon in the North Atlantic Ocean (Basic Instrument for the North Atlantic Salmon Conservation Organization—NASCO);

Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (Basic Instrument for the Northwest Atlantic Fisheries Organization—NAFO);

International Convention for the Conservation of Atlantic Tunas (Basic Instrument for the International Commission for the Conservation of Atlantic Tunas—ICCAT);

Pacific Ocean

Agreement on the International Dolphin Conservation Program (AIDCP);

Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean (Basic Instrument for the North Pacific Anadromous Fish Commission—NPAFC);

1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission (Basic Instrument for the Inter-American Tropical Tuna Commission—IATTC); [1]

Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea;

Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (South Pacific Tuna Treaty—SPTT);

Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Basic Instrument for the Western and Central Pacific Fisheries Commission—WCPFC);

Southern Ocean

Convention on the Conservation of Antarctic Marine Living Resources (Basic Instrument for the Commission for the Conservation of Antarctic Marine Living Resources—CCAMLR);

Convention for the Conservation of Antarctic Seals (CCAS);

Other

Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific Ocean; and

International Convention for the Regulation of Whaling (Basic Instrument for the International Whaling Commission—IWC).

Agreements To Which the United States Is Not Party

Agreement for the Establishment of the Indian Ocean Tuna Commission (Basic instrument of the Indian Ocean Tuna Commission—IOTC);

Convention on the Conservation and Management of Fisheries Resources in the Southeast Atlantic Ocean (Basic instrument for the South East Atlantic Fisheries Organization—SEAFO);

Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention Between the United States of America and the Republic of Costa Rica ("Antigua Convention"; Basic instrument for the Inter-American Tropical Tuna Commission—IATTC);

Convention for the Conservation of Southern Bluefin Tuna (Basic instrument for the Commission on the Conservation of Southern Bluefin Tuna—CCSBT);

Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries (Basic instrument for the North-East Atlantic Fisheries Commission—NEAFC); and

Agreement between the Government of the Kingdom of Norway and the Government of the USSR Concerning Cooperation in the Field of Fisheries.

This listing of "international conservation and management measures recognized by the United States" will be revised and updated from time to time by publication in the **Federal Register**. The inclusion or exclusion of items from this listing is without prejudice to any positions or views the United States Government may take or express with regard to such items in the future. This notice is not intended to and does not otherwise operate to amend, supplement, revise or supersede the regulations implementing the HSFCA at 50 CFR 300.15.

Authority: 16 U.S.C. 5501–5509.

Dated: May 12, 2011.

Samuel D. Rauch III,

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

[FR Doc. 2011–12339 Filed 5–18–11; 8:45 am]

BILLING CODE 3510–22–P

[1] On August 27, 2010, the Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention Between the United States of America and the Republic of Costa Rica ("Antigua Convention") entered into force for countries that have deposited their instrument of ratification. Pursuant to Article XXXI of the Antigua Convention, the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission will be considered terminated upon the entry into force of the Antigua Convention for all Parties to the 1949 Convention. The United States is a party to the 1949 Convention and signatory to the Antigua Convention. As of the date of this **Federal Register** notice, the United States has not ratified the Antigua Convention. Therefore the 1949 Convention remains the basis of the United States' membership in the Inter-American Tropical Tuna Commission.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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. Sec. 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 requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its revised Martin Luther King, Jr. Day of Service Application Instructions using the Corporation's Electronic Application System, eGrants. Completion of the Martin Luther King, Jr. Day of Service Application Instructions is required for funding considerations.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by July 18, 2011.

ADDRESSES: You may submit comments, identified by the title of the information

collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Georgia State Office; Attention Ms. Rochelle Barry, State Program Director, Suite 1600; 401 West Peachtree Street, NW., Atlanta, GA 30308.

(2) By hand delivery or by courier to the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (404) 331–2898, Attention Ms. Rochelle Barry, State Program Director.

(4) Electronically through the Corporation's e-mail address system: *mlkgrants@cns.gov* or *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rochelle Barry, (404) 965–2102, or by e-mail at *mlkgrants@cns.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Description

The purpose of these Martin Luther King, Jr. Day of Service Grants is to mobilize more Americans to observe the Martin Luther King, Jr. Federal Holiday as a day of service in communities and to bring people together around the common focus of service to others. The Corporation will award these funds to eligible applicants who will in turn subgrant to eligible local organizations or fund separate events to plan and carry out service activities.

Background

The Martin Luther King, Jr. Day of Service Grant application is completed by applicant organizations interested in supporting an MLK Day of Service Program. The application is completed electronically by using the Corporation's Web-based system, eGrants.

Current Action

The Corporation seeks to create renewal application instructions specifically for the Martin Luther King, Jr. Day of Service grants. When finalized, the application will include additional instructions to clarify narrative and budget sections; will contain an updated list of "Service Categories" used by applicants to identify the types of needs the national service participants will meet; and will contain current references used in the grants management system.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Martin Luther King, Jr. Day of Service Application Instructions.

OMB Number: 3045–0110.

Affected Public: Eligible applicants to the Corporation for National and Community Service for funding of Martin Luther King, Jr. Day of Service Grants.

Total Respondents: 80.

Frequency: Annual.

Average Time per Response: Ten (10) hours.

Estimated Total Burden Hours: 800 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

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.

Robert Velasco, II,

Acting Chief of Program Operations.

[FR Doc. 2011–12265 Filed 5–18–11; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 11–11]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Mr. John Unglesbee, DSCA/DBO/CFM, (703) 601–6026.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 11–11 with attached transmittal and policy justification.

Dated: May 15, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

MAY 0 3 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-11, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $67 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille Jr.

Richard A. Genaille, Jr.
Acting Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided under Separate Cover)

Transmittal No. 11-11

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Iraq

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$ 67 million
TOTAL	$ 67 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: (750) 50-Watt Vehicular Multiband Handheld Radio Systems, (900) 5-watt Multiband Handheld Radio Systems, (50) 50-watt Multiband Handheld Base Station Radio Systems, (50) 20-watt High Frequency (HF) Base Station Radio Systems, (100) 5-watt Secure Personal Role Handheld Radio Systems, accessories, installation, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering and technical support services, and other related elements of logistics support.

(iv) Military Department: Army (WAJ)

(v) Prior Related Cases, if any: FMS Case VFV-$58M-25May10

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: MAY 03 2011

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Iraq – Various Radios and Communication Equipment

The Government of Iraq has requested a possible sale of (750) 50-Watt Vehicular Multiband Handheld Radio Systems, (900) 5-watt Multiband Handheld Radio Systems, (50) 50-watt Multiband Handheld Base Station Radio Systems, (50) 20-watt High Frequency (HF) Base Station Radio Systems, (100) 5-watt Secure Personal Role Handheld Radio Systems, accessories, installation, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is $67 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country. This proposed sale directly supports the Iraq government and serves the interests of the Iraqi people and the U.S.

The proposed sale of the radios and communications equipment will advance Iraq's efforts to develop a strong Federal Police Force. The communications equipment will provide Iraq with updated frequency-hopping capabilities as well as a digital data capability. This expansion will enable Iraq to equip new forces to assume the missions currently accomplished by U.S. and coalition forces and to sustain itself in its efforts to establish stability.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be The Harris Corporation in White Plains, New York. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require six contractor personnel to travel to Iraq for operator & maintenance instruction (four weeks each) and installation support (six increments, for two weeks per visit).

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2011–12324 Filed 5–18–11; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Uniform Formulary Beneficiary Advisory Panel

AGENCY: Department of Defense, Assistant Secretary of Defense (Health Affairs).

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (Title 5, United States Code (U.S.C.), Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) the Department of Defense announces the following Federal Advisory Committee Meeting of the Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel).

DATES: June 23, 2011, from 9 a.m.–1 p.m.

ADDRESSES: Naval Heritage Center Theater, 701 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Stacia Spridgen, Designated Federal Officer, Uniform Formulary Beneficiary Advisory Panel, 4130 Stanley Road, Suite 208, Ft. Sam Houston, TX 78234–6102, *Telephone:* (210) 295–1271, *Fax:* (210) 295–2789. *E-mail Address: Baprequests@tma.osd.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: The Panel will review and comment on recommendations made to the Director, TRICARE Management Activity, by the Pharmacy and Therapeutics Committee, regarding the Uniform Formulary.

Meeting Agenda:

1. Sign-In
2. Welcome and Opening Remarks
3. Public Citizen Comments
4. Scheduled Therapeutic Class Reviews (Comments will follow each agenda item) Anti-Psychotics

a. Nasal Allergy Drugs

b. Designated Newly Approved Drugs in Already-Reviewed Classes

c. Pertinent Utilization Management Issues

5. Panel Discussions and Vote

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and Title 41, Code of Federal Regulations (CFR), Section 102–3.140 through 102–3.165, and the availability of space this meeting is open to the public. Seating is limited and will be provided only to the first 220 people signing-in. All persons must sign-in legibly.

Administrative Work Meeting: Prior to the public meeting, the Panel will conduct an Administrative Work Meeting from 7:30 a.m. to 9 a.m. to discuss administrative matters of the Panel. The Administrative Work Meeting will be held at the Naval Heritage Center, 701 Pennsylvania Avenue, NW., Washington, DC 20004. Pursuant to 41 CFR 102–3.160, the Administrative Work Meeting will be closed to the public.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Panel at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Panel's Designated Federal Officer (DFO). The DFO's contact information can be obtained from the General Services Administration's Federal Advisory Committee Act Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to the scheduled meeting of the Panel may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all the committee members.

Public Comments: In addition to written statements, the Panel will set aside one hour for individuals or interested groups to address the Panel. To ensure consideration of their comments, individuals and interested groups should submit written statements as outlined in this notice; but if they still want to address the Panel, then they will be afforded the opportunity to register to address the Panel. The Panel's DFO will have a "Sign-Up Roster" available at the Panel meeting, for registration on a first-come, first-serve basis. Those wishing to address the Panel will be given no more than five minutes to present their comments, and at the end of the one hour time period, no further public comments will be accepted. Anyone who signs up to address the Panel, but is unable to do so due to the time limitation, may submit their comments in writing; however, they must understand that their written comments may not be reviewed prior to the Panel's deliberation.

To ensure timeliness of comments for the official record, the Panel encourages that individuals and interested groups consider submitting written statements instead of addressing the Panel.

Dated: May 15, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–12313 Filed 5–18–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency National Defense Intelligence College Board of Visitors Closed Meeting

AGENCY: National Defense Intelligence College, Defense Intelligence Agency, Department of Defense.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the Defense Intelligence Agency National Defense Intelligence College Board of Visitors has been scheduled as follows:

DATES: Tuesday, June 14, 2011 (8 a.m. to 5 p.m.) and Wednesday, June 15, 2011 (8 a.m. to 5 p.m.).

ADDRESSES: National Defense Intelligence College, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Dr. David R. Ellison, President, DIA National Defense Intelligence College, Washington, DC 20340–5100 (202/231–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b (c) (1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the National Defense Intelligence College.

Dated: May 15, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 2011–12315 Filed 5–18–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Members Meeting

AGENCY: Under Secretary of Defense Personnel and Readiness, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary of Defense concerning requirements established by the David L. Boren National Security Education Act, Title VII of Public Law 102–183, as amended.

DATES: June 22, 2011 from 8 a.m.–2:30 p.m.

ADDRESSES: National Security Education Program, 1101 Wilson Blvd., Suite 1210, Arlington, VA 22219.

FOR FURTHER INFORMATION CONTACT: Ms. Alison Patz, Program Analyst, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *Alison.patz@wso.whs.mil.*

SUPPLEMENTARY INFORMATION: The National Security Education Board Members meeting is open to the public. The public is afforded the opportunity to submit written statements associated with NSEP. Comments should be mailed to National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn, Virginia 22209–2248; or e-mailed to *Alison.patz@wso.whs.mil.* Comments should be submitted no later than June 8, 2011.

Dated: May 15, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–12318 Filed 5–18–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0057]

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 20, 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, 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 call (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 15, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DoDEA 30

SYSTEM NAME:

DoDEA Travel Orders Processing System (TOPS).

SYSTEM LOCATION:

Department of Defense Education Activity (DoDEA), Human Resources Regional Service Center, Functional Automation & Information Management Section, 4040 North Fairfax Drive, Arlington, VA 22203–1365.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoDEA civilian personnel and/or family members necessary for the completion of travel documentation for employment or relocation as required.

CATEGORIES OF RECORDS IN THE SYSTEM:

Traveler's name, Social Security Number (SSN), title/grade, home address, mailing address, retirement code, district name, releasing official station and location, new official duty station and location. Specific trip information to include travel order number, reporting date at new duty station, travel purpose (to include round trip travel for house-hunting), transportation mode, names of dependents traveling, trip cost estimates and supporting documentation. Financial information to include government code/budget information, fund citation, temporary quarters/subsistence expense, household goods shipment commuted rate/government bill of lading, commitment of travel funds, travel related receipts, travel document status information, records of actual payment of travel funds, and other authorized expenses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701–5702, Travel, Transportation, and Subsistence; Joint Travel Regulation, Volume 2, Chapter 5, Permanent Duty Travel; and E.O. 9307 (SSN), as amended.

PURPOSE(S):

The Travel Order Processing System will enable DoDEA employees to create travel orders and transportation agreement forms, track the status of their travel orders, and view their completed travel orders.

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 of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal and private entities providing travel services for purposes of arranging transportation and lodging for those individuals authorized to travel at government expense on official business.

To banking establishments for the purpose of confirming billing or expense data.

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.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Records may be retrieved by name, SSN, district name, fund citation, and travel order number.

SAFEGUARDS:

Records are stored in office buildings protected by controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their official duties. Logon and passwords are used to control access to the systems date, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the record system.

RETENTION AND DISPOSAL:

Records are maintained for six years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Program Director, Department of Defense Education Activity, Human

Resources Regional Service Center, 4040 North Fairfax Drive, Arlington, VA 22203–1365.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1365.

Requests must include individual's full name, SSN, office or organization where assigned when trip was taken, date(s) of travel, and the address to which a response should be mailed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written requests to the DoDEA Freedom of Information Act Requester Service Center, 4040 North Fairfax Drive, Arlington, VA 22203–1365.

Requests must include individual's full name, SSN, office or organization where assigned when trip was taken, dates of travel, the address to which a response or record should be mailed, and the name and number of this system of records notice. The requestor must sign the request letter or a document authorizing another person to access his or her information.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual traveler or other authorized DoD personnel engaged in processing travel orders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–12323 Filed 5–18–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2011–0015]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Department of the Air Force is proposing to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as altered.

DATES: The proposed action will be effective on June 20, 2011 unless comments are received that would 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, 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: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, *Attn:* SAF/A6PPF, 1800 Air Force Pentagon, Washington DC 20330–1800, or call 703–696–6488.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices 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 systems reports, as required by 5 United States Code 552a(r) of the Privacy Act of 1974, were submitted on May 13, 2011 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget pursuant to paragraph 4c of Appendix I to Office of Management and Budget Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: May 15, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F033 AF A

SYSTEM NAME:

Information requests—Freedom of Information Act (April 7, 2003, 68 FR 16787)

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "All persons who have requested records from the Air Force under the provisions of the Freedom of Information Act (FOIA); all persons whose requests for records have been referred to the Air Force by other Federal agencies; and all persons who have submitted appeals to the Secretary of the Air Force under the provisions of the FOIA."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name, home address, telephone number, e-mail address, FOIA case numbers assigned to individual cases, and appeals, FOIA requests and appeals, responses to requests, determinations of appeals, correspondence with requesters and with other persons who have contacted the Air Force in connection with requests or appeals other than requesters or other correspondence in connection with requests or appeals."

* * * * *

STORAGE:

Delete entry and replace with "Maintained in hard copy file folders and/or on electronic storage media."

RETRIEVABILITY:

Delete entry and replace with "Retrieved by name or by unique FOIA case number assigned to each request or appeal."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records relating to requests that resulted in a full release of responsive records are retained in Requester Service Center files for two years following response to the requester.

Records that resulted in a full or partial denial (including "no records" responses) are retained in Requester Service Center files for six years following response to the requester.

Records for which an appeal is filed are retained in the Requester Service Center and in General Litigation Division office files for six years following determination of the appeal.

Records for which litigation is instituted are retained in accordance with the disposition instructions for the litigation concerned.

Paper records are disposed of by shredding, pulping, macerating, or burning. Computer records are destroyed by deleting, erasing, degaussing, or by overwriting."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "FOIA managers at Air Force installations, bases, units, organizations, and offices. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices. The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330–1420."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate FOIA office. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

For verification purposes, individual should provide their full name, and any detail which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address requests to the General Litigation Division, Air Force Legal Operations Agency, 1501 Wilson Boulevard, 7th Floor, Arlington, VA 22209–2403.

For verification purposes, individual should provide their full name, and any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Air Force rules for access to records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Instruction 33–332, Privacy Act Program, 32 CFR Part 806b, or may be obtained from the system manager."

* * * * *

F033 AF A

SYSTEM NAME:

Information Requests—Freedom of Information Act.

SYSTEM LOCATION:

Air Force installations and headquarters of combatant commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have requested records from the Air Force under the provisions of the Freedom of Information Act (FOIA); all persons whose requests for records have been referred to the Air Force by other Federal agencies; and all persons who have submitted appeals to the Secretary of the Air Force under the provisions of the FOIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, home address, telephone number, e-mail address, FOIA case numbers assigned to individual cases, and appeals, FOIA requests and appeals, responses to requests, determinations of appeals, correspondence with requesters and with other persons who have contacted the Air Force in connection with requests or appeals other than requesters or other correspondence in connection with requests or appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 5 U.S.C. 552, Public Information; agency rules, opinions, orders, records, and proceedings; and DoD Regulation 5400.07, DoD Freedom of Information Act (FOIA) Program.

PURPOSE(S):

To process FOIA requests and to assist the Department of the Air Force in carrying out responsibilities under the FOIA.

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 of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in hard copy file folders and/or on electronic storage media.

RETRIEVABILITY:

Retrieved by name or by unique FOIA case number assigned to each request or appeal.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are common access card (CAC) enabled and password protected.

RETENTION AND DISPOSAL:

Records relating to requests that resulted in a full release of responsive records are retained in Requester Service Center files for two years following response to the requester.

Records that resulted in a full or partial denial (including "no records" responses) are retained in Requester Service Center files for six years following response to the requester.

Records which an appeal is filed are retained in the Requester Service Center and in General Litigation Division office files for six years following determination of the appeal.

Records which litigation is instituted are retained in accordance with the disposition instructions for the litigation concerned.

Paper records are disposed of by shredding, pulping, macerating, or burning. Computer records are destroyed by deleting, erasing, degaussing, or by overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

FOIA managers at Air Force installations, bases, units, organizations, and offices. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices. The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330–1420.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate FOIA office. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

For verification purposes, individual should provide their full name, and any detail which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address requests to the General Litigation Division, Air Force Legal Operations Agency, 1501 Wilson Boulevard, 7th Floor, Arlington VA 22209–2403.

For verification purposes, individual should provide their full name, and any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Instruction 33–332, Privacy Act Program, 32 CFR Part 806b, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Those individuals who submit initial requests, the agency records searched in the process of responding to such requests; Air Force personnel assigned to handle such requests; other agencies or entities that have referred requests concerning Department of the Air Force records, or that have consulted with the Department of the Air Force regarding the handling of particular requests; and submitters of records or information that have provided assistance to the Department of the Air Force in making FOIA access determinations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a FOIA action, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this FOIA case record, Air Force hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 2011–12317 Filed 5–18–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Record of Decision for the Final Environmental Impact Statement/Overseas Environmental Impact Statement for Gulf of Alaska Navy Training Activities

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (Navy), after carefully weighing the operational and environmental consequences of the proposed action as presented in the Final Environmental Impact Statement (FEIS)/Overseas Environmental Impact Statement, announces its decision to conduct Navy training activities within the Temporary Maritime Activities Area within the Gulf of Alaska in furtherance of the Navy's statutory obligations under Title 10 of the United States Code governing the roles and responsibilities of the Navy. In its decision, the Navy considered applicable laws and executive orders, including an analysis of the effects of its actions in compliance with the Endangered Species Act, the Coastal Zone Management Act, and the National Historic Preservation Act, and the requirements of Executive Order (EO) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations and EO 13045, Protection of Children from Environmental Health Risks and Safety Risks.

SUPPLEMENTARY INFORMATION: The complete text of the Navy's Record of Decision (ROD) is available for public viewing on the project Web site at *http://www.gulfofalaskanavyeis.com* along with copies of the FEIS and supporting documents. Single copies of the ROD will be made available upon request by contacting Ms. Amy Burt, 360–396–0924.

Dated: May 12, 2011.

D.J. Werner,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–12283 Filed 5–18–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2011–0007]

Privacy Act of 1974; System of Records

AGENCY: U.S. Marine Corps, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The U.S. Marine Corps proposes to alter an existing system of records in its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June

20, 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, 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: Mr. LaDonne White, Headquarters, U.S. Marine Corps, FOIA/PA Section (ARSF), 2 Navy Annex, Room 3134, Washington, DC 20380–1775, or call (703) 614–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps system of records notices 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 13, 2011, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and 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 15, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

M01754–5

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Primary location: The Marine Corps Community Services (MCCS) contractor secured site—3n Global, Incorporated, 505 N. Brand Boulevard, Suite 700, Glendale, CA 91203–3946.

SECONDARY LOCATIONS:

Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, Marine Corps Community Services, 3280 Russell Road, MCB Quantico, VA 22134–5009.

Marine Corps Community Services (MCCS) offices located at Marine Corps installations. Official MCCS offices mailing addresses are published on the MCCS Web site or may be obtained from the system manger.

eMarine Website Hosting: DefenseWeb Technologies, Inc., 10182 Telesis Court, FL5, San Diego, CA 92121–4777."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Active Duty and Reserve military officer and enlisted personnel assigned to Marine Corps units/activities and their dependents."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Names, home addresses, work addresses, contact telephone numbers, contact email addresses, relationship information, date of birth (month day (MMDD)), and the last four digits of the military members' Social Security Number (SSN)."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Name, date of birth, and last four digits of the military member's SSN or the name and relationship for individuals other than military members."

SAFEGUARDS:

Delete entry and replace with "*Mass Communication Tool (MCT)*—Password controlled system, file, and element access based on predefined need-to-know basis. Computer facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having a need-to-know. Data is encrypted while at rest and during transmission.

Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening, or visitor registers.

eMarine Family Readiness (FR) Web site—The eMarine system is a protected network that will employ data encryption, data masking, secure virtual private network (VPN) and DoD approved methods for safeguarding and ensuring compliance. The network or system will be locked down with user IDs and passwords."

RETENTION AND DISPOSAL:

Delete entry and replace with "Disposition pending (until the National Archives and Records Administration approves retention and disposal schedule, records will be treated as permanent)."

* * * * *

M01754–5

SYSTEM NAME:

Marine Corps Family Readiness Mass Communication Records.

SYSTEM LOCATION:

PRIMARY LOCATION:

The Marine Corps Community Services (MCCS) contractor secured site—3n Global, Incorporated, 505 N. Brand Boulevard, Suite 700, Glendale, CA 91203–3946.

SECONDARY LOCATIONS:

Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, Marine Corps Community Services, 3280 Russell Road, MCB Quantico, VA 22134–5009.

Marine Corps Community Services (MCCS) offices located at Marine Corps installations. Official MCCS offices mailing addresses are published on the MCCS Web site or may be obtained from the system manger.

eMarine Web site Hosting: DefenseWeb Technologies, Inc., 10182 Telesis Court, FL5, San Diego, CA 92121–4777.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Duty and Reserve military officer and enlisted personnel assigned to Marine Corps units/activities and their dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, home addresses, work addresses, contact telephone numbers, contact email addresses, relationship information, date of birth (month day (MMDD)), and the last four digits of the military members' Social Security Number (SSN).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013; Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps: function; composition; Marine Corps Order (MCO) 1754.6A, Marine Corps Family Team Building (MCFTB); and NAVMC Directive 1754.6A, Marine Corps Family Team Building (MCFTB); and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To effect clear and direct communication between Marine Corps family readiness officers and military members, their family members, and other individuals designated by the military member, in order to ensure family preparedness and readiness before, during, and after a military member's deployment and related absence from the family. NOTE THAT THESE TOOLS WILL NOT BE USED TO COMMUNICATE CASUALTY NOTIFICATION OR ASSISTANCE INFORMATION.

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 of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

Name, date of birth, and last four digits of the military member's SSN or the name and relationship for individuals other than military members.

SAFEGUARDS:

Mass Communication Tool (MCT)—Password controlled system, file, and element access based on predefined need-to-know basis. Computer facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having a need-to-know. Data is encrypted while at rest and during transmission.

Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening, or visitor registers.

eMarine Family Readiness (FR) Web site—The eMarine system is a protected network that will employ data encryption, data masking, secure virtual private network (VPN) and DoD approved methods for safeguarding and ensuring compliance. The network or system will be locked down with user IDs and passwords.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration approves retention and disposal schedule, records will be treated as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Policy Manager: Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, Marine Corps Community Services, 3280 Russell Road, Marine Corps Base Quantico, VA 22134–5009.

Secondary Managers: Directors of Marine Corps Community Services (MCCS) offices. Official mailing addresses are published on the MCCS web site or may be obtained from the system manger.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the MCCS office servicing the activity where the Marine is currently stationed. Official mailing addresses are published on the MCCS Web site or may be obtained from the system manger.

The written inquiry should include the individual's full name, the last four of their Social Security Number (SSN), and written signature.

RECORD ACCESS PROCEDURE:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the MCCS office servicing the activity where the Marine is currently stationed. Official mailing addresses are published on the MCCS Web site or may be obtained from the system manger.

The written inquiry should include the individual's full name the last four of their Social Security Number (SSN), and written signature.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Military personnel, record files, and/or the Marine Corps Total Force System database.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–12314 Filed 5–18–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM93–11–000]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992; Notice of Annual Change in the Producer Price Index for Finished Goods

The Commission's regulations include a methodology for oil pipelines to change their rates through use of an index system that establishes ceiling levels for such rates. The Commission bases the index system, found at 18 CFR 342.3, on the annual change in the Producer Price Index for Finished Goods (PPI–FG), plus two point six five percent (PPI–FG+2.65). The Commission determined in an "Order Establishing Index For Oil Price Change Ceiling Levels" issued December 16, 2010, that PPI–FG+2.65 is the appropriate oil pricing index factor for pipelines to use for the five-year period commencing July 1, 2011.[1]

The regulations provide that the Commission will publish annually, an index figure reflecting the final change in the PPI–FG, after the Bureau of Labor Statistics publishes the final PPI–FG in May of each calendar year. The annual average PPI–FG index figures were 172.5 for 2009 and 179.8 for 2010.[2] Thus, the percent change (expressed as a decimal) in the annual average PPI–FG from 2009 to 2010, plus 2.65 percent, is positive 0.068819.[3] Oil pipelines must multiply their July 1, 2010, through June 30, 2011, index ceiling levels by positive 1.068819[4] to compute their index ceiling levels for July 1, 2011,

[1] 133 FERC ¶ 61,228 at P 1 (2010).

[2] Bureau of Labor Statistics (BLS) publishes the final figure in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Price Indexes of the BLS, at (202) 691–7705, and in print in August in Table 1 of the annual data supplement to the BLS publication Producer Price Indexes via the Internet at *http://www.bls.gov/ppi/home.htm.* To obtain the BLS data, scroll down to "PPI Databases" and click on "Top Picks" of the Commodity Data including stage-of-processing indexes (Producer Price Index—PPI). At the next screen, under the heading "Producer Price Index/Commodity Data," select the first box, "Finished goods—WPUSOP3000," then scroll all the way to the bottom of this screen and click on Retrieve data.

[3] [179.8 − 172.5]/172.5 = 0.042319 + .0265 = 0.068819.

[4] 1 + 0.068819 = 1.068819.

through June 30, 2012, in accordance with 18 CFR 342.3(d). For guidance in calculating the ceiling levels for each 12 month period beginning January 1, l995,[5] see *Explorer Pipeline Company,* 71 FERC 61,416 at n.6 (1995).

In addition to publishing the full text of this Notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print this Notice via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426. The full text of this Notice is available on FERC's Home Page at the eLibrary link. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field and follow other directions on the search page.

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

Dated: May 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–12303 Filed 5–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–480–000]

Columbia Gas Transmission, LLC; Notice of Application

Take notice that on May 11, 2011, Columbia Gas Transmission, LLC (Columbia), 5151 San Felipe, Suite 2500, Houston, Texas 77056, pursuant to section 7(c) of the Natural Gas Act (NGA), filed an application for a certificate of public convenience and necessity, seeking authority to continue to test and evaluate its Coco C storage field located in Kanawha County, West Virginia. Columbia will continue to collect and analyze the information it obtains to validate using this storage field to develop further storage services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Any questions regarding this application should be directed to Fredric J. George, Senior Counsel, Columbia Gas Transmission Corporation, PO Box 1273, Charleston, West Virginia 25325 at (304) 357–2359 or fax (304) 357–3206.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, *within 90 days of this Notice the Commission staff will either:* complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental cementers will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental cementers will not be required to serve copies of filed documents on all other parties. However, the nonparty commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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 fileelectronically should submit an original and seven 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) or TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 23, 2011.

Dated: May 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–12295 Filed 5–18–11; 8:45 am]

BILLING CODE 6717–01–P

[5] For a listing of all prior multipliers issued by the Commission, see the Commission's Web site, *http://www.ferc.gov/industries/oil/gen-info/pipeline-index.asp.*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2985–000]

MeadWestvaco; Notice of Authorization for Continued Project Operation

On April 14, 2006 MeadWestvaco, licensee for the Willow Mill Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Willow Mill Hydroelectric Project is on the Housatonic River in Berkshire County, Massachusetts.

The license for Project No. 2985 was issued for a period ending April 30, 2011. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 USC 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2985 is issued to MeadWestvaco for a period effective May 1, 2011 through April 30, 2012, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 30, 2012, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that MeadWestvaco is authorized to continue operation of the Willow Mill Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: May 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–12300 Filed 5–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR11–9–000]

Imperial Oil and ExxonMobil Oil Corporation, v. Enbridge Pipelines (Southern Lights) LLC; Notice of Complaint

Take notice that on May 11, 2011, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC or Commission), 18 CFR 385.206 (2011), section 343.2 of the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.2, and sections of the Interstate Commerce Act, 49 U.S.C. App. 1(4), 1(5), 3, 8, 9, 13, 15, and 16 (1988), Imperial Oil and ExxonMobil Oil Corporation (Complainants) filed a formal complaint against Enbridge Pipelines (Southern Lights) LLC (Respondent). Complainants are challenging certain rates, terms and conditions of service, and practices of Respondent as unjust and unreasonable, unduly discriminatory and preferential, and anticompetitive. Complainants request that the Commission set this complaint for hearing and consolidate this Complaint with the ongoing rate proceeding in Docket Nos. IS10–399, *et al.*

The Complainant states that a copy of the complaint has been served on the Respondent.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–12294 Filed 5–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–159–000]

Perryville Gas Storage LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Crowville Salt Dome Storage Project Amendment and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the proposed Crowville Salt Dome Storage Project Amendment (Project Amendment) which involves the expansion, installation and operation of natural gas storage facilities by Perryville Gas Storage LLC (Perryville) in Franklin Parish, Louisiana. This EA will be used by the Commission in its decision-making process to determine whether the Project Amendment is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public

and interested agencies on the Project Amendment. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on June 13, 2011.

This notice is being sent to the Commission's current environmental mailing list for the Project Amendment. State and local government representatives are asked to notify their constituents of this project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a Perryville representative about the acquisition or modification of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Project Amendment is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, Perryville could initiate condemnation proceedings where compensation would be determined in accordance with state or federal law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility on My Land? What Do I Need To Know?" is available for viewing on the FERC Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Proposed Project

Perryville proposes to increase the working capacity of its two previously certificated (FERC Docket No. CP09–418–000) natural gas storage caverns by 2.5 billion cubic-feet each; and install three freshwater supply wells (FW Wells 5–7), six brine disposal wells (SWD Wells 6–11) and eight groundwater monitoring wells (Monitor Wells 1–8). Perryville believes the proposed facilities are necessary to expand its Crowville Salt Dome Storage Project so that it can meet the demand for reliable natural gas storage capacity in the eastern and southeastern United States.

Land Requirements for Construction

With one exception, lands recently disturbed for installation and operation of the Crowville Salt Dome Storage Project facilities would be used for installation of the proposed facilities. The installation of one groundwater monitoring well would require the use of two previously undisturbed acres.

The general location of the proposed facilities is shown in Appendix 1.[1]

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from the issuance or amendment of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to be addressed in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed Project Amendment under these general headings:

- Geology and soils;
- Water resources;
- Vegetation and wildlife;
- Land use and visual resources;
- Cultural resources;
- Air quality and noise;
- Reliability and safety; and
- Cumulative impacts.

We will also evaluate alternatives to the proposed project or portions of the proposed project, and make recommendations on how to lessen or avoid environmental impacts.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record, and depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section beginning on page 4.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[3] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project is further developed. For natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before June 13, 2011.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP11–159–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "*eRegister*." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own property within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 1).

Becoming an Intervenor

In addition to participating in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *http://www.ferc.gov* using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP11–159). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: May 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–12296 Filed 5–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–109–000]

Worsham-Steed Gas Storage, LLC; Notice of Filing

Take notice that on May 12, 2011, Worsham-Steed Gas Storage, LLC filed to update its address in its Statement of Operating Conditions as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, May 23, 2011.

Dated: May 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–12302 Filed 5–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR11–108–000; PR11–108–001]

Atlanta Gas Light Company; Notice of Petition for Rate Approval

Take notice that on May 9, 2011, as supplemented on May 11, 2011, Atlanta Gas Light Company (Atlanta Gas Light) filed a petition pursuant to section 284.123(b)(1)(ii) of the Commission's regulations a rate election for transportation service. Atlanta Gas Light states the rate election consists of the maximum cost-based rates approved by the Georgia Public Service Commission for comparable transportation service on its local gas distribution system, General Gas Transportation Service (TS–1). In addition, Atlanta Gas Light submits a baseline filing of its Statement of Operating Conditions.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, May 23, 2011.

Dated: May 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–12301 Filed 5–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–335–000]

Paiute Pipeline Company; Notice of Request Under Blanket Authorization

Take notice that on April 28, 2011, Paiute Pipeline Company (Paiute) prior notice request pursuant to sections 157.205, 157.210, and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) for authorization to construct, operate and to abandon certain mainline natural gas facilities along U.S. Highway 50 in Lyon County, Nevada, as part of its 2011 Highway 50 Relocation Project, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Paiute proposes to (1) Relocate approximately 3.5 miles of existing 10-inch and 12-inch diameter pipeline and replace it with like-diameter pipeline, and (2) relocate approximately 3.7 miles of existing 10-inch diameter pipeline and replace it with 20-inch diameter pipeline all in Lyon County, Nevada. Paiute states that the purpose of the proposed project is to relocate certain mainline pipeline facilities due to a planned highway widening project and to enable the firm transportation of an additional 3,000 dekatherms per day of natural gas on its system for an existing shipper.

Any questions regarding this application should be directed to Edward C. McMurtrie, Vice President/General Manager, Paiute Pipeline Company, P.O. Box 94197, Las Vegas, Nevada 89193–4197 at (702) 876–7109.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commenter, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Dated: May 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–12299 Filed 5–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–333–000]

Eastern Shore Natural Gas Company; Notice of Request Under Blanket Authorization

Take notice that on April 28, 2011, Eastern Shore Natural Gas Company (Eastern Shore), 1110 Forrest Avenue, Dover, Delaware 19904, pursuant to its blanket certificate issued in Docket No. CP96–128–000,[1] filed an application in accordance to sections 157.205(b), 157.208(c), and 157.210 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, for the construction, ownership, and operation of new mainline facilities and new delivery point measurement and regulating stations in Sussex County, Delaware and Worcester County, Maryland, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

In order to provide additional firm natural gas transportation service to Chesapeake Utilities Corporation—Delaware Division, Chesapeake Utilities Corporation—Maryland Division, and Eastern Shore Gas Company (Shippers), Eastern Shore proposes to construct, own, operate, and maintain about 2.3 miles of new ten-inch steel pipeline looping along Route 13 near Seaford in Sussex County, Delaware and 19.4 miles of six-inch mainline extension from Millsboro, Delaware to Berlin, Worcester County, Maryland. Eastern Shore also proposes to install new delivery point facilities in the towns of Frankford, Dagsboro, and Selbyville, Delaware, and Bishop, Showell, and Berlin, Maryland. Eastern Shore has entered into binding Precedent Agreements with the Shippers in which the Shippers have agreed to execute fifteen-year FT Service Agreements with Eastern Shore to provide additional natural gas transportation service for the total of 6,250 dts/day [2] under Eastern Shore's maximum FT Zone One and Zone Two Tariff Rates on file with the Commission. Eastern Shore will recover its project costs entirely from the Shippers, with no subsidy from Eastern Shore's other firm service customers. The total estimate cost of the proposed facilities is $13,018,853. Eastern Shore proposes the facilities to be completed and placed into service by November 1, 2011.

Any questions concerning this application may be directed to Glen DiEleuterio, Project Manager, at (302) 734–6710, ext. 6723 or via fax (302) 734–6745, or e-mail at *GDIEleuterio@esng.com*.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Dated: May 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–12298 Filed 5–18–11; 8:45 am]

BILLING CODE 6717–01–P

[1] 81 FERC ¶ 61,013 (1997).

[2] 4,050 dts/day to Chesapeake Utilities Corporation—Delaware Division, 1,700 dts/day to Chesapeake Utilities Corporation—Maryland Division, and 500 dts/day to Eastern Shore Gas Company.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–303–000]

Eastern Shore Natural Gas Company; Notice of Request Under Blanket Authorization

Take notice that on April 28, 2011, Eastern Shore Natural Gas Company (Eastern Shore), 1110 Forrest Avenue, Dover, Delaware, 19904, pursuant to its blanket certificate issued in Docket No. CP96–128–000,[1] filed an application in accordance to sections 157.205(b), 157.208(c), and 157.210 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, for the construction, ownership, and operation of new mainline facilities and a new delivery point measurement and regulating station from Glasgow, Delaware to Elkton, Maryland, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

In order to provide additional firm natural gas transportation service to Chesapeake Utilities Corporation—Maryland Division (Chesapeake), Eastern Shore proposes to construct, own, operate, and maintain about 5 miles of new six-inch steel pipeline running westward from Route 40 in Glasgow, Delaware to Elkton, Maryland, and install a new delivery point measurement and regulating station near the intersection of US 40 and Maryland 279 in Elkton, Maryland. Eastern Shore has entered into a binding Precedent Agreement with Chesapeake in which Chesapeake has agreed to execute a fifteen-year FT Service Agreement with Eastern Shore to provide additional natural gas transportation service of 4,070 dts/day under Eastern Shore's maximum FT Zone One Tariff Rate on file with the Commission. Eastern Shore will recover its project costs entirely from Chesapeake, with no subsidy from Eastern Shore's other firm service customers. The total estimate cost of the proposed facilities is $5,850,450. Eastern Shore proposes the facilities to be completed and placed into service by November 1, 2011.

Any questions concerning this application may be directed to Glen DiEleuterio, Project Manager, at (302) 734–6710, ext. 6723 or via fax (302) 734–6745, or e-mail at *GDIEleuterio@esng.com*.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866)206–3676, or, for TTY, contact (202)502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18

[1] 81 FERC ¶ 61,013 (1997).

CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Dated: May 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–12297 Filed 5–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER11–2127–001, ER11–2127–002, EL11–37–000]

Terra-Gen Dixie Valley, LLC; Order on Rehearing and Accepting Tariff Filing, Subject to Modification, Establishing Hearing Procedures and Directing Further Compliance Filing

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

1. In this order, the Commission addresses an open access transmission tariff (OATT) submitted by Terra-Gen Dixie Valley, LLC (Terra-Gen), in response to a Commission order issued in this proceeding on January 14, 2011.[1] The Commission will accept Terra-Gen's OATT, to be effective May 14, 2011, and order modifications to Terra-Gen's OATT and require a further compliance filing. We will also establish hearing and settlement procedures. Finally, as discussed below, we will grant in part and deny in part Terra-Gen's request for rehearing of the January 14 Order.

I. Background

2. Terra-Gen is the owner of a 60 MW geothermal plant (Plant), located in northern Nevada, and an associated 214-mile, 230 kV radial generator tie-line (Dixie Valley Line) (collectively, Dixie Valley QF). Both the Plant and the Dixie Valley Line were certified as a single QF under the Commission's regulations. Terra-Gen currently utilizes the Dixie Valley Line by selling the 60 MW output of the Plant to Southern California Edison (SoCal Edison) under a pre-existing power purchase agreement.

3. On September 16, 2010, the Commission acted on a petition by Terra-Gen, whereby Terra-Gen and two of its affiliates, TGP Dixie Development Company, LLC, and New York Canyon, LLC, sought a determination awarding priority to existing and future planned expansion transmission capacity on the Dixie Valley Line. In that Order, the Commission also addressed a complaint filed against Terra-Gen by Green Borders Geothermal, LLC (Green Borders). In relevant part, the Commission found that: (1) Terra-Gen must file an OATT as a result of Green Borders' valid transmission service request made on May 8, 2007; (2) Terra-Gen is entitled to continue its present use of its 60 MW of capacity; (3) Terra-Gen had not supported its request for 100 MW of priority transmission capacity for expansion of its generation resource; and (4) Terra-Gen had not supported the claim for priority of 200 MW of expansion capacity for the two Terra-Gen affiliates.[2] However, the Commission allowed Terra-Gen "to submit further evidence of pre-existing development plans that satisfy the criteria in *Aero Energy* and *Milford*." The Commission explained that Terra-Gen "must demonstrate the existence of specific pre-existing generation development plans, consistent material progress towards achieving such plans, and that such plans and initial progress pre-date Green Border's valid request for service." [3]

4. In compliance with the September 16 Order, Terra-Gen submitted its OATT to the Commission on November 15, 2010, in Docket No. ER11–2127–000. Terra-Gen also submitted additional materials to support its request for 300 MW of priority transmission capacity.[4] On January 14, 2010, the Commission rejected Terra-Gen's OATT because Terra-Gen had not demonstrated that its OATT was consistent with or superior to the *pro forma* OATT. The Commission directed Terra Gen to resubmit an OATT that is consistent with the direction of the January 14 Order. On March 16, 2011, Terra-Gen submitted the instant filing in compliance with the January 14 Order. Subsequently, Terra-Gen requested rehearing of the January 14 Order.

A. Request for Rehearing of January 14 Order

5. On February 14, 2011, Terra-Gen filed a Request for Rehearing of the January 14 Order (Request for Rehearing). Terra-Gen alleges that the Commission departed from precedent, failed to engage in reasoned decision-making, and acted arbitrarily and capriciously "by finding that [Terra-Gen] had not justified an OATT exemption for its existing or future priority transmission services when the Commission had grandfathered [Terra-Gen's] priority transmission services in the September 16 Order." [5] Specifically, Terra-Gen argues that the Commission improperly departed from precedent established in *Sagebrush* by rejecting Terra-Gen's proposed OATT provisions that would provide "an OATT exemption for its existing and any future service rights confirmed by the Commission." [6] According to Terra-Gen, its proposed treatment of the 60 MW of existing capacity on the Dixie Valley Line is no different than Sagebrush's "treatment of capacity to which it had pre-OATT grandfathered rights." [7]

B. Terra-Gen OATT

6. Terra-Gen asserts that its OATT complies with the directives in the January 14 Order. Specifically, Terra-Gen explains that its compliance OATT contains several deviations from the *pro forma* OATT due to the design of the Dixie Valley Line as a generator tie-line. Terra-Gen explains that its OATT has non-conforming provisions that include limiting the applicability of the OATT with regard to any priority transmission capacity granted to Terra-Gen and its affiliates, providing alternative creditworthiness requirements for transmission customers, clarifying how Terra-Gen will cluster transmission system impact studies, and modifying the large generator interconnection procedures.

7. In addition, as it did in its initial filing, Terra-Gen reaffirms its requests for waiver of the *pro forma* OATT provisions related to the provision of

[1] *See Terra-Gen Dixie Valley, LLC,* 134 FERC ¶ 61,027 (2011) (January 14 Order).

[2] *Terra-Gen Dixie Valley, LLC,* 132 FERC ¶ 61,215 (2010) (September 16 Order).

[3] *Id.* P 53.

[4] The additional materials were submitted in Docket No. EL10–29–002.

[5] Request for Rehearing at 5.

[6] Request for Rehearing at 6 (citing *Sagebrush, a California Partnership,* 130 FERC ¶ 61,093 (2010) (Sagebrush)).

[7] *Id.* at 7.

network transmission service, ancillary services, Open Access Same-Time Information System (OASIS), and Standards of Conduct. Terra-Gen also requests waiver of various other *pro forma* provisions that Terra-Gen asserts are not necessary given the nature and use of the Dixie Valley Line. Finally, Terra-Gen proposes to modify or eliminate certain schedules and attachments of the *pro forma* OATT, consistent with the changes in the body of the Terra-Gen OATT.

II. Notice and Responsive Pleadings

8. Notice of Terra-Gen's OATT filing was published in the **Federal Register**, 76 FR 16,621 (2011), with interventions and protests due on or before April 6, 2011. On March 25, 2011, Green Borders filed a motion for an extension of time to file comments. Subsequently, the Commission issued a notice on March 30, 2011, extending the comment date to April 11, 2011. On April 11, 2011, Green Borders filed a protest requesting that the Commission reject Terra-Gen's OATT for failure to comply with the directives of the January 14 Order or, in the alternative, reject certain elements of the proposed OATT that are outside the scope of the January 14 Order and set certain issues for hearing.[8] On April 26, 2011, Terra-Gen filed an answer to Green Borders' protest.

III. Discussion

A. Procedural Matters

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. Accordingly, we will reject Terra-Gen's answer.

B. Substantive Matters

1. Terra-Gen Rehearing

10. The Commission will grant in part and deny in part the Request for Rehearing. As discussed in greater detail below, the Commission clarifies that it is appropriate for Terra-Gen to utilize transmission service outside the terms of the OATT for the 60 MW of pre-existing service it has been providing for itself. Terra-Gen was utilizing the capacity prior to Green Borders' May 8, 2007 request for transmission service; that is, prior to the time when Terra-Gen was first required to submit an OATT with the Commission. Therefore, the Commission will grant Terra-Gen's Request for Rehearing with respect to the 60 MW of existing transmission capacity.

11. The Commission will deny the Request for Rehearing with respect to Terra-Gen's future use of the Dixie Valley Line. Contrary to the situation presented by Terra-Gen's existing use of the Dixie Valley Line, Terra-Gen is not currently providing any transmission service beyond the existing 60 MW. Therefore, there is no "existing use" of transmission capacity beyond the existing 60 MW of service that could be considered for "grandfathering" outside of the OATT.

2. Terra-Gen OATT

12. In Order No. 890,[9] the Commission allowed transmission providers to propose non-rate terms and conditions that differ from those in Order No. 890 if those provisions are consistent with or superior to the *pro forma* OATT.[10] To the extent deviations from the *pro forma* OATT are necessary, we have found that applicant transmission owners must explain and support the deviations sufficiently,[11] and we will evaluate proposed OATT deviations on a case-by-case basis.[12] The Commission will only find that deviations from the *pro forma* OATT are just and reasonable if the filing party explains how the deviations in the proposed OATT are consistent with or superior to the *pro forma* OATT, or fully explains how the *pro forma* provisions are not applicable given the filing party's business model.[13] In this order, we summarily affirm the waivers granted in the January 14 Order. In addition, we will reject in part and accept in part Terra-Gen's OATT, effective May 14, 2011, as requested, and require Terra-Gen to submit a compliance filing. In the January 14 Order, we granted waiver of the provisions to provide network transmission service under Terra-Gen's OATT. Additionally, we found that Terra-Gen may remove references to local furnishing bonds, redispatch, and stranded cost recovery, as those provisions do not apply to service that Terra-Gen will provide on the Dixie Valley Line.[14] We find that Terra-Gen's deletion of the provisions for network service is consistent with the January 14 Order and will therefore grant waiver in the instant submittal. Similarly, we find that removal of the provisions for local furnishing bonds, redispatch, and stranded cost recovery is consistent with the January 14 Order.[15] We note, however, that, while Terra-Gen has proposed to remove the references to stranded cost recovery,[16] Terra-Gen has retained the stranded cost recovery provision in its proposed OATT. Accordingly, Terra-Gen will be required to submit a compliance filing that removes the stranded cost provisions from its OATT.[17]

13. In addition to granting waiver of the network transmission service and related provisions, we also find that Terra-Gen's removal of references to OASIS and Standards of Conduct is appropriate because we have already granted waiver to Terra-Gen of these requirements.[18] This waiver will remain in effect unless and until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation (for an OASIS waiver) or an entity complains that the public utility has unfairly used its access to information about transmission to benefit the utility or its affiliate (for a Standards of Conduct waiver).[19] If there is a material change in facts that affects this waiver, Terra-Gen must notify the Commission within 30 days of such change.[20]

14. In addition to the waivers granted above, Terra-Gen proposes several additional deviations from the *pro forma* OATT. Many of these proposed deviations are a direct result of the determinations in the January 14 Order. Other proposed deviations are new

[8] Green Borders April 11, 2011 Protest (Protest).

[9] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228 (2009).

[10] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 135.

[11] *Chinook Power Transmission, LLC,* 126 FERC ¶ 61,134, at P 47 (2009).

[12] *Montana Alberta Tie Ltd.,* 116 FERC ¶ 61,071, at P 55–60 (2006) (*MATL*).

[13] *Id.* at 60.

[14] *See* January 14 Order, 134 FERC ¶ 61,027 at P 12.

[15] *Id.*

[16] *See* Appendix C to Terra-Gen March 16, 2011 Filing at 7.

[17] *See* Section 26 of Terra-Gen OATT. We note that removal of this provision is not imperative. To the extent that Terra-Gen seeks recovery of stranded costs, it must submit a future section 205 filing with the Commission. 16 U.S.C. 824d (2006). Retaining this provision does not obligate Terra-Gen to seek recovery of stranded costs.

[18] *See* September 16 Order, 132 FERC ¶ 61,215 at P 55; January 14 Order, 134 FERC ¶ 61,027 at P 109.

[19] *See Entergy Mississippi, Inc.,* 112 FERC ¶ 61,228, at P 23 (2005) (citing *Central Minnesota Municipal Power Agency,* 79 FERC ¶ 61,260, at 62,127 (1997) and *Easton Utilities Commission,* 83 FERC ¶ 61,334, at 62,343 (1998)). Therefore, because Terra-Gen has demonstrated that it is a small public utility, the waiver we granted in the September 16 Order will not be revoked when an interconnection becomes operable.

[20] *See Material Changes in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations,* 127 FERC ¶ 61,141, at P 5 (2009).

requests for waivers. We address these matters in the following sections.

a. Clustering and Effective Date

i. Terra-Gen Tariff Provisions

15. Terra-Gen proposes provisions to address clustering of transmission system impact studies, consistent with the guidance provided in the January 14 Order.[21] In its submittal, Terra-Gen proposes to include a new section 19.10 that provides procedures on how Terra-Gen may cluster studies.[22] Terra-Gen's proposed clustering provisions provide, among other things, that "[T]he costs of the Cluster Study will be shared pro rata among the Eligible Customers whose request for service are included in the Cluster Study based on the amount of MW of service that the Transmission Customer has requested compared to the total MW of service required in the cluster."[23]

ii. Protest

16. Green Borders asserts that Terra-Gen has modified provisions of the OATT that the Commission found to be consistent with Commission precedent in the January 14 Order. Green Borders states that Terra-Gen proposes to change the cost sharing for cluster studies from being equal among all customers to a method whereby costs will be allocated based on the amount of MW of service requested by a transmission customer as compared to the total MW of transmission service requests included in the cluster study.[24] Green Borders argues that the change was not directed by the Commission and therefore should be rejected.

17. Green Borders also argues that the effective date of Terra-Gen's tariff, including the clustering provisions, should have been made effective retroactive to 60 days after Green Borders' valid transmission request made in May 2007.[25] Green Borders, citing the Commission's guidance that the Terra-Gen OATT will dictate how the assignment of available transmission capacity will be initially allocated, asserts that it is unfair and discriminatory to now allow Terra-Gen to extend the "window" for initial capacity until Terra-Gen's affiliated projects are completed, thereby allowing Terra-Gen to "dump Green Borders' request from 2007 into the same lottery."[26]

iii. Commission Determination

18. We will accept Terra-Gen's proposed clustering provisions as consistent with Commission precedent.[27] Like the proposal accepted in *Midwest ISO,* Terra-Gen's clustering proposal would allocate the cluster study costs to customers participating in the cluster based on the MW of capacity they are requesting. Furthermore, we find this *pro rata* allocation of the cost of the cluster study among eligible customers is consistent with cost causation principles as customer requests that require more study expenditures should pay the commensurate costs related to their request. Nothing in the January 14 Order precludes Terra-Gen from proposing additional deviations from the *pro forma* tariff, so long as these proposals are consistent with or superior to the *pro forma* tariff, and we find the clustering provisions to be consistent with or superior to the *pro forma* tariff.

19. We also find that Green Borders' argument regarding the effective date of the OATT is an impermissible collateral attack on the January 14 Order. In the January 14 Order, we denied Green Borders' request for a priority position in the transmission service queue. In addition, we directed that all transmission service requests made within the first 60 days of the effective date of the Terra-Gen OATT be treated as being submitted simultaneously and subject to a lottery system, if necessary, for assigning available transfer capability (ATC), consistent with section 2.1 of the *pro forma* tariff.[28] Green Borders now seeks to inject a request for an effective date back to 2007 on the presumption that it may obtain a more favorable position in the transmission queue for service on the Dixie Valley Line. We find this is a collateral attack on the January 14 Order and will therefore reject it. No party has provided cause for the Commission to consider a retroactive effective date for Terra-Gen's proposed OATT. As discussed above, Terra-Gen's OATT shall become effective, as modified as discussed in this order, on May 14, 2011.

b. Service Exempted From the OATT

i. Terra-Gen Tariff Provisions

20. Terra-Gen's proposed OATT modifies section 2.1 of the *pro forma* OATT to grandfather Terra-Gen's existing use of 60 MW of capacity on the Dixie Valley Line outside of the rates, terms, and conditions of the OATT, based on the Commission's prior confirmation of priority. The provisions in section 2.1 also propose that, if the Commission awards any additional priority rights to Terra-Gen or its affiliates to the planned expansion capacity on the Dixie Valley Line, such service would also be taken outside of the rates, terms, and conditions of the OATT.

21. In support of its proposal, Terra-Gen argues that the grandfathering provision mirrors what was previously approved by the Commission in *Sagebrush.* Specifically, Terra-Gen points out that, in *Sagebrush,* the Commission excluded from the OATT existing transmission service as well as planned expansion for which the Sagebrush partners had been granted priority in *Aero Energy.*[29] Terra-Gen also argues that all provisions proposing modifications to accommodate grandfathered service[30] are consistent with or superior to the *pro forma* OATT because they implement the September 16 Order and preserve Terra-Gen's expectations with respect to its historic use of the Dixie Valley Line. Additionally, in order to comply with the January 14 Order, which found that Terra-Gen had failed to explain the rules or agreements it would use to implement the proposed grandfathered service, Terra-Gen asserts that the proposed grandfathering provision includes language that Terra-Gen and any affiliates' use of the Dixie Valley Line capacity shall be subject to a future assignment, co-tenancy, and shared facilities agreement governing their rights with respect to each other. Finally, Terra-Gen explains that the proposed provisions provide that any future requests for additional firm transmission capacity, whether made by Terra-Gen, a Terra-Gen affiliate, or an unaffiliated third party, will be governed by the terms of the OATT.

ii. Protest

22. Green Borders asserts that, in contrast to the circumstances present in *Sagebrush,* where the Commission had the opportunity to review agreements related to prioritized service for an affiliate and did so prior to the triggering of the OATT filing obligation in that proceeding, Terra-Gen has failed

[21] Transmittal Letter at 11 (citing January 14 Order, 134 FERC ¶ 61,027 at P 17).

[22] *Id.*

[23] Terra-Gen OATT at Section 19.10.

[24] Protest at 30.

[25] *Id.*

[26] *Id.*

[27] *See, e.g., Midwest Independent Transmission System Operator, Inc.,* 126 FERC ¶ 61,108, at P 23–25 (2009); accepting compliance filing detailing that costs of cluster studies are shared "pro rata among customers * * * based on MWs of service requested."

[28] January 14 Order, 134 FERC ¶ 61,027 at P 17.

[29] *See* Terra-Gen March 15 Filing at 10 (citing *Sagebrush,* 130 FERC ¶ 61,093 at P 27).

[30] In addition to the proposed section 2.1a, Terra-Gen indicates that it made additional modifications to the proposed OATT to reflect that it does not apply to service grandfathered by the Commission.

to provide any such agreements despite a Commission directive to do so. Green Borders also argues that Terra-Gen has failed to comply with the requirement in Order No. 888, which requires that public utilities must take service under the same tariff used by others or demonstrate why they should be allowed to do otherwise. Accordingly, Green Borders urges the Commission to reject Terra-Gen's proposed grandfathering provision (Section 2.1a).

iii. Commission Determination

23. We will allow Terra-Gen to utilize transmission service outside of the OATT for the 60 MW of existing service. However, the Commission will require that all other service must be taken under the rates, terms, and conditions of the OATT. In Order No. 888,[31] the Commission determined that functional unbundling of wholesale services is necessary to implement non-discriminatory open access transmission service. As a result, the Commission required that a public utility take transmission services (including ancillary services) for all of its new wholesale sales and purchases of energy, with the exception of transmission service used by native load, under the same tariff of general applicability as do others, and a public utility must state separate rates for wholesale generation, transmission, and ancillary services.[32] The principles underlying that policy also require a transmission provider such as Terra-Gen to provide all new service pursuant to the provisions of an OATT, while existing service may continue under prior arrangements.

24. Contrary to Terra-Gen's assertions, its OATT proposal with respect to priority and grandfathering of future planned service is inconsistent with Commission policy, as well as Order No. 888, which requires that all new transmission be provided pursuant to an OATT.[33] Terra-Gen is correct that, in *Sagebrush,* we excluded from the OATT planned expansion for which the Sagebrush partners had previously been granted priority.[34] However, our determination in *Sagebrush* to exempt the 33 MW which had been granted priority was made almost three years after priority had been granted in *Aero Energy, LLC,*[35] and the parties had expected, during that intervening time, that the 33 MW would be exempt from the OATT, as we did not impose an obligation to file an OATT. In contrast, here, the obligation to file an OATT was triggered by Green Border's valid transmission service request made on May 8, 2007, prior to Terra-Gen's attempt to establish priority for future service let alone a Commission order granting such priority. In addition, here there was never any question that there would be an obligation to file an OATT, as was the case in *Aero Energy;* there was thus no assumption that service could be taken pursuant to an existing agreement as in *Sagebrush.* Thus, in considering any future use of the Dixie Valley Line, whether it be priority service to Terra-Gen itself, or to a third-party such as Green Borders, the Commission will apply its usual open access principals, which require that future service be taken subject to the OATT.

25. In the instant case, Terra-Gen proposes tariff language that would allow Terra-Gen to continue its existing service and initiate new transmission service to itself, for any Commission approved priority rights associated with its generation, outside of the rates, terms, and conditions of the OATT. Such a provision is not consistent with or superior to the *pro forma* OATT. Accordingly, Terra-Gen must revise its proposed grandfathering provision (Section 2.1a) in order to reflect that all future users of planned transmission capacity, for which priority may be granted, must take service subject to the terms of the OATT.

c. Ancillary Services

i. Terra-Gen Tariff Provisions

26. Terra-Gen requests waiver of the requirement to provide any ancillary services to customers of the Dixie Valley Line. Terra-Gen states that it does not operate a balancing area or have the generation resources necessary to provide ancillary services to third-parties seeking to take transmission service on the Dixie Valley Line. Terra-Gen notes that in the January 14 Order, the Commission granted waiver to Terra-Gen for the requirement to provide the ancillary services stated in Schedules 3 through 6 and Schedule 9 of the *pro forma* OATT.[36] In addition to the waivers granted in the January 14 Order, Terra-Gen now also requests waiver of the requirement to provide Scheduling, System Control and Load Dispatch Services (Service Schedule 1) and Reactive Power and Voltage Support Service (Service Schedule 2).[37] Finally, Terra-Gen seeks waiver of the requirement to act as an agent to assist third parties in obtaining ancillary services.

27. Terra-Gen explains that that scheduling of transmission service on the Dixie Valley Line is dependent of the ability to schedule on the SoCal Edison downstream transmission system. It continues that SoCal Edison currently provides the scheduling service for Terra-Gen's existing service and that any transmission customer may make similar arrangements with SoCal Edison. Terra-Gen also states that transmission customers may alternatively contract with a scheduling coordinator operating in the California Independent System Operator Corporation (CAISO) market in order to obtain all necessary ancillary services, including Scheduling and Reactive Power services.

28. As a result of its request for waiver, Terra-Gen proposes to include a new Schedule 12 provision stating that Terra-Gen will not provide ancillary services or contract to supply ancillary services and thus requires that transmission customers either self-supply ancillary services or contract with a CAISO certified Scheduling Coordinator in order to obtain any necessary ancillary services, including scheduling service and reactive power. Terra-Gen also proposes to modify section 13.8 (Scheduling of Firm Point-To-Point Transmission Service) and section 14.6 (Scheduling of Non-Firm Point-to-Point Transmission Service) [38] of its proposed tariff in order to state that transmission service must be scheduled by a CAISO certified Scheduling Coordinator.[39]

[31] *See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036, at 31,654 (1996).

[32] *Id.* The Commission has consistently indicated that native (retail) load customers of the transmission provider do not take transmission service under the OATT, but are required to designate network load and network resources in a manner consistent with the OATT. In this instance, the only service under the Terra-Gen OATT is point-to-point transmission service, and Terra-Gen does not have any retail load, as it has proposed to remove network service and native load service requirement from the proposed OATT.

[33] *Id.* at 31,654.

[34] *Sagebrush,* 130 FERC ¶ 61,093 at P 27 & n.49.

[35] 118 FERC ¶ 61,204, at P 19 (2007) (*Aero Energy*).

[36] Transmittal Letter at 6, citing January 14 Order, 134 FERC ¶ 61,027 at P 48. These schedules are Regulation and Frequency Response (Schedule 3), Energy Imbalance Service (Schedule 4), Operating Reserve-Spinning Reserve Service (Schedule 5), Operating Reserve-Supplemental Reserve Service (Schedule 6), and Generator Imbalance Service (Schedule 9), and Section 1.2 and Section 3 of the pro forma OATT.

[37] *Id.* at 7.

[38] Transmittal Letter at 13–14. Terra-Gen's transmittal stated that sections 13.6 and 14.8 were modified, but apparently this is a typographical error as sections 13.8 and 14.6 are instead modified in the clean tariff included in the submittal.

[39] Terra-Gen has included as section 1.42a, a new definition to the *pro forma* OATT denoting that

ii. Protest

29. Green Borders asserts that Terra-Gen's request for waiver of all ancillary service obligations does not meet the Commission's "consistent with or superior to" test.[40] Green Borders argues that Terra-Gen has not provided sufficient information to justify a deviation from the *pro forma* OATT. Green Borders, citing the January 14 Order, asserts that Terra-Gen was required to explain how scheduling and reactive services may be obtained and who the balancing area authority is for the Dixie Valley Line, which are required for the Commission to evaluate Terra-Gen's requested waiver. Green Borders also argues that Terra-Gen's reliance on *Sagebrush* is misplaced.[41] Green Borders states that, unlike the situation presented in *Sagebrush,* Terra-Gen demonstrates in its OATT that it will make no effort to either provide the services or to act as an agent to procure the services.

30. Green Borders argues that Terra-Gen has failed to comply with the January 14 Order by failing to fully explain how scheduling services are to be provided. Green Borders asserts that the Commission should reject the proposed scheduling provisions provided in sections 13.8 and 14.6, as these provisions provide no specificity regarding the scheduling requirements that will be imposed by the Scheduling Coordinator. Green Borders states, for example, that the proposed revisions do not provide any indication of what time of day schedules will be required for service over the Dixie Valley Line, how many times a day scheduling changes will be permitted, and under what circumstances or what the charge for such service will be, if any.

iii. Commission Determination

31. In the January 14 Order, the Commission found that Terra-Gen had demonstrated that a deletion of the provisions for ancillary services may be justified.[42] The Commission stated that waiver of these services was appropriate because transmission customers may either obtain these ancillary services from a third-party participating in the CAISO market or enter into appropriate agreements for similar service, as Terra-Gen currently does.[43] We continue to find that waiver of ancillary service schedules 3 through 6 and 9 is justified based on the fact that the Dixie Valley Line is a limited and discrete transmission line. Therefore, consistent with the January 14 Order, we will grant waiver of these provisions.[44]

32. We also will grant Terra-Gen's request for waiver of the obligation to provide scheduling services. Terra-Gen currently does not provide scheduling for its own use. Terra-Gen's line interconnects only to the CAISO controlled grid, and the CAISO is the balancing area authority in which the Dixie Valley Line is located.[45] Because any output from a third-party generator using the Terra-Gen facilities will sink to the CAISO controlled grid, we agree that scheduling service may be obtained from any scheduling coordinator operating in the CAISO market. Alternatively, any transmission customer can seek certification as a scheduling coordinator and schedule for itself. Terra-Gen does not need to supply scheduling service since certified scheduling coordinators will provide the necessary schedules for users of the Dixie Valley Line to the CAISO to perform scheduling and dispatch functions.

33. Consistent with Commission precedent, the Commission also will grant Terra-Gen's request for waiver of the obligation to provide reactive service.[46] The Dixie Valley Line is not a network grid supported by multiple resources from which ancillary services can be provided. We also agree with Terra-Gen that requiring it to provide reactive services from its existing Dixie Valley plant would impair a pre-existing contractual obligation that it has with SoCal Edison. Furthermore, reactive services are generally necessary as close to the load as practicable. There is no load served on the Dixie Valley Line; rather, all energy transmitted will sink to the CAISO system, thereby allowing reactive services to be obtained from the CAISO-controlled grid through the CAISO market. Accordingly, based on the design of the facilities, Terra-Gen need not be the provider of reactive services.

34. Finally, we will grant Terra-Gen's request for waiver of the obligation to act as agent to assist third-parties in obtaining any ancillary services, including scheduling and reactive power services. In this instance, because the Dixie Valley Line interconnects only to the CAISO market, third-party users may freely obtain the requisite services by entering into bilateral agreements or otherwise obtaining them from the competitive market. Based upon the current design and use of the Dixie Valley Line, for example only delivering energy to a Commission-approved organized market, with no load being served off of the line prior to delivery to the CAISO-controlled system, we find that the agent provisions are not necessary at this time. Accordingly, we find that the revised sections 13.8 and 14.6 are just and reasonable.

d. Transmission Losses

i. Terra-Gen Tariff Provisions

35. In response to concerns raised by the Commission in the January 14 Order,[47] Terra-Gen proposes a formula in Schedule 10 of its proposed OATT to address the allocation of line losses to transmission customers on the Dixie Valley Line. Specifically, Terra-Gen proposes a formula to calculate the incremental line losses that are directly attributable to a specific customer at the time the customer interconnects with the Dixie Valley Line. According to Terra-Gen, the proposed formula makes the determination of the line losses associated with each new customer transparent and ensures that line losses are being determined in a uniform and fair manner.[48] Terra-Gen states that application of the proposed formula will guarantee that each transmission customer is responsible for the line losses attributable to the customer's specific transmission request.[49] Terra-Gen further states that the proposed OATT provision is consistent with Commission policy that customers should bear the costs they cause.[50]

ii. Protest

36. Green Borders opposes Terra-Gen's proposed assignment of line losses. First, Green Borders argues that Terra-Gen's shift from average line losses in the November 15 OATT filing to incremental line losses in the March 15 compliance filing goes beyond what the Commission directed Terra-Gen to do in the compliance filing.[51] Second, Green Borders states that Terra-Gen has failed to provide support for the

Scheduling Coordinator means "an entity that the California Independent System Operator has certified as a Scheduling Coordinator."

[40] Protest at 16.

[41] *Id.*

[42] January 14 Order, 134 FERC ¶ 61,027 at P 48.

[43] *Id.*

[44] *Id. See also Sagebrush,* 130 FERC ¶ 61,093 at P 29; *MATL,* 116 FERC ¶ 61,071 at P 58.

[45] Pursuant to the North American Electric Reliability Corporation (NERC) Registry, Terra-Gen Dixie Valley is listed as only a Generator Owner and Generator Operator. Because the Dixie Valley Line is only connected to SoCal Edison, the CAISO must be the Balancing Area Authority.

[46] *Sagebrush,* 130 FERC ¶ 61,093 at P 29 and n.52.

[47] *See* January 14 Order, 134 FERC ¶ 61,027 at P 49.

[48] Transmittal Letter at 8.

[49] *Id.*

[50] *Id.* (citing *Quachita Power, LLC* v. *Entergy La., Inc.,* 120 FERC ¶ 61,059, at P 10 (2007); *Commonwealth Edison & Commonwealth Edison of Ind., Inc.,* 123 FERC ¶ 61,122, at P 22 (2008)).

[51] Protest at 27.

proposed treatment of losses.[52] Third, Green Borders argues that Terra-Gen's proposed treatment of line losses is contrary to Commission precedent. Specifically, Green Borders argues that Terra-Gen's proposal is inconsistent with the policy that a transmission provider cannot use incremental losses while charging average rates.[53]

iii. Commission Determination

37. We find that Terra-Gen's proposed treatment of line losses is not consistent with Commission policy.[54] Specifically, under current Commission policy, it is unreasonable for Terra-Gen to assign incremental line losses while charging an average embedded cost rate for existing transmission service on the Dixie Valley Line.[55] We note that the two cases cited by Terra-Gen in support of the proposed assignment of line losses are not on point. Specifically, *Quachita Power, LLC* v. *Entergy La., Inc.,*[56] addresses the treatment of transmission credits resulting from a customer-financed system upgrade, and *Commonwealth Edison & Commonwealth Edison of Ind., Inc.,*[57] addresses the treatment of losses associated with service over non-jurisdictional distribution facilities. The facts at issue in both cases cited by Terra-Gen are not analogous to the situation here, where the Commission's policy clearly requires like treatment for both the development of transmission rates and the assignment of line losses.[58] To the extent that Terra-Gen charges an average embedded cost rate to existing transmission service customers, it must assign losses on an average basis. Should Terra-Gen prefer to assign losses on an incremental basis, it is free to propose a rate methodology that is consistent with Commission policy. Accordingly, we do not find Terra-Gen's incremental loss proposal just and reasonable and we will require a further compliance filing proposing a loss compensation methodology that is consistent with Commission policy and precedent.

e. Creditworthiness

i. Terra-Gen Tariff Provisions

38. Terra-Gen proposes to modify the *pro forma* creditworthiness procedures in Attachment L. Specifically, Terra-Gen proposes several alternatives for transmission customers to demonstrate creditworthiness. First, Terra-Gen would allow a customer to establish creditworthiness by demonstrating that it has a credit rating of BBB+/Baa1 or better, and posting a letter of credit equal to three months of its reservation charges at the time it executes its service agreement.[59] Alternatively, if a customer does not have a credit rating of BBB+/Baa1, a transmission customer must post a letter of credit equivalent to twelve months of reservation charges.[60] For customers seeking transmission service for less than one year, the customer must be investment grade or provide a letter of credit equal to two times the estimated monthly charges for service. Terra-Gen's Attachment L also provides that the transmission customer and Terra-Gen may agree on an alternative credit support arrangement.

ii. Protest

39. Green Borders argues that Terra-Gen's proposed creditworthiness procedures are not reasonable and are inconsistent with industry commercial practices. Green Borders states that, while the proposed creditworthiness provisions are a step forward from those the Commission rejected in the January 14 Order, the provisions raise questions about discrimination against unaffiliated generators.[61] Green Borders argues that the precedent to which Terra-Gen refers in support of it rating level to determine creditworthy parties is inconsistent with other parties in the market and is not commercially reasonable.[62]

iii. Commission Determination

40. In Order No. 890, the Commission explained that an Attachment L filing must specify both the qualitative and quantitative criteria that the transmission provider will use to determine the level of secured and unsecured credit required of customers. In addition, the Commission required transmission providers to address six specific elements regarding the transmission provider's credit requirements.[63] We find that Terra-Gen's proposed Attachment L provisions include both quantitative and qualitative creditworthiness criteria, consistent with Commission policy.[64] We agree with Terra-Gen that the nature of its business as only a generator developer and operator that is not a publicly held entity from which it can obtain additional financial resources, supports higher creditworthiness standards in order to ensure that it is not financially harmed.

41. We also find that the provisions for non-creditworthy parties, whereby those customers must provide a letter of credit of up to twelve months of reservation charges, to be just and reasonable. Terra-Gen is not a transmission owner and operator in the traditional sense. For example, it does not plan for native load growth and other uses for which transmission expansion is required. Accordingly, there are limitations on its ability to expand the Dixie Valley Line without these additional credit supports.

42. Additionally, we find acceptable the proposed credit requirements of a letter of credit equal to two times the expected monthly charge for service requests of less than one year. We disagree with Green Borders at this time that the threshold credit rating of BBB+/Baa1 is unreasonable. We also note that section 1.9 of Attachment L provides that other forms of security may be agreed to between Terra-Gen and its customers. In that regard, we remind Terra-Gen that any additional creditworthiness provision that is agreed to that deviates from the terms and conditions of Attachment L must be filed with the Commission.

43. However, we still have some concerns regarding the proposal. Terra-Gen has not explained why it is necessary to require a letter of credit, or to otherwise require a cash deposit, for creditworthy parties. Consistent with the provisions of section 17.2 of the OATT, among other things, customers must submit a deposit when requesting

[52] *Id.* at 27–28.

[53] *Id.* at 28–29 (citing *Mw. Indep. Transmission Sys. Operator, Inc.,* 129 FERC ¶ 61,172, at P 22 (2009)).

[54] *See Sithe/Independence Power Partners LP* v. *FERC,* 165 F.3d 944, 334 U.S. App. DC 157 (DC Cir. 1999); *Northern States Power Co.,* 59 FERC ¶ 61,100, at 61,369, *reh'g denied,* 60 FERC ¶ 61,076, at 61,252–53 & n.25 (1992), *clarification denied,* 64 FERC ¶ 61,111, at 61,920 (1993), *aff'd sub nom. Northern States Power Co.* v. *FERC,* 30 F.3d 177, 308 U.S. App. DC 115 (DC Cir. 1994).

[55] We note that Terra-Gen's proposed form of service agreement notes that it may seek to charge a new transmission customer either the average embedded cost rate stated in the OATT, or propose an incremental transmission charge based on the cost of expansion of the Dixie Valley Line caused by the transmission request.

[56] 120 FERC ¶ 61,059 (2007).

[57] 123 FERC ¶61,122 (2008).

[58] *See Midwest ISO, Inc.,* 129 FERC ¶ 61,172, at P 34 (2009); *Sithe/Independence Power Partners LP* v. *FERC,* 165 F.3d 944, 334 U.S. App. DC 157 (DC Cir. 1999); *Northern States Power Co.,* 59 FERC ¶ 61,100, at 61,369, *reh'g denied,* 60 FERC ¶ 61,076, at 61,252–53 & n.25 (1992), *clarification denied,* 64 FERC ¶ 61,111, at 61,920 (1993), *aff'd sub nom. Northern States Power Co.* v. *FERC,* 30 F.3d 177, 308 U.S. App. DC 115 (DC Cir. 1994).

[59] Terra-Gen OATT at Attachment L, Section 1.2(i).

[60] Both the three months of reservations or twelve months of reservations apply to customers seeking long-term point-to-point transmission service.

[61] Green Borders Protest at 21.

[62] *Id.*

[63] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1656–61. *See also NorthWestern Corp.,* 128 FERC ¶ 61,202, at P 8–9 (2009).

[64] *Id. See also Policy on Electric Creditworthiness,* 109 FERC ¶ 61,186 (2004).

transmission service.[65] If these parties are creditworthy, we agree with Green Borders that the additional deposit requirements proposed by Terra-Gen might be unnecessary. Accordingly, Terra-Gen is required to explain why additional deposits for creditworthy customers are necessary, or delete the letter of credit provision for creditworthy parties.

44. While we accept the creditworthiness provisions, subject to further explanation or revision from Terra-Gen, to the extent a transmission customer believes that the transmission provider has discriminated in the application of its creditworthiness standards, that customer may contact the Commission's enforcement hotline or file a complaint pursuant to section 206 of the Federal Power Act (FPA).[66]

f. Attachment C—Methodology for Calculating ATC

i. Terra-Gen Tariff Provisions

45. Terra-Gen requests waivers of certain Attachment C (calculation of available transfer capability) requirements, to the extent necessary to accept its proposed Attachment C provisions. Terra-Gen asserts that its Attachment C methodology is consistent with or superior to the *pro forma* OATT because it provides necessary information for assessing the transfer capability of the Dixie Valley Line while avoiding the imposition of unnecessary costs, such as those associated with various modeling requirements. In addition, Terra-Gen commits to reassess its proposed Available Transfer Capability (ATC) methodology in the event there is a modification to or addition of a transmission component on the Dixie Valley Line. Finally, until such time as Terra-Gen has an available Web site, Terra-Gen requests a limited waiver from the requirement to include a link to its ATC methodology.[67]

46. Pursuant to the Commission's January 14 Order, Terra-Gen identifies the Rated System Path Methodology, described in North American Electric Reliability Corporation (NERC) Reliability Standard MOD–29–1a, as the methodology it employs to calculate ATC. Terra-Gen further states that it has included a process flow diagram illustrating the steps taken in calculating ATC, as well as definitions of the ATC components. Terra-Gen also includes an algorithm that it states would apply to its scheduling, operating and planning horizons, but suggests that ATC calculations for SoCal Edison would provide more useful information because application of Terra-Gen's methodology results in an ATC of zero.

47. In support of its ATC calculation, Terra-Gen states that service on the Dixie Valley Line is contingent on the line being in service and on SoCal Edison having sufficient ATC to schedule deliveries from the line onto its system. Terra-Gen asserts that the methodologies approved by NERC for the calculation of ATC demonstrate that ATC is meaningless when applied to a single radial transmission line with one point of interconnection. Specifically, Terra-Gen asserts that Total Transfer Capability (TTC) is zero because a single radial transmission line with one point of interconnection cannot sustain an N–1 contingency and, thus, ATC is also zero.

ii. Protest

48. Green Borders states that Terra-Gen's calculations of TTC and ATC as zero are in error, and that these calculations are an attempt to reserve capacity on the Dixie Valley Line for Terra-Gen's affiliates while denying service to others.[68] Green Borders argues that Terra-Gen has incorrectly applied NERC standards to arrive at a value of zero for TTC. Green Borders asserts that the NERC Reliability Standard MOD–29–1a is intended to ensure that contingencies will not result in reliability problems elsewhere on the system when the contingency occurs.[69]

49. Green Borders argues that if TTC and ATC are always zero for a radial line, then there is no need for an OATT because no capacity would ever be available until a second circuit is built.[70] Green Borders states that Terra-Gen is inconsistent in arguing that TTC is zero and also arguing that existing users should have priority service on the line, as a TTC value of zero should preclude any transfers on the line.[71] Finally, Green Borders argues Terra-Gen is wrong that ETC (capacity held by existing users) reduces both TTC and ATC, as the equations proposed by Terra-Gen show that ETC reduces only ATC.[72]

iii. Commission Determination

50. In the January 14 Order, we directed Terra-Gen to address certain deficiencies with its proposed Attachment C. Specifically, we directed Terra-Gen to include certain algorithms for calculating ATC for the scheduling, operating, and planning horizons, explain the application of all algorithms it includes, provide an ATC process flow diagram and an Internet link to its ATC data and algorithms, and revise its proposed definitions of ATC components to comply with the requirements of Order No. 890.[73]

51. With respect to the aforementioned directives, we find that Terra-Gen has substantially complied inasmuch as it has attempted to provide the Commission with the missing information that was identified in the January 14 Order. However, we find that Terra-Gen's treatment of ATC in Attachment C is contradictory, when considering a TTC value of zero, and we will therefore reject Terra-Gen's proposed Attachment C. Moreover, it is illogical for Terra-Gen to state that TTC on the Dixie Valley Line is zero, while simultaneously arguing that there is capacity available to accommodate any grandfathered service but not service for other potential users. Insofar as Terra-Gen's Attachment C will always yield a TTC value of zero regardless of the line's actual capacity, we find that such methodology is not consistent with or superior to the *pro forma* tariff, and is thus not just and reasonable.

52. In prior orders, we have found that different transmission provider business models and unique layouts and the resulting different services offered may justify differences in the OATT applicable to such facilities as compared to an OATT governing more traditional integrated network transmission facilities.[74] For example, as discussed previously in this order, we will not require Terra-Gen to provide network service on the Dixie Valley Line as it makes little sense to provide such service.[75] Similarly, we find here that Terra-Gen's assertion that application of the N–1 analysis in computing transfer capability makes little sense because the Dixie Valley Line is a radial tie line, and do not find it to be reasonable. This standard, as applied to the Dixie Valley Line, will always result in zero for ATC

[65] Deposits for system impact studies and interconnection studies and the requirement to fund system expansions required by the transmission service request are required elsewhere in the OATT.

[66] 16 U.S.C. 824e (2006).

[67] Terra-Gen suggests that it anticipates having an operational Web site within ninety days from the date upon which its filing was made and commits to amending its ATC provision to include a link to its ATC methodology once the Web site becomes available.

[68] Protest at 25.

[69] Protest, Exhibit GBG–4; Testimony of David Becher at 5:8–11.

[70] Testimony of David Becher at 5:15–16.

[71] Protest at 24, Testimony of David Becher at 6:16–17.

[72] Testimony of David Becher at 7:4–13.

[73] January 14 Order, 134 FERC ¶ 61,027 at P 58.

[74] *See, e.g., MATL,* 116 FERC ¶ 61,071, at P 57–58.

[75] *Id. See also Sagebrush,* 130 FERC ¶ 61,093 at P 29.

and TTC, regardless of whether there may actually be capacity available. Accordingly, we will direct Terra-Gen to re-file Attachment C establishing the TTC value for the line based on the most limiting component of the line, electrical characteristics, or other factors (such as ground clearance) that impact reliable operation, and which is consistent with the fact that that an allocation of capacity to existing users implies that TTC on the Dixie Valley Line must exceed zero.[76]

g. Transmission Planning Process—Attachment K

i. Terra-Gen Tariff Provisions

53. In the January 14 Order, the Commission addressed Terra-Gen's proposed planning process. The Commission found that Terra-Gen's planning process satisfied the coordination, transparency, and regional participation principles. The Commission also found that Terra-Gen's proposed planning process satisfactorily addressed how it would recover the cost of planning activities. However, the Commission found that Terra-Gen partially complied with the openness, information exchange, comparability, and dispute resolution principles. In addition, the Commission found that Terra-Gen did not satisfy the economic planning or cost allocation principles.

54. As a result of the January 14 Order, Terra-Gen proposes an Attachment K that is directed at addressing the guidance provided in the January 14 Order. Specifically, Terra-Gen addresses further the openness, information exchange, comparability, dispute resolution, economic planning, and cost allocation principles.

ii. Protest

55. Green Borders comments that, while Terra-Gen's proposed planning process addresses the guidance in the January 14 Order, the Commission should require Terra-Gen to make further revisions to the comparability, economic planning, and cost allocation principles.

56. With regard to comparability, Green Borders points out that Terra-Gen's proposal provides Terra-Gen with sole discretion for selecting which projects to undertake, based on factors over which Terra-Gen has sole discretion to consider. Green Borders asserts that, under such a process, stakeholders would not be able to ensure that Terra-Gen is not discriminating against unaffiliated generators and using the transmission planning process to allocate the cost of self-serving projects to multiple parties.[77]

57. Green Borders also asserts that Terra-Gen's economic planning proposal could lead to discriminatory planning and ignores the interests of stakeholders in the planning process.[78] For example, Green Borders points out that, while a transmission customer must assist in gathering the information for conducting the economic study, the provisions do not provide an opportunity for the requesting customer to participate in, oversee, or observe the study. Additionally, Green Borders asserts that Terra-Gen's proposal to reserve sole discretion of which economic studies are highest priority is unreasonable.

58. Finally, Green Borders asserts that Terra-Gen's cost allocation proposal doesn't satisfy the guidance provided in the January 14 Order. Green Borders states that, while the Commission required that Terra-Gen include a method by which Terra-Gen would allocate the costs of new transmission facilities that do not fit under existing rate structures, Terra-Gen's OATT only provides that the cost allocation of facilities will be pursuant to the tariff.[79] Green Borders asks that the Commission require Terra-Gen to provide greater specificity regarding the allocation of costs that are not already contemplated by the existing rate schedules.[80]

iii. Commission Determination

59. Consistent with our findings in the January 14 Order, we continue to find that Terra-Gen complies with the coordination, transparency, and regional participation principles.[81] For the same reasons, Terra-Gen also satisfactorily addresses the recovery of planning costs.[82] In addition, Terra-Gen has addressed the openness, information exchange, and dispute resolution principles, based upon the guidance in the January 14 Order. For example, Terra-Gen has addressed the openness principle by modifying its provisions to allow any stakeholder to participate in the planning process. Terra-Gen also addressed the information exchange by explaining how interested parties may submit data to the planning process and provided the milestones and timeframes for data submission and stakeholder review of the plan. Terra-Gen has also specified the process by which disputes arising during the planning process will be handled. Accordingly, in addition to meeting the coordination principle, transparency principle, regional participation principle, and the recovery of planning costs, we find that Terra-Gen satisfactorily complies with the openness, information exchange and dispute resolution principles.

60. While we find that Terra-Gen complies with the principles addressed above, we address below the comparability, economic planning, and cost allocation principles, as addressed by Terra-Gen in the instant filing.

Comparability

61. In the January 14 Order, the Commission found that Terra-Gen's Attachment K partially complied with the comparability principle. However, the Commission noted that Terra-Gen had not addressed how its proposed planning provisions comply with Order No. 890–A.[83]

62. Terra-Gen addresses the requirement of the January 14 Order by modifying its Attachment K to clarify that all interested stakeholders in the transmission planning process may participate in the Planning Advisory Group, including providers of transmission and non-transmission alternatives. Additionally, Terra-Gen has clarified how and when stakeholders in the transmission planning process may provide data to the plan and offer alternatives to the transmission plan.

63. Based upon our preliminary review of Terra-Gen's transmission planning process, we agree with Green Borders that Terra-Gen's proposal to retain sole discretion to select projects based on "cost, economic impact, reliability and other considerations" does not satisfactorily explain how Terra-Gen will select projects for inclusion in the transmission plan.[84] To select one of the bases for evaluation "at its sole discretion" without input from stakeholders fails to provide transparency in the selection process. Accordingly, we will require Terra-Gen to submit a further compliance filing that addresses the basis on which competing projects will be selected.

[76] While we recognize that the downstream ATC at the SoCal Edison system interface may limit the realizable ATC on the Dixie Valley Line, service from the point where Terra-Gen's line interconnect with SoCal Edison's line is a separate matter not covered under Terra-Gen's OATT and, as such, is beyond the scope of this proceeding. Additionally, because we reject the proposed Attachment C, we find it unnecessary to address the limited request for waiver of the requirement to provide an Internet link to the ATC calculation data and methodology.

[77] Protest at 18.

[78] *Id.*

[79] *Id.* at 19.

[80] *Id.*

[81] *See* January 14 Order, 134 FERC ¶ 61,027 at P 68, P 76, and P 89, respectively.

[82] *Id.* P 98.

[83] January 14 Order, 134 FERC ¶ 61,027 at P 83.

[84] *See* Terra-Gen OATT, Attachment K at Section 1.4.

Economic Planning

64. In the January 14 Order, the Commission found that Terra-Gen did not satisfy the economic planning requirement.[85] Specifically, the Commission noted that Terra-Gen's proposed Attachment K did not include any provisions for the study of economic considerations in the transmission planning process.[86]

65. Terra-Gen has now included provisions that establish procedures for conducting economic studies as part of the overall planning cycle. Terra-Gen proposes a new section 4.6 to its Attachment K that provides that, during its five year planning cycle, it will take into account economic and reliability considerations proposed by interested stakeholders. Terra-Gen's proposed provisions detail the time frames in which interested stakeholders may submit information for conducting economic studies and the obligations of a stakeholder to participate in the economic study process. Terra-Gen proposes that it will conduct up to two high-priority economic planning studies during each planning cycle.

66. We find that Terra-Gen's Attachment K satisfies the economic planning requirement. Terra-Gen has adequately described when and how interested parties may request economic studies, and how Terra-Gen will address which high priority economic study request will be undertaken within the planning period. Additionally, we disagree with Green Borders that the economic planning process is not transparent and open. Terra-Gen explains that economic planning studies will be submitted to the Planning Advisory Group as part of the planning process and will consider the input of interested stakeholders.

Cost Allocation

67. In the January 14 Order, the Commission found that Terra-Gen did not satisfy the cost allocation principle.[87] Similar to the economic planning requirement, the Commission noted that Terra-Gen's proposed Attachment K did not include any provisions that address how Terra-Gen proposed to allocate the cost of new facilities that do not fit under existing rate structures.[88]

68. To address the cost allocation principle, Terra-Gen now proposes a new section 10 to its Attachment K that states "the costs of new facilities required because of individual requests for transmission and interconnection service shall be allocated to customers pursuant to the Tariff."[89]

69. The Commission finds that Terra-Gen's proposal does not satisfy the cost allocation principle. We agree with Green Borders that Terra-Gen's proposal is vague as to how the costs of new facilities that do not otherwise fit under the existing rate structures of Terra-Gen's OATT will be allocated. Accordingly, we will require Terra-Gen to submit a further compliance filing that explains how such costs would be allocated; whether, for example, allocated to the requesting customer or allocated to transmission or interconnection customers that benefit from the facilities.

h. Transmission Service Rates

i. Tariff Proposal

70. Terra-Gen proposes a cost-based, monthly rate of $3,600/MW for both firm and non-firm point-to-point transmission service on the Dixie Valley Line.[90] Terra-Gen's proposed transmission service rate is based upon an average annual revenue requirement of approximately $2.8 million.[91]

71. Terra-Gen's proposed revenue requirement includes a proxy capital structure adopted from SoCal Edison, the transmission provider to which the Dixie Valley Line is interconnected.[92] Terra-Gen states that it does not issue publicly traded stocks, thus requiring a proxy capital structure, and further asserts that Commission policy permits an independent power producer to adopt the capital structure of its interconnected transmission owner due to the fact that it has not been subject to either traditional rate regulation or the FERC Uniform System of Accounts.[93]

72. In addition to the stated average embedded rates for transmission service, Terra-Gen has also included a provision, as part of the form of transmission service agreement, that it may charge a transmission customer the higher of the rate established for firm point-to-point transmission service or the rate developed from amortizing the costs of any new facilities required by the transmission customer's request for service, over the period of the transmission customer's service agreement.[94]

73. Terra-Gen also seeks permission to establish a regulatory asset that will include expenses incurred in connection with the requirement that Terra-Gen convert the Dixie Valley Line into a Commission-regulated transmission line. Terra-Gen asserts that it has spent approximately $1 million to address the regulatory ramifications of Green Borders' decision to explore siting a generator on the Dixie Valley Line.[95] Terra-Gen asserts that the costs to be included in the regulatory asset include, but are not limited to, consulting, accounting and legal expenses, engineering studies, personnel, and computer and communication expenses. Terra-Gen proposes to accrue carrying charges on the regulatory asset from the effective date of the Commission approval until such time as the regulatory asset is included in rate base. Terra-Gen proposes to record the regulatory asset and related carrying charges to FERC Account 182.3.

ii. Protest

74. Green Borders states that Terra-Gen has failed to comply with the January 14 Order in that it failed to submit all cost computations used to develop the proposed rate, including, but not limited to, detailed work papers.[96] Therefore, Green Borders requests that the Commission either reject the proposed rate or schedule a full evidentiary hearing to review Terra-Gen's proposed rate.[97] In particular, Green Borders argues that Terra-Gen should not be permitted to adopt SoCal Edison's capital structure because Terra-Gen is acting as a transmission provider in the instant situation as opposed to a merchant generator.[98]

75. Green Borders also raises concerns with other aspects of the proposed rate. First, Green Borders states that the plant-in-service amount and depreciation methods used in the rate calculation appear to be selected to artificially maximize Terra-Gen's rate base.[99] Second, Green Borders states that Terra-Gen's calculation of net tax balance is unsupported by evidence. Green Borders also states that the amounts used to calculate costs for other taxes appear abnormally high and

[85] January 14 Order, 134 FERC ¶ 61,027 at P 93.

[86] *Id.*

[87] *Id.* P 96.

[88] *Id.*

[89] Terra-Gen OATT, Attachment K at Section 10.

[90] Transmittal Letter at 16.

[91] Terra-Gen has only included monthly rates for Point-to-Point Transmission Service. Because it does not provide Network Transmission Service, the OATT does not include the $2.8 million transmission revenue requirement in Attachment H.

[92] *Id.* at 17–18.

[93] *Id.*

[94] Terra-Gen OATT, Attachment A, Section 5.1.

[95] Transmittal Letter at 19.

[96] Protest at 9 (citing January 14 Order, 134 FERC ¶ 61,027 at P 104).

[97] *Id.* at 10.

[98] *Id.*

[99] *Id.* at 11.

are not supported by evidence.[100] In addition, Green Borders questions the billing determinants used to calculate the proposed rate. Specifically, Green Borders argues that Terra-Gen erred in using only the 64 MW of current firm service rather than the actual current capacity of 400 MW. Green Borders argues that, at a minimum, Terra-Gen should include 60 MW of firm service for Green Borders in the calculation.[101] Finally, Green Borders states that Terra-Gen should not use a non-levelized carrying charge in calculating the rate.[102]

76. Green Borders also asserts that Terra-Gen has provided no explanation to justify the addition of the incremental cost provisions in the form of service agreement. Green Borders requests that the Commission reject this provision, recognizing that Terra-Gen must submit any proposed rate with the Commission for approval.[103]

iii. *Commission Determination*

77. Our preliminary review of Terra-Gen's filing indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Several aspects of Terra-Gen's proposed rates raise issues of material fact, including the reasonableness of Terra-Gen's proposed return on equity of 10.30 percent, the verification of Terra-Gen's plant-in-service, depreciation, operations and maintenance, and other cost-of-service related data.[104] We further note that Terra-Gen has not provided any rates other than for monthly service, either for firm point-to-point transmission service or non-firm point-to-point service. Therefore, we will accept Terra-Gen's proposed rates, to be effective May 14, 2011, as requested, and set the proposed rates for hearing pursuant to section 206 of the FPA [105] and settlement judge procedures.

78. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than publication of notice of the Commission's initiation of its investigation in the **Federal Register**, and no later than five months subsequent to that date. In order to give maximum protection to customers, and consistent with our precedent,[106] we will establish a refund date at the earliest possible date. This date will be the date on which the notice of our investigation in this proceeding is published in the **Federal Register**. The Commission is also required by section 206 to indicate when it expects to issue a final order. In this case, the Commission expects that it will be able to issue a final order, should the case go to an initial decision, within one year of the date of an initial decision.

79. While we are setting these matters for trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure. If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

80. We will not reject section 5.1 of Terra-Gen's form of service agreement allowing it to propose incremental transmission rates, capped at the cost of expansion, in lieu of the stated average cost transmission rates proposed in Services Schedules 7 and 8 of its OATT. Pursuant to Commission policy, a transmission provider may seek to charge a transmission customer the greater of the average embedded cost of service or the incremental cost of providing service (capped at the cost of expansion), but not both.[107] We remind Terra-Gen that any service agreement in which it seeks to charge an incremental rate to a transmission customer, in lieu of the stated average cost rates provided in its OATT, is a non-conforming service agreement that will be required to be filed with the Commission. The transmission customer must have opportunity to ensure that any proposed transmission rate based on the incremental cost of expansion on the Dixie Valley Line is just and reasonable.

81. Finally, we will allow Terra-Gen to establish a regulatory asset, as requested. Costs deferred as a regulatory asset must be recorded in Account 182.3, Other Regulatory Assets, and may only include amounts that would otherwise be chargeable to expense in the period incurred, are not recoverable in current rates, and are probable for recovery in rates in a different period.[108] Furthermore, the instructions to Account 182.3 require that amounts deferred in this account are to be charged to expense concurrent with the recovery of the amounts in rates. If rate recovery of all or part of the costs deferred in Account 182.3 is later disallowed, the disallowed amount shall be charged to Account 426.5, Other Deductions, in the year of disallowance.

82. While this order provides Terra-Gen with the ability to record certain costs as a regulatory asset, Terra-Gen must make a filing under section 205 of the FPA when it proposes to include such costs in transmission rates, in order to ensure that the incurred expenses are just and reasonable. Terra-Gen also will have to establish that the costs included in the regulatory asset are costs that would have otherwise been chargeable to expense in the period incurred. Parties will be able to challenge these costs at that time.

3. *Waiver of Reporting Requirements*

83. Terra-Gen requests that the Commission grant waiver to Terra-Gen so that it will have to comply with the FERC Uniform System of Accounts only with respect to the Dixie Valley Line.[109] Terra-Gen explains that, because the generator is a qualifying facility (QF), imposing the FERC reporting requirements on its merchant function will impose a burden of complying with new accounting rules. Terra-Gen further

[100] *Id.*

[101] *Id.* at 10–12.

[102] *Id.* at 12.

[103] Protest at 20.

[104] Terra-Gen was formerly exempt from the Commission's reporting requirements as a Qualifying Facility. Accordingly, no publicly reported data, consistent with the Commission's Uniform System of Accounts, is available for examination in this proceeding without discovery and cross-examination.

[105] The section 206 proceeding has been designated Docket No. EL11–37–000.

[106] *See, e.g., PJM Interconnection, L.L.C.,* 90 FERC ¶ 61,137 (2000); *Cambridge Elec. Light Co.,* 75 FERC ¶ 61,177, *clarified,* 76 FERC ¶ 61,020 (1996); *Canal Elec. Co.,* 46 FERC ¶ 61,153, *reh'g denied,* 47 FERC ¶ 61,275 (1989).

[107] *See Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act; Policy Statement,* FERC Stats. & Regs. ¶ 31,005 (1994).

[108] The term "probable" as used in the definition of regulatory assets, refers to that which can reasonably be expected or believed on the basis of available evidence or logic but is neither certain nor proved. *Revisions to Uniform Systems of Accounts to Account for Allowances under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1–F, 2, and 2–A,* FERC Statutes and Regulations, Regulations Preambles January 1991–June 1996 ¶ 30,967 (1993).

[109] Transmittal Letter at 18.

requests the Commission grant a deferral of the obligation to comply with the Uniform System of Accounts with respect to the Dixie Valley Line until such time as a third-party commences service under the OATT.

84. We will grant the waiver Terra-Gen requests with regard to requiring the Dixie Valley QF to be subject to FERC Uniform System of Accounts. As we explained in the September 16 Order, our determination does not affect the QF status of the Dixie Valley Generator.[110] As a result, Terra-Gen must only be required to report under the uniform system of accounts, as a transmission service provider, for the Dixie Valley Line. However, we will not grant deferral of the reporting requirement. Terra-Gen will be required to submit the appropriate reporting information consistent with the Commission regulations.

4. *Additional Matters*

85. In review of Terra-Gen's proposed deviations from the *pro forma* OATT,[111] Terra-Gen lists the proposed changes it seeks approval of in its OATT. We agree with Green Borders that certain uses of the term "Transmitting Utility" may remain in the OATT, notably in the Large Generator Interconnection Procedures and Large Generator Interconnection Agreement, despite Terra-Gen's removal of the term from the master definitions. We will require Terra-Gen to correct these instances and utilize the *pro forma* term Transmission Provider, as it has committed to do.[112]

86. Additionally, Terra-Gen has revised the language it filed as Schedule 11, FERC Annual Charges, to clarify that all users of the Dixie Valley Line, including grandfathered users, will be responsible for FERC annual charges that are attributable to transmission service. Additionally, Terra-Gen has incorporated *pro forma* sections 17.7 (Extensions for Commencement of Service), 19.8 (Expedited Procedures for New Facilities), and 19.9 (Penalties for Failure to Meet Study Deadlines), as well as *pro forma* sections 4.1.1 and 4.1.2 of the LGIP into its proposed OATT. We find that Terra-Gen's proposals in this regard satisfactorily comply with the January 14 Order.

The Commission orders:

(A) Terra-Gen's February 14, 2011 Request for Rehearing is hereby granted in part and denied in part, as discussed in the body of this order.

(B) Terra-Gen is hereby directed to file, within 30 days of the date of this order, revisions to its proposed OATT, as discussed in the body of this order.

(C) Terra-Gen's proposed OATT is hereby accepted in part and rejected in part, effective May 14, 2011, as modified in accordance with Ordering Paragraph (B) above, as discussed in the body of this order.

(D) Terra-Gen's requested waivers are granted in part and denied in part, as discussed in the body of this order.

(E) Terra-Gen's proposed transmission rates are hereby accepted, effective May 14, 2011, subject to refund.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR chapter I), a public hearing shall be held concerning Terra-Gen's proposed revenue requirement. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (G) and (H) below.

(G) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 CFR 385.603 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(H) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(I) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(J) The Secretary shall promptly publish in the **Federal Register** a notice of the Commission's initiation of the investigation ordered in Ordering Paragraph (F) above, under section 206 of the Federal Power Act.

By the Commission. Chairman Wellinghoff is not participating.

Dated: May 13, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–12278 Filed 5–18–11; 8:45 am]

BILLING CODE 6717–01–P

[110] September 16 Order, 132 FERC ¶ 61,215 at n. 80.

[111] *See* March 16 Filing, Attachment C.

[112] Transmittal Letter at 15.

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 11–83; DA 11–756]

Media Bureau Seeks Comment on the Economic Impact of Low-Power FM Stations on Full-Service Commercial FM Stations

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: This document solicits public comments on the economic impact of low-power FM stations on full-service commercial FM stations in connection with the Commission's preparation of an economic study and report due to Congress, as required by section 8 of the Local Community Radio Act of 2010.

DATES: Interested parties may file comments on or before June 24, 2011, and reply comments on or before July 25, 2011.

FOR FURTHER INFORMATION CONTACT: Martha Heller, Media Bureau (202) 418–0426, or e-mail at *Martha.Heller@fcc.gov,* and Julie Salovaara, Media Bureau (202) 418–2330 or e-mail at *Julie.Salovaara@fcc.gov.* Press inquiries should be directed to Janice Wise, (202) 418–8165, of the Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's document

in MB Docket No. 11–83, DA 11–756, released May 10, 2011. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street, SW., Washington, DC 20054. Customers may contact BCPI, Inc. at their Web site *http://www.bcpi.com* or call 1–800–378–3160.

Summary of the Public Notice

1. The Local Community Radio Act of 2010 (LCRA),[1] enacted on January 4, 2011, relaxed certain restrictions on low-power FM (LPFM) stations in order to facilitate the growth of LPFM service. In addition, section 8 of the LCRA requires the Commission to "conduct an economic study on the impact that low-power FM stations will have on full-service commercial FM stations" and to provide a report to Congress on that study within one year of the LCRA's enactment. In connection with the preparation of the study and report, the Media Bureau sought public comment on the requirements of section 8 and on the ways in which LPFM stations may have an economic impact on full-service commercial FM radio.

2. As a preliminary matter, the Media Bureau sought public comment on the appropriate subject matter and scope of the study and report Congress has requested. In particular, section 8 of the LCRA directs the Commission to study the economic impact that LPFM stations "will have" on full-service commercial FM stations. Based on this use of the future tense and the changes to LPFM service mandated by the LCRA, the Bureau's preliminary reading of section 8 is that Congress intended for the Commission to assess any economic impact that LPFM stations may have on full-service FM stations after the statute has been implemented. However, the analysis requested by Congress necessarily must be based on data currently available for existing LPFM stations. The Bureau sought comment on whether the LCRA requires the Commission to include in its report predictive judgments about potential impacts that will occur after the statute is fully implemented and additional LPFM stations are licensed pursuant to the LCRA. The Bureau also sought comment on how the Commission should account for any limitations involved in making predictive judgments based on currently available data.

3. In addition, the Media Bureau requested input on the metrics the Commission should take into account in its economic study and report to Congress. In order to assess any "economic" impact that LPFM stations may have on full-service commercial FM stations, the Bureau's initial view is that there are two metrics the Commission should take into consideration: (1) Changes in audience ratings of full-service FM stations attributable to competition from LPFM stations and (2) changes in the advertising revenues of full-service FM stations attributable to the existence of LPFM stations. Full-service commercial FM stations derive the vast majority of their earnings from advertising, which in turn is a function of their listenership. Accordingly, the Media Bureau believes that audience ratings and advertising revenues are the most relevant available indicators for evaluating changes in a commercial station's economic performance.

4. Each of these metrics is discussed in more detail below. The Media Bureau asked commenters to address its preliminary views about the factors relevant to the study and report Congress requested, to discuss the relative importance or usefulness of the factors it identified, and to suggest other factors that should be considered. The Bureau also invited commenters to identify relevant resources or data for evaluating these factors and to provide any evidence or information that will inform the Commission's review. In addition, the Bureau requested that commenters provide input on the proper geographic areas to be analyzed for purposes of the study as well as on its preliminary conclusion, discussed below, that the Commission need not address interference issues in the study.

5. *Audience Ratings:* The Media Bureau invited commenters to provide evidence that LPFM stations have had, or are likely to have after the LCRA's implementation, a direct or indirect impact on the audience ratings of full-service commercial FM stations. Given that LPFM stations generally target niche audiences and have small coverage areas in comparison to full-service stations, to what extent do they compete for listeners with full-service commercial stations? Has any such competition had a measurable effect on the audience shares of full-service stations? To the extent that there is available data showing recent changes in the audience ratings of full-service FM stations, what is the best means to discern what portion of such changes, if any, is attributable to competition from LPFM stations, and not a result of unrelated economic conditions? Aside from local audience measurements provided by Arbitron Inc. (Arbitron), are there any other sources the Commission should examine? Approximately 54 percent of existing LPFM stations are not located in Arbitron Metro markets. Is there any way to measure the effect of such LPFM stations on the audience ratings of full-service FM stations?

6. *Advertising Revenues:* The Media Bureau sought comment on the extent to which LPFM stations have had, or are likely to have after the LCRA's implementation, a direct or indirect impact on the advertising revenues of full-service commercial FM stations. LPFM stations are prohibited from airing commercial advertisements and therefore are prohibited from directly competing for advertising. However, the Bureau sought comment on whether sponsorship and underwriting of LPFM stations siphon advertising dollars away from full-service stations and on whether LPFM stations impact the advertising revenues of full-service stations in any other respect. What are the primary sources of funding for most LPFM stations, and what percentage of their funding typically derives from underwriting arrangements? Has the level of underwriting increased substantially among LPFM stations since the service was authorized in 2000? Is there any way to discern from aggregated data what portion, if any, of changes in the advertising revenues of full-service commercial FM stations is attributable to competition from LPFM stations, and not a result of unrelated economic conditions? Are the databases maintained by BIA/Kelsey the best sources for tracking radio advertising revenues? Are there any other sources the Commission should examine?

7. *Relevant Geographic Measures:* With respect to the metrics discussed above and any others that the Commission may consider, the Media Bureau also sought comment on the appropriate geographic areas to be evaluated for purposes of the economic study. The Bureau's current plan is to use two different geographic measures in the study. First, the Bureau intends to examine the economic effect of LPFM stations on full-service commercial FM stations with signal contours that either significantly overlap or encompass one or more LPFM stations. There is the greatest potential for direct economic competition between LPFM stations and full-service commercial FM stations in areas in which there is such coverage overlap. Second, the Bureau plans to evaluate the economic impact of LPFM

[1] Local Community Radio Act of 2010, Public Law 111–371, 124 Stat. 4072 (2011).

stations on full-service commercial FM stations based on geographic markets as defined by Arbitron. Specifically, the Bureau will attempt to determine whether full-service commercial FM stations experience any economic effects due to the presence of one or more LPFM stations in the same Arbitron market, regardless of whether there is contour overlap between the full-service station and any LPFM stations. The Bureau sought comment on the advantages and disadvantages of each of these proposed measures and on any other approaches the Commission should consider. With respect to the Arbitron market-based approach in particular, the Bureau sought comment on the limitations that it may present due to the fact that a large percentage of LPFM stations are not located in Arbitron markets.

8. *Interference Remediation Issues:* The Media Bureau stated that the Commission currently does not intend to study potential interference issues in connection with the report to Congress. The Bureau's preliminary interpretation of the statute is that Congress did not intend the Commission's study or report to assess the potential economic impact on full-service stations due to interference from LPFM stations. Section 8 of the LCRA does not expressly require such an assessment. Moreover, Congress adequately protected against interference problems by including in the LCRA extensive measures designed to resolve any interference from LPFM stations on third-adjacent channels. The statute also requires the Commission within one business day of receiving a complaint of interference from an LPFM station operating on a second-adjacent channel to notify the station to suspend operations immediately until the problem is resolved.

9. The Media Bureau believes its interpretation also is supported by the history of LPFM service. Congress required the Commission in legislation passed in 2000 to hire an independent engineering firm to study potential interference to full-service FM stations from LPFM stations operating on third-adjacent channels.[2] The subsequent engineering study conducted by the MITRE Corporation and released by the Commission in 2003 (the MITRE Report) concluded that LPFM third-adjacent channel minimum distance separation requirements could be eliminated, subject to certain stipulations, without creating an interference risk for full-service stations.[3] In contrast to the specific directive in the 2000 legislation requiring the Commission to analyze potential interference caused by LPFM stations, Section 8 of the LCRA does not expressly obligate the Commission to analyze or assess interference issues. Because of this difference in the two statutes, combined with the interference protections included in the LCRA and the conclusions of the MITRE Report, the Media Bureau does not anticipate an economic impact on full-service stations due to interference from LPFM stations. The Media Bureau sought comment on its view that the Commission need not analyze interference issues in connection with the economic study and report required under section 8 of the LCRA.

10. *Other Issues:* The Media Bureau sought comment on whether there are any other potential economic effects that LPFM stations have, or may have after the LCRA's implementation, on full-service commercial FM stations. With regard to any such factors, commenters should provide specific and detailed information. The Media Bureau also offered commenters this opportunity to discuss any other issues the Commission should consider in connection with the economic study and report to Congress required under section 8 of the LCRA.

11. *Procedural Matters:* The proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under § 1.1206(b) of the Commission's Rules.[4] *Ex parte* presentations are permissible if disclosed in accordance with Commission Rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.[5] Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

12. *Comment Information:* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message "get form." A Sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300

[2] United States Public Laws, Public Law 106–553, 114 Stat. 2762 (2000); *see also* S. Rep. No. 111–160, at 1–3 (2010); H.R. Rep. No. 111–375, at 4–5 (2009).

[3] *Experimental Measurements of the Third-Adjacent Channel Impacts of Low-Power FM Stations,* The MITRE Corp. (May 2003) at xxvi–xxvii, 2–16 to 2–18, 5–1 to 5–4. The MITRE Report found an interference potential in certain limited circumstances, particularly to FM translators, unless recommended technical requirements are met. *Id.* The LCRA instructs the Commission to address the potential interference that the MITRE Report predicted to FM translator input signals. LCRA § 6.

[4] 47 CFR 1.1206(b), as revised.

[5] *Id.* § 1.1206(b)(2).

East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority Mail must be addressed to 445 12th Street, SW., Washington DC 20554.

• People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

[FR Doc. 2011–12343 Filed 5–18–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, May 24, 2011, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, *Telephone:* (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2011–12504 Filed 5–17–11; 4:15 pm]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–Ne30-day notice]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, *including any of the following subjects:* (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: Comprehensive Communication Campaign for HITECH Act— OMB No. 0990–NEW–Office National Coordinator for Health Information Technology (ONC).

Abstract: ONC requests OMB approval for a generic clearance for collecting information through a variety of research methods for developing and testing communications involving health information technology and health information privacy. This information will be used to assess the need for communications on specific topics and to assist in the development and modification of communication messages. ONC intends to utilize best practices for effective health communication research set forth by other DHHS agencies such as the National Cancer Institute.

ONC must also understand the general beliefs of physicians and healthcare adjuncts. Prescribers and technicians, including nurses, play a key role in the use of health information technology. ONC must determine their informational needs and the most effective communication channels and formats for reaching and educating them about the transition to an electronic records environment. This information will allow ONC to engage healthcare professionals as partners in the transition.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN, BY ANTICIPATED DATA COLLECTION METHODS

	Number of respondents	Frequency of response	Hours per response	Total hours
General Public Focus Group Interviews	144	1	1.50	216
Screening for General Public Focus Group Interviews	2,160	1	10/60	360
Web usability testing sessions	144	1	1.50	216
Screening for Web usability testing	2,160	1	10/60	360
Self-Administered Surveys	2,000	1	15/60	500
Screening for Self-Administered Surveys	8,000	.....	10/60	1,333
Omnibus Surveys	2,000	1	10/60	333
TOTAL (General Public)	16,608	.....	.....	3,318
Health Professional Focus Group Interviews	144	1	1.50	216
Screening for Professional Focus Group Interviews	2,160	1	10/60	360
Web usability testing sessions	144	1	1.50	216
Screening for Web usability testing	2,160	1	10/60	360
Self-Administered Surveys	2,000	1	15/60	500
Screening for Self-Administered Surveys	8,000	.....	10/60	1,333
Omnibus Surveys	2,000	1	10/60	333
Health Professional Individual In-Depth Interviews	100	1	45/60	75

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN, BY ANTICIPATED DATA COLLECTION METHODS—Continued

	Number of respondents	Frequency of response	Hours per response	Total hours
Screening for Health Professional Individual In-Depth Interviews	1,000	1	10/60	167
TOTAL (Physician and Other Health Professional)	17,708			3,560
TOTAL (Overall)	34,316			6,878

Mary Forbes,

Paperwork Reduction Act Clearance Officer, Office of the Secretary.

[FR Doc. 2011–12337 Filed 5–18–11; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New; 30-day notice]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: Research Evaluation and Impact Assessment of ARRA Comparative Effectiveness Research Portfolio—OMB No. 0990–New-Assistant Secretary Planning and Evaluation (ASPE).

Abstract: Researchers and policymakers have emphasized the need for research on effectiveness of health care interventions under real-world conditions in diverse populations and clinical practice settings, that is, comparative effectiveness research (CER). The American Reinvestment and Recovery Act of 2009 (ARRA) expanded Federal resources devoted to CER by directing $1.1 billion to the U.S. Department of Health and Human Services (HHS) for such research.

ARRA also called for a report to Congress and the Secretary of HHS on priority CER topics by the Institute of Medicine (IOM). The report presented priority CER topics and recommendations to support a robust and sustainable CER enterprise. In addition, ARRA established the Federal Coordinating Council on Comparative Effectiveness Research (FCCCER) to help coordinate and minimize duplicative efforts of Federally sponsored CER across multiple agencies and to advise the President and Congress on how to allocate Federal CER expenditures.

This project seeks to evaluate and assess the products and outcomes of ARRA-funded CER investments and the impacts of those investments on the priority topics recommended by IOM and on the categories and themes of the FCCCER framework. The primary goals of this evaluation are to (1) conduct an initial assessment of the ARRA CER portfolio, cataloguing how CER funding was invested to achieve the vision of the FCCCER and assessing initial impact from the perspective of various stakeholders; and (2) lay the groundwork for future CER investments by identifying investment opportunities, evidence gaps and lessons learned.

ESTIMATED ANNUALIZED BURDEN HOUR TABLE

Instrument	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total hour burden
Attachment B: Survey (PSLA)	Principal investigators and project directors.	730	1	20/60	243
Attachment C: In-depth interviews (PSLA).	Principal investigators and project directors.	50	1	1	50
Attachment D: Survey (SSLA)	Key stakeholders: health care providers.	600	2	15/60	300
Attachment D: Survey (SSLA)	Key stakeholders: health care organization administrators.	600	2	15/60	300
Attachment D: Survey (SSLA)	Key stakeholders: patients/consumers.	600	2	15/60	300
Attachment E: Focus group (SSLA)	Members of the general public	60	2	2	240
Attachment F: In-depth interviews (SSLA).	Stakeholders: health care providers	10	1	1	10
Attachment G: In-depth interviews (SSLA).	Stakeholders: health care organization administrators.	10	1	1	10

ESTIMATED ANNUALIZED BURDEN HOUR TABLE—Continued

Instrument	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total hour burden
Attachment H: In-depth interviews (SSLA).	Stakeholders: patients/consumers ...	10	1	1	10
Attachment I: In-Depth interviews (SSLA).	Stakeholders: employers and payers	10	1	1	10
Attachment J: In-Depth interviews (SSLA).	Stakeholders: researchers	10	1	1	10
Attachment K: In-Depth interviews (SSLA).	Stakeholders: developers of health innovations.	10	1	1	10
Total	.....	2,700	.....	.....	1,493

Mary Forbes,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–12338 Filed 5–18–11; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5502–N]

Medicare Program; Accelerated Development Sessions for Accountable Care Organizations—June 20, 21, and 22, 2011

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the first of four accelerated development sessions (ADSs) that will provide executives with the opportunity to learn about core functions of an Accountable Care Organization (ACO) and ways to build their organization's capacity to succeed as an ACO. This 3-day, in-person ADS is to help new ACOs deliver better care and reduce costs. We invite all new or newly emerging ACOs to register a team of senior executives to participate.

DATES: *Meeting Dates:* Monday, June 20, 2011, 1 p.m. to 7:15 p.m., central standard time (c.d.t.); Tuesday, June 21, 2011, 8 a.m. to 5:45 p.m., (c.d.t.); Wednesday, June 22, 2011, 8 a.m. to 12 p.m. (c.d.t.).

Deadline for Meeting Registration: All teams must register by Monday, June 20, 2011.

ADDRESSES: *Meeting Location:* The first ADS will be held at the Doubletree by Hilton, Minneapolis-Park Place, 1500 Park Place Boulevard, Minneapolis, MN 55416. *Meeting Registration:* Individuals and teams wishing to participate must complete the online registration located at *https://acoregister.rti.org.* Potential participants are also strongly encouraged to complete the comprehensive planning tool discussed in section III of this notice before arriving to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information is available on the registration Web site at *https://acoregister.rti.org.* Click on "contact us" to send questions or comments via e-mail. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1115A of the Social Security Act (the Act), as added by section 3021 the Affordable Care Act, established the Center for Medicare and Medicaid Innovation (Innovation Center) for the purpose of examining new ways of delivering health care and paying health care providers in ways that can save money for Medicare and Medicaid while improving the quality of care for our beneficiaries. Through accelerated development sessions (ADSs), the Innovation Center will test whether intensive shared learning activities will expand and improve the capabilities of provider organizations to coordinate the care of a population of Medicare beneficiaries more effectively than organizations that do not participate in the ADSs. Well coordinated care can improve beneficiaries' quality outcomes and reduce the growth of Medicare expenditures.

Completion of the ADS will not be a factor for selection or participation in a CMS ACO program. It is intended to provide new ACOs with the opportunity to learn from their peers about essential ACO functions and various ways to build capacity needed to achieve better care for individuals, better population health, and lower growth in health care expenditures.

II. Session Participant Information and Agenda

Faculty at each ADS will be senior leadership from organizations that have already developed many of the characteristics of an ACO, and other experts in ACO core competencies—practitioners with first-hand experience with what is working and not working in the field. Each will offer a focused curriculum on core competencies for ACO development within four main areas: leadership and priority-setting; the clinical and operating challenge of transforming care delivery, including use of health IT; the managerial and financial challenge of assuming and managing risk; and meeting patient needs while reducing the total cost of care. Individual sessions and faculty will help participants complete corresponding sections of a comprehensive ACO implementation plan, including defining ACO goals and an action plan for establishing ACO core competencies.

Each participating team should consist of two to four senior-level leaders (including at least one executive with financial/management responsibility and one with clinical responsibility). Participants are also asked to attend future Web based seminars and complete a full ACO implementation plan as part of the broader ADS initiative to facilitate on-going learning and evaluation.

The agenda for the first ADS is available online at *https://acoregister.rti.org.*

III. Completion of Planning Tool and Session Registration Information

Registrants need to complete the registration form in order to participate in an ACO ADS. Potential participants are also strongly encouraged to complete a comprehensive planning tool, which will allow them to take full advantage of the hands-on learning activities during the ADS. The

registration form and comprehensive planning tool are available on the ACO ADS Web site at *https://acoregister.rti.org.*

This session is open to the public. However, space is limited and participants are encouraged to register as soon as possible. Registration for this session will remain open until the date specified in the **DATES** section of this notice or the seating capacity has been reached.

Participants are responsible for their own travel, parking, meals, and overnight-stay expenses. More information about the venue and accommodations can be found at *https://aco-adsregister.rti.org.*

Subsequent ADSs will be offered in other locations in different regions around the country at later dates to be determined. Information for all future ADSs will be posted online at *https://acoregister.rti.org* as they become available.

Authority: Section 1115A of the Act.

Dated: May 16, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–12342 Filed 5–17–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Measurement Development: Quality of Caregiver-Child Interactions for Infants and Toddlers (Q–CCIIT).

OMB No.: New Collection.

Description: The Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to develop a new observation measure to assess the quality of child care settings, specifically the quality of caregiver-child interaction for infants and toddlers in nonparental care. The measure will be appropriate for use across child care settings, center-based and family child care settings as well as single- and mixed-age classrooms.

The two-year data collection activity will include two phases: (1) A pilot test and (2) a psychometric field test. We will request information about the child care setting, its classrooms and families for recruitment into the study. Information will be collected through observations, focus groups, and questionnaires.

In the pilot and field tests, the new Q–CCIIT observation measure will include observing a small group activity structured with a common task and asking follow-up observation questions. Caregivers observed will also complete a background questionnaire. Focus groups to obtain stakeholder input on caregiver-child interactions will be conducted separately with parents, caregivers, and training and technical assistance providers. Focus group participants will also complete a demographic questionnaire. Parents of children served by caregivers will complete a questionnaire on their child's competencies related to cognitive, language/communication, and social-emotional development. Parents will complete this questionnaire, which will also include family and child characteristics, once in the pilot test and twice in the field test, at the start of the field test and 6 months later to assess growth.

The purpose of this data collection is to support the 2007 reauthorization of the Head Start program (Pub. L. 110–134), which calls for periodic assessments of Head Start's quality and effectiveness.

Respondents: Child care setting representatives (directors or owners), caregivers (center-based and family child care settings), parents of children in those child care settings, and training and technical assistance providers.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hour per response	Estimated annual burden hours
1. Child care setting recruitment form	190	1	0.5	95
2. Q–CCIIT measure—small group activity and follow-up	290	1	0.25	73
3. Caregiver background questionnaire	520	1	0.25	130
4. Focus group interview guide	20	1	1.90	38
5. Parent focus group demographic questionnaire	10	1	0.10	1
6. Caregiver focus group demographic questionnaire	5	1	0.10	1
7. Training and technical assistance provider focus group demographic questionnaire	5	1	0.10	1
8. Parent-report child competence questionnaire	880	2	0.75	1,320

Estimated Total Annual Burden Hours: 1,659.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* OPRE Reports Clearance Officer. *E-mail address: OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 11, 2011.

Steven Hanmer,

OPRE Reports, Clearance Officer.

[FR Doc. 2011–12150 Filed 5–18–11; 8:45 am]

BILLING CODE 4184–22–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0301]

Ultra High Throughput Sequencing for Clinical Diagnostic Applications—Approaches To Assess Analytical Validity; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

The Food and Drug Administration (FDA) is announcing the following public meeting entitled "Ultra High Throughput Sequencing for Clinical Diagnostic Applications—Approaches To Assess Analytical Validity." The purpose of the public meeting is to discuss challenges in assessing analytical performance for ultra high throughput genomic sequencing-based clinical applications.

Date and Time: The public meeting will be held on June 23, 2011, from 8 a.m. to 6 p.m.

Location: The public meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, rm. 1503 (the Great Room), Silver Spring, MD 20993–0002. For parking and security information, please visit the following Web site: *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm*. The public meeting will also be available to be viewed online via Web cast.

Contact Person: Zivana Tezak, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5668, Silver Spring, MD 20993–0002, 301–796–6206, e-mail: *zivana.tezak@fda.hhs.gov*.

Registration and Requests for Oral Presentations: If you wish to attend or view the Web cast of the public meeting, you must register online at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select the appropriate meeting from the list).

Provide complete contact information for each attendee, including name, title, affiliation, e-mail, and telephone number. Registration requests should be received by June 9, 2011.

If you wish to make an oral presentation during the open comment session at the meeting, you must indicate this at the time of registration. FDA has included general discussion topics for comment in section III of this document, Topics for Input. You should also identify which discussion topic you wish to address in your presentation. FDA will do its best to accommodate requests to speak. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations and to request time for a joint presentation. FDA will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin.

Registration is free and will be on a first-come, first-served basis. Early registration is recommended because seating is limited. FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the public meeting will be provided on a space-available basis beginning at 7 a.m. Non-U.S. citizens are subject to additional security screening, and they should register as soon as possible.

If you need special accommodations due to a disability, please contact Susan Monahan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4321, Silver Spring, MD 20993–0002, 301–796–5661, e-mail: *susan.monahan@fda.hhs.gov* at least 7 days in advance of the meeting.

Streaming Web Cast of the Public Meeting: There will be a registration process for the Web cast, and it will be on a first-come, first-served basis (*maximum capacity:* 900). If you have never attended a Connect Pro meeting before, test your connection at: *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit: *http://www.adobe.com/go/connectpro_overview.* (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Comments: FDA is holding this public meeting to discuss a number of questions regarding appropriate approaches to assess analytical validity of ultra high throughput sequencing for clinical diagnostic applications. The deadline for submitting comments to be presented at this public meeting is June 9, 2011.

Regardless of attendance at the public meeting, interested persons may submit either electronic or written comments on any discussion topic(s) to the open docket. The deadline for submitting comments to the docket is July 23, 2011. Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. 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. In addition, if responding to specific topics as outlined in section III of this document, please identify the topic you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Background

Ultra high throughput genomic sequencing technologies are currently extensively used in research and are entering clinical diagnostic use; they are expected to bring transformative public health applications. In order to effectively utilize new sequencing technologies for clinical applications, appropriate evaluation tools (*e.g.,* standards, well established criteria) are needed to determine the accuracy of the results. Any regulatory strategy for clinical tests based on ultra high throughput genomic sequencing will benefit from novel and scientifically agreed-upon approaches to analytical validation. FDA is holding this public meeting to start discussion on approaches that can provide the most useful information in establishing safety and effectiveness of genomic sequencing technologies when used clinically.

This public meeting seeks input from academia, Government, industry, and other stakeholders on validation methodologies, materials, and bioinformatics approaches needed to address unique analytical validation requirements of ultra high throughput sequencing based molecular diagnostics and confirm the sequencing quality and the accuracy of the tests. The ultimate goal is to accelerate and support the introduction of safe and effective innovative diagnostics in public health applications.

II. Meeting Overview

The public meeting will consist of presentations providing background on

current and anticipated uses for sequencing technologies, an open public comment session, and roundtable discussions on selected topics. (See section III of this document.) The roundtable participants will not be asked to develop consensus opinions during the discussion, but rather to provide their individual perspectives. Others in attendance at the public meeting will have an opportunity to listen to the roundtable discussion.

Additional information, including a meeting agenda, will be available on the Internet., immediately after publication of this **Federal Register** notice. This information will be placed on file in the public docket (docket number found in brackets in the heading of this document), which is available at *http://www.regulations.gov*. This information will also be available at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select the appropriate meeting from the list).

III. Topics for Input

FDA seeks input on the following issues:

1. Technical performance:
- Acceptance criteria,
- Validation samples/panels,
- Comparator/analytical standard.

2. Bioinformatics:
- Data format,
- Data analysis.

IV. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information, 12420 Parklawn Dr., rm. 1050, Rockville, MD 20857.

Dated: May 13, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–12310 Filed 5–18–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Privacy Act of 1974; Report of a New System of Records

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the Health Resources and Services Administration (HRSA) is proposing a new system of records. The Countermeasures Injury Compensation Program (CICP), authorized by the Public Readiness and Emergency Preparedness Act (PREP Act), provides compensation to certain individuals for serious physical injuries or deaths resulting from the administration or use of pandemic, epidemic, or security countermeasures identified in declarations issued by the Secretary of the U.S. Department of Health and Human Services (the Secretary) pursuant to section 319F–3(b) of the Public Health Service Act (PHS Act) (42 U.S.C. 247d–6d). The Secretary has issued several declarations specifying covered countermeasures, such as the pandemic 2009 H1N1 influenza vaccines, antiviral medications (*e.g.,* Tamiflu), anthrax vaccines, and smallpox vaccines. The PREP Act directs the Secretary to establish administrative procedures to compensate individuals who sustained serious injuries as the direct result of the administration or use of covered countermeasures. This system of records is required to comply with the implementation directives of the PREP Act, Public Law 109–148. The records will be used for the CICP's resource planning, administrative implementation (*e.g.,* making medical and/or financial eligibility determinations), compensating requesters, evaluation, scientific research, monitoring, and document storage purposes.

DATES: HRSA invites interested parties to submit comments on the proposed New System of Records on or before June 20, 2011. As of the date of the publication of this Notice, HRSA has sent a Report of New System of Records to Congress and to the Office of Management and Budget (OMB). The New System of Records will be effective 40 days from the date submitted to OMB unless HRSA receives comments that would result in a contrary determination.

ADDRESSES: Please address comments to the Director, Countermeasures Injury Compensation Program, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 11C–06, Rockville, Maryland 20857; telephone 1–800–ASK–HRSA (275–4772). This is a toll-free number. Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Eastern Standard Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Director, Countermeasures Injury Compensation Program, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 11C–06, Rockville, Maryland 20857; telephone toll-free 1–800–ASK–HRSA (275–4772).

SUPPLEMENTARY INFORMATION: HRSA proposes to establish a new system of records: "The Countermeasures Injury Compensation Program, HHS/HRSA/HSB." The PREP Act which is a part of the "Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006" (Pub. L. 109–148), was enacted on December 30, 2005, and confers broad liability protections on covered persons, as defined in section 319F–3(i)(2) of the PHS Act, and authorizes the creation of a Countermeasures Injury Compensation Program (CICP or the Program) to compensate individuals injured by the administration or use of covered countermeasures, as defined in section 319F–3(i)(1) of the PHS Act, in the event of designated present or future public health emergencies. The Secretary has issued regulations for the administrative implementation of the Program at 42 CFR part 110.

The PREP Act provides the Secretary the authority, which was delegated by the Secretary on November 8, 2006 to the Administrator of HRSA, to compensate eligible individuals for covered injuries from a covered countermeasure.

Compensation benefits will be provided for eligible individuals who suffer serious physical injuries or death resulting from pandemic, epidemic, or security countermeasures such as vaccines identified in declarations issued by the Secretary under a "PREP Act declaration" issued in response to a current public health emergency, or to a credible risk that the disease, condition, or threat may in the future constitute such an emergency. The Secretary has issued several pandemic influenza declarations specifying

covered countermeasures, such as the pandemic 2009 H1N1 influenza vaccines, antiviral medications (*e.g.,* Tamiflu), diagnostic kits, mechanical ventilators and N–95 masks. The Secretary has also issued declarations for countermeasures against the threats of anthrax, smallpox, botulism, and radiation syndrome.

In order to be considered for CICP benefits, an injured countermeasure recipient must have been administered or used a covered countermeasure according to the terms of a declaration (or in a good faith belief of such). The injured countermeasure recipient must also have sustained a serious physical injury or died as a result of the covered countermeasure. The PREP Act also allows certain survivors of an injured countermeasure recipient to be eligible to receive death benefits if the death resulted from the administration or use of the covered countermeasure. Also, the estate of a deceased injured countermeasure recipient may be eligible for certain benefits, regardless of the cause of death

Subject to certain provisions, the PREP Act authorizes benefits and other compensatory payments as payer of last resort for the following:

- Medical Expenses—Reasonable and necessary costs incurred for unreimbursed medical items and services may be paid to diagnose, treat or prevent a covered countermeasure-related injury of an eligible individual.
- Lost Employment Income—The individual may receive compensation for loss of employment income incurred as a result of the covered countermeasure injury. The amount of compensation is based on income at the time of injury. Certain limitations are placed on such benefits.
- Survivor Death Benefits—Death benefits may be paid to certain survivors of covered countermeasures recipients who have died as a direct result of a covered injury.

Individuals have one (1) year from the date the vaccine or other covered countermeasure was administered or used to request benefits.

This system of records is required to comply with the implementation directives set forth in the PREP Act. It will be used for Program resource planning, administrative implementation, compensation, evaluation, scientific research, monitoring, and document storage purposes. HRSA permits disclosure of the records to third parties pursuant to the following routine uses: The first routine use permits disclosure to a Congressional office to allow subject individuals to obtain assistance from their representatives in Congress, if they wish to do so. The second routine use allows disclosure to Federal, State or local Government entities or to private entities for the purpose of their providing information relevant to medical, legal or financial documentation required for determinations of eligibility or payment. The third routine use allows disclosure of records to contractors engaged by the Department of Health and Human Services (DHHS or the Department) who need access to the records in order to assist the Department, e.g., medical experts or consultants providing advice on requester eligibility for benefits and/or compensation. The fourth routine use allows disclosure of records to contractors engaged by the Department who need access to the records in order to assist the Department, in evaluating the effectiveness of the CICP. The fifth routine use allows disclosure of records to individuals and/or entities as necessary for the purposes of obtaining financial advice and providing benefits to requesters approved for payment under the Program. The sixth routine use allows disclosure of records to a Federal agency administering aspects of the Program under a Memorandum of Agreement or assisting in the accomplishment of a Departmental function related to the purposes of the Program. The seventh routine use allows disclosure of records to the Department of Justice or a court in the event of litigation. The eighth routine use allows disclosure to the appropriate Federal, State or local agency in the event of a violation of law. The ninth routine use allows disclosure of records to researchers for certain scientific research purposes. The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system becomes effective.

Dated: April 15, 2011.

Mary K. Wakefield,

Administrator, Health Resources and Services Administration.

SYSTEM NUMBER:

09–15–0071.

SYSTEM NAME:

Countermeasures Injury Compensation Program, HHS/HRSA/HSB.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Room 11C–06, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are injured countermeasure recipients or their representatives, survivors of such recipients or their representatives, and representatives of the estates of deceased injured countermeasure recipients, filing for benefits under the Countermeasures Injury Compensation Program (CICP or the Program).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of documents that may include, but are not limited to, general or congressional correspondence, requests, case number assignment, HHS responses to correspondence, medical and legal documentation, employment documentation, documentation concerning services or benefits available from the United States or any third party (including any State or local governmental entity, private insurance carrier, or employer), payment information, and other related case processing documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority for maintaining this system of records is 42 U.S.C. 247d–6e. Management of the system is authorized by Public Law 109–148, the Public Readiness and Emergency Preparedness Act (PREP Act), enacted on December 30, 2005 (42 U.S.C. 247d–6e).

PURPOSE(S):

The purpose of the system is to provide benefits to certain individuals who have sustained a covered injury as a result of the administration or use of a covered countermeasure, and to provide benefits to the survivors and/or estates of deceased injured countermeasure recipients. Requests for Benefits must be submitted to the CICP no later than (one) 1 year from the date the recipient was administered or used a covered countermeasure.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a Congressional office from the record of a subject individual, in response to an inquiry from the Congressional office made at the written request of that individual or his/her legal or personal representative.

2. Disclosure may be made to Federal, State or local Government entities or to private entities for the purpose of their providing information relevant to

medical, legal, or financial (e.g., insurance, payment) documentation required for determinations of eligibility or payment, provided that such disclosure is compatible with the purpose for which the records were collected.

3. Disclosure of records may be made to contractors engaged by the Department who need access to the records in order to assist the Department, *e.g.,* medical experts or consultants providing advice on requesters' eligibility for benefits. All such individuals shall be required to maintain Privacy Act safeguards with respect to such records and return all records to HRSA and not retain any copies.

4. Disclosure of records may be made to contractors engaged by the Department who need access to the records in order to assist the Department in evaluating the effectiveness of the CICP.

5. Disclosure of records may be made to individuals and/or entities as necessary for the purposes of obtaining financial advice and providing benefits to requesters approved for payment under the Program. All individuals and/or entities permitted disclosure for this use shall be required to maintain Privacy Act safeguards with respect to such records and return all records to HRSA without retaining any copies.

6. Disclosure of records may be made to a Federal agency assisting in the accomplishment of a Departmental function relating to the purposes of this system of records, provided that such disclosure is compatible with the purposes for which the records are collected, or to a Federal agency administering aspects of the Program, as authorized by a Memorandum of Agreement between the Secretary or her designee and the head of the Federal agency or designee.

7. Disclosure of records may be made in the event of litigation where the defendant is:

(a) The Department, any component of the Department, or any employee of the Department in his or her official capacity;

(b) the United States where the Department determines that the action, if successful, is likely to affect directly the operation of the Department or any of its components; or

(c) any Department employee in his or her individual capacity where the Department of Justice (DOJ) has agreed to represent such employee, for example, in defending an action against the Department in connection with such individual, disclosure may be made to DOJ to enable DOJ to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

8. Disclosure may be made in the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State or local, charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, provided that such disclosure is compatible with the purpose for which the records were collected.

9. A record may be disclosed to researchers for a scientific research purpose, only when the Department has determined:

(a) That the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(b) That the research purpose is consistent with the purpose for which the Program was formed;

(c) That the proposed research is scientifically sound in its methods and analyses and is likely to answer the proposed research question;

(d) That the information sought is not available from any other source;

(e) That the record made available for scientific research is redacted of all personal identifiers regarding injured individuals, health care practitioners and employers that are not essential for the accomplishment of the approved research purpose, and;

(f) That the recipient of records for scientific research purposes:

(1) Established strict limitations acceptable to the Department concerning the receipt and use of any patient-identifiable data;

(2) Established reasonable administrative, technical, and physical safeguards and/or protocols acceptable to the Department to protect the confidentiality of the data and to prevent the unauthorized use or disclosure of the record;

(3) Removes or destroys the information that identifies an individual at the earliest time that removal or destruction can be accomplished consistent with the purpose of the research project;

(4) Makes no further use or disclosure of the record except when required by law; and

(5) Secures and approves a written statement attesting to the recipient's understanding of, and agreement to abide by, these conditions of disclosure.

Violation of these provisions is subject to penalties set forth under 5 U.S.C. 552a(i)(3) and any other applicable Federal law.

10. Disclosure of records may be made to appropriate federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, on computer hard drives and shared drives, and/or in electronic media storage.

RETRIEVABILITY:

Records can be retrieved by the requester's name and by the case number assigned based on the order in which the Letter of Intent to File a Request for Benefits or the Request for Benefits form is filed.

SAFEGUARDS:

1. Assign Responsibility for Security: Responsibility is assigned to a CICP management official who is knowledgeable about the nature of the information in this system of records, the process of reviewing records contained in it, and in the management, personnel, operational, and technical controls used to protect it.

2. Perform Risk Assessment: A risk assessment is to be conducted in conjunction with the development of, and prior to the approval of, the system design and will ensure that vulnerabilities, risks, and other security concerns are identified and addressed in the system design and throughout the life cycle of the project. This is consistent with the Information Security Program Policy, HHS IRM Policy 2004–002.001 (Dec. 15, 2004), Section 3.7.3.

3. Develop CICP Request Security Plan: Plan for the adequate security of the CICP Request for Benefits system, taking into account the security of all systems in which Requests for Benefits will operate. CICP request security plans shall address request rules, training on

use of the system, personnel security, contingency planning, technical controls, information sharing, and public access controls.

4. Review CICP Request for Benefits System Controls: Perform an independent review or audit of the CICP Request for Benefits system security control in accordance with applicable Federal requirements and/or guidelines.

5. Authorize Processing: Ensure that a management official authorizes, in writing, confirmation that the security plan as implemented adequately secures the CICP Request for Benefits system. The CICP Request for Benefits system must be authorized prior to operating and reauthorized in accordance with applicable Federal requirements and/or guidelines.

6. Implementation Guidelines: DHHS Chapter 45–13 "Safeguarding Records Contained in Systems of Records;" the Information Security Program Policy, HHS IRM Policy 2004–002.001 (Dec. 15, 2004); and Appendix III to OMB Circular No. A–130 "Security of Federal Automated Information Resources;" Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals."

RETENTION AND DISPOSAL:

HRSA is working with NARA to obtain the appropriate retention value. Records will be retained and disposed of in accordance with the Records Control Schedule of the Health Resources and Services Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Countermeasures Injury Compensation Program, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 11C–06, Rockville, Maryland 20857, or the Director's designee.

NOTIFICATION PROCEDURE:

Requests must be made to the System Manager.

Requests by mail: Requests for information and/or access to records received by mail must contain information providing the identity of the writer, and a reasonable description of the record desired, and whom it concerns. Written requests must contain the name and address of the requester, his/her date of birth and his/her signature for comparison purposes. Requests must be notarized to verify the identity of the requester, or the requester must certify that (s)he is the individual who (s)he claims to be and that (s)he understands that to knowingly and willfully request or acquire a record pertaining to another individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine (45 CFR 5b.5(b)(2)(ii)).

Requests in person: Record access procedures are the same as notification procedures. The requester should provide a reasonable description of the contents of the record being sought. Records will be mailed only to the requester's address that is on file, unless a different address is demonstrated by official documentation. A parent or guardian who requests notification of, or access to, a minor/legally incompetent person's medical records must verify his/her relationship to the minor/legally incompetent person as well as his/her own identity and shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent.

Requests by telephone/facsimile/electronic mail: Since positive identification of the requester cannot be established, telephone, facsimile, or electronic mail (e-mail) requests will not be honored.

RECORD ACCESS PROCEDURES:

Record access procedures are the same as Requests in Person procedures above.

CONTESTING RECORDS PROCEDURES:

To contest a record in the system, contact the System Manager at the address specified above and reasonably identify the record, stipulate the information being contested, state the corrective action sought and the reason(s) for requesting the correction, along with supporting documentation to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Sources of records include, but are not limited to, countermeasure recipients and/or their legal or personal representatives under the Countermeasures Injury Compensation Program, and any other sources of information or documentation submitted by any other person or entity for inclusion in a request for the purpose of determining medical or legal eligibility for, or amount of benefits and/or compensation under, the Program (*e.g.,* Federal, State, or local government or private health care entities participating in the administration of covered countermeasures under a Secretarial declaration).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2011–12258 Filed 5–18–11; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; A Generic Submission for Formative Research, Pre-Testing, Stakeholder Measures and Advocate Forms at NCI

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 15, 2011 (76 FR 14034) and allowed 60-days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: A Generic Submission for Formative Research, Pre-testing, Stakeholder Measures and Advocate Forms at NCI. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* In order to carry out NCI's legislative mandate, the Office of Advocacy Relations (OAR) disseminates cancer-related information to a variety of stakeholders, seeks their input and feedback, and facilitates collaboration between the Institute and these external partners to advance NCI's authorized programs. It is beneficial for NCI, through the OAR, to pretest strategies, concepts, activities and materials while they are under development. Additionally, administrative forms may be part of this generic submission since they are a necessary part of collecting demographic information and areas of interest for advocates. Pre-testing, or formative evaluation, helps ensure that the products and services developed by NCI have the greatest capacity of being received, understood, and accepted by their target audiences. Since OAR is

responsible for matching advocates to NCI programs and initiatives across the cancer continuum, it necessary to measure the satisfaction of both internal and external stakeholders with this collaboration. This customer satisfaction research helps ensure the relevance, utility, and appropriateness of the many initiatives and products that OAR and NCI produce. The OAR will use a variety of qualitative (focus groups, interviews) and quantitative (paper, phone, in-person, and web surveys) methodologies to conduct this research, allowing NCI to: (1) Understand characteristics (attitudes, beliefs, and behaviors) of the intended target audience and use this information in the development of effective strategies, concepts, activities; (2) use a feedback loop to help refine, revise, and enhance OAR's efforts—ensuring that they have the greatest relevance, utility, appropriateness, and impact for/to target audiences; and (3) expend limited program resource dollars wisely and effectively. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households; Businesses or other for profit; Not-for-profit institutions and organizations; Federal Government; State, Local, or Tribal Government. *Type of Respondents:* Adult cancer research advocates; members of the public; health care professionals; organizational representatives. Table 1 outlines the estimated burden hours required for a three-year approval of this generic submission. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

TABLE 1—ESTIMATE OF BURDEN HOURS OVER THREE YEARS

[For generic submissions]

Survey/instrument	Number of respondents	Frequency of response	Average time per response (minutes/hour)	Annual burden hours
Self-Administered Post-Activity Questionnaires	3,600	1	20/60 (.33)	1,200
Other Self-Administered Questionnaires and Forms	1,800	1	60/60 (1.0)	1,800
Individual In-Depth Interviews	225	1	60/60 (1.0)	225
Focus Group Interviews	300	1	90/60 (1.5)	450
Totals	5,925			3,675

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function 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.

Direct Comments to OMB: 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 *Attention:* NIH Desk Officer, Office of Management and Budget at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project, contact Shannon Bell, Director of Office of Advocacy Relations (OAR), NCI, NIH, 31 Center Drive, Bldg. 31, Room 10A28, MSC 2580, Bethesda, MD 20892, call non-toll-free number 301–451–3393 or *e-mail your request, including your address to: bells@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: May 13, 2011.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2011–12375 Filed 5–18–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Health, Behavior, and Context Subcommittee.

Date: June 20–21, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michele C. Hindi-Alexander, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–8382, *hindialm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 13, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12336 Filed 5–18–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group, Heart, Lung, and Blood Program Project Review Committee.

Date: June 17, 2011.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jeffrey H Hurst, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892–7924, 301–435–0303, *hurstj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 13, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12334 Filed 5–18–11; 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 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 Dental and Craniofacial Research Special Emphasis Panel, Review K99 & F30.

Date: June 15, 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 No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 13, 2011 .

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12291 Filed 5–18–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Population Sciences Subcommittee.

Date: June 16–17, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaylord National Hotel & Convention Center, 201 Waterfront Street, National Harbor, MD 20745.

Contact Person: Carla T. Walls, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 13, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12288 Filed 5–18–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Functional Genomics of Dictyostelilum.

Date: June 20, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Neelakanta Ravindranath, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive

Blvd., Room 5B01, Bethesda, MD 20892, 301–496–1485, *ravindm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 13, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12289 Filed 5–18–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group,Microbiology and Infectious Diseases B Subcommittee.

Date: June 15, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Gary S. Madonna, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID, National Institutes of Health, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–496–3528, *gm12w@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 13, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–12290 Filed 5–18–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[DHS Docket No. ICEB–2011–0003]

RIN 1653–ZA01

Extension of Employment Authorization for Haitian F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the January 12, 2010 Earthquake in Haiti

AGENCY: U.S. Immigration and Customs Enforcement (ICE), DHS.

ACTION: Notice.

SUMMARY: This notice informs the public of the extension of an earlier notice, which suspended certain requirements for F–1 nonimmigrant students whose country of citizenship is Haiti and who are experiencing severe economic hardship as a direct result of the January 12, 2010 earthquake in Haiti. This notice extends the effective date of that notice.

DATES: This notice is effective July 22, 2011 and will remain in effect until January 22, 2013.

FOR FURTHER INFORMATION CONTACT: Louis Farrell, Director, Student and Exchange Visitor Program; MS 5600, U.S. Immigration and Customs Enforcement; 500 12th Street, SW., Washington, DC 20536–5600; (703) 603–3400. This is not a toll-free number. Program information can be found at *http://www.ice.gov/sevis/*.

SUPPLEMENTARY INFORMATION:

What action is DHS taking under this notice?

The Secretary of Homeland Security is exercising her authority under 8 CFR 214.2(f)(9) to extend the suspension of the applicability of certain requirements governing on-campus and off-campus employment for F–1 nonimmigrant students whose country of citizenship is Haiti and who are experiencing severe economic hardship as a direct result of the January 12, 2010 earthquake in Haiti. *See* 75 FR 56120. The previous notice was effective from September 15, 2010 until July 22, 2011. Effective with this publication, suspension of the requirements is extended 18 months, from July 22, 2011 until January 22, 2013.

F–1 students granted employment authorization through that notice were deemed to be engaged in a "full course of study" for the duration of their employment authorization, provided they satisfied the minimum course load requirement described in 75 FR 56120. *See* 8 CFR 214.2(f)(6)(i)(F).

Who is covered under this action?

This notice applies exclusively to F–1 students whose country of citizenship is Haiti and who were lawfully present in the United States in F–1 nonimmigrant status on January 12, 2010 under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 101(a)(15)(F)(i), and (1) Are enrolled in an institution that is Student and Exchange Visitor Program (SEVP)-certified for enrollment of F–1 students, (2) are currently maintaining F–1 status, and (3) are experiencing severe economic hardship as a direct result of the January 12, 2010 earthquake in Haiti.

This notice applies both to undergraduate and graduate students, as well as elementary school, middle school, and high school students. The notice, however, applies differently to elementary school, middle school, and high school students (see the discussion published in 75 FR 56121 in the question, "Does this notice apply to elementary school, middle school, and high school students in F–1 status?").

F–1 students covered by this notice who transfer to other academic institutions that are SEVP-certified for enrollment of F–1 students remain eligible for the relief provided by means of this notice.

Why is DHS taking this action?

The Department of Homeland Security (DHS) took action to provide temporary relief to F–1 students whose country of citizenship is Haiti and experienced severe economic hardship as a result of the January 12, 2010 earthquake. *See* 75 FR 56120. It enabled these F–1 students to obtain employment authorization, work an increased number of hours while school was in session, and reduce their course load, while continuing to maintain their F–1 student status. DHS also took action to extend Temporary Protected Status to Haiti in response to the January 12, 2010 earthquake. *See* 75 FR 3476.

Haiti has limited resources to cope with a natural disaster like this earthquake, which was the strongest one to strike the island nation in 200 years. The country's critical infrastructure was severely damaged, and many government offices, schools, businesses, and hospitals were completely destroyed. Haiti continues to deal with the aftermath of the earthquake.

As Haiti continues to rebuild its infrastructure and economy, this difficult period has affected students from Haiti studying in the United States. Many of these students depend on money from relatives in Haiti who are

themselves continuing to recover from the earthquake.

The U.S. is committed to continuing to assist the people of Haiti. DHS is therefore extending this employment authorization for F–1 Haitian nonimmigrant students that are continuing to experience severe economic hardship as a result of the earthquake.

How do I apply for an employment authorization under the circumstances of this notice?

F–1 Haitian students who were lawfully present in the U.S. on January 12, 2010 and are experiencing severe economic hardship as a result of the earthquake may apply for employment authorization under the guidelines described in 75 FR 56120. This notice extends the time period during which F–1 Haitian students may seek employment authorization due to the earthquake. It does not impose any new or additional policies or procedures beyond those listed in the original notice. All interested F–1 students should follow the instructions listed in the original notice.

Janet Napolitano,

Secretary.

[FR Doc. 2011–12430 Filed 5–18–11; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2007–0030]

Implementation of Revised Passenger Weight Standards for Existing Passenger Vessels

AGENCY: Coast Guard, DHS.

ACTION: Notice of Availability.

SUMMARY: The Coast Guard announces the publication of Officer of Vessel Activities (CG–543) Policy Letter 11–03: "Implementation of Revised Passenger Weight Standards for Existing Passenger Vessels." This policy letter provides guidance on how the Coast Guard will amend Certificates of Inspection prior to a change in the assumed average weight per person standard that will become effective in December 2011.

DATES: The policy letter announced in this notice is effective on May 19, 2011.

ADDRESSES: The policy letter and other documents mentioned in this preamble as being available in the docket, are part of docket USCG–2007–0030 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.* In addition:

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Lieutenant Commander David Webb, Passenger Vessel Program Manager, Office of Vessel Activities, Domestic Vessel Compliance Division (CG–543), telephone 202–372–1224 or via e-mail at *CG5431@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard determines the maximum number of persons permitted on a vessel by several factors, including the total weight of people carried based on an Assumed Average Weight per Person (AAWPP). The Coast Guard published a Final Rule (75 FR 78064, December 14, 2010), which updated the AAWPP for new and existing inspected passenger vessels and is available in the docket. The relevant portions of the final rule will become effective on December 1, 2011. Because of the large number of passenger vessels affected by the Final Rule, it is not practical for the Coast Guard to amend all stability letters and Certificates of Inspection (COIs) prior to the effective date of the new AAWPP, nor is it reasonable to defer vessel operator compliance until all vessel documents are updated.

For this reason, the policy letter referred to in this notice provides supplemental guidance to the implementation discussion contained in the preamble to the Final Rule. This policy letter provides guidance for existing passenger vessels and contains acceptable methods for passenger vessel owners and operators to demonstrate compliance with the new AAWPP. It also outlines procedures to be followed by both passenger vessel owners and operators and the Coast Guard in order to verify compliance and amend vessel documents as may be needed. Finally, the policy letter provides guidance on an alternative to the AAWPP, described in the final rule, that a vessel may use if the owner/operator can demonstrate that the average weight of passengers and crew routinely carried on that vessel differs significantly from the published AAWPP.

This notice is issued under authority of 5 U.S.C. 552(a) and 46 CFR 176.

Dated: May 10, 2011.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. 2011–12282 Filed 5–18–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3320–EM; Docket ID FEMA–2011–0001]

Mississippi; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Mississippi (FEMA–3320–EM), dated May 4, 2011, and related determinations.

DATES: *Effective Date:* May 6, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of May 4, 2011.

Sharkey and Yazoo Counties for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially, Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

May 13, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–12356 Filed 5–18–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3318–EM; Docket ID FEMA–2011–0001]

North Dakota; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of North Dakota (FEMA–3318–EM), dated April 7, 2011, and related determinations.

DATES: *Effective Date:* May 6, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of North Dakota is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of April 7, 2011.

Benson, Eddy, Nelson, Ramsey, and Towner Counties and Spirit Lake Reservation for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

May 13, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–12355 Filed 5–18–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1973–DR; Docket ID FEMA–2011–0001]

Georgia; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–1973–DR), dated April 29, 2011, and related determinations.

DATES: *Effective Date:* May 6, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 29, 2011.

Bartow, Catoosa, Dade, Floyd, Greene, Lamar, Meriwether, Monroe, Morgan, Pickens, Rabun, Spalding, Troup, and Walker Counties for Public Assistance [Categories C–G], (already designated for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

May 13, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–12351 Filed 5–18–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1971–DR; Docket ID FEMA–2011–0001]

Alabama; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–1971–DR), dated April 28, 2011, and related determinations.

DATES: *Effective Date:* May 6, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 28, 2011.

Monroe County for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

May 13, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–12353 Filed 5–18–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2500–10; DHS Docket No. USCIS 2010–0016]

RIN 1615–ZB01

Extension and Redesignation of Haiti for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: This notice announces that the Secretary of Homeland Security (Secretary) is both extending the existing designation of Haiti for temporary protected status (TPS) for 18 months from July 23, 2011 through January 22, 2013, and redesignating Haiti for TPS for 18 months, effective July 23, 2011 through January 22, 2013. The extension allows current eligible TPS beneficiaries to retain their TPS through January 22, 2013. The redesignation of Haiti allows additional individuals who have been continuously residing in the United States since January 12, 2011, to obtain TPS, if eligible, including certain Haitians who arrived in the United States following the January 12, 2010 earthquake in Haiti.

Under the redesignation, individuals who currently do not have TPS, or a TPS application pending, may apply for TPS from May 19, 2011 through November 15, 2011. In addition to demonstrating continuous residence in the United States since January 12, 2011, initial applicants for TPS under this redesignation must demonstrate that they have been continuously physically present in the United States since July 23, 2011, the effective date of the redesignation of Haiti.

For individuals who have already been granted Haiti TPS, the 90-day re-registration period will run from May 23, 2011 through August 22, 2011. The Department will publish a **Federal Register** notice in May with complete information on the re-registration procedures, including the automatic 6-month extension of currently valid employment authorization documents (EADs) that expire July 22, 2011. However, current Haiti TPS beneficiaries may not apply for re-registration until May 23, 2011. Applications and fees submitted before that date will be rejected and will have to be resubmitted once the re-registration period starts.

TPS applications that were filed during the first Haiti designation that opened on January 21, 2010, and remain pending on May 19, 2011 will be treated as initial applications under the redesignation. Therefore, individuals who have a pending TPS application will not need to file a new Application for Temporary Protected Status, Form I–821. Additional instructions are provided in this notice for individuals whose TPS applications remain pending and who would like to obtain an EAD valid through January 22, 2013.

DATES: *Extension of TPS:* The 18-month extension of the existing designation for Haiti is effective July 23, 2011, and will remain in effect through January 22, 2013. The 90-day re-registration period for current Haiti TPS beneficiaries will run from May 23, 2011 through August 22, 2011. Re-registration procedures will be announced prior to the start of the re-registration period.

Redesignation of TPS: The redesignation of Haiti for TPS is effective July 23, 2011, and will remain in effect through January 22, 2013, a period of 18 months. The initial registration period for new applicants under the Haiti TPS re-designation will run from May 19, 2011 through November 15, 2011.

FOR FURTHER INFORMATION CONTACT:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* You can find specific information about this TPS extension and re-designation of TPS for Haiti by selecting "TPS Designated Country—Haiti" from the menu on the left of the TPS Web page. From the Haiti page, you can select the Haiti TPS Questions & Answers Section from the menu on the right for further information.
- You can also contact the TPS Operations Program Manager at Status and Family Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2060 or by phone at (202) 272–1533 (this is not a toll-free number). **Note:** The phone number provided here is solely for questions regarding this TPS notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).
- Further information will also be available at local USCIS offices upon publication of this notice.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

DHS—Department of Homeland Security
DOJ—Department of Justice
DOS—Department of State
EAD—Employment Authorization Document
GoH—Government of Haiti
IDP—Internally Displaced Person
INA—Immigration and Nationality Act
NGO—Nongovernmental Organizations
OSC—U.S. Department of Justice, Office of Special Counsel for Immigration Related Unfair Employment Practices
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
UN—United Nations
UNICEF—United Nations Children's Fund
USAID—U.S. Agency for International Development
USCIS—U.S. Citizenship and Immigration Services

What is TPS?

- Temporary Protected Status (TPS) is an immigration status granted under the Immigration and Nationality Act (INA) to eligible nationals of a country designated for TPS (or to persons without nationality who last habitually resided in the designated country).
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States and to obtain work authorization documentation, so long as they continue to meet the terms and conditions of their TPS status.
- TPS beneficiaries may also be granted travel authorization as a matter of discretion.
- A grant of TPS does not lead to permanent resident status.
- When the Secretary terminates a country's TPS designation, beneficiaries return to the same immigration status they maintained before obtaining TPS (unless that status has since expired or been terminated) or to any other status they may have obtained while registered for TPS.

When was Haiti first designated for TPS?

On January 21, 2010, the Secretary designated Haiti for TPS based on extraordinary and temporary conditions within Haiti which prevented aliens who are nationals of Haiti (or persons without nationality who last habitually resided in Haiti) from returning to Haiti

safely, specifically the effects of the 7.0-magnitude earthquake that occurred January 12, 2010. *See* 75 FR 3476; *see also* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).[1]

What authority does the Secretary have to extend the designation of Haiti for TPS?

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate agencies of the government, must review the conditions in a foreign State designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that a foreign state continues to meet the conditions for TPS designation, the designation is extended for an additional 6 months (or in the Secretary's discretion for 12 or 18 months). *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

What is the Secretary's authority to redesignate Haiti for TPS?

In addition to extending an existing TPS designation so that current beneficiaries may renew their TPS, the Secretary, after consultation with appropriate agencies of the government, may redesignate a country (or part thereof) for TPS. *See* INA section 244(b)(1), 8 U.S.C. 1254a(b)(1); *see also* INA section 244(c)(1)(A)(i), 8 U.S.C. 1254a(c)(1)(A)(i) (requiring that "the alien has been continuously physically present since the effective date of *the most recent designation of the state*") (emphasis added). This is one of several instances in which the Secretary and, prior to the establishment of DHS, the Attorney General have simultaneously extended a country's TPS designation and redesignated the country for TPS. *See, e.g.,* 69 FR 60168 (Oct. 7, 2004) (extension and redesignation for Sudan); 62 FR 16608 (Apr. 7, 1997) (extension and redesignation for Liberia).

When the Secretary designates or redesignates a country for TPS, she also has the discretion to establish the date from which TPS applicants must demonstrate that they have been "continuously resid[ing]" in the United States. *See* INA section 244(c)(1)(A)(ii). This discretion permits her to tailor the "continuous residence" date to offer TPS protection to the group of individuals that she deems most appropriate.

The Secretary has determined that the "continuous residence" date for applicants for Haiti TPS shall be changed from its original date of January 12, 2010, to January 12, 2011. *See* 75 FR 3476. Initial applicants for TPS under this redesignation must also show they have been "continuously physically present" in the United States since July 23, 2011, which is the effective date of the Secretary's most recent designation, or redesignation, of Haiti. *See* INA section 244(c)(1)(A)(i). For each initial TPS application filed under the redesignation, the final determination whether the applicant has met the "continuous physical presence" requirement cannot be made until July 23, 2011. USCIS, however, will issue employment authorization documentation, as appropriate, during the registration period in accordance with 8 CFR 244.5(b).

Why is the Secretary extending the TPS designation for Haiti and simultaneously re-designating Haiti for TPS?

Over the past year, DHS and the Department of State (DOS) have continued to review conditions in Haiti. Based on this review, and after consulting with DOS, the Secretary has determined that an 18-month extension of Haiti's TPS designation from July 23, 2011 through January 22, 2013, is warranted because the conditions prompting the original designation continue to be met. The Secretary has further determined that these same conditions in Haiti support redesignating Haiti for TPS under INA section 244(b)(1)(C) and changing the "continuous residence" and "continuous physical presence" dates so as to continue affording TPS protection to eligible Haitians who arrived in the United States before January 12, 2010 and to extend TPS protection to eligible Haitians who arrived between January 12, 2010 and January 12, 2011.

The January 12, 2010 earthquake has exacerbated Haiti's position as the least-developed country in the Western Hemisphere and one of the poorest in the world. According to the Central Intelligence Agency World Factbook (last updated on September 22, 2010), 80 percent of Haiti's population is living below the poverty line. Per capita gross domestic product is now under $2 per day, and comparative social and economic indicators continue to decline. Low revenue collection rates by the Government of Haiti (GoH)—barely over 10 percent of gross domestic product—remain insufficient for Haiti to provide adequate social services and to invest in physical and human capital.

According to the GoH, an estimated 230,000 people died and approximately three million were affected by the earthquake. In total, more than one million Haitians have been left homeless and are currently living in temporary camps. As of October 14, 2010, teams from international nongovernmental organizations (NGOs) and the GoH had conducted assessments of structures to determine habitability on 297,569 buildings out of an estimated 350,000 to 400,000 buildings destroyed by the earthquake. Roughly half of those buildings assessed were deemed safe for habitation with another 26 percent deemed possibly safe with repairs conducted. Approximately 21 percent of assessed homes thus far have been deemed unsafe, requiring major repairs or demolition.

Despite these assessments, DOS estimates that there are approximately 1,300 internally displaced persons (IDPs) camps in Haiti. Although statistical reports vary, the United Nations Children's Fund (UNICEF) reports that there are approximately 1.6 million IDPs, of which approximately 800,000 are children. The IDP camps are extremely crowded and are vulnerable to flooding, crime (including gender-based violence), and disease.

International NGOs report that primary healthcare services are available at 160 fixed and mobile sites. Thirty-one percent of these sites are supported by USAID and the Office of U.S. Foreign Disaster Assistance. The current cholera outbreak in Haiti is evidence of the vulnerability of the public health sector of Haiti. Although statistical reports have varied, the GoH Ministry of Public Health and Population reported 199,497 cholera cases, including 112,656 hospitalizations and 3,927 deaths. Health officials and aid organizations believe the outbreak may spread nationwide. In efforts to contain the outbreak, a network of cholera treatment centers has been created.

Based on this review and after consultation with the appropriate Government agencies, the Secretary has determined that:

- The conditions that prompted the January 21, 2010 designation of Haiti for TPS continue to be met. *See* INA sections 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred under the HSA from the DOJ to the DHS "shall be deemed to refer to the Secretary" of Homeland Security. *See* 6 U.S.C. 557 (2003) (codifying HSA, tit. XV, sec. 1517).

• Nationals of Haiti (and persons without nationality who last habitually resided in Haiti) still cannot safely return to Haiti due to continued extraordinary and temporary conditions. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).

• It is not contrary to the national interest of the United States to permit aliens who meet the eligibility requirements for TPS to remain in the United States temporarily. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).

• The TPS designation of Haiti should be extended for an additional 18-month period from July 23, 2011 through January 22, 2013. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).

• Haiti should be simultaneously redesignated for TPS effective July 23, 2011 through January 22, 2013. *See* INA sections 244(b)(1)(C) and (b)(2), 8 U.S.C. 1254a(b)(1)(C) and (b)(2).

• It is appropriate to change the date by which TPS applicants must demonstrate that they have continuously resided in the United States from January 12, 2010 to January 12, 2011.

• The date by which TPS applicants must demonstrate that they have been continuously physically present in the United States is July 23, 2011, the effective date of the redesignation of Haiti for TPS.

• There are approximately 47,000 current Haiti TPS beneficiaries who are expected to be eligible to re-register for TPS under the extension.

• It is estimated that approximately 10,000 additional individuals may be eligible for TPS under the redesignation of Haiti.

Why is the Secretary changing the "continuous residence" date from January 12, 2010 to January 12, 2011?

In the aftermath of the earthquake in Haiti, additional Haitian nationals were lawfully admitted to the United States as nonimmigrants or were granted humanitarian parole for emergency reasons. As described in this notice, the devastating impact of the January 12, 2010 earthquake continues to create extraordinary and temporary conditions that prevent aliens who are nationals of Haiti from safely returning to Haiti. Therefore, the Secretary has determined, in her discretion, that it is appropriate for DHS to extend TPS to eligible Haitians who arrived in the United States between January 12, 2010, and January 12, 2011, so that they will not be subject to removal while in TPS and can obtain work authorization to support themselves until they are able to return safely to Haiti.

Notice of Extension of TPS for Haiti and Re-designation of Haiti for TPS through January 22, 2013

By the authority vested in me as Secretary of Homeland Security under section 244 of the INA, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate government agencies, that the conditions that prompted the original designation of Haiti for temporary protected status on January 21, 2010, continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am simultaneously extending the existing TPS designation of Haiti for 18 months from July 23, 2011 through January 22, 2013, and redesignating Haiti for TPS for 18 months effective July 23, 2011 through January 22, 2013. *See* INA sections 244(b)(1)(C) and (b)(2), 8 U.S.C. 1254a(b)(1)(C) and (b)(2). I am also changing the "continuous residence" date from January 12, 2010 to January 12, 2011. *See* INA section 244(c)(1)(A)(ii), 8 U.S.C. 1254a(c)(1)(A)(ii).

Janet Napolitano,

Secretary.

How do I know whether I should wait until May 23, 2011, to apply for re-registration under the extension of TPS or whether I should file an initial TPS application now under the re-designation of Haiti?

Table 1 below will help you decide if you should file for re-registration under the extension of TPS for Haiti or if you should file an initial application under the re-designation of Haiti for TPS.

TABLE 1—RE-REGISTRATION FILING VERSUS INITIAL FILING

If . . .	And . . .	Then . . .
You filed a TPS application under the initial designation of Haiti during the registration period January 21, 2010 through January 18, 2011, or filed after January 18 under the fee waiver cure..	Your application was approved by May 19, 2011.	You need to re-register under the extension by filing a Form I–821 application and Form I–765 during the re-registration period May 23, 2011 through August 22, 2011.
You filed a TPS application under the initial designation of Haiti during the registration period January 21, 2010 through January 18, 2011, or filed after January 18 under the fee waiver cure..	Your application is still pending as of May 19, 2011.	You do not yet have TPS and your pending Form I–821 will be treated as an initial application under the re-designation. You do not need to file a new Form I–821. Please see Table 2 to determine if you need to file a new Form I–765.
You filed a TPS application under the initial designation of Haiti during the registration period January 21, 2010 through January 18, 2011, or filed after January 18 under the fee waiver cure..	Your application was denied before May 19, 2011, and you believe you may be eligible for TPS under the redesignation.	You may be covered under the re-designation and you need to file an initial application during the registration period May 19, 2011 through November 15, 2011.
You never filed a TPS application under the initial designation of Haiti.	You believe you may be eligible for TPS under the redesignation.	You may be covered under the re-designation and you need to file an initial application during the registration period May 19, 2011 through November 15, 2011.

I have been granted TPS. If the re-registration period does not begin until May 2011, does my current TPS continue through January 22, 2013?

Although an individual's TPS continues until it is withdrawn or terminated, your TPS will be withdrawn if you fail to re-register during the May 23, 2011 through August 22, 2011 period, or if USCIS does not approve your re-registration application. The forthcoming **Federal Register** notice, to be published in May 2011, regarding re-registration will explain the requirements, fees, and fee waiver procedures. Please do not submit your re-registration application before May 23rd or it will be rejected, and you will need to re-file when the re-registration period opens. Given the timeframes involved with processing TPS re-registration applications, and because the re-registration period will not open until May 23, 2011, DHS recognizes the possibility that re-registrants may not receive new EADs until after their current EADs expire on July 22, 2011. Accordingly, the May 2011 **Federal Register** notice explaining the re-registration procedures will also extend the validity of EADs issued under the original TPS designation of Haiti for an additional 6 months, through January 22, 2012. That notice will provide further details for re-registration and explanations of the 6-month automatic extension of EADs that expire on July 22, 2011.

I have a pending TPS application filed during the original Haiti TPS registration period that ran from January 21, 2010 through January 18, 2011. What should I do?

If your TPS application is still pending on May 19, 2011, then you will not need to file a new Application for Temporary Protected Status, Form I–821. Pending TPS applications will be treated as initial applications under the re-designation. Therefore, if your TPS application is approved, you will be granted TPS through January 22, 2013. If you have a pending TPS application *and* you wish to have an EAD valid through January 22, 2013, please look at Table 2 below to determine whether you should file a new Application for Employment Authorization, Form I–765. If you do need to file a new Form I–765, wait until the re-registration period opens May 23, 2011, before filing your application.

TABLE 2—EAD INFORMATION FOR STILL PENDING TPS APPLICATIONS

If . . .	And . . .	Then . . .	But if . . .
You requested an EAD during the original registration period for Haiti TPS.	You received an EAD with Category C19 or A12.	You must file a new Form I–765 with fee (or fee waiver request) during the re-registration period that opens May 23, 2011 if you wish to have a new EAD valid through January 22, 2013.	Your Form I–821 is denied before the re-registration period opens May 23, 2011, then DO NOT file a new Form I–765. If you file a new Form I–765, it will be denied due to the denial of your Form I–821.
You requested an EAD during the original registration period for Haiti TPS.	You did not receive an EAD with Category C19 or A12.	You do not need to file a new Form I–765. If your TPS application is approved, your Form I–765 will be approved through January 22, 2013.	
You did not request an EAD during the original registration period for Haiti TPS.	You wish to have an EAD valid through January 22, 2013.	You must file a new Form I–765 with fee (or fee waiver request) during the re-registration period that opens May 23, 2011.	Your Form I–821 is denied before the re-registration period opens on May 23, 2011, then DO NOT file a new Form I–765. If you file a new Form I–765, it will be denied due to the denial of your Form I–821.
You did not request an EAD during the original registration period.	You do not wish to have an EAD valid through January 22, 2013.	You do not need to file a new Form I–765.	

I am not a TPS beneficiary and I do not have a TPS application pending. What are the procedures for Initial Registration for TPS under the Redesignation?

Individuals who do not yet have Haiti TPS or a pending application for TPS may submit their TPS applications during the 180-day initial registration period that will run from May 19, 2011 through November 15, 2011.

The remainder of this **Federal Register** notice provides the procedures for initial registration under the redesignation. The following procedures *do not* apply to individuals who have already been granted TPS under the original designation of Haiti. Re-registration procedures for current TPS beneficiaries will be announced in a subsequent **Federal Register** notice that will be published in May.

Required Application Forms and Application Fees To Register Initially for TPS

To register for TPS for the first time, an applicant must submit:

1. Application for Temporary Protected Status, Form I–821 and pay the Form I–821 application fee, which is $50, and

2. Application for Employment Authorization, Form I–765.

- If you want an EAD, you must pay the Form I–765 fee only if you are age 14 through 65. No EAD fee is required if you are under the age of 14 or over the age of 65 and filing for initial TPS registration.
- You do not pay the Form I–765 fee if you are not requesting an EAD.

Individuals who are in removal proceedings will be provided an opportunity to apply for TPS in accordance with 8 CFR 244.7(d) and 1244.7(d).

You must submit both completed application forms together. If you are unable to pay, you may apply for application and/or biometrics fee waivers by completing Request for Fee Waiver, Form I–912, or submitting your own request for a fee waiver, and providing satisfactory supporting documentation. For more information on the application forms and

application fees for TPS, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps* and click on Temporary Protected Status for Haiti. Fees for the Form I–821, Form I–765, and biometrics fee are also described in 8 CFR 103.7(b).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years of age or older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay, you may apply for a biometrics fee waiver by completing Form I–912 or your own request for a fee waiver, and providing satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS Web site at *http://www.uscis.gov.*

Mailing Information

Mail your application for TPS to the proper address in Table 3:

TABLE 3–MAILING ADDRESSES

If you live in . . .	For regular mail, send to . . .	For express mail and courier deliveries, send to . . .
The state of Florida	USCIS, P.O. Box 4464, Chicago, IL 60680–4464	USCIS, *Attn: Haiti TPS, 131 South Dearborn, 3rd Floor, Chicago, IL 60603–5520.*
The state of New York	USCIS, P.O. Box 660167, Dallas, TX 75266–0167	USCIS, *Attn: Haiti TPS, 2501 S. State Hwy. 121, Business, Suite 400, Lewisville, TX 75067.*
All other states	USCIS, P.O. Box 24047, Phoenix, AZ 85074–4047	USCIS, *Attn: Haiti TPS, 1820 E. Skyharbor Circle S, Suite 100, Phoenix, AZ 85034.*

E-Filing

You cannot e-file your application when applying for initial registration for TPS. Please mail your application to the mailing address listed in Table 2 above.

Employment Authorization Document (EAD)

May I request an interim EAD at my local USCIS office?

No. USCIS will not issue interim EADs to TPS applicants at local offices.

What documents may I show to my employer as proof of employment authorization and identity for Form I–9 (Employment Eligibility Verification form)?

To complete Form I–9 for new hires, an employee must present his or her employer with proof of identity and employment authorization. For reverification, an employee needs to provide proof of continued employment authorization. Document choices are listed on the Lists of Acceptable Documents on page 5 of Form I–9. An EAD is listed as an acceptable document under "List A." Therefore, TPS beneficiaries under this redesignation of Haiti who have timely registered with USCIS as directed under this notice and obtained an EAD may present their valid EAD to their employers as proof of employment authorization and identity. In the alternative, employees may present any other legally acceptable document or combination of documents listed on the Form I–9 as proof of identity and employment authorization.

Employers may not request proof of Haitian citizenship when completing Form I–9. Employers should accept a valid EAD so long as the EAD reasonably appears on its face to be genuine and to relate to the employee.

Note to Employers: Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For questions, employers may call the USCIS Customer Assistance Office at 1–800–357–2099. Employers may also call DOJ's Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155.

Note to Employees: Employees or applicants may call the OSC Employee Hotline at 1–800–255–7688 for information regarding employment problems. Additional information is available on the OSC Web site at *http://www.justice.gov/crt/osc/.*

Note Regarding State and Local Government Agencies (Such as Departments of Motor Vehicles): State and Local government agencies are permitted to create their own guidelines when granting certain benefits, such as a driver's license or an identification card. Each state may have different laws and requirements pertaining to the documents that may be used to prove eligibility for certain benefits. If you are applying for a state or local government benefit, you should take all documents that show that you are a TPS beneficiary to the state or local government agency. Examples are:

(1) A copy of your Form I–821 Approval Notice (I–797), and

(2) Your EAD that has a valid expiration date (if you have a TPS-based EAD).

[FR Doc. 2011–12440 Filed 5–18–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5487–N–16]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request Choice Neighborhoods

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Department is soliciting public comments on the subject proposal, to assure better understanding of the reporting requirements and consistency in the submission of data.

DATES: *Comments Due Date:* May 26, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (14) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *e-mail: Ross_A._Rutledge@omb.eop.gov; fax:* 202–395–3086.

FOR FURTHER INFORMATION CONTACT: Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW.,

Washington, DC 20410; e-mail *Colette.Pollard@HUD.gov;* telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from the Reports Management Officer. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone number is not toll-free.)

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a proposed information collection that supports the Choice Neighborhoods Notice of Funding Availability (NOFA).

Title of Proposal: Choice Neighborhoods.

OMB Control Number: 2577–0269.

Description of Information Collection: This is a revised information collection. The Department of Housing and Urban Development Appropriations Act. 2010 (Pub. L. 111–117, enacted on December 16, 2009) permits the HUD Secretary to use up to $65,000,000 of the HOPE VI appropriations for Choice Neighborhoods Initiative demonstration. Thus, except as otherwise specified in the appropriations act, the HOPE VI program requirements and selection criteria will apply to Choice Neighborhoods grant for FY 2011. The notice of Funding Availability (NOFA) will contain the selection criteria for awarding Choice Neighborhoods grants and specific requirements that will apply to selected grantees.

The program aims to transform neighborhoods of poverty into viable mixed-income neighborhoods with access to economic opportunities by revitalizing severely distressed public and assisted housing and investing and leveraging investment in well-functioning services, effective schools and education programs, public assets, public transportation and improved access to jobs. Choice Neighborhoods grants will primarily fund the transformation of public and/or HUD-assisted housing developments through preservation, rehabilitation, and management improvements as well as demolition and new construction. In addition, these funds can be used on a limited basis (and combined with other funding) for improvements to the surrounding community, public services, facilities, assets, and supportive services. Choice Neighborhoods grant funds are intended to catalyze other investments that will be directed toward necessary community improvements. The leveraging of other sources will be necessary to address other key neighborhood assets and achieve the program's core goals. HUD is working with other Federal agencies to integrate Choice Neighborhoods with other Federal place-based programs.

Agency Form Numbers: HUD Form 53233, HUD Form 53237, HUD Form 53239, HUD Form 53234, HUD Form 53235, HUD Form 53154, HUD Form 53240, HUD Form 53151, HUD Form 53150, HUD Form 53153, HUD Form 53236, HUD Form 53232, HUD Form 53152, HUD Form 53238, HUD Form 53230, HUD Form 53231.

Members of Affected Public: Local governments, public housing authorities, nonprofits, and for-project developers that apply jointly with a public entity.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: For Choice Neighborhoods burden hours per response total to 68.09 for Implementation Grant applications and 34.59 for Planning Grant applications. The total burden hours, estimating 150 respondents for both applications is 6,864.

Status of the proposed information collection: This is an Emergency Information Collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 12, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–12275 Filed 5–18–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2011–N080; 10120–1113–0000–F5]

Endangered Plants and Wildlife; Receipt of Applications for Enhancement of Survival Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit applications; request for comments.

SUMMARY: In accordance with the requirements of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), invite the public to comment on applications for permits to conduct enhancement of survival activities with endangered species.

DATES: To ensure consideration, please send your written comments by June 20, 2011.

ADDRESSES: Comments can be sent to the Endangered Species Program Manager, Ecological Services, U.S. Fish and Wildlife Service, 911 NE., 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Linda Belluomini, Fish and Wildlife Biologist, at the above address or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION: The following applicants have applied for recovery or interstate commerce permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We are soliciting review of and comments on these applications by local, State, and Federal agencies, and the public.

Permit No. TE–39185A

Applicant: Pei-Luen Lu, Honolulu, Hawaii.

The applicant requests a permit to remove and reduce to possession (collect plant parts) *Pleomele hawaiiensis* (halapepe) at Hawaii Volcanoes National Park, Hawaii Island, Hawaii, in conjunction with genetic research for the purpose of enhancing its survival.

Permit No. TE–149068

Applicant: Eric VanderWerf, Honolulu, Hawaii.

The permittee requests a permit amendment to take (harass by survey using taped-playback; monitor nests) the Oahu elepaio (*Chasiempis sandwichensis ibidis)* on Oahu Island, Hawaii, in conjunction with life history studies for the purpose of enhancing its survival.

Permit No. TE–40123A

Applicant: Pohakuloa Training Area, U.S. Army, Hilo, Hawaii.

The permittee requests an amendment to remove and reduce to possession (collect plants and their parts) *Asplenium peruviana var. insulare* (fragile fern), *Haplostachys haplostachya* (honohono), *Kadua coriacea* (kioele), *Isodendrion hosakae* (aupaka), *Melanthera venosa* (spreading nehe), *Neraudia ovata* (maoloa), *Portulaca sclerocarpa* (poe), *Silene lanceolata* (lance-leaf catchfly), *Solanum incompletum* (popolo ku mai),

Spermolepis hawaiiensis (Hawaiian parsley), *Stenogyne angustifolia* (creeping mint), *Tetramolopium arenarium* (Mauna Kea pamakani), *Vigna o-wahuensis* (Oahu cowpea), and *Zanthoxylum hawaiiense* (ae) at Pohakuloa Training Area, Hawaii Island, Hawaii, in conjunction with ex situ genetic storage, controlled propagation, and outplanting for the purpose of enhancing their survival.

Permit No. TE–043628

Applicant: Institute for Applied Ecology, Corvallis, Oregon.

The permittee requests an amendment to remove and reduce to possession (collect plants and their parts) *Lomatium cookii* (Cook's lomatium) in Josephine County, Oregon, in conjunction with controlled propagation and outplanting for the purpose of enhancing its survival.

Permit No. TE–40138A

Applicant: Duckcrossing Game Farm, Isantic, Minnesota.

The applicant requests an interstate commerce permit to purchase nene geese (*Branta sandvicensis*) in conjunction with captive propagation in Isantic, Minnesota for the purpose of enhancing its survival.

Permit No. TE–42195A

Applicant: U.S. Navy.

The applicant requests a permit to take (harass by survey using taped-playback) the Mariana common moorhen (*Gallinula chloropus guami*) on Guam, in conjunction with life history studies for the purpose of enhancing its survival.

Public Comments

We are soliciting public review and comment on these recovery permit applications. Submit written comments to the Endangered Species Program Manager (see address above). Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Please refer to the appropriate permit number for the application when submitting comments. All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: May 12, 2011.

Richard R. Hanman,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 2011–12345 Filed 5–18–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–11–L19100000–BJ0000–LRCME0R04043]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on June 20, 2011.

DATES: Protests of the survey must be filed before June 20, 2011 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009. 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: This survey was executed at the request of the Bureau of Indian Affairs, Rocky Mountain Region, Billings, Montana, and was necessary to determine individual and tribal trust lands.

The lands we surveyed are:

Principal Meridian, Montana.

T. 27 N., R. 50 E.

The plat, in one sheet, representing the dependent resurvey of a portion of the 12th Guide Meridian East, through Township 27 North, a portion of the subdivisional lines, and a portion of the subdivision of sections 13 and 24 and the subdivision of sections 13 and 24, Township 27 North, Range 50 East, Principal Meridian, Montana, was accepted May 3, 2011.

We will place a copy of the plat, in one sheet, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in one sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in one sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

James D. Claflin,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2011–12347 Filed 5–18–11; 8:45 am]

BILLING CODE 4310–DN–P

INTERNATIONAL TRADE COMMISSION

Inv. No. 337–TA–773

In the Matter of Certain Motion-Sensitive Sound Effects Devices and Image Display Devices and Components and Products Containing Same; Notice of Investigation

Institution of investigation pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 1, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Ogma, LLC of Longview, Texas. An amended complaint was filed on April 26, 2011, and a supplement was filed on May 5, 2011. The amended complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain motion-sensitive sound effects devices and image display devices and components and products containing same by reason of infringement of certain claims of U.S. Patent No. 6,150,947 ("the '947 patent") and U.S. Patent No. 5,825,427 ("the '427 patent"). The amended complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation

and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The amended complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 12, 2011, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain motion-sensitive sound effects devices and image display devices and components and products containing same that infringe one or more of claims 1, 6, 7, and 9, of the '947 patent and claims 1–3 of the '427 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) *The complainant is:* Ogma, LLC, 3301 W. Marshall Ave., Longview, TX 75604.

(b) *The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:*

Activision Blizzard, Inc., 3100 Ocean Park Blvd., Santa Monica, CA 90405.

Canon, Inc., 30–2, Shimomaruko 3-chome Ohta-ku, Tokyo 146–8501, Japan.

Canon USA, Inc., One Canon Plaza, Lake Success, NY 11042.

Jakks Pacific, Inc., 22619 Pacific Coast Highway, Malibu, CA 90265.

Kyocera Communications, Inc. 9520 Towne Centre Drive, San Diego, CA 92121.

LEGO A/S dba LEGO Group, Aastvej 1, Dk-7190 Billund, Denmark.

LEGO Systems, Inc., 555 Taylor Road, Enfield, CT 06082.

Lenovo (United States), Inc., 1009 Think Place, Morrisville, NC 27560.

Lenovo Group Ltd., No. 6 Chuang Ye Road, Shangdi Information Industry Base, Haidian District, Beijing 100085, China.

Lenovo (Singapore) Pte. Ltd., New Tech Park, 151 Lorong, Chuan, (S) 556741 at Serangoon Garden, Singapore.

Mad Catz, Inc., 7480 Mission Valley Road, Suite 101, San Diego, CA 92108.

Nintendo Co., Ltd., 11–1 Kamitoba-hokotate-cho, Minami-ku. Kyoto 601–8501, Japan.

Nintendo of America, Inc., 4600 150th Avenue NE., Redmond, WA 98052.

Nyko Technologies, Inc., 1990 Westwood Blvd., 3rd Floor, Los Angeles, CA 90025.

Sony Ericsson Mobile Communications (USA), Inc., 3333 Piedmont Road, Suite 600, Atlanta, GA 30305.

Sony Ericsson Mobile Communications AB, Nya Vattentornet SE–221, 88 Lund, Sweden.

Vivitek Corporation, 4425 Cushing Parkway, San Jose, CA 94538.

VTech Electronics North America, LLC, 1155 W. Dundee, Suite 130, Arlington Heights, IL 60004.

VTech Holdings, Ltd., 23/F, Tai Ping Industrial Centre, Block 1, 57 Ting Kok Rd., Tai Po, New Territories, Hong Kong.

ViewSonic Corp., Ltd., 381 Brea Canyon Road, Walnut, CA 91789.

WowWee Group Ltd., Energy Plaza, 3F, 92 Granville Road, Tsim Sha Tsui East, Hong Kong.

WowWee USA, Inc., 5963 La Place Court, Suite 207, Carlsbad, CA 92008.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 13, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–12293 Filed 5–18–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–475 and 731–TA–1177 (Final)]

Certain Aluminum Extrusions From China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) and (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports of certain aluminum extrusions from

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

China other than finished heat sinks, provided for in subheadings 7604.21, 7604.29, and 7608.20 of the Harmonized Tariff Schedule of the United States, that the U.S. Department of Commerce ("Commerce") has determined are subsidized and sold in the United States at less than fair value ("LTFV").[2] The Commission further determined that an industry in the United States is not materially injured or threatened with material injury, or that the establishment of an industry in the United States is not materially retarded, by reason of imports of finished heat sinks from China.[3] [4]

Background

The Commission instituted these investigations effective March 31, 2010, following receipt of a petition filed with the Commission and Commerce by Aluminum Extrusions Fair Trade Committee and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union. The final phase of the investigations was scheduled by the Commission following notification of a preliminary determinations by Commerce that imports of certain aluminum extrusions from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and dumped within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on December 22, 2010 (75 FR 80527). The hearing was held in Washington, DC, on March 29, 2011, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 13, 2011. The views of the Commission are contained in USITC Publication 4229 (May 2011), entitled *Certain Aluminum Extrusions from China: Investigation Nos. 701–TA–475 and 731–TA–1177 (Final).*

By order of the Commission.

Issued: May 13, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–12276 Filed 5–18–11; 8:45 am]

BILLING CODE P

[2] All six Commissioners voted in the affirmative.

[3] Because they do not find that finished heat sinks are a separate domestic like product, Vice Chairman Irving A. Williamson and Commissioner Charlotte R. Lane do not join in this determination.

[4] Finished heat sinks are fabricated heat sinks, sold to electronics manufacturers, the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–385 (Third Review)]

Granular Polytetrafluoroethylene Resin From Italy; Correction of Notice of Scheduling

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: In a notice published in the **Federal Register** May 12, 2011 (76 FR 27663), the Commission published a notice of scheduling of an expedited five-year review on an antidumping duty order on granular polytetrafluoroethylene resin from Italy.

CORRECTION: The Commission hereby corrects the investigation number to Inv. No. 731–TA–385 (Third Review), and footnote 2 that replaces IDENTIFY with E.I. DuPont de Nemours & Co.

DATES: *Effective Date:* May 13, 2011.

FOR FURTHER INFORMATION CONTACT: Stefania Pozzi Porter (202–205–3177; *Stefania.PozziPorter@usitc.gov*), 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 this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 13, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–12277 Filed 5–18–11; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–227]

Caribbean Basin Economic Recovery Act: Impact on U.S. Industries and Consumers and on Beneficiary Countries; Notice of public hearing and opportunity to submit comments in connection with the 20th report on the economic impact of the Caribbean Basin Economic Recovery Act (CBERA).

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: Section 215 of the CBERA (19 U.S.C. 2704) requires the Commission to report biennially to the Congress and the President by September 30 of each reporting year on the economic impact of the Act on U.S. industries and U.S. consumers and on the economy of the beneficiary countries. This series of biennial reports was instituted as investigation No. 332–227, *Caribbean Basin Economic Recovery Act: Impact on U.S. Industries and Consumers and on Beneficiary Countries.* The Commission has scheduled a public hearing for its 2011 CBERA report, covering trade during calendar years 2009 and 2010, for June 21, 2011.

DATES:

June 8, 2011: Deadline for filing requests to appear at the public hearing.

June 14, 2011: Deadline for filing pre-hearing briefs and statements.

June 21, 2011: Public hearing.

June 28, 2011: Deadline for filing post-hearing briefs and statements and all other written submissions.

September 30, 2011: Transmittal of Commission report to Congress and the President.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Walker Pollard (202–205–3228 or *walker.pollard@usitc.gov*), or James Stamps (202–205–3227 or *james.stamps@usitc.gov*) Country and Regional Analysis Division, Office of Economics, U.S. International Trade

Commission, Washington, DC 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Peg O'Laughlin, Public Affairs Officer (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). 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.

Background: Section 215(a)(1) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2704(a)(1)) requires that the Commission submit biennial reports to the Congress and the President regarding the economic impact of the Act on U.S. industries and consumers, and on the economy of the beneficiary countries. Section 215(b)(1) requires that the reports include, but not be limited to, an assessment regarding:

(A) The actual effect, during the period covered by the report, of [CBERA] on the United States economy generally, as well as on those specific domestic industries which produce articles that are like, or directly competitive with, articles being imported into the United States from beneficiary countries; and

(B) The probable future effect which this Act will have on the United States economy generally, as well as on such domestic industries, before the provisions of this Act terminate.

Notice of institution of the investigation was published in the **Federal Register** of May 14, 1986 (51 FR 17678). The 20th report, covering calendar years 2009 and 2010, is to be submitted by September 30, 2011.

Public Hearing: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on June 21, 2011. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., June 8, 2011. All pre-hearing briefs and statements should be filed not later than 5:15 p.m., June 14, 2011; and all post-hearing briefs and statements should be filed not later than 5:15 p.m., June 28, 2011. All requests to appear and pre- and post-hearing briefs and statements should be filed in accordance with the requirements in the "Written Submissions" section below. In the event that, as of the close of business on June 8, 2011, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Office of the Secretary (202–205–2000) after June 8, 2011, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., June 28, 2011. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 C.F.R. 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf).*

Persons with questions regarding electronic filing should contact the Office of the Secretary (202–205–2000).

Any submissions that contain confidential business information (CBI) must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission intends to publish only a public report in this investigation. Accordingly, any CBI received by the Commission in this investigation will not be published in a manner that would reveal the operations of the firm supplying the information.

The report will be made available to the public on the Commission's Web site.

By order of the Commission.

Issued: May 13, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–12260 Filed 5–18–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Records of Tests and Examinations of Mine Personnel Hoisting Equipment

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine and Safety Health Administration (MSHA) sponsored information collection request (ICR) titled, "Records of Tests and Examinations of Mine Personnel Hoisting Equipment," 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 20, 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 and Safety 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 make it mandatory for

covered mine operators to make and maintain records of specific tests and inspections of mine personnel hoisting systems, including wire ropes, to ensure each system remains safe to operate while in use. 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 1219–0034. 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, 2010 (76 FR 3176).

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 1219–0034. 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: Records of Tests and Examinations of Mine Personnel Hoisting Equipment.

OMB Control Number: 1219–0034.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 286.

Total Estimated Number of Responses: 85,550.

Total Estimated Annual Burden Hours: 6,855.

Total Estimated Annual Costs Burden: $343,200.

Dated: May 16, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–12305 Filed 5–18–11; 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; Ionizing Radiation Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, "Ionizing Radiation Standard," 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 20, 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: Several provisions of the Ionizing Radiation Standard specify paperwork requirements, *including:* Monitoring of worker exposure to ionizing radiation, instructing workers on the hazards associated with ionizing radiation exposure and precautions to minimize exposure, posting of caution signs at radiation areas, reporting of worker overexposures to OSHA, maintaining exposure records, and providing exposure records to current and former workers. The purpose of the Standard and its information collection requirements are to document that employers are providing their workers with protection from hazardous ionizing radiation exposure.

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 1218–0103. 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 27, 2011.

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 1218–0103. *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: Ionizing Radiation Standard.

OMB Control Number: 1218–0103.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 12,719.

Total Estimated Number of Responses: 256,914.

Total Estimated Annual Burden Hours: 45,217.

Total Estimated Annual Costs Burden: $5,691,144.

Dated: May 16, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–12333 Filed 5–18–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Fire Protection in Shipyard Employment

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, "Fire Protection in Shipyard Employment," 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 20, 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: 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 Fire Protection in Shipyard Employment Standard makes it mandatory for a covered employer to develop a written fire safety plan and written statement or policy that contains information about fire watches and fire response duties and responsibilities. The Standard also requires the employer to obtain medical examinations for certain workers and to develop training programs and to train employees exposed to fire hazards. Additionally, the Standard requires an employer to create and maintain records to certify that employees have been made aware of the details of the fire safety plan and that employees have been trained as required by the Standard.

These information collections are 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 1218–0248. 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 3178).

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 1218–0248. 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: Fire Protection in Shipyard Employment.

OMB Control Number: 1218–0248.

Affected Public: Private Sector—Businesses or other for profits.

Total Estimated Number of Respondents: 317.

Total Estimated Number of Responses: 21,046.

Total Estimated Annual Burden Hours: 4,635.

Total Estimated Annual Costs Burden: $0.

Dated: May 16, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–12332 Filed 5–18–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Unemployment Insurance Data Validation Program

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, "Unemployment Insurance Data Validation Program," 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 20, 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, Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Unemployment Insurance Data Validation Program requires States to operate a system for ascertaining the validity (adherence to Federal reporting requirements) of specified unemployment insurance (UI) data submitted to the ETA on certain reports they are required to submit monthly or quarterly. Some of these data are used to assess performance, including for the Government Performance and Results Act, or determine States' grants for UI administration.

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 1205–0431. The current OMB approval is scheduled to expire on July 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 March 2, 2011 (76 FR 11514).

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 1205–0431. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Title of Collection: Unemployment Insurance Data Validation Program.

OMB Control Number: 1205–0431.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 53.

Total Estimated Annual Burden Hours: 29,150.

Total Estimated Annual Costs Burden: $0.

Dated: May 13, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–12306 Filed 5–18–11; 8:45 am]

BILLING CODE 4510–FT–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before June 20, 2011 to be assured of consideration.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5167; or electronically mailed to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on March 2, 2011 (76 FR 11521). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper

performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed 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 collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Court Order Requirements.

OMB number: 3095–0038.

Agency form number: NA Form 13027.

Type of review: Regular.

Affected public: Veterans and Former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 5,000.

Estimated time per response: 15 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 1,250 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT), the NPRC also administers military service records of veterans after discharge, retirement, and death, and the medical records of these veterans, current members of the Armed Forces, and dependents of Armed Forces personnel. The NA Form 13027, Court Order Requirements, is used to advise requesters of (1) The correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law and (2) the information to be provided so that records may be identified.

Dated: May 13, 2011.

Michael L. Wash,

Assistant Archivist for Information Services/CIO.

[FR Doc. 2011–12363 Filed 5–18–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CAPITAL PLANNING COMMISSION

Senior Executive Service; Performance Review Board; Members

AGENCY: National Capital Planning Commission.

ACTION: Notice of Members of Senior Executive Service Performance Review Board

SUMMARY: Section 4314(c) of Title 5, U.S.C. (as amended by the Civil Service Reform Act of 1978) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards (PRB) to review, evaluate and make a final recommendation on performance appraisals assigned to individual members of the agency's Senior Executive Service. The PRB established for the National Capital Planning Commission also makes recommendations to the agency head regarding SES performance awards, rank awards and bonuses. Section 4314(c)(4) requires that notice of appointment of Performance Review Board members be published in the **Federal Register.** The following persons have been appointed to serve as members of the Performance Review Board for the National Capital Planning Commission: Deidre Flippen, Mary Johnson, Jeff Thomas and Raymond J. Wollman from July 01, 2011 to July 01, 2013.

FOR FURTHER INFORMATION CONTACT: Phyllis A. Vessels, Human Resources Officer, National Capital Planning Commission, 401 Ninth Street, NW., Suite 500, Washington, DC 20004, (202) 482–7217.

Dated: May 10, 2011.

Barry S. Socks,

Chief Operating Officer.

[FR Doc. 2011–11983 Filed 5–18–11; 8:45 am]

BILLING CODE 7520–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Notice; Public Hearing Cancellation, May 25, 2011

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 76, Number 90, Page 27103) on May 10, 2011. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 2 PM, May 25, 2011 in conjunction with OPIC's June 2, 2011 Board of Directors meeting has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, or via e-mail at *Connie.Downs@opic.gov.*

Dated: May 17, 2011.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2011–12402 Filed 5–17–11; 11:15 am]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2009–61; Order No. 729]

Change in Postal Prices

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to amend the Global Expedited Package Services 2 contract to the competitive product list. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* May 23, 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:

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I. Introduction
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I. Introduction

On May 11, 2011, the Postal Service filed notice that prices under Parcel Select & Parcel Return Service Contract 2 filed in the instant docket have changed in accordance with the original contract provisions for extension of its

term.[1] An amendment incorporating the changes to Parcel Select & Parcel Return Service Contract 2 accompanies the Notice. Additionally, the Postal Service states that the financial documentation filed in compliance with 39 CFR 3015.5 incorporates changes proposed in Docket No. RM2011–10 currently being reviewed by the Commission.[2] Notice at 1. Because the Commission's review of the proposed methodology is still pending, the notice also provides a financial analysis based upon the current methodology approved by the Commission. *Id.*

The Postal Service includes three attachments in support of its Notice:

- Attachment A—a redacted copy of the amendment to the Parcel Select & Parcel Return Service Contract 2;
- Attachment B—a certified statement required by 39 CFR 3015.5(c)(2); and
- Attachment C—an application for non-public treatment of materials to maintain redacted portions of the contract, related financial information, and customer-identifying information under seal.

The current contract's term expires on May 31, 2011. *Id.* Attachment A at 3. The amendment will extend its term to May 31, 2012. *Id.* at 1. The Postal Service intends for the amendment to become effective on the date that the Commission completes its review of the instant filing. *Id.*

II. Notice of Filing

Interested persons may submit comments on whether the changes as presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 39 CFR part 3015. Comments are due no later than May 23, 2011. The Postal Service's Notice can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Malin G. Moench to serve as Public Representative in the captioned proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission shall review the amendment to Parcel Select & Parcel Return Service Contract 2 in Docket No. CP2009–61 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in this proceeding are due no later than May 23, 2011.

3. Pursuant to 39 U.S.C. 505, Malin G. Moench is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–12326 Filed 5–18–11; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Parcel Select & Parcel Return Service Contract 2, May 11, 2011 (Notice).

[2] *See* Notice of the United States Postal Service of Filing of USPS–RM2011–10/NP1, May 10, 2011 (RM2011–10 Notice).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64494; File No. SR–NASDAQ–2011–066]

Self-Regulatory Organizations; NASDAQ Stock Market, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rebates and Fees in Penny Pilot, NDX and MNX and Non-Penny Pilot Options

May 13, 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 3, 2011, The NASDAQ Stock Market LLC ("NASDAQ" 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 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 modify Rule 7050 governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to adopt certain Fees for Execution of Contracts for a "Professional" market participant. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

NASDAQ is proposing to modify Rule 7050 governing the rebates and fees assessed for options orders entered into NOM. Specifically, NASDAQ is proposing to adopt Professional pricing for Penny Pilot Options, options on the Nasdaq 100 Index traded under the symbol NDX ("NDX") and options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX") and All Other Options.[3]

There is currently NOM pricing for four separate categories of market participants: Customer, Firm, Non-NOM Market maker[4] and NOM Market Maker.[5] The Professional category would be an addition to these existing categories. The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).[6] Today a Professional is assessed and paid Customer fees and rebates, respectively.[7]

[3] All Other Options includes non-Penny Pilot options.

[4] Non-NOM Market Makers are registered market makers on another options market that append the market maker designation to orders routed to NOM.

[5] NOM Market Makers must be registered as such pursuant to Chapter VII, Section 2 of the Nasdaq Options Rules, and must also remain in good standing pursuant to Chapter VII, Section 4.

[6] *See* Chapter I, Section I (Definitions). *See also* Securities Exchange Act Release Nos. 63028 (October 1, 2010), 75 FR 62443 (October 8, 2010) (SR–NASDAQ–2010–099); and 63151 (October 21, 2010), 75 FR 66811 (October 29, 2010) (SR–NASDAQ–2010–132). Participants are required to identify Professional orders submitted electronically by indentifying [sic] them in the customer type field. *See* Securities Exchange Act Release No. 63028 (October 1, 2010) 75 FR 62443 (October 8, 2010) (SR–NASDAQ–2010–099). *See* NOM Chapter I, Sec.1 (a)(48).

[7] The priority of orders designated as Professional on NOM are not impacted in the same manner as

The Exchange is proposing to adopt a $0.29 per contract Rebate to Add Liquidity; [8] and a $0.45 per contract Fee for Removing Liquidity [9] for Professionals transacting Penny Pilot Options.[10] The Exchange is proposing to adopt a $0.10 per contract Rebate to Add Liquidity and a $0.50 per contract Fee for Removing Liquidity for Professionals transacting NDX and MNX.[11] The Exchange is proposing to adopt a $0.20 per contract Fee for Adding Liquidity, and a $0.45 per contract Fee for Removing Liquidity for Professionals transacting All Other Options. The Exchange proposes to offer no Rebate to Add Liquidity for Professionals transacting All Other Options.[12]

For purposes of the Opening Cross, a Professional would be assessed the Fee for Removing Liquidity during the Exchange's Opening Cross similar to Firms, Non-NOM Market Makers and NOM Market Makers.[13] Professionals would not receive a Rebate to Add Liquidity during the Exchange's Opening Cross.[14]

The Exchange is proposing to add Professional fees to: (i) raise revenue for the Exchange; and (ii) eliminate specialized pricing for Professionals. The Exchange is proposing separate pricing for Professionals to bring additional revenue to the Exchange. The Exchange believes that the increased revenue from the proposal would assist the Exchange to recoup fixed costs. Additionally, the Exchange seeks to address the perceived favorable pricing of Professionals, who today are assessed fees and paid rebates like a Customer. A Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.[15]

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[16] in general, and with Section 6(b)(4) of the Act,[17] in particular, in that it provides for the equitable allocation of reasonable rebates, dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes it is equitable to assess Professionals fees and offer rebates that are less favorable than or equivalent to Customers but generally more favorable than or equivalent to market markers [18] because it has been established that Professionals have access to more information than a Customer and Professionals do not bear the obligations of a market maker. It can be argued that Professionals have the same technological and informational advantages as broker-dealers trading for their own account. First, a Professional by definition enters 390 orders per day on average over a calendar month which the Exchange believes exceeds the number of retail Customers [sic] in a single day. Second, the Exchange believes that retail Customers are a source of liquidity in the market, and exchanges have provided such Customer [sic] favorable pricing in order to attract such orders.[19] The Exchange believes that it would be inequitable to assess higher fees on Customers and offer less rebates to Customers, as compared to other market participants, because they are unable to shoulder the burden of such costs as effectively as other market participants, including a Professional.

The Exchange believes that this concept of pricing Professionals differently than Customers exists today on other markets. The International Securities Exchange ("ISE") assesses professionals different fees than customers. ISE assesses higher taker fees to professionals as compared to market makers and customers. ISE also provides professionals a lower priority on its market as compared to public customers.[20] The Approval Order states that ISE amended its priority rules to attract retail investor order flow to its exchange by leveling the playing field for retail investors over market professionals and provide competitive pricing.[21] The Approval Order also noted that professionals are more sophisticated than retail investors.[22] While NOM does not have such priority rules because it executes orders according to price-time priority, with no distinctions made with regard to account designation, NOM currently offers Professionals the pricing advantages of a Customer. NOM believes that for the same reasons the Commission permitted ISE to amend its rules so that professional orders would not be granted special priority and would be assessed the same fees as broker-dealer transactions, the Exchange should likewise be permitted to assess different fees for Professionals and Customers.[23] While priority is a reason to distinguish Customers and Professionals, the Exchange believes that pricing alone could produce the same unintended advantage to Professionals as noted in the Approval Order.[24] The Commission also noted in the Approval Order that the customers who enter more than 390 orders per day on average during a calendar month are using the exchange's facilities to place approximately 8000 orders, on average one order for every minute of every trading day, over the course of the month and nearly 100,000 orders per year. The Commission found that it was consistent with the Act for ISE to allocate to customers who participate in the market at this level of activity—which enables them to compete with non-Customers who are registered broker-dealers—the same transaction

on other options exchanges which have a Professional designation because NOM executes orders on a price/time priority basis, regardless of the designation of the market participant submitting the order.

[8] An order that adds liquidity is one that is entered into NOM and rests on the NOM book.

[9] An order that removes liquidity is one that is entered into NOM and that executes against an order resting on the NOM book.

[10] The Exchange is not proposing to amend the Penny Pilot Option rates for other market participants.

[11] The Exchange is not proposing to amend NDX and MNX rates for other market participants.

[12] The Exchange is not proposing to amend the rates for other market participants in All Other Options.

[13] NOM does not have any priority rules for the Opening Cross.

[14] Today a Professional receives a Rebate to Add Liquidity during the Exchange's Opening Cross, unless the contra-side is also a Customer.

[15] A Professional, defined as a non broker-dealer who places more than 390 orders in listed options per day on average (or more than one order per minute on average per day), has access to continuously updated pricing models based on real-time streaming data, access to multiple markets simultaneously, and other risk management tools.

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(4).

[18] The Exchange notes that the proposed Professional Rebate to Add Liquidity in Penny Pilot Options is greater than the rebate for a Non-NOM Market Maker but less than the rebate for a NOM Market Maker. This is explained in greater detail below.

[19] The Exchange provides Customers such favorable pricing notwithstanding the fact that NOM executes orders on a price/time priority basis, regardless of the designation of the market participant submitting the order.

[20] *See* Securities Exchange Act Release No. 59287 (January 23, 2009), 75 FR 62443 (October 1, 2010) (SR–ISE–2006–26) ("Approval Order").

[21] *See* Securities Exchange Act Release No. 59287 (January 23, 2009), 75 FR 62443 (October 1, 2010) (SR–ISE–2006–26).

[22] *See* Securities Exchange Act Release No. 59287 (January 23, 2009), 75 FR 62443 (October 1, 2010) (SR–ISE–2006–26).

[23] *See* Securities Exchange Act Release No. 59287 (January 23, 2009), 75 FR 62443 (October 1, 2010) (SR–ISE–2006–26). Since the Approval Order, ISE has filed additional pricing changes.

[24] The Approval Order notes that professionals have access to information and advantages similar to broker-dealers and by both amending the execution rules and fee schedule, professional account holders participate on equal terms with broker-dealer orders and marker maker quotes. *See* Securities Exchange Act Release No. 59287 (January 23, 2009), 75 FR 62443 (October 1, 2010) (SR–ISE–2006–26).

fees that it charges to such non-Customers.[25]

The Exchange is proposing to amend its pricing to attract Customer orders and create a competitive market. The Exchange believes that establishing separate pricing for a Professional, which ranges between that of a Customer and market maker,[26] accomplishes this objective. The Exchange believes the role of the retail Customer in the marketplace is distinct from that of the Professional and the Exchange believes that its fee proposal accounts for this distinction and prices each market participant according to their roles and assumes their obligations. A market maker has the obligation to make continuous markets, engage in course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with course of dealings.[27]

The Exchange believes that Professionals, who are considered sophisticated algorithmic traders, utilize the advantaged Customer pricing they receive to effectively compete with market makers and broker-dealers [28] without the obligations of either. The Exchange believes Professionals should not be entitled to the same favorable fee treatment as a Customer, which such Professionals rely on as a means to effectively compete with other market participants. This was not the intent of the Exchange in providing Customer favorable pricing. Market makers and broker-dealers provide valuable liquidity to the marketplace without the advantage of Customer pricing.

For the reasons described above and the basis provided hereafter, the Exchange believes that the proposed pricing is not unfairly discriminatory because the Exchange is seeking to continue to encourage the participation of Customers, other than those Customers who exceed the threshold requirement of the Professional definition. The Exchange believes that those who meet the Professional definition have certain technological and informational advantages over retail Customers which combined with favorable pricing allows them to compete with market makers and broker-dealers and for this reason the proposed pricing is not unfairly discriminatory.

The Exchange believes that the proposed NOM Professional fees and rebates are equitable in that the Exchange currently differentiates between options classes and categories of market participants for purposes of pricing. The existing differentiation recognizes the differing contributions made to the liquidity and trading environment on the Exchange, as well as the differing mix of orders entered. For example, the Exchange assesses different fees for Penny Pilot transactions and non-Penny Pilot transactions. In addition, some market participants, such as market makers, have obligations pursuant to Exchange rules which the Exchange recognizes in its pricing.

The Exchange believes that the proposed Professional rebates and fees are both equitable and reasonable for the reasons outlined below. With respect to Penny Pilot options, the Exchange is assessing the same Fee for Removing Liquidity as other market participants. The Exchange believes that the proposed fee is reasonable and equitable because all market participants are equally assessed a Fee for Removing Liquidity in Penny Pilot options. There is no change to the Professional Fee for Removing Liquidity; the fee is the same as that assessed today.

With respect to the Rebate to Add Liquidity in Penny Pilot options, the Exchange believes the proposed rate is reasonable because the proposed rate is less than that paid to Customers and NOM Market Makers, which is similar in concept to the rebates offered at NASDAQ OMX PHLX LLC ("Phlx").[29] In addition, Chicago Board Options Exchange Incorporated ("CBOE") assesses Professionals more than Customers, who incur no fee.[30] Further, the Exchange believes the proposed rebate is equitable because providing Customers and NOM Market Makers with higher rebates will continue to bolster liquidity, and attract more order flow to the Exchange, which benefits all market participants, including Professionals.

The Exchange stated above that it proposes to assess Professionals fees and offer rebates that are less favorable than or equivalent to Customers but generally more favorable than or equivalent to market markers. The one exception in this proposal is with respect to the Professional Rebate to Add Liquidity in Penny Pilot Options. The Exchange has explained above why it believes that providing a Professional a greater rebate as compared to the Non-NOM Market maker is equitable. With respect to the NOM Market Maker, the Exchange proposes a lower rebate, by $0.01 per contract, as compared to a Professional because the Exchange seeks to continue to incentivize the NOM Market Maker. The Exchange believes that this rebate is equitable because the NOM Market Maker has obligations that the Professional does not bear.

With respect to the NDX and MNX the Exchange is proposing to assess Professionals the same fees that are assessed Customers and pay Professionals the same rebate that are paid to Customers today. The Exchange believes that this is both reasonable and equitable because, other than NOM Market Makers, all market participants are assessed the same fees and paid the same rebates in NDX and MNX. With respect to NDX and MNX there is no fee change to the Professional as compared to the rebates received and fees paid today.

The Exchange believes that the Fee for Removing Liquidity for a Professional in All Other Options is both equitable because it is the same rate for all market participants.[31] There is no change to the Professional Fee for Removing Liquidity; the fee is the same as that assessed today.

The Exchange believes that the proposed Fee for Adding Liquidity is equitable because Professionals engage in trading activity similar to that conducted by market makers. For example, Professionals continue to join bids and offers on the Exchange and thus compete for incoming order flow. Professionals do so in direct competition with the Exchange's market makers, but with the distinct advantage of generally receiving fees and rebates akin to Customers. Currently, on NOM Professionals enjoy a higher rebate than NOM Market Makers, who have quoting obligations to the market. The Exchange believes it is not only equitable but reasonable to provide Fees and Rebates

[25] *See* Securities Exchange Act Release No. 59287 (January 23, 2009), 75 FR 62443 (October 1, 2010) (SR–ISE–2006–26) at page 37.

[26] The Exchange notes that the proposed Professional Rebate to Add Liquidity in Penny Pilot Options is greater than the rebate for a Non-NOM Market Maker but less than the rebate for a NOM Market Maker. This is explained in greater detail below.

[27] *See* NOM Chapter VII, Sections 5, 6, 9 and 10.

[28] Broker-dealers pay registration and membership fees in self-regulatory organizations ("SRO") and incur costs to comply and assure that their associated persons comply with the Act and SRO rules. A broker-dealer on NOM is classified as a Firm.

[29] *See* Phlx's Fee Schedule. The professional executing a single contra-side order on Phlx receives a lower rebate to add liquidity as compared a Phlx market maker (defined as a directed participant, specialist, ROT, SQT or RSQT). Also, the professional executing a complex order receives no rebate to add liquidity, while a customer receives a rebate of $0.24/$0.25 respectively.

[30] *See* CBOE's Fees Schedule.

[31] All market participants are assessed $0.45 per contract as a Fee for Removing Liquidity in All Other Options.

for Adding Liquidity to Professionals that are within the range of non-NOM Market Makers and NOM Market Makers.

This concept is similar in approach to NYSE Amex, Inc. (”NYSE Amex”) CBOE, Phlx and ISE. On each of these venues, the fees paid by professionals and rebates received by professionals are generally in between Customers, Market Makers and other broker-dealers.[32] The Exchange believes that assessing a Professional a higher Fee for Adding Liquidity than a Customer, but lower than all other broker-dealers would put the Professional on a more equal footing with market makers and other broker-dealers regarding fees paid for transacting on the Exchange.

The Exchange assesses all market participants the same Fee for Removing Liquidity, only differentiated by Penny Pilot, Non-Penny Pilot, NDX and MNX. The Exchange believes that the proposed Fee for Adding Liquidity is reasonable because it is similar to the transaction fee assessed by NYSE Amex for an electronic Professional transaction.[33]

With respect to the Rebate to Add Liquidity in All Other Options, the Exchange believes that the rebate is equitable because only Customers receive a rebate. The Professional, similar to all other market participants, would receive no rebate. The Exchange believes that offering a rebate to Customers only would attract more order flow to the Exchange for the benefit [sic] all market participants. For this same reason, the Exchange believes that it is reasonable to not pay a Professional a Rebate to Add Liquidity during the Exchange's Opening Cross and to assess a Professional a Fee for Removing Liquidity during the Exchange's Opening Cross. The Exchange believes that a Professional would benefit, similar to other market participants, from the Customer order flow. In addition, this proposal would allow a Customer to receive a Rebate to Add Liquidity during the Exchange's Opening Cross if a Professional was on the contra-side of the transaction.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants, including Professionals, can readily, and do, send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive or rebates paid to be inadequate. The Exchange believes that the proposed rebates and fees are competitive, fair and similar with rebates and fees in place on other exchanges for Professionals. The Exchange believes that this competitive marketplace impacts the rebates and fees present on the Exchange today and substantially influences the proposals set forth above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[34] and paragraph (f)(2) of Rule 19b–4[35] 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–NASDAQ–2011–066 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–066. 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,[36] 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–NASDAQ–2011–066 and should be submitted on or before June 9, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12286 Filed 5–18–11; 8:45 am]

BILLING CODE 8011–01–P

[32] *See* NYSE Amex's Fee Schedule, CBOE's Fees Schedule, Phlx's Fee Schedule and ISE's Fee Schedule, respectively.

[33] *See* NYSE Amex's Fee Schedule.

[34] 15 U.S.C. 78s(b)(3)(A)(ii).

[35] 17 CFR 240.19b–4(f)(2).

[36] The text of the proposed rule change is available on Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* on the Commission's Web site at *http://www.sec.gov,* at NASDAQ, and at the Commission's Public Reference Room.

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64488; File No. SR–FICC–2011–03]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Updating the Range of Haircuts To Be Applied to Eligible Clearing Fund Securities and Eligible Participants Fund Securities

May 13, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 10, 2011, the Fixed Income Clearing Corporation ("FICC") 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 primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this filing is to modify the range of haircuts currently applied to Eligible Clearing Fund Securities by FICC's Government Securities Division ("GSD") and Eligible Participants Fund Securities by FICC's Mortgage-Backed Securities Division ("MBSD").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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 III below. FICC 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

Under GSD's Rulebook and MBSD's Clearing Rules ("Rules"), GSD Members and MBSD Participants are required to make deposits to the GSD Clearing Fund and MBSD Participants Fund, respectively, with the amount of each Member's and Participant's required deposit being fixed by FICC in accordance with formulas as specified in the Rules ("Required Deposit").

A GSD Member or MBSD Participant may satisfy its Required Deposit with a cash deposit, and FICC may permit a portion of the Member's or Participant's deposit to be evidenced by an open account indebtedness secured by Eligible Clearing Fund Securities (for the GSD) and Eligible Participants Fund Securities (for the MBSD). Eligible Clearing Fund Securities and Eligible Participants Fund Securities consist of certain Treasury, agency, and mortgage-backed securities. Eligible Clearing Fund Securities and Eligible Participants Fund Securities pledged as Clearing Fund collateral are subject to haircuts.

For reasons set forth in a companion rule filing, FICC's affiliate, the National Securities Clearing Corporation ("NSCC"), has increased haircuts on Clearing Fund collateral.[2] Given that the haircuts are applied to NSCC and FICC systemically and on a harmonized basis, these changes are also proposed to be applied to FICC. Moreover, FICC believes that adjusting FICC's haircuts on Clearing Fund and Participants Fund collateral will ensure that adequate collateral levels are maintained to facilitate settlement in the event of a member or participant default.

Accordingly, FICC proposes to increase the haircut applied to (i) agency notes and bonds from the current range of 2 to 7 percent based on term to a proposed range of 7 to 10 percent based on term, (ii) zero coupon obligations of Agency Securities from the current range of 5 to 12 percent based on term to a proposed 7 to 18 percent based on term, and (iii) mortgage-backed pass-through securities issued by Ginnie Mae from the current 6 percent to a proposed 7 percent.

A complete listing of the haircut schedule and the proposed changes is attached to FICC's proposed rule filing as Exhibit 5 and can be viewed online at *http://www.dtcc.com/legal/rule_filings/ficc/2011.php.*

Subject to approval by the Commission, the proposed haircut changes on Clearing Fund and Participants Fund collateral will become effective on May 16, 2011.

FICC states that the proposed rule change is consistent with the requirements of the Act[3] and the rules and regulations thereunder applicable to FICC because it facilitates the prompt and accurate clearance and settlement of securities transactions by adjusting FICC's haircuts on Clearing Fund and Participants Fund collateral to ensure adequate collateral levels are maintained to facilitate settlement in the event of a member or participant default.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received by FICC. FICC will notify the Commission of any written comments it receives.

III. 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 No. SR–FICC–2011–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC, 20549–1090.

All submissions should refer to File No. SR–FICC–2011–03. 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

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 64487 (May 13, 2011) (SR–NSCC–2011–02).

[3] 15 U.S.C. 78q–1.

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 filings also will be available for inspection and copying at FICC's principal office and on FICC's Web site at *http://www.dtcc.com/legal/rule_filings/ficc/2011.php.* 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 submission should refer to File No. SR–FICC–2011–03 and should be submitted on or before June 9, 2011.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Section 19(b) of the Act[4] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act,[5] and the rules and regulations thereunder applicable to FICC. Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[6] which requires, among other things, that the rules of a registered clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission finds that FICC's rule change is consistent with this requirement because increasing the haircuts that are applied to the securities that FICC's members and participants deposit as Clearing Fund or Participants Fund collateral should help ensure that FICC maintains adequate collateral levels to facilitate settlement in the event of a member or participant default, which should therefore help minimize risk to FICC and its members and participants. Accordingly, the proposed rule change should improve FICC's ability to assure the safeguarding of securities and funds in its custody or control or for which it is responsible.

FICC has requested that the Commission approve the proposed rule change on an accelerated basis such that it would become effective on May 16, 2011. By granting accelerated approval to the proposed change so that FICC will be able to adjust its haircuts for securities pledged as Clearing Fund or Participants Fund collateral by May 16, 2011, so that it haircuts remain harmonious with those of NSCC. As a result, FICC should be better able to maintain adequate collateral levels to protect itself and its members and participants in the event of a member or participant default. Accordingly, the Commission finds good cause to approve the proposed rule change prior to the 30th day after the date of publication of notice of the proposed rule change in the **Federal Register**.

V. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Act[7] that the proposed rule change (SR–FICC–2011–03) be, and it hereby is, approved on an accelerated basis.

For the Commission by the Division of Trading and Markets pursuant to delegated authority.[8]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12331 Filed 5–18–11; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78s(b).

[5] 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] *Id.*

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–64487; File No. SR–NSCC–2011–02)

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Updating the Range of Haircuts To Be Applied to Eligible Clearing Fund Securities

May 13, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 10, 2011, the National Securities Clearing Corporation ("NSCC") 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 primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this filing is to modify certain haircuts currently applied to Eligible Clearing Fund Securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC 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

Under NSCC's Rules and Procedures ("Rules"), Members are required to make deposits to the Clearing Fund with the amount of each Member's required deposit being fixed by NSCC in accordance with one or more formulas ("Required Deposit").[2] A Member may satisfy its Required Deposit with a cash deposit, and NSCC may permit a portion of the Member's deposit (with the exception of the deposit of a Mutual Fund/Insurance Services Member) to be evidenced by an open account indebtedness secured by Eligible Clearing Fund Securities. Eligible Clearing Fund Securities consist of certain Treasury, agency, and mortgage-backed securities.[3] Eligible Clearing Fund Securities pledged as Clearing Fund collateral are subject to haircuts.

The Rules permit NSCC to fund settlement by pledging Clearing Fund deposits as collateral for loans, and NSCC maintains a committed borrowing facility for this purpose. Haircuts imposed on collateral pledged by NSCC under the borrowing facility are being increased by the lending syndicate, and

[1] 15 U.S.C. 78s(b)(1).

[2] Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters).

[3] *See* Rule 1 (Definitions and Descriptions) for applicable definitions including Eligible Clearing Fund Securities, which are Eligible Clearing Fund Treasury Securities, Eligible Clearing Fund Agency Securities, and Eligible Clearing Fund Mortgage-Backed Securities.

therefore, NSCC must make corresponding increases in its Clearing Fund collateral haircuts in order to maintain alignment with the haircuts under the borrowing facility.

Accordingly, NSCC proposes to modify Procedure XV of the Rules to update certain haircuts applied to the types of Eligible Clearing Fund Securities to maintain conformity with the requirements of its lenders.[4] Specifically, NSCC proposes to increase the haircut applied to: (i) Agency notes and bonds from the current range of 2 to 7 percent based on term to a proposed range of 7 to 10 percent based on term, (ii) zero coupon obligations of agencies from the current range of 5 to 12 percent based on term to a proposed 7 to 18 percent based on term, and (iii) mortgage-backed pass-through securities issued by Ginnie Mae from 6 percent to 7 percent. A complete listing of the haircut schedule and the proposed changes is attached to NSCC's rule filing as Exhibit 5 and may be viewed online at *http://www.dtcc.com/legal/rule_filings/nscc/2011.php*.

Subject to approval by the Commission, the proposed haircut changes on Clearing Fund collateral will become effective on May 16, 2011.

NSCC states that the proposed rule change is consistent with the requirements of the Act[5] and the rules and regulations thereunder applicable to NSCC because it facilitates the prompt and accurate clearance and settlement of securities transactions by adjusting NSCC's haircuts on Clearing Fund collateral so that NSCC maintains adequate collateral levels to support a borrowing, should it become necessary, to complete settlement.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received by NSCC. NSCC will notify the Commission of any written comments it receives.

III. 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 No. SR–NSCC–2011–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NSCC–2011–02. 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 filings also will be available for inspection and copying at NSCC's principal office and on NSCC's Web site at *http://www.dtcc.com/legal/rule_filings/nscc/2011.php*. 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 submission should refer to File No. SR–NSCC–2011–02 and should be submitted on or before June 9, 2011.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Section 19(b) of the Act[6] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act,[7] and the rules and regulations thereunder applicable to NSCC. Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[8] which requires, among other things, that the rules of a registered clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission finds that NSCC's rule change is consistent with this requirement because increasing the haircuts that are applied to the securities that NSCC's members deposit as Clearing Fund collateral should help ensure that NSCC maintains adequate collateral levels to facilitate settlement in the event of a member default, which should therefore help minimize risk to NSCC and its members. Accordingly, the proposed rule change should improve NSCC's ability to assure the safeguarding of securities and funds in its custody or control or for which it is responsible.

NSCC has requested that the Commission approve the proposed rule change on an accelerated basis so that it would become effective on May 16, 2011. By granting accelerated approval to the proposed change, NSCC will be able to adjust its haircuts for securities pledged as Clearing Fund collateral by May 16, 2011, so that NSCC's haircuts remain in alignment with the haircuts under the borrowing facility. As a result, NSCC should be better able to maintain adequate collateral levels to protect itself and its members in the event of a member default. Accordingly, the Commission finds good cause to approve the proposed rule change prior to the 30th day after the date of publication of notice of the proposed rule change in the **Federal Register**.

[4] In a companion rule filing, NSCC's affiliate, the Fixed Income Clearing Corporation ("FICC"), has also sought to modify the range of haircuts applied to Eligible Clearing Fund Securities by FICC's Government Securities Division and to Eligible Participants Fund Securities by FICC's Mortgage-Backed Securities Division. Securities Exchange Act Release No. 64488 (May 13, 2011) (SR–FICC–2011–03).

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b).

[7] 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78q–1(b)(3)(F).

V. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Act [9] that the proposed rule change (SR–NSCC–2011–02) be, and it hereby is, approved on an accelerated basis.

For the Commission by the Division of Trading and Markets pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12328 Filed 5–18–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Delegation of Authority No. 336]

Delegation of Authority by the Deputy Director of U.S. Foreign Assistance to the Managing Director of the Office of U.S. Foreign Assistance

By virtue of the authority vested in the Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), and delegated to me by the Deputy Secretary of State in Delegation of Authority 307–1, I hereby delegate to the Managing Director of the Office of U.S. Foreign Assistance, to the extent authorized by law, all authorities and functions vested in the Deputy Director of Foreign Assistance by Delegation of Authority 307–1.

Notwithstanding this delegation of authority, any function or authority delegated by this Delegation may be exercised by the Secretary, the Deputy Secretary, the Deputy Secretary for Management and Resources, or the Deputy Director of U.S. Foreign Assistance. Any reference in this delegation of authority to any statute or delegation of authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time.

This delegation of authority shall be published in the **Federal Register**.

Dated: April 15, 2011.

Robert H. Goldberg,

Deputy Director of U.S. Foreign Assistance.

[FR Doc. 2011–12367 Filed 5–18–11; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Delegation of Authority No. 307–1]

Delegation of Authority by the Deputy Secretary for Management and Resources to the Deputy Director of U.S. Foreign Assistance

By virtue of the authority vested in the Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), and delegated to me by the Secretary of State in Delegation of Authority 245–1, I hereby delegate to the Deputy Director of U.S. Foreign Assistance, to the extent authorized by law, all authorities and functions vested in the Director of Foreign Assistance by Delegation of Authority 293–1. The Deputy Director may, to the extent consistent with law, re-delegate such functions and authorities.

Notwithstanding this delegation of authority, any function or authority delegated by this Delegation may be exercised by the Secretary, the Deputy Secretary, or the Deputy Secretary for Management and Resources. Any reference in this delegation of authority to any statute or delegation of authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time.

This delegation supersedes Delegation of Authority 307, dated December 3, 2007.

This delegation of authority shall be published in the **Federal Register**.

Dated: April 15, 2011.

Thomas R. Nides,

Deputy Secretary of State for Management and Resources.

[FR Doc. 2011–12372 Filed 5–18–11; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Written Re-Evaluation and Record of Decision for the Final Environmental Impact Statement for the Relocation of the Panama City-Bay County International Airport

AGENCY: FAA, DOT.

ACTION: Notice of availability of written re-evaluation and Record of Decision for the Final Environmental Impact Statement for the Relocation of the Panama City-Bay County International Airport (2006) Release and Disposal of the Panama City-Bay County International Airport.

SUMMARY: In September 2006, the FAA issued a Record of Decision (ROD) for actions associated with the proposed relocation of the Panama City-Bay County International Airport (PFN) in Bay County, Florida. The FAA's ROD was based on information and analysis contained in the FAA's 2006 FEIS for the project. The new airport approved in the 2006 ROD was named the Northwest Florida Beaches International Airport (ECP), and began operations at the new site in May 2010. The FAA noted in the 2006 FEIS that further federal action would be necessary to decommission and dispose of the existing airport property from aeronautical use, and that additional environmental review would be necessary due to the preliminary nature of the redevelopment information. In April 2010, the Airport Sponsor requested full release of the old airport property from federal grant obligations. Subsequent to this request, the FAA published a notice in the **Federal Register** (FR) in August 2010, regarding the intent to rule on the Panama City-Bay County Airport and Industrial District (Airport Sponsor) request to release airport property at PFN. The Federal Action addressed in the written reevaluation is FAA approval of the disposal (closure) of the Panama City-Bay County International Airport (PFN) property and release of PFN's grant obligations. Based on the best information currently available regarding reuse of the PFN site, the written reevaluation assessed the continuing validity of the environmental analysis contained in the 2006 FEIS with regard to the disposal and release actions requested by the Airport Sponsor. After the written reevaluation was completed and based on information contained therein, the FAA signed a ROD environmentally approving disposal of the property and release of grant obligations on May 5, 2011. This is not, however, the final step in the disposal and release process. Upon FAA's final approval of the disposal of the property, the Airport Sponsor will be released from their grant obligations over the property known as PFN.

FOR FURTHER INFORMATION CONTACT: Virginia Lane, Environmental Protection Specialist, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024. 407–812–6331 Ext. 129.

Issued in Orlando, Florida, on May 12, 2011.

W. Dean Stringer,

Manager, FAA Orlando Airports District Office.

[FR Doc. 2011–12359 Filed 5–18–11; 8:45 am]

BILLING CODE 4910–13–P

[9] *Id.*

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Marshfield Municipal Airport, Marshfield, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to authorize the release of 2.04 acres of the airport property at the Marshfield Municipal Airport, Marshfield, WI. The Wisconsin Department of Transportation (WisDOT) is seeking airport property to improve the intersection of U.S. Highway 10 and County Trunck Highway BB. The WisDOT issued an environmental Finding of No Significant Impact on January 30, 2007.

The acreage being released is not needed for aeronautical use as currently identified on the Airport Layout Plan. The acreage comprising this parcels 20 and 32 were originally acquired under Grant Nos. ADAP 6–55–0039–03. The City of Marshfield (Wisconsin), as airport owner, has concluded that the subject airport land is not needed for expansion of airport facilities. There are no impacts to the airport by allowing the airport to dispose of the property. The airport will receive the appraised fair market value of $18,500 for the land. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the Federal Register on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before June 20, 2011.

ADDRESSES: Mr. Andrew J. Peek, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 713–4350/ FAX Number (612) 713–4346. Documents reflecting this FAA action may be reviewed at this same location or at the Wisconsin Department of Transportation, 4802 Sheboygan Ave., Room 701, Madison, WI 53707.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew J. Peek, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 713–4350/FAX Number (612) 713–4346. Documents reflecting this FAA action may be reviewed at this same location or at the Wisconsin Department of Transportation, 4802 Sheboygan Ave., Room 701, Madison, WI 53707.

SUPPLEMENTARY INFORMATION: Following is a legal description of the subject airport property to be released at Marshfield Municipal Airport in Marshfield, Wisconsin and described as follows:

A parcel of land located in Northeast Quarter of the Northeast Quarter of Section 30, Township 25 North, Range 3 East, town of Cameron, Marshfield, Wood County, WI.

And

Northeast Quarter of the Northeast Quarter of Section 30, Township 25 North, Range 3 East, Town of Cameron (since changed to the City of Marshfield), Wood County, WI.

Said parcel subject to all easements, restrictions, and reservations of record.

Issued in Minneapolis, MN on April 27, 2011.

Steven J. Obenauer,

Manager, Minneapolis Airports District Office FAA, Great Lakes Region.

[FR Doc. 2011–11994 Filed 5–18–11; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0102]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 16 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before June 20, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0102 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* 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.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–

224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." FMCSA can renew exemptions at the end of each 2-year period. The 16 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Stanley C. Anders

Mr. Anders, age 58, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/80. Following an examination in 2011, his optometrist noted, "His right eye provides the necessary vision for him to perform the driving task of operating a commercial vehicle." Mr. Anders reported that he has driven tractor-trailer combinations for 38 years, accumulating 2.7 million miles. He holds a Class A Commercial Driver's License (CDL) from South Dakota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joel A. Cabrera

Mr. Cabrera, 31, has a prosthetic left eye due to retinoblastoma that occurred at age 2. The visual acuity in his right eye is 20/15 and in his left eye, no light perception. Following an examination in 2011, his optometrist noted, "On the basis of my clinical observations, Joel meets all the visual requirements to drive a commercial vehicle." Mr. Cabrera reported that he has driven tractor-trailer combinations for 3 years, accumulating 63,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Sherman W. Clapper

Mr. Clapper, 50, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is count-finger vision and in his left eye, 20/20. Following an examination in 2011, his ophthalmologist noted, "He should have sufficient vision to perform his tasks as a commercial driver". Mr. Clapper reported that he has driven straight trucks for 15 years, accumulating 7,500 miles and tractor-trailer combinations for 4 years, accumulating 400 miles. He holds a Class A CDL from Idaho. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Eric C. Esplin

Mr. Esplin, 46, has loss of vision in his right eye due to a traumatic injury that occurred in 1994. The best corrected visual acuity in his right eye is hand motion vision and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, "It is my opinion that Eric has adapted well to the loss of sensitivity in that right eye and is capable of maintaining commercial driver's license privileges." Mr. Esplin reported that he has driven straight trucks for 30 years, accumulating 180,000 miles and tractor-trailer combinations for 26 years, accumulating 260,000 miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ronald R. Fournier

Mr. Fournier, 52, has amblyopia in his right eye due to anisometropia since birth. The best corrected visual acuity in his right eye is 20/70 and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, "It is my opinion, Ronald Fournier has sufficient vision to perfrom the driving tasks required to operate a commercial vehicle". Mr. Fournier reported that he has driven straight trucks for 28 years, accumulating 154,000 miles and tractor-trailer combinations for 19 years, accumulating 104,500 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ronald D. Jackman, II

Mr. Jackman, 44, has had ambylopia in his right eye since childhood. The visual acuity in his right eye is 20/50 and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, "In my medical opinion, this patient has adequate vision to operate a commercial vehicle". Mr. Jackman reported that he has driven straight trucks for 22 years, accumulating 286,000 miles and tractor-trailer combinations for 22 years, accumulating 286,000 miles. He holds a Class A CDL from Nevada. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thomas W. Kent

Mr. Kent, 53, has central scotoma in his left eye due to a traumatic injury sustained in 1982. The visual acuity in his right eye is 20/20 and in his left eye, hand motion vision. Following an examination in 2011, his optometrist noted, "My medical opinion is that the patient does have adequate vision to perfrom the driving tasks requried to operate a commercial vehicle". Mr. Kent reported that he has driven straight trucks for 32 years, accumulating 960,000 miles and tractor-trailer combinations for 10 years, accumulating 200,000 miles. He holds an operator's license from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Brian L. Keszler

Mr. Keszler, 33, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/70. Following an examination in 2011, his optometrist noted, "It is my professional opinion that Mr. Keszler has sufficient vision to perform the driving tasks required to operate a commercial vehicle, considering the requirements are fulfilled of wearing glasses at all times and using a working, correctly adjusted left/driver's side mirror required at all times." Mr. Keszler reported that he has driven straight trucks for 15 years, accumulating 150,600 miles. He holds a Class R operator's license from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gerald Kortesmaki

Mr. Kortesmaki, 48, has a congenital cataract in his left eye. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/50. Following an examination in 2010, his optomerist noted, "It is my opinion that Mr. Kortesmaki has sufficient vision to operate a commercial vehicle". Mr. Kortesmaki reported that he has driven straight trucks for 32 years, accumulating 640,000 miles. He holds a Class D operator's license from Minnesota. His driving record for the

last 3 years shows no crashes and no convictions for moving violations in a CMV.

Craig C. Lowry

Mr. Lowry, 39, has loss of vision in his right eye due to a retinal detachment that occurred in 2006. The visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "I believe Craig has sufficient vision to perfrom the driving tasks requried to operate a commercial vehicle". Mr. Lowry reported that he has driven straight trucks for 11 years, accumulating 440,000 miles and tractor-trailer combinations for 17 years, accumulating 1 million miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert J. MacInnis

Mr. MacInnis, 58, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/50 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "His vision is stable and sufficient to perform the driving tasks requried to operate a commercial motor vehicle". Mr. MacInnis reported that he has driven straight trucks for 5 years, accumulating 13,500 miles and tractor-trailer combinations for 21 years, accumulating 2 million miles. He holds a Class A CDL from Massachusetts. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gordon S. Newman

Mr. Newman, 50, has no light perception in his left eye due to a traumatic injury that occurred eight years ago. The best corrected visual acuity in his right eye is 20/200 and in his left eye, no light perception. Following an examination in 2010, his optometrist noted, "In my medical opinion, Mr. Newman has sufficient vision to perform the driving tasks required of him." Mr. Newman reported that he has driven straight trucks for 18 years, accumulating 270,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Adolph L. Romero

Mr. Romero, 48, has had refractive amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20 and in his left eye, 20/80. Following an examination in 2011, his ophthalmologist noted, "I certify that in my medical opinion the patient's visual acuity is adequate for both daylight and nightime driving and the visual acuity is sufficient to perfrom the driving tasks required to operate a commercial vehicle". Mr. Romero reported that he has driven straight trucks for 25 years, accumulating 112,500 miles and tractor-trailer combinations for 10 years, accumulating 20,000 miles. He holds a Class E operator's license from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Rodney W. Sukalski

Mr. Sukalski, 54, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/15. Following an examination in 2010, his optometrist noted, "Yes, in my opinion I feel that Rodney Sukalski has adequate vision to drive a commercial vehicle." Mr. Sukalski reported that he has driven straight trucks for 15 years, accumulating 45,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Larry D. Warneke

Mr. Warneke, 49, has had exotropia and ambylopia in his left eye since birth. The visual acuity in his right eye is 20/15 and in his left eye, 20/200. Following an examination in 2011, his optometrist noted, "It is my opinion that this man has sufficient vision to drive as he has proved within Washington State since 1987-when driving commercial vehicles". Mr. Warneke reported that he has driven straight trucks for 20 years, accumulating 800,000 miles and tractor-trailer combinations for 23 years, accumulating 115,000 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Lonnie D. Wendinger

Mr. Wendinger, 56, has had retinal scars in both eyes due to toxoplasmosis since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/70. Following an examination in 2010, his optometrist noted, "In my medical opinion, Lonnie has sufficient vision to perform the driving tasks necessary to operate the commercial vehicle." Mr. Wendinger reported that he has driven straight trucks for 40 years, accumulating 1 million miles and tractor-trailer combinations for 20 years, accumulating 600,000 miles. He holds a Class A CDL Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business *June 20, 2011.* Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: May 12, 2011.

Larry W. Minor,

Associate Administrator of Policy.

[FR Doc. 2011–12340 Filed 5–18–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0057]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 16 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective May 19, 2011. The exemptions expire on May 19, 2013.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)-366–4001, *fmcsamedical@dot.gov,* FMCSA,

Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Background

On April 5, 2011, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (76 FR 18824). That notice listed 16 applicants' case histories. The 16 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 16 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 16 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, complete loss of vision, optic nerve, atrophy, macular hole, vision field defect, central scarring, histoplasmosis, chorodial rupture, central scar, retinal detachment and prosthesis. In most cases, their eye conditions were not recently developed. 7 of the applicants were either born with their vision impairments or have had them since childhood. The 9 individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 26 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. While possessing a valid CDL or non-CDL, these 16 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 38 years. In the past 3 years, two of the drivers were involved in crashes or convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the April 5, 2011 notice (76 FR 18824).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision

deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 16 applicants, two of the applicants were convicted for moving violations and one of the applicants was involved in a crash. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 16 applicants listed in the notice of April 5, 2011 (76 FR 18824).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 16 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

The Delaware Division of Motor Vehicles is in favor of granting a Federal vision exemption to Halman Smith, they indicated that they have reviewed the driving histories of this applicant and have no objections to FMCSA granting him a vision exemption.

Conclusion

Based upon its evaluation of the 16 exemption applications, FMCSA exempts, Melvin T. Ayer, Luis A. Bejarono, Richard T. Berendt, James O. Cook, Timothy J. Curran, Alfred D. Hewitt, Mark A. Kleinow, Luke R. Lafley, Kevin R. Lambert, James P. Lanigan, Nusret Odzakovic, Scott W. Schilling, Randy E. Sims, Halman Smith, Robert D. Smith and Richard D. Williams from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: May 12, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–12349 Filed 5–18–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7918; FMCSA–2002–13411; FMCSA–2003–14504; FMCSA–2008–0231; FMCSA–2008–0398]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 18 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these

commercial motor vehicle (CMV) drivers.

DATES: This decision is effective June 4, 2011. Comments must be received on or before June 20, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–2000–7918; FMCSA–2002–13411; FMCSA–2003–14504; FMCSA–2008–0231; FMCSA–2008–0398, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 18 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 18 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Rickie L. Boone
Michael C. Boyne
Timothy H. DuBois
Alf M. Gronstedt
Dennis K. Harris
Donald E. Howell
Tommy T. Hudson
William D. Johnson
Phillip L. Mangen
Tommy R. Masterson
Clarence M. Miles
Steven M. Montalbo
Jeremy L. Perry
Vincent Rubino
Randy G. Spilman
Wyatt W. Thayer, Jr.
Thomas S. Thompson
Robert A. Wegner

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 18 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 66286; 66 FR 13825; 67 FR 76439; 68 FR 10298; 68 FR 13360; 68 FR 19598; 68 FR 33570; 70 FR 25878; 72 FR 28093; 73 FR 46973; 73 FR 54888; 74 FR 7097, 74 FR 15584; 74 FR 20253). Each of these 18 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by June 20, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 18 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: May 12, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–12350 Filed 5–18–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Applications for Modification of Special Permits

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

ACTION: List of Applications for Modification of Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before June 3, 2011.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, SE., Washington, DC or at *http://www.regulations.gov*.

This notice of receipt of applications for modification of special permits is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 11, 2011.

Donald Burger,

Chief, Special Permits and Approvals Branch.

Modification of Special Permits

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
10646–M		Schlumberger Technologies Corporation, Sugar Land, TX.	49 CFR 173.302	To modify the special permit to authorize an additional material in the construction of non-DOT specification cylinders.
10698–M		Worthington Cylinders, Chilton, WI.	49 CFR 173.304(a)(2); 178.50.	To modify the special permit to authorize additional Division 2.2 materials.
11924–M		Packgen Corporation, Auburn, ME.	49 CFR 173.12(b)(2)(i)	To modify the special permit to authorize an additional non-bulk packaging.
14457–M		Amtrol Alfa Metalomecanica SA, Portugal.	49 CFR 173.304a(a)(1)	To modify the special permit to extend the external visual inspection to every five (5) years.
15097–M		U.S. Consumer Product Safety Commission, Denver, CO.	49 CFR 173.56	To reissue the special permit originally issued on an emergency basis for the transportation of unapproved fireworks to the CPSC laboratory in Gaithersburg, MD for testing.

[FR Doc. 2011–12147 Filed 5–18–11; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Application for Special Permits

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

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has

received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before June 20, 2011.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, SE., Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 11, 2011.

Donald Burger,

Chief, Special Permits and Approvals Branch.

NEW SPECIAL PERMITS

Application number	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
15727–N		GFS Chemicals, Columbus, OH.	49 CFR 173.242(d) and 173.243(d)	To authorize the transportation of certain materials, a short distance from one facility to another, in intermediate bulk containers not otherwise authorized. (mode 1)
15283–N		KwikBond Polymers, LLC, Benicia, CA.	49 CFR 173.225 and 173.243	To authorize the transportation in commerce of Class 3, PG II polyester resin in non-specification cargo tanks and UN31A intermediate bulk containers and Division 5.2, organic peroxide, type D, catalyst in a non-bulk non-specification polyethylene container. (mode 1)
15322–N		Digital Wave Corporation, Englewood, CO.	49 CFR 180.209(a), 180.205(c), (f), and (g), 173.302(a)(b)(2), and (b)(5) and 180.213.	To authorize the transportation in commerce of DOT 3A, 3AA, 3AX, 3AAX and 3T cylinders used for the transportation of industrial gases on truck trailers or in modules, using modal acoustic emission (MAE) retesting in lieu of hydrostatic testing (modes 1, 2, 3, 4, 5)
15323–N		Kidde-Fenwal Inc., Ashland, MA.	49 CFR 171.23	To authorize the manufacture, marking, sale and use of non-DOT specification cylinders meeting EN 13322–1, containing nitrogen, to be used in fire suppression systems. (mode 1)
15328–N		Helimax Aviation Inc., Jackson, CA.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2), 175.30(a)(1), 172.200, 172.300 and 172.400.	To authorize the transportation in commerce of certain hazardous materials by cargo aircraft including by external load in remote areas of the U.S. without being subject to hazard communication requirements and quantity limitations where no other means of transportation is available. (mode 4)
15334–N		Floating Pipeline Company Incorporated, Halifax, Nova Scotia.	49 CFR 173.302a	To authorize the manufacture, marking, sale and use of non-DOT specification fiber reinforced plastic hoop wrapped cylinders with water capacities of up to 120 cubic feet for use in transporting certain Class 2 gases. (mode 1)
15343–N		Bush Air Cargo, Inc., Anchorage, AK.	49 CFR 173.241 and 173.242	To authorize the transportation in commerce of Class 3 liquid fuels in non-DOT specification collapsible, rubber containers up to 500 gallon capacity by cargo aircraft within and to only remote Alaska locations. (mode 4)
15351–N		Cooper-Atkins Corporation, Middlefield, CT.	49 CFR 173.4a	To authorize certain Division 2.1 and 2.2 materials to be transported as excepted quantities. (modes 3, 5)

NEW SPECIAL PERMITS—Continued

Application number	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
15360–N	.....	FMC Corporation, Tonawanda, NY.	49 CFR 173.225	To authorize the transportation in commerce of a Division 5.1 organic peroxide in a nominal 5,000 gallon DOT 412 cargo tank equipped with special relief devices by motor vehicle. (mode 1)

[FR Doc. 2011–12149 Filed 5–18–11; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 6; Sub-No. 476]

BNSF Railway Company—Discontinuance—in Iron and Crawford Counties, MO

On April 29, 2011, BNSF Railway Company (BNSF) filed with the Board an application for permission to discontinue service on a line of railroad known as the Lead Line extending from railroad milepost 87.60, at Cuba, to the end of the line at railroad milepost 133.42, near Buick, a distance of 45.84 [1] miles in Iron and Crawford Counties, MO. There are no stations on the line. The Line traverses United States Postal Service Zip Codes 65440, 65453, 65456, 65560, 65565, and 65566.

The line does contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The applicant's entire case for discontinuance (case-in-chief) was filed with the application.

This line of railroad has appeared on BNSF's system diagram map or has been included in the narrative in category 1 since February 24, 2010.

The interests of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Amon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

Any interested person may file with the Surface Transportation Board written comments concerning the proposed discontinuance or protests (including the protestant's entire opposition case), by June 13, 2011. Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Also, only offers of financial assistance (OFAs) under 49 U.S.C. 10904 to subsidize (not purchase) the line will be entertained. Applicant's reply to any opposition statements must be filed by June 28, 2011. *See* 49 CFR 1152.26(a).

Persons opposing the discontinuance who wish to participate actively and fully in the process should file a protest. Persons who oppose the discontinuance but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons seeking information concerning the filing of protests should refer to 49 CFR 1152.25.

In addition, a commenting party or protestant may provide: (i) An OFA to subsidize rail service under 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner); and (ii) recommended provisions for protection of the interests of employees.

The line sought to be discontinued will be available for subsidy for continued rail use, if the Board decides to permit the discontinuance, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Each OFA must be accompanied by a $1,500 filing fee. 49 CFR 1002.2(f)(25). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties. 49 U.S.C. 10904(f)(4)(B). Applicant will promptly provide upon request to each interested party an estimate of the subsidy required to keep the line in operation. The applicant's representative to whom inquiries may be made concerning subsidy terms is set forth below.

Written comments and protests must indicate the proceeding designation Docket No. AB 6 (Sub-No. 476) and should be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. A copy of each written comment or protest shall be served upon the representative of the applicant: Karl Morell, 1455 F Street, NW., Suite 225, Washington, DC 20005. Except as otherwise set forth in 49 CFR pt. 1152, every document filed with the Board must be served on all parties to the discontinuance proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment and discontinuance regulations at 49 CFR pt. 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

OEA has determined that this action is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8. Consequently, OEA concludes that this action does not require the preparation of an environmental assessment.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov*."

Decided: May 13, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–12322 Filed 5–18–11; 8:45 am]

BILLING CODE 4915–01–P

[1] The line is 45.84 miles in length, not 45.82, because of an equation in mileposts between milepost 100.72 and 100.74. Line segment 1009, which begins at Cuba, extends to milepost 100.74, and line segment 1010, which extends to the south end of the line, begins at milepost 100.72. The line also has approximately 6.1 miles of sidings.

FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Part 63
National Emissions Standards for Hazardous Air Pollutants: Secondary Lead Smelting; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2011–0344; FRL–9303–4]

RIN 2060–AQ68

National Emissions Standards for Hazardous Air Pollutants: Secondary Lead Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing amendments to the national emissions standards for hazardous air pollutants for Secondary Lead Smelting to address the results of the residual risk and technology review that EPA is required to conduct by the Clean Air Act. These proposed amendments include revisions to the stack emissions limits for lead; revisions to the fugitive dust emissions control requirements; the addition of total hydrocarbons emissions limits for reverberatory, electric, and rotary furnaces; the addition of emissions limits and work practice requirements for dioxins and furans; and the modification and addition of testing and monitoring and related notification, recordkeeping, and reporting requirements. We are also proposing to revise provisions addressing periods of startup, shutdown, and malfunction to ensure that the rules are consistent with a recent court decision.

DATES: Comments must be received on or before July 5, 2011. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before June 20, 2011.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by May 31, 2011, a public hearing will be held on June 3, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–HQ–OAR–2011–0344, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov,* Attention Docket ID Number EPA–HQ–OAR–2011–0344.
- *Fax:* (202) 566–9744, Attention Docket ID Number EPA–HQ–OAR–2011–0344.
- *Mail:* U.S. Postal Service, send comments to: EPA Docket Center, EPA West (Air Docket), Attention Docket ID Number EPA–HQ–OAR–2011–0344, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004, Attention Docket ID Number EPA–HQ–OAR–2011–0344. 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 Number EPA–HQ–OAR–2011–0344. EPA's policy is that all comments received will be included in the public 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 *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket. EPA has established a docket for this rulemaking under Docket ID Number EPA–HQ–OAR–2011–0344. 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, is not placed on the Internet and 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 Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Public Hearing. If a public hearing is held, it will begin at 10 a.m. on June 3, 2011 and will be held at EPA's campus in Research Triangle Park, North Carolina, or at an alternate facility nearby. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held should contact Ms. Virginia Hunt, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, (D243–02), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; *telephone number:* (919) 541–0832.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Mr. Chuck French, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–7912; *fax number:* (919) 541–5450; and *e-mail address: french.chuck@epa.gov.* For specific information regarding the risk modeling methodology, contact Ms. Elaine Manning, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5499; *fax number:* (919) 541–0840; and *e-mail address: manning.elaine@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact the appropriate person listed in Table 1 of this preamble.

TABLE 1—LIST OF EPA CONTACTS FOR THE NESHAP ADDRESSED IN THIS PROPOSED ACTION

NESHAP for:	OECA Contact [1]	OAQPS Contact [2]
Secondary Lead Smelting	Maria Malave, (202) 564–7027 *malave.maria@epa.gov*	Chuck French, (919) 541–7912, *french.chuck@epa.gov*

[1] EPA Office of Enforcement and Compliance Assurance.
[2] EPA Office of Air Quality Planning and Standards.

SUPPLEMENTARY INFORMATION:

Preamble Acronyms and Abbreviations

Several acronyms and terms used to describe industrial processes, data inventories, and risk modeling are included in this preamble. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms and acronyms are defined here:

ADAF age-dependent adjustment factors
AEGL acute exposure guideline levels
AERMOD air dispersion model used by the HEM–3 model
ANPRM advance notice of proposed rulemaking
ATSDR Agency for Toxic Substances and Disease Registry
BACT best available control technology
BLDS bag leak detection system
CAA Clean Air Act
CBI Confidential Business Information
CEMS continuous emissions monitoring system
CFR Code of Federal Regulations
CTE central tendency exposure
D/F dioxins and furans
EJ environmental justice
EPA Environmental Protection Agency
ERPG Emergency Response Planning Guidelines
ERT Electronic Reporting Tool
HAP hazardous air pollutants
HEM–3 Human Exposure Model, Version 3
HEPA high efficiency particulate air
HHRAP Human Health Risk Assessment Protocols
HI Hazard Index
HON hazardous organic national emissions standards for hazardous air pollutants
HQ Hazard Quotient
ICR information collection request
IRIS Integrated Risk Information System
Km kilometer
LAER lowest achievable emissions rate
lb/yr pounds per year
MACT maximum achievable control technology
MACT Code Code within the NEI used to identify processes included in a source category
MDL method detection level
mg/acm milligrams per actual cubic meter
mg/dscm milligrams per dry standard cubic meter
mg/m^3 milligrams per cubic meter
MIR maximum individual risk
MRL minimum risk level
NAAQS National Ambient Air Quality Standard
NAC/AEGL Committee National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances
NAICS North American Industry Classification System
NAS National Academy of Sciences
NATA National Air Toxics Assessment
NEI National Emissions Inventory
NESHAP National Emissions Standards for Hazardous Air Pollutants
NOAEL no observed adverse effects level
NRC National Research Council
NTTAA National Technology Transfer and Advancement Act
O&M operation and maintenance
OAQPS Office of Air Quality Planning and Standards
ODW Office of Drinking Water
OECA Office of Enforcement and Compliance Assurance
OHEA Office of Health and Environmental Assessment
OMB Office of Management and Budget
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
PM particulate matter
POM polycyclic organic matter
ppmv parts per million volume
RACT reasonably available control technology
RBLC RACT/BACT/LAERClearinghouse
REL reference exposure level
RFA Regulatory Flexibility Act
RfC reference concentration
RfD reference dose
RIA Regulatory Impact Analysis
RME reasonable maximum exposure
RTR residual risk and technology review
SAB Science Advisory Board
SBA Small Business Administration
SCC Source Classification Codes
SF3 2000 Census of Population and Housing Summary
SIP State Implementation Plan
SOP standard operating procedures
SSM startup, shutdown, and malfunction
TEF toxic equivalency factors
TEQ toxic equivalency quotient
THC total hydrocarbons
TOSHI target organ-specific hazard index
TPY tons per year
TRIM Total Risk Integrated Modeling System
TTN Technology Transfer Network
UF uncertainty factor
μ/m^3 microgram per cubic meter
UL upper limit
UMRA Unfunded Mandates Reform Act
UPL upper predictive limit
URE unit risk estimate
VOC volatile organic compounds
VOHAP volatile organic hazardous air pollutants
WESP wet electrostatic precipitator
WHO World Health Organization
WWW worldwide Web

Organization of this Document. The information in this preamble is organized as follows:

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A. What is the statutory authority for this action?
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H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, after EPA has identified categories of sources emitting one or more of the HAP listed in CAA section 112(b), CAA section 112(d) calls for us to promulgate NESHAP for those sources. "Major sources" are those that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAP. For major sources, these technology-based standards must reflect the maximum degree of emissions reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

MACT standards must require the maximum degree of emissions reduction through the application of measures, processes, methods, systems, or techniques, including, but not limited to, measures that (A) reduce the volume of or eliminate pollutants through process changes, substitution of materials or other modifications; (B) enclose systems or processes to eliminate emissions; (C) capture or treat pollutants when released from a process, stack, storage, or fugitive emissions point; (D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification); or (E) are a combination of the above (CAA section 112(d)(2)(A)–(E)). The MACT standards may take the form of design, equipment, work practice, or operational standards where EPA first determines either that, (A) a pollutant cannot be emitted through a conveyance designed and constructed to emit or capture the pollutants, or that any requirement for, or use of, such a conveyance would be inconsistent with law; or (B) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations (CAA sections 112(h)(1)–(2)).

The MACT "floor" is the minimum control level allowed for MACT standards promulgated under CAA section 112(d)(3) and may not be based on cost considerations. For new sources, the MACT floor cannot be less stringent than the emissions control that is achieved in practice by the best-controlled similar source. The MACT floors for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emissions limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on considerations of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

EPA is then required to review these technology-based standards and revise them "as necessary (taking into account developments in practices, processes, and control technologies)" no less frequently than every 8 years, under CAA section 112(d)(6). In conducting this review, EPA is not obliged to completely recalculate the prior MACT determination, and, in particular, is not obligated to recalculate the MACT floors. *NRDC* v. *EPA*, 529 F.3d 1077, 1084 (DC Cir., 2008).

The second stage in standard-setting focuses on reducing any remaining "residual" risk according to CAA section 112(f). This provision requires, first, that EPA prepare a *Report to Congress* discussing (among other things) methods of calculating the risks posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks, and EPA's recommendations as to legislation regarding such remaining risk. EPA prepared and submitted this report (*Residual Risk Report to Congress*, EPA–453/R–99–001) in March 1999. Congress did not act in response to the report, thereby triggering EPA's obligation under CAA section 112(f)(2) to analyze and address residual risk.

Section 112(f)(2) of the CAA requires us to determine, for source categories subject to certain MACT standards, whether those emissions standards provide an ample margin of safety to protect public health. If the MACT standards that apply to a source category emitting a HAP that is "classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one-in-one million," EPA must promulgate residual risk standards for the source category (or subcategory) as necessary to provide an ample margin of safety to protect public health (CAA section 112(f)(2)(A)). This requirement is procedural. It mandates that EPA establish CAA section 112(f) residual risk standards if certain risk thresholds are not satisfied, but does not determine the level of those standards. *NRDC* v. *EPA*, 529 F. 3d at 1083. The second sentence of CAA section 112(f)(2) sets out the substantive requirements for residual risk standards: protection of public health with an ample margin of safety based on EPA's interpretation of this standard in effect at the time of the Clean Air Act amendments. *Id.* This refers to the Benzene NESHAP, described in the next paragraph. EPA may adopt residual risk standards equal to existing MACT standards if EPA determines that the existing standards are sufficiently protective, even if (for example) excess cancer risks to a most exposed individual are not reduced to less than one-in-one million. *Id.* at 1083, ("If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking"). Section 112(f)(2) of the CAA further authorizes EPA to adopt more stringent standards, if necessary "to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect." [1]

As just noted, CAA section 112(f)(2) expressly preserves our use of the two-step process for developing standards to address any residual risk and our interpretation of "ample margin of safety" developed in the *National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions From Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels,*

[1] "Adverse environmental effect" is defined in CAA section 112(a)(7) as any significant and widespread adverse effect, which may be reasonably anticipated to wildlife, aquatic life, or natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental qualities over broad areas.

Benzene Equipment Leaks, and Coke By-Product Recovery Plants (Benzene NESHAP) (54 FR 38044, September 14, 1989). The first step in this process is the determination of acceptable risk. The second step provides for an ample margin of safety to protect public health, which is the level at which the standards are set (unless a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect).

The terms "individual most exposed," "acceptable level," and "ample margin of safety" are not specifically defined in the CAA. However, CAA section 112(f)(2)(B) preserves EPA's interpretation set out in the Benzene NESHAP, and the court in *NRDC* v. *EPA* concluded that EPA's interpretation of CAA section 112(f)(2) is a reasonable one. See *NRDC* v. *EPA*, 529 F.3d at 1083 (DC Cir. 2008), which says "[S]ubsection 112(f)(2)(B) expressly incorporates EPA's interpretation of the Clean Air Act from the Benzene standard, complete with a citation to the *Federal Register*." See also, *A Legislative History of the Clean Air Act Amendments of 1990*, volume 1, p. 877 (Senate debate on Conference Report). We also notified Congress in the *Residual Risk Report to Congress* that we intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11).

In the Benzene NESHAP, we stated as an overall objective:

> * * * in protecting public health with an ample margin of safety, we strive to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1-in-1 million; and (2) limiting to no higher than approximately 1-in-10 thousand [*i.e.*, 100-in-1 million] the estimated risk that a person living near a facility would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

The Agency also stated that, "The EPA also considers incidence (the number of persons estimated to suffer cancer or other serious health effects as a result of exposure to a pollutant) to be an important measure of the health risk to the exposed population. Incidence measures the extent of health risks to the exposed population as a whole, by providing an estimate of the occurrence of cancer or other serious health effects in the exposed population." The Agency went on to conclude that "estimated incidence would be weighed along with other health risk information in judging acceptability." As explained more fully in our *Residual Risk Report to Congress*, EPA does not define "rigid line[s] of acceptability," but rather considers broad objectives to be weighed with a series of other health measures and factors (EPA–453/R–99–001, p. ES–11). The determination of what represents an "acceptable" risk is based on a judgment of "what risks are acceptable in the world in which we live" (*Residual Risk Report to Congress*, p. 178, quoting the DC Circuit's en banc *Vinyl Chloride* decision at 824 F.2d 1165) recognizing that our world is not risk-free.

In the Benzene NESHAP, we stated that "EPA will generally presume that if the risk to [the maximum exposed] individual is no higher than approximately 1-in-10 thousand, that risk level is considered acceptable." 54 FR 38045. We discussed the maximum individual lifetime cancer risk as being "the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years." *Id.* We explained that this measure of risk "is an estimate of the upper bound of risk based on conservative assumptions, such as continuous exposure for 24 hours per day for 70 years." *Id.* We acknowledge that maximum individual lifetime cancer risk "does not necessarily reflect the true risk, but displays a conservative risk level which is an upper-bound that is unlikely to be exceeded." *Id.*

Understanding that there are both benefits and limitations to using maximum individual lifetime cancer risk as a metric for determining acceptability, we acknowledged in the 1989 Benzene NESHAP that "consideration of maximum individual risk * * * must take into account the strengths and weaknesses of this measure of risk." *Id.* Consequently, the presumptive risk level of 100-in-1 million (1-in-10 thousand) provides a benchmark for judging the acceptability of maximum individual lifetime cancer risk, but does not constitute a rigid line for making that determination.

The Agency also explained in the 1989 Benzene NESHAP the following: "In establishing a presumption for MIR [maximum individual cancer risk], rather than a rigid line for acceptability, the Agency intends to weigh it with a series of other health measures and factors. These include the overall incidence of cancer or other serious health effects within the exposed population, the numbers of persons exposed within each individual lifetime risk range and associated incidence within, typically, a 50-kilometer (km) exposure radius around facilities, the science policy assumptions and estimation uncertainties associated with the risk measures, weight of the scientific evidence for human health effects, other quantified or unquantified health effects, effects due to co-location of facilities, and co-emissions of pollutants." *Id.*

In some cases, these health measures and factors taken together may provide a more realistic description of the magnitude of risk in the exposed population than that provided by maximum individual lifetime cancer risk alone. As explained in the Benzene NESHAP, "[e]ven though the risks judged 'acceptable' by EPA in the first step of the *Vinyl Chloride* inquiry are already low, the second step of the inquiry, determining an 'ample margin of safety,' again includes consideration of all of the health factors, and whether to reduce the risks even further." In the ample margin of safety decision process, the Agency again considers all of the health risks and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors. Considering all of these factors, the Agency will establish the standard at a level that provides an ample margin of safety to protect the public health, as required by CAA section 112(f) (54 FR 38046).

B. Does this action apply to me?

The regulated industrial source category that is the subject of this proposal is listed in Table 2 of this preamble. Table 2 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding the entities likely to be affected by this proposed action. These standards, once finalized, will be directly applicable to affected sources. Federal, State, local, and Tribal government entities are not affected by this proposed action. As defined in the source category listing report published by EPA in 1992, the Secondary Lead Smelting source category is defined as any facility at which lead-bearing scrap materials (including, but not limited to lead acid batteries) are recycled by smelting into elemental lead or lead alloys.[2] For clarification purposes, all references to lead emissions in this preamble mean "lead compounds" (which is a listed HAP) and all references to lead

[2] USEPA. Documentation for Developing the Initial Source Category List—Final Report, USEPA/OAQPS, EPA–450/3–91–030, July, 1992.

production mean elemental lead (which is not a listed HAP as provided under CAA section 112(b)(7)).

TABLE 2—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Source category	NESHAP	NAICS code [1]	MACT code [2]
Secondary Lead Smelting	Secondary Lead Smelting	331492	0205

[1] North American Industry Classification System.
[2] Maximum Achievable Control Technology.

C. 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 proposal will also be available on the World Wide Web (WWW) through the EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* The TTN provides information and technology exchange in various areas of air pollution control.

Additional information is available on the residual risk and technology review (RTR) Web page at: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* This information includes source category descriptions and detailed emissions estimates and other data that were used as inputs to the risk assessments.

D. What should I consider as I prepare my comments for EPA?

Submitting CBI. Do not submit information containing 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–ROMas CBI and then identify electronically within the disk or CD–ROMthe 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. If you submit a CD–ROMor disk that does not contain CBI, mark the outside of the disk or CD–ROMclearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID Number EPA–HQ–OAR–2011–0344.

II. Background

A. Overview of the Source Category and MACT Standards

The NESHAP (or MACT rule) for the Secondary Lead Smelting source category was promulgated on June 13, 1997 (62 FR 32216) and codified at 40 CFR part 63, subpart X. As promulgated in 1997, the NESHAP applies to affected sources of HAP emissions at secondary lead smelters. The 1997 NESHAP (40 CFR 63.542) defines "secondary lead smelters" as "any facility at which lead-bearing scrap material, primarily, but not limited to, lead-acid batteries, is recycled into elemental lead or lead alloys by smelting." The MACT rule for the Secondary Lead Smelting source category does not apply to primary lead smelters, lead remelters, or lead refiners.

Today, there are 14 secondary lead smelting facilities that are subject to the MACT rule. No new secondary lead smelters have been built in the last 20 years, and we anticipate no new secondary lead smelting facilities in the foreseeable future, although there is one facility currently in the process of expanding operations.

Lead is used to make various construction, medical, industrial and consumer products such as batteries, glass, x-ray protection gear and various fillers. The secondary lead smelting process consists of: (1) Pre-processing of lead bearing materials, (2) melting lead metal and reducing lead compounds to lead metal in the smelting furnace, and (3) refining and alloying the lead to customer specifications.

HAP are emitted from secondary lead smelting as process emissions, process fugitive emissions, and fugitive dust emissions. Process emissions are the exhaust gases from feed dryers and from blast, reverberatory, rotary, and electric furnaces. The HAP in process emissions are primarily composed of metals (mostly lead compounds, but also some arsenic, cadmium, and other metals) and also may include organic compounds that result from incomplete combustion of coke that is charged to the smelting furnaces as a fuel or fluxing agent or from fuel natural gas and/or small amounts of plastics or other materials that get fed into the furnaces along with the lead bearing materials. Process fugitive emissions occur at various points during the smelting process (such as during charging and tapping of furnaces) and are composed primarily of metal HAP. Fugitive dust emissions result from the entrainment of HAP in ambient air due to material handling, vehicle traffic, wind erosion from storage piles, and other various activities. Fugitive dust emissions are composed of metal HAP only.

The MACT rule applies to process emissions from blast, reverberatory, rotary, and electric smelting furnaces, agglomerating furnaces, and dryers; process fugitive emissions from smelting furnace charging points, smelting furnace lead and slag taps, refining kettles, agglomerating furnace product taps, and dryer transition pieces; and fugitive dust emissions sources such as roadways, battery breaking areas, furnace charging and tapping areas, refining and casting areas, and material storage areas. For process sources, the NESHAP specifies numerical emissions limits for lead compounds (as a surrogate for metal HAP) for the following types of smelting furnaces: (1) Collocated reverberatory and blast furnaces (reverberatory/blast), (2) blast furnaces, and (3) reverberatory furnaces not collocated with blast furnaces, rotary furnaces, and electric furnaces. Lead compound emissions from all smelting furnace configurations are limited to an outlet concentration of 2.0 milligrams per dry standard cubic meter (mg/dscm) (0.00087 grains per dry standard cubic foot (gr/dscf)), 40 CFR 63.543(a). Total hydrocarbon (THC) emissions (as a surrogate for organic HAP) from existing and new collocated reverberatory/blast furnace

configurations are limited to an outlet concentration of 20 parts per million volume (ppmv) (expressed as propane) corrected to 4 percent carbon dioxide (CO_2) to account for dilution. THC emissions are limited to 360 ppmv (as propane) at 4 percent CO_2 from existing blast furnaces and 70 ppmv (as propane) at 4 percent CO_2 from new blast furnaces (40 CFR 63.543(c)). The NESHAP does not specify emissions limits for THC emissions from reverberatory furnaces not collocated with blast furnaces, rotary furnaces, and electric furnaces.

The 1997 NESHAP requires that process fugitive emissions sources be equipped with an enclosure hood meeting minimum face velocity requirements or be located in a total enclosure subject to general ventilation that maintains the building at negative pressure (40 CFR 63.543(b)). Ventilation air from the enclosure hoods and total enclosures is required to be conveyed to a control device. Lead emissions from these control devices are limited to 2.0 mg/dscm (0.00087 gr/dscf) (40 CFR 63.544(c)). Lead emissions for all dryer emissions vents and agglomerating furnace vents are limited to 2.0 mg/dscm (0.00087 gr/dscf) (40 CFR 63.544(d)). The 1997 NESHAP also requires the use of bag leak detection systems (BLDS) for continuous monitoring of baghouses in cases where a high efficiency particulate air (HEPA) filter was not used in series with a baghouse (40 CFR 63.548(c)(9)).

For fugitive dust sources, as defined in 40 CFR 63.545, the 1997 NESHAP requires that the smelting process and all control devices be operated at all times according to a standard operating procedures (SOP) manual developed by the facility. The SOP manual is required to describe, in detail, the measures used to control fugitive dust emissions from plant roadways, battery breaking areas, furnace areas, refining and casting areas, and material storage and handling areas.

B. What data collection activities were conducted to support this action?

In June 2010, EPA issued an information collection request (ICR), pursuant to CAA section 114, to six companies that own and operate the 14 secondary lead smelting facilities. The ICR requested available information regarding process equipment, control devices, point and fugitive emissions, practices used to control fugitive emissions, and other aspects of facility operations. The six companies completed the surveys for their facilities and submitted the responses to us in the fall of 2010. In addition to the ICR survey, each facility was asked to submit reports for any emissions tests conducted in 2003 or later. We received lead emissions test data from all 14 facilities with some facilities submitting data for multiple years. Additionally, EPA requested that eight facilities conduct additional emissions tests in 2010 for certain HAP from specific processes that were considered representative of the industry. Pollutants tested included most HAP metals, dioxins and furans, and certain organic HAP. The results of these tests were submitted to EPA in the fall of 2010 and are available in the docket for this action.

III. Analyses Performed

In this section we describe the analyses performed to support the proposed decisions for the RTR for this source category.

A. Addressing Unregulated Emissions Sources

In the course of evaluating the Secondary Lead Smelting source category, we identified certain HAP for which we failed to establish emission standards in the original MACT. See *National Lime* v. *EPA*, 233 F. 3d 625, 634 (DC Cir. 2000) (EPA has "clear statutory obligation to set emissions standards for each listed HAP"). Specifically, we evaluated emissions standards for three HAP (or groups of HAP), described below, that are not specifically regulated in the existing 1997 MACT standard, or are only regulated for certain emissions points. As described below, for two of these groups of HAP (*i.e.*, organic HAP and dioxins and furans) we are proposing emissions limits pursuant to 112(d)(2) and 112(d)(3). For the other HAP (mercury compounds), we are proposing standards based on work practices pursuant to 112(h). The results and proposed decisions based on the analyses performed pursuant to CAA section 112(d)(2), 112(d)(3), and 112(h) are presented in Section IV.A of this preamble.

1. Organic HAP

EPA did not establish standards for organic HAP emitted from reverberatory furnaces not collocated with blast furnaces, rotary furnaces, and electric furnaces in the 1997 NESHAP. EPA is therefore proposing to set emissions limits for organic HAP emissions from these furnace configurations in today's action based on emissions data received in response to the ICR.

2. Mercury

The 1997 NESHAP specified emissions limits for metal HAP (*e.g.*, arsenic, cadmium, lead) in terms of a lead emissions limit (*i.e.*, lead is used as a surrogate for metal HAP). There is no explicit standard for mercury and we are therefore proposing a standard pursuant to section 112 (as described further in section IV.A of this preamble).

3. Dioxins and Furans

Lastly, with regard to dioxin and furan emissions, because the 1997 NESHAP did not include emissions limits, we are proposing emissions standards for dioxins and furans pursuant to CAA section 112(d)(3). We are also proposing work practices for dioxins and furans.

B. How did we estimate risks posed by the source category?

EPA conducted a risk assessment that provided estimates of the maximum individual cancer risk (MIR) posed by the HAP emissions from the 14 sources in the source category, the distribution of cancer risks within the exposed populations, total cancer incidence, estimates of the maximum target organ-specific hazard index (TOSHI) for chronic exposures to HAP with the potential to cause chronic non-cancer health effects, worst-case screening estimates of hazard quotients (HQ) for acute exposures to HAP with the potential to cause non-cancer health effects, and an evaluation of the potential for adverse environmental effects. In June of 2009, the EPA's Science Advisory Board (SAB) conducted a formal peer review of our risk assessment methodologies in its review of the document entitled, "Risk and Technology Review (RTR) Assessment Methodologies".[3] We received the final SAB report on this review in May of 2010.[4] Where appropriate, we have responded to the key messages from this review in developing the current risk assessment; we will be continuing our efforts to improve our assessments by incorporating updates based on the SAB recommendations as they are developed and become available. The risk assessment consisted of seven primary steps, as discussed below.

The docket for this rulemaking contains the following document, which provides more information on the risk

[3] U.S. EPA, 2009. Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing. EPA–452/R–09–006. *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.*

[4] U.S. EPA, 2010. SAB's Response to EPA's RTR Risk Assessment Methodologies. *http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf.*

assessment inputs and models: Draft Residual Risk Assessment for the Secondary Lead Smelting Source Category.

1. Establishing the Nature and Magnitude of Actual Emissions and Identifying the Emissions Release Characteristics

For each facility in the Secondary Lead Smelting source category, we compiled an emissions profile (including emissions estimates, stack parameters, and location data) based on the information provided by the industry in the ICR, the emissions test data, various calculations, and the NEI. The site-specific emissions profiles include annual estimates of process, process fugitive, and fugitive dust emissions for the 2008–2010 timeframe, as well as emissions release characteristics such as emissions release height, temperature, velocity, and location coordinates.

The primary risk assessment is based on estimates of the actual emissions (though we also analyzed allowable emissions and the potential risks due to allowable emissions). We received a substantial amount of emissions test data and other information that enabled us to derive estimates of stack emissions of certain HAP for all of the facilities. However, we did not have test data for all pollutants at all emissions points. Therefore, we estimated emissions of some pollutants from certain emissions points (for which we had no emissions data) using test data from similar source types with similar controls.

With regard to fugitive emissions, because they cannot be readily captured or directly measured, fugitive emissions are a more challenging emissions type to estimate. In 2010, as part of an information collection request (ICR), EPA asked the Secondary Lead industry to provide their best estimate of the emissions from fugitive sources (*e.g.,* building openings, raw material storage piles, roadways, parking areas) at their facilities and to provide a description of the basis for the estimates (*e.g.,* test data, emissions factors, mass balance calculations, engineering judgment). For our analysis of fugitive emissions for the source category, we first reviewed and evaluated the estimates of fugitive lead emissions that were submitted by each of the facilities in response to the 2010 ICR to determine the reliability and appropriateness of those estimates as an input to our risk analyses and other assessments. We concluded that there were significant gaps and incomplete documentation for a number of facilities, a large amount of variability in estimates between the facilities, and various significant uncertainties. For example, five facilities did not provide any estimates of fugitive emissions, while a few other facilities provided emissions estimates that were quite incomplete. Thus, we developed estimates of fugitive emissions for all facilities in the source category based on a methodology described in the emissions development technical document (*Draft Development of the RTR Emissions Dataset for the Secondary Lead Smelting Source Category*) for this rulemaking, which is available in the docket. In this methodology, we began with estimates provided by one facility in the ICR which were well-documented and covered all the various fugitive emissions sources expected at these facilities. Using the ICR responses, other available information on fugitive emissions (including scientific literature), and various assumptions and calculations, we scaled these estimates to derive site-specific fugitive emissions estimates at each of the other 13 facilities. The estimates calculated using this methodology were used as inputs to the risk assessment modeling.

The results of the risk assessment modeling (which are described further in section IV below) indicated that the fugitive dust emissions were the largest contributor to the risks due to lead emissions. The impacts of fugitive emissions were generally considerably greater than the impacts due to stack emissions. Because of these impacts, and because of the difficulties and uncertainties associated with estimating fugitive emissions, we decided to do further analyses and review of the fugitive emissions estimates as a quality assurance check on the initial fugitive emissions estimates. Therefore, we consulted further with industry representatives, gathered additional information from the EPA's Toxics Release Inventory, evaluated the ICR responses further, and performed various other analyses, which led to the development of an alternative set of fugitive emissions estimates based on a slightly different methodology. The total fugitive estimates of lead for the industry calculated based on the alternative approach are within 10 percent of our initial estimates. We did not rerun the model with the alternative estimates because we know that the overall results would be quite similar and would not change our overall conclusions and decisions (described later in this notice). Further details on all the emissions data, calculations, estimates, and uncertainties, are in the emissions technical document (*Draft Development of the RTR Emissions Dataset for the Secondary Lead Smelting Source Category*) which is available in the docket for this action. We are seeking comments on our emissions data and estimates, and the fugitive emissions estimation methodologies and any other potential appropriate methods or data that could be used to estimate fugitive emissions from these facilities.

2. Establishing the Relationship Between Actual Emissions and MACT–Allowable Emissions Levels

The emissions data in our data set are estimates of actual emissions on an annual basis for stacks and fugitives for the 2008–2010 timeframe. With most source categories, we generally find that "actual" emissions levels are lower than the emissions levels that a facility is allowed to emit under the MACT standards. The emissions levels allowed to be emitted by the MACT standards are referred to as the "MACT-allowable" emissions levels. This represents the highest emissions level that could be emitted by facilities without violating the MACT standards.

As we have discussed in prior residual risk and technology review rules, assessing the risks at the MACT-allowable level is inherently reasonable since these risks reflect the maximum level at which sources could emit while still complying with the MACT standards. However, we also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP (54 FR 38044, September 14, 1989). It is reasonable to consider actual emissions because sources typically seek to perform better than required by emissions standards to provide an operational cushion to accommodate the variability in manufacturing processes and control device performance. Facilities' actual emissions may also be significantly lower than MACT-allowable emissions for other reasons such as State requirements, better performance of control devices than required by the MACT standards, or reduced production.

For the Secondary Lead Smelting source category, we evaluated actual and allowable emissions for both stack emissions and fugitive dust emissions. As described earlier in this section, the actual emissions data for this source category were compiled based on the ICR responses, available test data, various calculations, and the NEI. We estimated actual emissions for all HAP that we identified in the dataset. The

analysis of allowable emissions was largely focused on lead compound emissions, which we considered the most important HAP emitted from this source category based on our screening level risk assessment and the HAP for which we had the most data. However, we also considered allowable emissions for other HAP.

With regard to fugitive emissions, because there are no numerical emissions limits, and because all facilities are required to implement identical fugitive emissions control work-practices, we assume that the allowable fugitive emissions from this source category are equal to the actual emissions.

To estimate emissions at the MACT-allowable level from stacks (*e.g.*, process, process fugitive, and building vents), we estimated the emissions that would occur if facilities were continuously emitting lead at the maximum allowed by the existing MACT standard (*i.e.*, 2.0 mg/dscm) from all vents. We then compared these estimated allowable emissions to the estimated emissions using the actual stack test data for each facility. We realize that these estimates of allowable emissions are theoretical high-end estimates as facilities must maintain average emissions levels at some level below the MACT limit to ensure compliance with the standard at all times because of the day-to-day variability in emissions. Nevertheless, these high-end estimates of allowable emissions were adequate for us to estimate the magnitude of allowable emissions and the differences between the estimates of actual emissions and the MACT allowable emissions.

Based on this analysis, we conclude that all facilities are emitting lead at levels lower than allowable; however, the range of differences between actual and allowable is significant. For two facilities, the estimated actual emissions were only moderately lower than allowable (about 2–3 times lower). The majority of other facilities have estimated actual emissions in the range of 10 to 100 times lower than allowable. Finally, one facility, which has highly advanced controls, has estimated actual emissions of about 1,500 times below the MACT allowable emissions level.

We then developed a ratio of MACT-allowable to actual emissions for each facility in the source category. After developing these ratios, we applied them on a facility-by-facility basis to the maximum modeled ambient lead concentrations to estimate the maximum ambient concentrations that would occur if all stacks were emitting at maximum allowable levels. The ratios were applied to stack emissions while leaving fugitive dust emissions at actual levels since, as described above, actual fugitive dust emissions were assumed to be equal to allowable fugitive dust emissions. The estimates of MACT-allowable emissions are described further in the technical document: *Draft Development of the RTR Emissions Dataset for the Secondary Lead Smelting Source Category*. The estimates of risks due to allowable emissions are summarized in Section IV.B of this preamble and described further in the draft risk report: *Draft Residual Risk Assessment for the Secondary Lead Smelting Source Category*.

3. Conducting Dispersion Modeling, Determining Inhalation Exposures, and Estimating Individual and Population Inhalation Risks

Both long-term and short-term inhalation exposure concentrations and health risks from the source category addressed in this proposal were estimated using the Human Exposure Model (Community and Sector HEM–3 version 1.1.0). The HEM–3 performs three of the primary risk assessment activities listed above: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 km of the modeled sources, and (3) estimating individual and population-level inhalation risks using the exposure estimates and quantitative dose-response information.

The dispersion model used by HEM–3 is AERMOD, which is one of EPA's preferred models for assessing pollutant concentrations from industrial facilities.[5] To perform the dispersion modeling and to develop the preliminary risk estimates, HEM–3 draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes 1 year of hourly surface and upper air observations for 130 meteorological stations, selected to provide coverage of the United States and Puerto Rico. A second library, of United States Census Bureau census block[6] internal point locations and populations, provides the basis of human exposure calculations based on the year 2000 U.S. Census. In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant unit risk factors and other health benchmarks is used to estimate health risks. These risk factors and health benchmarks are the latest values recommended by EPA for HAP and other toxic air pollutants. These values are available at *http://www.epa.gov/ttn/atw/toxsource/summary.html* and are discussed in more detail later in this section.

In developing the risk assessment for chronic exposures, we used the estimated annual average ambient air concentrations of each of the HAP emitted by each source for which we have emissions data in the source category. The air concentrations at each nearby census block centroid were used as a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. We calculated the MIR for the facilities as the cancer risk associated with a lifetime (70-year period) of exposure to the maximum concentration at the centroid of inhabited census blocks. Individual cancer risks were calculated by multiplying the estimated lifetime exposure to the ambient concentration of each of the HAP (in micrograms per cubic meter) by its unit risk estimate (URE), which is an upper bound estimate of an individual's probability of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic meter of air. In general, for residual risk assessments, we use URE values from EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without EPA IRIS values, we look to other reputable sources of cancer dose-response values, often using California Environmental Protection Agency (CalEPA) URE values, where available. In cases where new, scientifically credible dose response values have been developed in a manner consistent with EPA guidelines and have undergone a peer review process similar to that used by EPA, we may use such dose-response values in place of, or in addition to, other values, if appropriate. For this review, URE values and their sources (*e.g.*, IRIS, CalEPA) can be found in Table 2.6–1(a) in the risk assessment document entitled, *Draft Residual Risk Assessment for the Secondary Lead Smelting Source Category*, which is available in the docket for this proposed rulemaking.

Incremental individual lifetime cancer risks associated with emissions from the 14 facilities in the source category were estimated as the sum of the risks for each of the carcinogenic

[5] U.S. EPA. Revision to the Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions (70 FR 68218, November 9, 2005).

[6] A census block is the smallest geographic area for which census statistics are tabulated.

HAP (including those classified as carcinogenic to humans, likely to be carcinogenic to humans, and suggestive evidence of carcinogenic potential [7]) emitted by the modeled source. Cancer incidence and the distribution of individual cancer risks for the population within 50 km of the sources were also estimated for the source category as part of these assessments by summing individual risks. A distance of 50 km is consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044) and the limitations of Gaussian dispersion models, including AERMOD.

To assess the risk of non-cancer health effects from chronic exposures, we summed the HQ for each of the HAP that affects a common target organ system to obtain the HI for that target organ system (or target organ-specific HI, TOSHI). The HQ is the estimated exposure divided by the chronic reference value, which is either the EPA RfC, defined as "an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime," or, in cases where an RfC is not available, the Agency for Toxic Substances and Disease Registry (ATSDR) chronic Minimal Risk Level (MRL) or the CalEPA Chronic Reference Exposure Level (REL). Notably, the REL is defined as "the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration."

Worst-case screening estimates of acute exposures and risks were also evaluated for each of the HAP at the point of highest off-site exposure for each facility (*i.e.*, not just the census block centroids) assuming that a person was located at this spot at a time when both the peak (hourly) emissions rate and worst-case hourly dispersion conditions occurred. In general, acute HQ values were calculated using best available, short-term dose-response values. These acute dose-response values include REL, Acute Exposure Guideline Levels (AEGL), and Emergency Response Planning Guidelines (ERPG) for 1-hour exposure durations. Notably, for HAP emitted from this source category, REL values were the only such dose-response values available. As discussed below, we used conservative assumptions for emissions rates, meteorology, and exposure location for our acute analysis.

As described in the *CalEPA's Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants*, an acute REL value (*http://www.oehha.ca.gov/air/pdf/acuterel.pdf*) is defined as "the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration." REL values are based on the most sensitive, relevant, adverse health effect reported in the medical and toxicological literature. REL values are designed to protect the most sensitive individuals in the population by the inclusion of margins of safety. Since margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact.

To develop screening estimates of acute exposures, we first developed estimates of maximum hourly emissions rates by multiplying the average actual annual hourly emissions rates by a factor to cover routinely variable emissions. We chose the factor to use based on process knowledge and engineering judgment and with awareness of a Texas study of short-term emissions variability, which showed that most peak emissions events, in a heavily-industrialized 4-county area (Harris, Galveston, Chambers, and Brazoria Counties, Texas) were less than twice the annual average hourly emissions rate. The highest peak emissions event was 74 times the annual average hourly emissions rate, and the 99th percentile ratio of peak hourly emissions rate to the annual average hourly emissions rate was 9.[8] This analysis is provided in Appendix 4 of the *Draft Residual Risk Assessment for Secondary Lead Smelting* that is available in the docket for this action. Considering this analysis, unless specific process knowledge or data are available to provide an alternate value, to account for more than 99 percent of the peak hourly emissions, we generally apply the assumption to most source categories that the maximum one-hour emissions rate from any source other than those resulting in fugitive dust emissions are 10 times the average annual hourly emissions rate for that source. We use a factor other than 10 in some cases if we have information that indicates that a different factor is appropriate for a particular source category. Moreover, the factor of 10 is not applied to fugitive dust sources because these emissions are minimized during the meteorological conditions associated with the worst-case short-term impacts (*i.e.*, during low-wind, stable atmospheric conditions) in these acute exposure screening assessments.

In cases where all worst-case acute HQ values from the screening step were less than or equal to 1, acute impacts were deemed negligible and no further analysis was performed. In the cases where any worst-case acute HQ from the screening step was greater than 1, additional site-specific data were considered to develop a more refined estimate of the potential for acute impacts of concern. Ideally, we would prefer to have continuous measurements over time to see how the emissions vary by each hour over an entire year. Having a frequency distribution of hourly emissions rates over a year would allow us to perform a probabilistic analysis to estimate potential threshold exceedances and their frequency of occurrence. Such an evaluation could include a more complete statistical treatment of the key parameters and elements adopted in this screening analysis. However, we recognize that having this level of data is rare, hence our use of the multiplier (*i.e.*, factor of 10) approach in our screening analysis. In the case of this source category, we had no further information on peak-to-mean emissions which could be used to refine the estimates. The only refinement that was made to the acute screening assessments was to ensure that the estimated worst-case HQ was not calculated at a location within the facility boundaries.

4. Conducting Multipathway Exposure and Risk Modeling

EPA evaluated the potential for significant human health risks due to exposures via routes other than inhalation (*i.e.*, multipathway exposures) and the potential for adverse environmental impacts in a three-step process. In the first step, we determined whether any facilities emitted any HAP known to be persistent and bio-accumulative in the environment (PB–HAP). There are 14 PB–HAP compounds or compound classes identified for this screening in EPA's *Air*

[7] These classifications also coincide with the terms "known carcinogen, probable carcinogen, and possible carcinogen," respectively, which are the terms advocated in the EPA's previous Guidelines for Carcinogen Risk Assessment, published in 1986 (51 FR 33992, September 24, 1986). Summing the risks of these individual compounds to obtain the cumulative cancer risks is an approach that was recommended by the EPA's Science Advisory Board (SAB) in their 2002 peer review of EPA's NATA entitled, NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data—an SAB Advisory, available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf.*

[8] See *http://www.tceq.state.tx.us/compliance/field_ops/eer/index.html* or docket to access the source of these data.

Toxics Risk Assessment Library (available at *http://www.epa.gov/ttn/fera/risk_atra_vol1.html*).

Emissions of five PB–HAP were identified in the emissions dataset for the Secondary Lead Smelting source category, as follows: Lead compounds, cadmium compounds, POM, dioxin and furans, and mercury.[9] The dataset is described in the emissions technical document (*Draft Development of the RTR Emissions Dataset for the Secondary Lead Smelting Source Category*) which is available in the docket for this action. As described in that document, lead emissions estimates are based on multiple emission stack tests conducted over multiple years, cadmium and dioxin and furans are based on emissions tests conducted in 2010. Mercury emissions estimates are based on test results in 2010 which included a large number of non-detects and conservative assumptions about non-detects, and the estimates for POM are based on reported estimates from the NEI or estimates provided by the companies in the ICR responses in 2010.

Emissions of cadmium compounds, POM, dioxin and furans and mercury were evaluated for potential non-inhalation risks and adverse environmental impacts using our recently developed screening scenario that was developed for use with the Total Risk Integrated Methodology (TRIM.FaTE) model. This screening scenario uses environmental media outputs from the peer-reviewed TRIM.FaTE to estimate the maximum potential ingestion risks for any specified emissions scenario by using a generic farming/fishing exposure scenario that simulates a subsistence environment. The screening scenario retains many of the ingestion and scenario inputs developed for EPA's Human Health Risk Assessment Protocols (HHRAP) for hazardous waste combustion facilities. In the development of the screening scenario, a sensitivity analysis was conducted to ensure that its key design parameters were established such that environmental media concentrations were not underestimated, and to also minimize the occurrence of false positives for human health endpoints. See Appendix 3 of the risk assessment document for a complete discussion of the development and testing of the screening scenario, as well as for the values of facility-level *de minimis* emissions rates developed for screening potentially significant multipathway impacts. For the purpose of developing *de minimis* emissions rates for our multipathway screening, we derived emissions levels at which the maximum human health risk could be 1-in-1 million for lifetime cancer risk, or exposures could potentially be above the reference dose for non-cancer effects, based on a conservative model plant analysis described in Appendix 3 of the risk assessment document.

For the secondary lead smelting source category, there were exceedances of *de minimis* emissions rates at multiple facilities for multiple PB–HAP, and thus a multipathway analysis was performed. Two facilities were chosen as case study analyses to assess potential multipathway risks for mercury, cadmium, POM, and dioxins and furans. The selection criteria for modeling these two facilities included emissions rates of PB–HAPs, proximity to water bodies, proximity to farmland, average rainfall, average wind speed and direction, smelting furnace type, local change in elevation, and geographic representativeness of sites throughout the U.S. As a result of our selection process, we believe the multipathway risks associated with these two facilities are in the upper end of the potential for multipathway risks from the source category. Since the modeling used in these case study assessments utilize site specific parameters to describe naturally occurring physical, chemical and biological processes, we believe that the multimedia concentrations of PB–HAPs generated in this analysis are unbiased estimates of the true impacts.

In general, results of this assessment were designed to characterize multipathway risks associated with high end consumption of PB–HAP predominantly from contaminated food sources. Thus, multipathway exposure and risk estimates were calculated for two basic scenarios, both of which are expected to give rise to high-end exposures and risks. The farmer scenario involves an individual living on a farm homestead in the vicinity of a PB–HAP source who consumes contaminated produce grown on the farm, as well as contaminated meat and animal products raised on the farm. The farming scenario also accounts for incidental ingestion of contaminated surface soil at the location of the farm homestead. The recreational fisher scenario involves an individual who regularly consumes fish caught in freshwater lakes in the vicinity of a PB–HAP source. In the fishing scenario, in addition to the characterization of exposure and risks across the broad population of recreational anglers, exposures were also calculated for three subpopulations of recreational anglers (Hispanic, Laotian, and Vietnamese descent) who have higher rates of fish consumption.[10] Furthermore, in order to more fully characterize the modeled potential multipathway risks that may be associated with high-end consumption of PB–HAP contaminated food, we present results based on two ingestion exposure scenarios: (1) A reasonable maximum exposure (RME) scenario that, for example, utilizes 90th percentile ingestion rates for farmers, recreational anglers, and the three subpopulations of recreational anglers (*e.g.,* ingestion rates specific to Laotian recreational anglers); and (2) a central tendency exposure (CTE) scenario that, for example, utilizes mean ingestion rates for the groups just described. We provide results from both scenarios to illustrate the range of potential modeled exposures and risks that may exist in the high-end of the complete distribution of potential multipathway risks for this source category.

In evaluating the potential air-related multipathway risks from the emissions of lead compounds, rather than developing a *de minimis* emissions rate, we compared its maximum modeled 3-month average atmospheric lead concentration at any off-site location with the current primary National Ambient Air Quality Standard (NAAQS) for lead (promulgated in 2008), which is set at a level of 0.15 micrograms per cubic meter ($\mu g/m^3$) based on rolling 3-month periods with a not-to-be-exceeded level for any 3-month rolling average, and which will require attainment by 2016 (73 FR 66964). Notably, in making these comparisons, we estimated maximum rolling 3-month ambient lead concentrations taking into account all of the elements of the NAAQS for lead. That is, our estimated 3-month lead concentrations are

[9] Most of the emissions test results for mercury emissions for this industry were below detection limit. The emissions estimates used in the risk assessment are based on the assumption that all the non-detect test values were at the level of the detection limit. Therefore, these estimated emissions for mercury are clear overestimates. We conclude that the true amounts of emissions of mercury from this source category are much lower than shown in this assessment, but we are not able to quantify precisely how much lower.

[10] In both scenarios, exposure via drinking water was not considered because it is unlikely that humans would use surface waters as a drinking water source. Groundwater, which is a likely source of drinking water, also was not included in the exposure scenarios because contamination of groundwater aquifers by air deposition sources was not expected to be significant. For dioxin, exposure via breast milk was considered in the farming scenario as well as the recreational fishing scenario, but not for the three recreational fishing subpopulations (Hispanic, Laotian, and Vietnamese descent) since subpopulation ingestion rates were only applicable to adult males. The breast milk pathway was not considered with respect to mercury exposure due to a current lack of data regarding this pathway.

calculated in a manner that is consistent with the indicator, averaging time, and form of the lead NAAQS, and those estimates are compared to the level of the lead NAAQS (0.15 μg/m^3).

The NAAQS value, a public health policy judgment, incorporated the Agency's most recent health evaluation of air effects of lead exposure for the purposes of setting a national standard. In setting this value, the Administrator promulgated a standard that was requisite to protect public health with an adequate margin of safety. That standard applies everywhere, under all circumstances, regardless of an individual's location, exposure patterns, or health circumstances. We consider values below the level of the primary NAAQS to protect against multipathway risks because, as mentioned above, the primary NAAQS is set so as to protect public health with an adequate margin of safety. However, ambient air lead concentrations above the NAAQS are considered to pose the potential for increased risk to public health. We consider this assessment—comparing modeled concentrations to the level of the NAAQS—to be a refined analysis given: (1) The numerous health studies, detailed risk and exposure analyses, and level of external peer and public review that went into the development of the primary NAAQS for lead, combined with: (2) the site-specific dispersion modeling performed in the risk assessment to develop ambient concentration estimates from the 14 secondary lead smelter facilities addressed in this proposed rule. It should be noted, however, that this comparison to the NAAQS for lead does not account for possible population exposures to lead from sources other than the one being modeled; for example, via consumption of water from contaminated local sources or ingestion of contaminated locally grown food. Nevertheless, the Administrator judged that the primary NAAQS would protect, with an adequate margin of safety, the health of children and other at-risk populations against an array of adverse health effects, most notably including neurological effects, particularly neurobehavioral and neurocognitive effects, in children (73 FR 67007). The Administrator, in setting the standard, also recognized that no evidence of a risk-based bright line indicated a single appropriate level. Instead, a collection of scientific evidence and other information was used to select the standard from a range of reasonable values (73 FR 67006).

We further note that comparing ambient lead concentrations to the NAAQS for lead, considering the level, averaging time, form and indicator of the lead NAAQS, also informs whether there is the potential for adverse environmental effects. This is because the secondary lead NAAQS, which has the same averaging time, form, and level as the primary standard, was set to protect the public welfare which includes among other things soils, water, crops, vegetation and wildlife (CAA section 302(h)). Thus, ambient lead concentrations above the NAAQS for lead also indicate the potential for adverse environmental effects (73 FR 67007 to 67012). For additional information on the multipathway analysis approach, see the residual risk documentation as referenced in Section III.A of this preamble. EPA solicits comment generally on the modeling approach used herein to assess air-related lead risks, and specifically on the use of the lead NAAQS in this analytical construct.

5. Assessing Risks Considering Emissions Control Options

In addition to assessing baseline inhalation risks and screening for potential multipathway risks, we also estimated risks considering the potential emissions reductions that would be achieved by the main control options under consideration. The expected emissions reductions were applied to the specific HAP and emissions points in the source category dataset to develop corresponding estimates of risk reductions. More information regarding the risks after control can be found in the risk assessment document: *Draft Residual Risk Assessment for the Secondary Lead Smelting Source Category,* which is available in the docket for this action.

6. Conducting Other Risk-Related Analyses, Including Facility-Wide Assessments and Demographic Analyses

a. Facility-Wide Risk

To put the source category risks in context, for our residual risk review, we also examine the risks from the entire "facility," where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words, we examine the HAP emissions not only from the source category of interest, but also emissions of HAP from all other emissions sources at the facility. In this rulemaking, for the Secondary Lead Smelting source category, there are no other significant HAP emissions sources present. Thus, there was no need to perform a separate facility wide risk assessment.

b. Demographic Analysis

To identify specific groups that may be affected by this rulemaking, EPA conducted demographic analyses. These analyses provide information about the percentages of different social, demographic, and economic groups within the populations subjected to potential HAP-related cancer and non-cancer risks from the facilities in this source category.

For the demographic analyses, we focus on the populations within 50 km of any facility with emissions sources subject to the MACT standard (identical to the risk assessment). Based on the emissions for the source category or the facility, we then identified the populations that are estimated to have exposures to HAP which result in: (1) Cancer risks of 1-in-1 million or greater; (2) non-cancer HI of 1 or greater; and/or (3) ambient lead concentrations above the level of the NAAQS for lead. We compare the percentages of particular demographic groups within the focused populations to the total percentages of those demographic groups nationwide. The results, including other risk metrics, such as average risks for the exposed populations, are documented in a technical report in the docket for the source category covered in this proposal.[11]

The basis for the risk estimates used in the demographic analyses for this source category was the modeling results based on actual emissions levels obtained from the HEM–3 model described above. The risk estimates for each census block were linked to a database of information from the 2000 decennial census that includes data on race and ethnicity, age distributions, poverty status, household incomes, and education level. The Census Department Landview® database was the source of the data on race and ethnicity, and the data on age distributions, poverty status, household incomes, and education level were obtained from the 2000 Census of Population and Housing Summary File 3 (SF3) Long Form. While race and ethnicity census data are available at the census block level, the age and income census data are only available at the census block group level (which includes an average of 26 blocks or an average of 1,350 people). Where census data are available at the block group level but not the block level, we assumed that all census blocks within the block group have the same distribution of ages and incomes as the block group.

[11] Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Primary Lead Smelting Operations.

As noted above, we focused the analysis on those census blocks where source category risk results show: (1) Estimated lifetime inhalation cancer risks above 1-in-1 million; (2) chronic non-cancer indices above 1; and/or (3) census blocks where estimated ambient lead concentrations were above the level of the lead NAAQS. For each of these cases, we determined the relative percentage of different racial and ethnic groups, different age groups, adults with and without a high school diploma, people living in households below the national median income, and people living below the poverty line within those census blocks.

The specific census population categories included:

- Total population
- White
- African American (or Black)
- Native Americans
- Other races and multiracial
- Hispanic or Latino
- People living below the poverty line
- Children 18 years of age and under
- Adults 19 to 64 years of age
- Adults 65 years of age and over
- Adults without a high school diploma.

It should be noted that these categories overlap in some instances, resulting in some populations being counted in more than one category (*e.g.,* other races and multiracial and Hispanic). In addition, while not a specific census population category, we also examined risks to "Minorities," a classification that is defined for these purposes as all race population categories except white.

The methodology and the results of the demographic analyses for this source category are included in the technical report available in the docket for this action (*Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living near Secondary Lead Smelting Operations*).

7. Considering Uncertainties in Risk Assessment

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for the source category addressed in this proposal. Although uncertainty exists, we believe the approach that we took, which used conservative tools and assumptions to bridge data gaps, ensures that our decisions are health-protective. A brief discussion of the uncertainties in the emissions dataset, dispersion modeling, inhalation exposure estimates, dose-response relationships, multipathway and environmental impacts analyses, and demographics analysis follows below. A more thorough discussion of these uncertainties is included in the risk assessment documentation (*Draft Residual Risk Assessment for the Secondary Lead Smelting Category*) available in the docket for this action.

a. Uncertainties in the Emissions Dataset

Although the development of the RTR dataset involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are accurate, whether and to what extent errors were made in estimating emissions values, and other factors. The estimates of stack emissions are largely based on actual emissions test data, and, therefore, we have a relatively high degree of confidence in those estimates. With regard to fugitive emissions, those estimates are largely based on engineering calculations and application of various assumptions, and are therefore considered less certain relative to the stack emissions estimates. Nevertheless, we believe the fugitive estimates we derived for these facilities and used in our analyses are reasonable estimates of the actual fugitive emissions from these facilities partly due to the findings that the available ambient monitoring data (which are described in the document *Draft Summary of the Ambient Lead Monitoring Data near Secondary Lead Smelting Facilities,* available in the docket) indicate that measured levels of lead in ambient air near these facilities are generally similar in magnitude (*e.g.,* generally within a factor of 2) to the modeled estimates (which are shown in the *Draft Residual Risk Assessment for the Secondary Lead Smelting Source Category,* which is available in the docket).

The emissions estimates for stacks considered in this analysis are hourly emissions rates primarily extracted from test reports and extrapolated to an annual total based on the hours of operation of each facility and may not reflect short-term fluctuations during the course of a year or variations from year to year. The estimates of peak hourly emissions rates from stacks for the acute effects screening assessment were based on multiplication factors applied to the hourly emissions rates (the default factor of 10 was used for Secondary Lead Smelting for sources other than fugitive dust) which are intended to account for emissions fluctuations due to normal facility operations.

There is an unquantified level of uncertainty regarding the emissions estimates for acute impacts of fugitive dusts. The current set of assumptions used in deriving the worst-case acute impact estimate for fugitive dusts assumes the average hourly emission level (annual emissions divided by 8760 hours per year) to occur at the default worst-case meteorological conditions (low winds with a stable atmosphere). It is acknowledged that the combination of average emissions during low winds would be an overestimate of the fugitive dust emission rate during those low wind periods. Therefore, for fugitive dusts, the worst case meteorology may not be the same as for other process emissions, and the level of hourly fugitive dust emissions during this alternate worst-case condition is unknown.

We further note that there is additional uncertainty with respect to emissions of mercury. As previously noted, most of the mercury emissions test results for this industry were below detection limit. The emissions estimates utilized in the risk assessment are based on the health-protective assumption that all the non-detect test values were at the level of the detection limit. Therefore, these estimated emissions for mercury are clear overestimates. We conclude that the true amounts of emissions of mercury from this source category are much lower than those provided in the technical documents supporting today's proposed rule, but we are not able to quantify precisely how much lower.

b. Uncertainties in Dispersion Modeling

Although the analysis employed EPA's recommended regulatory dispersion model, AERMOD, we recognize that there is uncertainty in ambient concentration estimates associated with any model, including AERMOD. In circumstances where we had to choose between various model options, where possible, we selected model options (*e.g.,* rural/urban, plume depletion, chemistry) that provided an overestimate of ambient concentrations of the HAP rather than an underestimate. However, because of practicality and data limitation reasons, some factors (*e.g.,* building downwash) have the potential in some situations to overestimate or underestimate ambient impacts. Despite these uncertainties, we believe that at off-site locations and census block centroids, the approach considered in the dispersion modeling analysis should generally yield overestimates of ambient HAP concentrations.

Furthermore, as noted previously, there is a level of uncertainty in the

conditions leading to worst-case emissions for fugitive dusts. However, in the absence of better information regarding actual short-term impacts from fugitive dust sources, the combination of average hourly emission level and worst-case meteorology was assumed to be useful for deriving protective acute impact estimates.

c. Uncertainties in Inhalation Exposure

The effects of human mobility on exposures were not included in the assessment. Specifically, short-term mobility and long-term mobility between census blocks in the modeling domain were not considered.[12] As a result, this simplification will likely bias the assessment toward overestimating the highest exposures. In addition, the assessment predicted the chronic exposures at the centroid of each populated census block as surrogates for the exposure concentrations for all people living in that block. Using the census block centroid to predict chronic exposures tends to over-predict exposures for people in the census block who live farther from the facility and under-predict exposures for people in the census block who live closer to the facility. Thus, using the census block centroid to predict chronic exposures may lead to a potential understatement or overstatement of the true maximum impact for any one individual, but is an unbiased estimate of average risk and incidence.

The assessments evaluate the projected cancer inhalation risks associated with pollutant exposures over a 70-year period, which is the assumed lifetime of an individual. In reality, both the length of time that modeled emissions sources at facilities actually operate (*i.e.,* more or less than 70 years), and the domestic growth or decline of the modeled industry (*i.e.,* the increase or decrease in the number or size of United States facilities), will influence the future risks posed by a given source or source category. Depending on the characteristics of the industry, these factors will, in most cases, result in an overestimate both in individual risk levels and in the total estimated number of cancer cases. However, in rare cases, where a facility maintains or increases its emissions levels beyond 70 years, residents live beyond 70 years at the same location, and the residents spend most of their days at that location, then the risks could potentially be underestimated. Annual cancer incidence estimates from exposures to emissions from these sources would not be affected by uncertainty in the length of time emissions sources operate.

The exposure estimates used in these analyses assume chronic exposures to ambient levels of pollutants. Because most people spend the majority of their time indoors, actual exposures may not be as high, depending on the characteristics of the pollutants modeled. For many of the HAP, indoor levels are roughly equivalent to ambient levels, but for very reactive pollutants or larger particles, these levels are typically lower. This factor has the potential to result in an overstatement of 25 to 30 percent of exposures for some HAP.[13]

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that should be highlighted. The accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology, and human activity patterns. In this assessment, we assume that individuals remain for 1 hour at the point of maximum ambient concentration as determined by the co-occurrence of peak emissions and worst-case meteorological conditions. These assumptions would tend to be worst-case actual exposures since it is unlikely that a person would be located at the point of maximum exposure during the time of worst-case impact.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in our risk assessments for cancer effects from chronic exposures and non-cancer effects from both chronic and acute exposures. Some uncertainties may be considered quantitatively, and others generally are expressed in qualitative terms. We note as a preface to this discussion a point on dose-response uncertainty that is brought out in EPA's *2005 Cancer Guidelines;* namely, that "the primary goal of EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective" (*EPA 2005 Cancer Guidelines,* pages 1–7). This is the approach followed here as summarized in the next several paragraphs. A complete detailed discussion of uncertainties and variability in dose-response relationships is given in the residual risk documentation which is available in the docket for this action.

Cancer URE values used in our risk assessments are those that have been developed to generally provide an upper bound estimate of risk. That is, they represent a "plausible upper limit to the true value of a quantity" (although this is usually not a true statistical confidence limit).[14] In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.[15] When developing an upper bound estimate of risk and to provide risk values that do not underestimate risk, health-protective default approaches are generally used. To err on the side of ensuring adequate health protection, EPA typically uses the upper bound estimates rather than lower bound or central tendency estimates in our risk assessments, an approach that may have limitations for other uses (*e.g.,* priority-setting or expected benefits analysis).

Chronic non-cancer reference (RfC and RfD) values represent chronic exposure levels that are intended to be health-protective levels. Specifically, these values provide an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure (RfC) or a daily oral exposure (RfD) to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. To derive values that are intended to be "without appreciable risk," the methodology relies upon an uncertainty factor (UF) approach (U.S. EPA, 1993, 1994) which considers uncertainty, variability and gaps in the available data. The UF are applied to derive reference values that are intended to protect against appreciable risk of deleterious effects. The UF are commonly default values,[16] *e.g.,* factors

[12] Short-term mobility is movement from one microenvironment to another over the course of hours or days. Long-term mobility is movement from one residence to another over the course of a lifetime.

[13] U.S. EPA. *National-Scale Air Toxics Assessment* for 1996. (EPA 453/R–01–003; January 2001; page 85.)

[14] IRIS glossary (*http://www.epa.gov/NCEA/iris/help_gloss.htm*).

[15] An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible, and which is based on maximum likelihood estimates.

[16] According to the NRC report, *Science and Judgment in Risk Assessment* (NRC, 1994) "[Default] options are generic approaches, based on general scientific knowledge and policy judgment, that are applied to various elements of the risk assessment process when the correct scientific model is unknown or uncertain." The 1983 NRC report, *Risk Assessment in the Federal Government: Managing*

of 10 or 3, used in the absence of compound-specific data; where data are available, UF may also be developed using compound-specific information. When data are limited, more assumptions are needed and more UF are used. Thus, there may be a greater tendency to overestimate risk in the sense that further study might support development of reference values that are higher (*i.e.,* less potent) because fewer default assumptions are needed. However, for some pollutants, it is possible that risks may be underestimated.

While collectively termed "UF," these factors account for a number of different quantitative considerations when using observed animal (usually rodent) or human toxicity data in the development of the RfC. The UF are intended to account for: (1) Variation in susceptibility among the members of the human population (*i.e.,* inter-individual variability); (2) uncertainty in extrapolating from experimental animal data to humans (*i.e.,* interspecies differences); (3) uncertainty in extrapolating from data obtained in a study with less-than-lifetime exposure (*i.e.,* extrapolating from sub-chronic to chronic exposure); (4) uncertainty in extrapolating the observed data to obtain an estimate of the exposure associated with no adverse effects; and (5) uncertainty when the database is incomplete or there are problems with the applicability of available studies. Many of the UF used to account for variability and uncertainty in the development of acute reference values are quite similar to those developed for chronic durations, but they more often use individual UF values that may be less than 10. UF are applied based on chemical-specific or health effect-specific information (*e.g.,* simple irritation effects do not vary appreciably between human individuals, hence a value of 3 is typically used), or based on the purpose for the reference value (see the following paragraph). The UF applied in acute reference value derivation include: (1) Heterogeneity among humans; (2) uncertainty in extrapolating from animals to humans; (3) uncertainty in lowest observed adverse effect (exposure) level to no observed adverse effect (exposure) level adjustments; and (4) uncertainty in accounting for an incomplete database on toxic effects of potential concern. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.,* 4 hours) to derive an acute reference value at another exposure duration (*e.g.,* 1 hour).

As further discussed below, there is no RfD or other comparable chronic health benchmark value for lead compounds. Thus, to address multipathway human health and environmental risks associated with emissions of lead from this facility, ambient lead concentrations were compared to the NAAQS for lead. In developing the NAAQS for lead, EPA considered human health evidence reporting adverse health effects associated with lead exposure, as well as an EPA-conducted multipathway risk assessment that applied models to estimate human exposures to air-related lead and the associated risk (73 FR 66979). EPA also explicitly considered the uncertainties associated with both the human health evidence and the exposure and risk analyses when developing the NAAQS for lead. For example, EPA considered uncertainties in the relationship between ambient air lead and blood lead levels (73 FR 66974), as well as uncertainties between blood lead levels and loss of IQ points in children (73 FR 66981).

In considering the evidence and risk analyses and their associated uncertainties, EPA found that there is no evidence- or risk-based bright line that indicates a single appropriate level. EPA noted there is a collection of scientific evidence and judgments and other information, including information about the uncertainties inherent in many relevant factors, which needs to be considered together in making the public health policy judgment and in selecting a standard level from a range of reasonable values (73 FR 66998). In so doing, EPA decided that a level for the primary lead standard of 0.15 $\mu g/m^3$, in combination with the specified choice of indicator, averaging time, and form, is requisite to protect public health, including the health of sensitive groups, with an adequate margin of safety (73 FR 67006). A thorough discussion of the health evidence, risk and exposure analyses, and their associated uncertainties can be found in EPA's final rule revising the lead NAAQS (73 FR 66970–66981, November 12, 2008).

We also note the uncertainties associated with the health-based (*i.e.,* primary) NAAQS are likely less than the uncertainties associated with dose-response values developed for many of the other HAP, particularly those HAP for which no human health data exist.

We also note that because of the multipathway, multi-media impacts of lead, the risk assessment supporting the NAAQS considered direct inhalation exposures and indirect air-related multipathway exposures from industrial sources like primary and secondary lead smelting operations. It also considered background lead exposures from other sources (like contaminated drinking water and exposure to lead-based paints). In revising the NAAQS for lead, EPA placed more weight on the evidence-based framework and less weight on the results from the risk assessment, although the risk estimates were found to be roughly consistent with and generally supportive of the evidence-based framework applied in the NAAQS determination (73 FR 67004). Thus, when revising the NAAQS for lead to protect public health with an adequate margin of safety, EPA considered both the health evidence and the risk assessment, albeit to different extents.

In addition to the uncertainties discussed above with respect to chronic, cancer, and the lead NAAQS reference values, there are also uncertainties associated with acute reference values. Not all acute reference values are developed for the same purpose, and care must be taken when interpreting the results of an acute assessment of human health effects relative to the reference value or values being exceeded. Where relevant to the estimated exposures, the lack of short-term dose-response values at different levels of severity should be factored into the risk characterization as potential uncertainties.

Although every effort is made to identify peer-reviewed reference values for cancer and non-cancer effects for all pollutants emitted by the sources included in this assessment, some hazardous air pollutants continue to have no peer-reviewed reference values for cancer or chronic non-cancer or acute effects. Since exposures to these pollutants cannot be included in a quantitative risk estimate, an understatement of risk for these pollutants at environmental exposure levels is possible.

Additionally, chronic reference values for several of the compounds included in this assessment are currently under EPA IRIS review (*e.g.,* cadmium and nickel), and revised assessments may

the Process, defined default option as "the option chosen on the basis of risk assessment policy that appears to be the best choice in the absence of data to the contrary" (NRC, 1983a, p. 63). Therefore, default options are not rules that bind the Agency; rather, the Agency may depart from them in evaluating the risks posed by a specific substance when it believes this to be appropriate. In keeping with EPA's goal of protecting public health and the environment, default assumptions are used to ensure that risk to chemicals is not underestimated (although defaults are not intended to overtly overestimate risk). See EPA, 2004, *An Examination of EPA Risk Assessment Principles and Practices,* EPA/100/B–04/001 available at: *http://www.epa.gov/osa/pdfs/ratf-final.pdf.*

determine that these pollutants are more or less potent than the current value. We may re-evaluate residual risks for the final rulemaking if, as a result of these reviews, a dose-response metric changes enough to indicate that the risk assessment supporting this notice may significantly understate or overstate human health risk.

e. Uncertainties in the Multipathway and Environmental Impacts Assessment

For the secondary lead smelting source category, two facilities were chosen as case study analyses to assess potential multipathway risks for mercury, cadmium, POM, and dioxins and furans. The selection criteria for modeling these two facilities included emissions rates of PB–HAPs, proximity to water bodies, proximity to farmland, average rainfall, average wind speed and direction, smelting furnace type, local change in elevation, and geographic representativeness of sites throughout the U.S. However, there is uncertainty as to whether these two facilities represent the highest potential for multipathway human health risks from the source category.

Since the modeling used in these case study assessments utilize site specific parameters to describe naturally occurring physical, chemical and biological processes, we believe that the multimedia concentrations of PB–HAPs generated in this analysis are unbiased estimates of the true impacts.

With respect to the risk estimates generated from this analysis, we present results based on two ingestion exposure scenarios: the RME and CTE scenarios. As noted above, we believe that these scenarios illustrate the range of potential modeled exposures and risks that may exist in the high-end of the complete distribution of potential multipathway risks for this source category.

We further note that high-end fisher populations could display considerable variability both in terms of the degree to which they frequent specific water bodies or watersheds and the degree to which they target specific types of fish (or at least sizes of fish). Both of these factors can impact estimates of exposure. If a fisher population distributes their activity across a range of water bodies and harvests a variety of fish species (and sizes) than the distribution of exposure and risk across that population will be smaller compared with a population that focuses activity at individual water bodies and tends to focus on larger fish.

To estimate potential high-end multipathway exposures and risks, in addition to utilizing fish consumption rate data for the general U.S. population of recreational anglers,[17] we used fish consumption information for distinct fisher subpopulations that are known to have higher fish consumption rates. The data were obtained from Shilling, *et al.* (2010).[18] In this publication, the authors provide fish consumption information for different ethnic groups including Hispanics, Laotians, and Vietnamese surveyed in California's Central Valley Delta based on sample sizes of 45, 33, and 30, respectively. We note that there is uncertainty based on the limited sample sizes and in the extrapolation of these fish consumption rates to other parts of the United States. Further discussion of these values is provided in the risk assessment supporting documents. We request comment on the use of these data to support the RME analysis.

A more detailed discussion of the multipathway analysis and its associated uncertainties is presented in section 5.3 of the document Human Health Multipathway Residual Risk Assessment for the Secondary Lead Smelting Source Category, which can be found in the docket for the proposed rule.

f. Uncertainties in the Demographic Analysis

Our analysis of the distribution of risks across various demographic groups is subject to uncertainty associated with the extrapolation of census-block group data (*e.g.,* income level and education level) down to the census block level.

C. How did we consider the risk results in making decisions for this proposal?

In evaluating and developing standards under section 112(f)(2), as discussed in Section I.A of this preamble, we apply a two-step process to address residual risk. In the first step, EPA determines whether risks are acceptable. This determination "considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) [19] of approximately 1-in-10 thousand [*i.e.,* 100-in-1 million]" (54 FR 38045). In the second step of the process, EPA sets the standard at a level that provides an ample margin of safety "in consideration of all health information, including the number of persons at risk levels higher than approximately 1-in-1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision" (*Id.*)

In past residual risk actions, EPA has presented and considered a number of human health risk metrics associated with emissions from the category under review, including: The MIR; the numbers of persons in various risk ranges; cancer incidence; the maximum non-cancer hazard index (HI); and the maximum acute non-cancer hazard (72 FR 25138, May 3, 2007; 71 FR 42724, July 27, 2006). In our most recent proposals (75 FR 65068, October 21, 2010 and 75 FR 80220, December 21, 2010), EPA also presented and considered additional measures of health information, such as estimates of the risks associated with the maximum level of emissions which might be allowed by the current MACT standards (see, *e.g.,* 75 FR 65068, October 21, 2010 and 75 FR 80220, December 21, 2010). EPA also discussed and considered risk estimation uncertainties. EPA is providing this same type of information in support of the proposed actions described in this **Federal Register** notice.

The Agency is considering all available health information to inform our determinations of risk acceptability and ample margin of safety under CAA section 112(f). Specifically, as explained in the Benzene NESHAP, "the first step judgment on acceptability cannot be reduced to any single factor" and thus "[t]he Administrator believes that the acceptability of risk under [previous] section 112 is best judged on the basis of a broad set of health risk measures and information" (54 FR 38046). Similarly, with regard to making the ample margin of safety determination, as stated in the Benzene NESHAP "[in the ample margin decision, the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors." *Id.*

The Agency acknowledges that the Benzene NESHAP provides flexibility regarding what factors EPA might consider in making determinations and how these factors might be weighed for each source category. In responding to

[17] Data for the general U.S. population of recreational anglers was obtained from: EPA 2002, "Estimated Per Capita Fish Consumption in the United States, Office of Water, Office of Science and Technology, Washington, DC, EPA–821–C–02–003. August 2002.

[18] Shilling, *et al.* 2010 is available in the docket for this rulemaking.

[19] Although defined as "maximum individual risk," MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk were an individual exposed to the maximum level of a pollutant for a lifetime.

comment on our policy under the Benzene NESHAP, EPA explained that: "The policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of non-cancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the Vinyl Chloride mandate that the Administrator ascertain an acceptable level of risk to the public by employing [her] expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and, thereby, implicitly permits consideration of any and all measures of health risk which the Administrator, in [her] judgment, believes are appropriate to determining what will 'protect the public health' " (54 FR at 38057).

Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risks. The Benzene NESHAP explained that "an MIR of approximately 1-in-10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors" (*Id.* at 38045). Similarly, with regard to the ample margin of safety analysis, EPA stated in the Benzene NESHAP that: "* * * EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category" (*Id.* at 38061).

EPA wishes to point out that certain health information has not been considered to date in making residual risk determinations. In assessing risks to populations in the vicinity of the facilities in each category, we present estimates of risk associated with HAP emissions from the source category alone (source category risk estimates), and generally we have also assessed risks due to HAP emissions from the entire facility at which the covered source category is located (facility-wide risk estimates). We have not attempted to characterize the risks associated with all HAP emissions impacting the populations living near the sources in these categories. That is, at this time, we do not attempt to quantify those HAP risks that may be associated with emissions from other facilities that do not include the source categories in question, mobile source emissions, natural source emissions, persistent environmental pollution, or atmospheric transformation in the vicinity of the sources in these categories.

The Agency understands the potential importance of considering an individual's total exposure to HAP in addition to considering exposure to HAP emissions from the source category and facility. This is particularly important when assessing non-cancer risks, where pollutant-specific exposure health reference levels (*e.g.,* Reference Concentrations (RfCs)) are based on the assumption that thresholds exist for adverse health effects. For example, the Agency recognizes that, although exposures attributable to emissions from a source category or facility alone may not indicate the potential for increased risk of adverse non-cancer health effects in a population, the exposures resulting from emissions from the facility in combination with emissions from all of the other sources (*e.g.*, other facilities) to which an individual is exposed may be sufficient to result in increased risk of adverse non-cancer health effects. In May 2010, the EPA SAB advised us "* * * that RTR assessments will be most useful to decision makers and communities if results are presented in the broader context of aggregate and cumulative risks, including background concentrations and contributions from other sources in the area." [20]

Although we are interested in placing source category and facility-wide HAP risks in the context of total HAP risks from all sources combined in the vicinity of each source, we are concerned about the uncertainties of doing so. At this point, we believe that such estimates of total HAP risks will have significantly greater associated uncertainties than for the source category or facility-wide estimates, and hence would compound the uncertainty in any such comparison. This is because we have not conducted a detailed technical review of HAP emissions data for source categories and facilities that have not previously undergone an RTR review or are not currently undergoing such review. We are requesting comment on whether and how best to estimate and evaluate total HAP exposure in our assessments, and, in particular, on whether and how it might be appropriate to use information from EPA's National Air Toxics Assessment (NATA) to support such estimates. We are also seeking comment on how best to consider various types and scales of risk estimates when making our acceptability and ample margin of safety determinations under CAA section 112(f). Additionally, we are seeking comments and recommendations for any other comparative measures that may be useful in the assessment of the distribution of HAP risks across potentially affected demographic groups.

D. How did we perform the technology review?

Our technology review focused on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the 1997 NESHAP was promulgated. In cases where the technology review identified such developments, we conducted an analysis of the technical feasibility of applying these developments, along with the estimated impacts (costs, emissions reductions, risk reductions, *etc.*) of applying these developments. We then made decisions on whether it is necessary to propose amendments to the regulation to require any of the identified developments.

Based on our analyses of the data and information collected by the ICR and our general understanding of the industry and other available information on potential controls for this industry, we identified several potential developments in practices, processes, and control technologies. For the purpose of this exercise, we considered any of the following to be a "development":

- Any add-on control technology or other equipment that was not identified and considered during development of the 1997 NESHAP.
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the 1997

[20] EPA's responses to this and all other key recommendations of the SAB's advisory on RTR risk assessment methodologies (which is available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf*) are outlined in a memo to this rulemaking docket from David Guinnup entitled, EPA's Actions in Response to the Key Recommendations of the SAB Review of RTR Risk *Assessment Methodologies.*

NESHAP) that could result in significant additional emissions reduction.

- Any work practice or operational procedure that was not identified or considered during development of the 1997 NESHAP.
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the 1997 NESHAP.

In addition to reviewing the practices, processes, or control technologies that were not considered at the time we developed the 1997 NESHAP, we reviewed a variety of data sources in our evaluation of whether there were additional practices, processes, or controls to consider for the secondary lead smelting industry. Among the data sources we reviewed were the NESHAP for various industries that were promulgated after the 1997 NESHAP. We reviewed the regulatory requirements and/or technical analyses associated with these regulatory actions to identify any practices, processes, and control technologies considered in these efforts that could possibly be applied to emissions sources in the Secondary Lead Smelting source category, as well as the costs, non-air impacts, and energy implications associated with the use of these technologies.

We also consulted EPA's RACT/BACT/LAER Clearinghouse (RBLC) to identify potential technology advances. Control technologies, classified as RACT (Reasonably Available Control Technology), BACT (Best Available Control Technology), or LAER (Lowest Achievable Emissions Rate) apply to stationary sources depending on whether the sources are existing or new, and on the size, age, and location of the facility. BACT and LAER (and sometimes RACT) are determined on a case-by-case basis, usually by State or local permitting agencies. EPA established the RBLC to provide a central database of air pollution technology information (including technologies required in source-specific permits) to promote the sharing of information among permitting agencies and to aid in identifying future possible control technology options that might apply broadly to numerous sources within a category or apply only on a source-by-source basis. The RBLC contains over 5,000 air pollution control permit determinations that can help identify appropriate technologies to mitigate many air pollutant emissions streams. We searched this database to determine whether it contained any practices, processes, or control technologies for the types of processes covered by the Secondary Lead Smelting MACT.

Additionally, we requested information from facilities regarding developments in practices, processes, or control technology. Finally, we reviewed other information sources, such as State or local permitting agency databases and industry-supported databases.

E. What other issues are we addressing in this proposal?

In addition to the analyses described above, we also reviewed other aspects of the MACT standards for possible revision as appropriate and necessary. Based on this review we have identified aspects of the MACT standards that we believe need revision.

This includes proposing revisions to the startup, shutdown, and malfunction (SSM) provisions of the MACT rule in order to ensure that they are consistent with a recent court decision in *Sierra Club* v. *EPA*, 551 F.3d 1019 (DC Cir. 2008). In addition, we are proposing other various minor changes with regards to editorial errors and other revisions to promote the use of plain language. The analyses and proposed decisions for these actions are presented in Section IV.E of this preamble.

IV. Analyses Results and Proposed Decisions

This section of the preamble provides the results of our RTR for the Secondary Lead Smelting source category and our proposed decisions concerning changes to the 1997 NESHAP.

A. What are the results of our analyses and proposed decisions regarding unregulated emissions sources?

1. Organic HAP

As discussed in Section III.A of this preamble, we evaluated emissions limits for organic HAP for reverberatory furnaces not collocated with blast furnaces, rotary furnaces, and electric furnaces. Section 112(d)(3)(B) of the CAA requires that the MACT standards for existing sources be at least as stringent as the average emissions limitation achieved by the best performing five sources (for which the Administrator has or could reasonably obtain emissions information) in a category with fewer than 30 sources. The Secondary Lead Smelting source category consists of fewer than 30 sources. Where, as here, there are less than 30 sources, we base the MACT floor limit on the average emissions limitation achieved by those sources for which we have data.

EPA must exercise its judgment, based on an evaluation of the relevant factors and available data, to determine the level of emissions control that has been achieved by the best performing sources under variable conditions. It is recognized in the case law that EPA may consider variability in estimating the degree of emissions reduction achieved by best-performing sources and in setting MACT floors. See *Mossville Envt'l Action Now* v. *EPA*, 370 F.3d 1232, 1241–42 (DC Cir 2004) (holding EPA may consider emissions variability in estimating performance achieved by best-performing sources and may set the floor at a level that a best-performing source can expect to meet "every day and under all operating conditions"). More details on how we calculate MACT floors and how we account for variability are described in the *Draft MACT Floor Analysis for the Secondary Lead Smelting Source Category* which is available in the docket for this proposed action.

With regard to the evaluation of potential MACT limits for organic HAP from this source category, consistent with the explanation presented in the proposal of the 1997 NESHAP (NESHAP for Secondary Lead Smelting, Proposed Rule, June 9, 1994, 59 FR 63941) for this source category describing the appropriateness of THC as a surrogate for organic HAP, we continue to consider THC as an appropriate surrogate for non-dioxin organic HAP in the proposed amendments to the NESHAP in today's action. Based on our data, there are currently only two reverberatory furnaces not collocated with a blast furnace, one rotary furnace, and two reverberatory furnaces mixed with electric furnaces (*i.e.*, two reverberatory furnaces whose exhaust are mixed with the exhaust of an electric furnace prior to atmospheric release) operating in this source category. Based on analysis of emissions data and furnace operating characteristics (as discussed further below), we believe it is appropriate to set one THC limit that will apply to reverberatory furnaces not collocated with a blast furnace and reverberatory furnaces mixed with electric furnaces, because of generally similar (and low) potential for organic HAP emissions from both furnace types. We are proposing a separate THC emissions limit for rotary furnaces.

We received THC emissions data for one reverberatory furnace not collocated with a blast furnace and one reverberatory furnace mixed with an electric furnace, and one rotary furnace. Therefore, for each of these furnace configurations, we have emissions data from at least half the units. We are soliciting emissions data for the

operating affected sources for which we don't have data. Based on the data that we have, we conducted a MACT Floor analysis.

As discussed above, the MACT floor limit is calculated based on the average performance of the units plus an amount to account for these units' variability. To account for variability in the operation and emissions, the stack test data were used to calculate the 99 percent upper predictive limit (UPL) for reverberatory furnaces not collocated with a blast furnace and reverberatory furnaces mixed with electric furnaces. For rotary furnaces, because we have only one test with two successful test runs, we considered both the 99 percent UPL and the 99 percent upper limit (UL) to account for variability in the emissions data. Our consideration of variability is explained in more detail in the technical document for this action: *Draft MACT Floor Analysis for the Secondary Lead Smelting Source Category, which is available in the docket for this action.*

The 99 percent UPL for exhaust THC concentrations from existing reverberatory furnaces not collocated with a blast furnace and reverberatory furnaces mixed with electric furnaces is 12 ppmv (expressed as propane) corrected to 4 percent CO_2 to account for dilution. Consistent with CAA section 112(d)(3), the MACT floor for new sources cannot be less stringent than the emissions control that is achieved in practice by the best-controlled similar source. The 99 percent UPL for exhaust THC concentrations from the best-performing affected source was calculated as 12 ppmv (expressed as propane) corrected to 4 percent CO_2.

We are also proposing a THC MACT limit for rotary furnaces. As mentioned previously, there is only one operating rotary furnace in the U.S. We received test data for this unit; however, it included only two successful test runs. The average of the two emissions test runs was 257 ppmv (expressed as propane and adjusted to 4 percent CO_2), and the highest of the two test runs was 292 ppmv (expressed as propane and adjusted to 4 percent CO_2). Using the 99 percent UPL approach, we calculated a MACT floor of 1700 ppmv, which is 6.6 times higher than the average. By using the 99 percent UL approach, we calculated a MACT floor of 610 ppmv (expressed as propane and adjusted to 4 percent CO_2) applicable to new and existing affected sources, which is 2.4 times higher than the average. Because of very limited emissions data, our statistical analysis does not clearly indicate whether the UPL or UL is a better measure of the typical variability in performance of the unit. However, because the 99 percent UL approach resulted in a MACT floor that is more within the range of typical variability we expect when calculating MACT floors for various source categories and emissions points, the emissions limit calculated using the 99 percent UL was chosen as the proposed THC MACT floor for rotary furnaces in this action. However, we seek comments on this issue.

We considered beyond-the-floor options for THC standards for all of these furnace configurations, as required by section 112(d)(2) of the Act. However, we decided not to propose any limits based on the beyond the floor analyses for THC because of the costs, potential disadvantages of these additional controls (including increases in CO_2 and NO_X emissions), and non-air environmental impacts and adverse energy implications associated with use of these additional controls. The beyond-the-floor analysis is presented in the technical documentation for this action (*Draft MACT Floor Analysis for the Secondary Lead Smelting Source Category*). In summary, we are proposing that new and existing reverberatory furnaces not collocated with a blast furnace and reverberatory furnaces mixed with electric furnaces be subject to a THC concentration limit of 12 ppmv (expressed as propane) corrected to 4 percent CO_2. Additionally, we are proposing that both new and existing rotary furnaces be subject to a THC concentration limit of 610 ppmv (expressed as propane) corrected to 4 percent CO_2.

We propose that compliance with all the proposed THC limits will be demonstrated by annual performance tests, and that continuous monitoring of temperatures of control devices (*e.g.*, afterburners) and/or furnaces (*e.g.*, reverberatory furnaces) will be required as parametric monitoring to ensure continuous compliance with the THC limits.

No changes are being considered in this action for the THC limits for blast and collocated blast and reverberatory furnaces established in the 1997 NESHAP.

2. Dioxin and Furans

As mentioned previously, the 1997 NESHAP does not include emissions limits for dioxins and furans. Therefore, pursuant to CAA section 112(d)(3), we are proposing to revise the 1997 NESHAP to include emission limits for dioxins and furans. The form of these proposed standards are in the form of toxic equivalency quotient (TEQ) concentration limits (*i.e.*, prorating the amount of total dioxins and furans allowed to the most toxic species of dioxin). For more information on the TEQ approach to calculating dioxin and furan emissions see the dioxin emissions guidance available at: *http://www.epa.gov/raf/hhtefguidance/.*

Because the formation of dioxins and furans is highly temperature dependent, and because the potential for dioxin and furan emissions varies considerably among different furnace types and configurations, EPA is proposing separate limits for each of the following furnace configurations: (1) Reverberatory furnaces not collocated with blast furnaces and reverberatory furnaces where the exhaust gases are mixed with the exhaust from electric furnaces; (2) blast furnaces; (3) collocated blast and reverberatory furnaces; and (4) rotary furnaces. A detailed analysis and documentation of the MACT floor calculations can be found in the technical document for this action: *Draft MACT Floor Analysis for the Secondary Lead Smelting Source Category.*

Based on the emissions data and furnace operating temperatures reported in ICR surveys, EPA is proposing a single TEQ emissions limit that will apply to reverberatory furnaces not collocated with a blast furnace and to reverberatory furnaces where the exhaust gases are mixed with electric furnaces. There are seven sources of this type in the industry. We received emissions data for two such affected sources. We are soliciting data for the affected sources of this type for which we don't have emissions data. The MACT floor emissions limit for this affected source was calculated based on the average of the two emissions tests plus variability (based on the 99 percent UPL). The 99 percent UPL for exhaust TEQ concentrations from the affected sources is 0.20 nanograms per dry standard cubic meter (ng/dscm) of TEQ corrected to 7 percent oxygen (O_2) to account for dilution. The 99 percent UPL calculated for new affected sources is 0.10 ng/dscm corrected to 7 percent O_2.

With regard to blast furnaces, there are nine sources of this type in the industry. We received dioxin and furan emissions data for two affected sources. Using the data from these two sources, we calculated that the 99 percent UPL for exhaust TEQ concentrations from blast furnaces is 170 ng/dscm at 7 percent O_2. For new blast furnaces, the 99 percent UPL is 10 ng/dscm at 7 percent O_2. We acknowledge the large difference between the performance of the two affected sources for which we

have data but have not identified a technical basis for the difference. We are soliciting information that may explain these differences and other comments on this topic, including comments regarding the calculation of MACT floor limits for these sources. Additionally, we are soliciting data for the seven affected sources of this type for which we don't have emissions test data.

There are five collocated blast and reverberatory furnaces in the industry. We received emissions test data for one of the affected sources. The calculated 99 percent UPL is 0.5 ng/dscm at 7 percent O_2 and would apply to both new and existing collocated blast and reverberatory furnaces. We are soliciting data for the remaining four affected sources for which we don't have emissions data.

As previously noted, there is only one rotary furnace currently in operation and we received emissions data for this source. Similar to THC emissions, we have only two emissions test runs for this unit. For the same reasons explained above for THC, we developed a MACT floor limit of 1.0 ng/dscm of TEQ corrected to 7 percent O_2 based on the 99 percent UL, as opposed to the UPL. Thus, an emissions limit based on the MACT floor for existing and new rotary furnaces would be 1.0 ng/dscm of TEQ corrected to 7 percent O_2.

We then considered beyond-the-floor options to further reduce emissions of dioxins and furans, especially from blast furnaces since blast furnaces have higher emissions compared to the other furnace types. The options considered, included an option based on setting a MACT limit for existing sources based on the performance of the best performing source (*i.e.*, based upon the test data used to calculate the MACT floor for new sources) such that the MACT limit for existing sources would be the same as the MACT limit for new sources (*i.e.*, 10 ng/dscm). However, since we are uncertain about the performance of the other blast furnaces and whether it would be feasible for them to meet a limit of 10 ng/dscm and what the costs would be, we are not proposing MACT limits for existing blast furnaces based on this one set of data in today's action. We do have data for two other blast furnaces that are not controlled with reverberatory furnaces, but because of the configuration of the stacks (blast furnace off-gas is mixed with reverberatory furnace off-gas), we were unable to determine the amount of dioxin that originated from the blast furnace alone compared to the dioxin that was due to the reverberatory furnace. Therefore, these data were not used in the calculation of the blast furnace MACT limits. However, we note that the dioxin concentrations emitted from these sources was in the range of the better performing of the two blast furnaces that were used in the calculations of the MACT Floor. Nevertheless, we are seeking comments as to whether it would be appropriate to establish a MACT limit based upon the data from the one better performing blast furnace or if it would be appropriate to use the data from the mixed sources to determine a MACT limit for Blast furnaces. A MACT limit based upon the data from the one better performing blast furnace (using the 3 test results and applying the 99 percent UPL) would be 10 ng/dscm. We are seeking comments on whether this limit, or some other limit, would be appropriate for Blast Furnaces.

The key conditions typically associated with determining the extent of dioxin and furan formation are combustion efficiency, complex organic fuels, particulate concentration in the flue gas, time in a critical temperature window of approximately 250 to 450 degrees C, and the amount of chlorine present. Increased chlorine concentrations in the furnace feed can increase the dioxin formation. The blast furnaces tested have higher emissions of dioxins and furans than other furnace types. We believe this is because these furnaces are designed to operate at lower temperatures, and these operating temperatures can lead to dioxin formation. Controls for dioxins and furans once they have formed include a high temperature oxidation with quick quenching of the off-gases, or activated carbon injection followed by fabric filtration. Fabric filtration alone has also been demonstrated to provide significant control of dioxins and furans, and because improvements are expected in the performance of fabric filters as a result of standards being proposed for lead in today's action, it is anticipated that some additional reduction in dioxin emissions may occur as a co-benefit of the proposed lower limits for lead. Nevertheless, we are seeking data and information on dioxin emissions from blast furnaces, possible control options, factors that affect dioxin formation and other related information to inform the development of appropriate standards for dioxin and furan emissions from these sources.

As described below, we are also proposing a work practice standard to prevent plastics (which are complex organics and may contain chlorine) from entering furnaces as a beyond-the-floor option. We also considered an option that involves installation of additional afterburner capacity at the facilities operating blast furnaces. This option would include operating the currently installed afterburners at high temperatures and with sufficient residence time to destroy dioxins, or installation of new or additional afterburner capacity with this capability. Based on the current level of performance identified in the ICR surveys, we believe that this option would require four facilities to install afterburner capacity at their facility in order to operate the units at these conditions. The estimated total capital cost for the additional controls is $5.9 million, with a total annualized cost of $2.9 million. We estimate that TEQ emissions would be reduced by roughly 28 grams per year (and organic HAP emissions by 200 tons per year) resulting in a total estimated cost effectiveness of $103,600 per gram of dioxin TEQ and $14,500 per ton organic HAP (see: *Draft MACT Floor Analysis for the Secondary Lead Smelting Source Category* for more details).

In light of the costs of these additional controls and since these controls would have some disadvantages, including causing increases in CO_2 and NO_X (oxides of nitrogen) emissions and increased fuel use, and given the uncertainties regarding how effective these controls would be, we are not proposing more stringent numerical emissions limits based on this beyond-the-floor analysis. Nevertheless, we are seeking data and information on dioxin and furan emissions from blast furnaces and the costs and feasibility of additional controls and emissions reductions, including the beyond-the-floor options described above.

Based on all the analyses described above, under CAA section 112(d)(3), we are proposing to revise the 1997 NESHAP for this source category to include the following emissions limits for dioxins and furans:

- For reverberatory furnaces not collocated with blast furnaces and reverberatory furnaces where the exhaust gases are mixed with electric furnaces, we are proposing emissions limits of 0.20 ng/dscm at 7 percent O_2 and 0.1 ng/dscm at 7 percent O_2 for existing and new affected sources, respectively.
- For blast furnaces, we are proposing emissions limits of 170 ng/dscm at 7 percent O_2 and 10 ng/dscm at 7 percent O_2 for existing and new sources, respectively.
- For collocated blast and reverberatory furnaces, we are proposing an emissions limit of 0.5 ng/dscm at 7 percent O_2 for both new and existing sources.
- For rotary furnaces, we are proposing an emissions limit of 1.0 ng/dscm at 7 percent O_2 for both new and existing sources.

Compliance with the TEQ limits will be demonstrated through an initial

compliance test followed by a compliance test at least once every 5 years. The TEQ emissions will be calculated using the toxic equivalency factors (TEF) outlined by the World Health Organization (WHO) in 2005 (available at Web site: *http://www.epa.gov/raf/hhtefguidance/*). Additionally, we are proposing that facilities must establish limits for the furnace exhaust temperature or afterburner operating temperature during the initial performance test. These temperatures must be maintained and monitored continuously between compliance tests to ensure that the controls are working properly to limit dioxin and furan emissions.

In addition to the emissions limits described above, we are proposing that each facility must operate a process to separate plastic battery casing material prior to introducing feed into a blast furnace. Separation of plastic materials prior to the furnace will limit the organic component in the feed material, minimizing the formation of organic HAP, including dioxins and furans. It is our understanding that all facilities currently have a plastics separation process (that they implement on a voluntary basis) so this proposed requirement results in very minimal additional costs to the industry, if any. We are proposing this as a requirement (*i.e.*, propose to convert this from a voluntary activity to a regulatory requirement) to ensure that facilities continue to implement the separation process to help minimize formation of dioxins and furans. Moreover, we considered proposing a minimum percent of plastics separation requirement (such as ensuring that a minimum of 95 percent of total plastics are separated from the scrap materials before being fed to furnaces). However, we did not have sufficient data to determine an appropriate specific percent. Nevertheless, we are seeking data and comments regarding the percent separation that can be achieved by the available processes and the potential to establish such a minimum percent separation requirement. Moreover, we are seeking information and comments on the various types of plastics separation processes and equipment used, and the relative feasibility and effectiveness of those processes and equipment. We are also seeking comments and information on potential methods to improve overall plastics separation, or methods to improve separation of certain types of plastics that may have higher potential for dioxin formation (*e.g.*, chlorinated plastics). Finally, we are seeking information on appropriate recordkeeping and reporting requirements for these proposed work practices.

3. Mercury Emissions

Based on the emissions test data received under the ICR, we considered proposing an emissions limit for mercury under CAA section 112(d)(3). However, after careful review of the data from the ICR, we have decided not to propose a numerical limit for mercury. We found that the measured stack concentrations of mercury were consistently below the detection levels of the EPA test methods (52 out of 76 total test runs for mercury contained data below the detection limit, or 68 percent of the entire data set). Consequently, EPA considers it impracticable to reliably measure mercury emissions from these units.

We instead considered work practice standards under 112(h) for mercury emissions from this category. The difficulties with accurate measurements at the levels encountered from secondary lead smelters makes a measured standard technologically impracticable, and possibly economically impracticable as well (there appears to be no reliable way to measure compliance at such low levels even with the most carefully conducted tests). Given the factors described above, we conclude it is appropriate to consider work practice standards under 112(h) for mercury rather than numerical emissions limits under Section 112(d)(3).

Therefore, we considered establishing work practice standards under CAA section 112(h) to minimize the potential for mercury emissions. Based on information submitted under the ICR, all facilities have baghouses to control lead and other particulate matter (PM) emissions. These control devices are very effective at controlling non-volatile HAP metals (*e.g.*, a well performing baghouse captures more than 99 percent of lead emissions). These devices do not capture mercury as efficiently as the non-volatile metals. However, available data from other industries (such as coal-fired power plants) indicate that baghouses do provide some level of mercury control. For example, emissions data from coal-fired power plants suggest that baghouses can capture approximately 50 to 90 percent of mercury emissions depending on the speciation of the mercury compounds and other factors. (Reference: "Control of Mercury Emissions from Coal Fired Electric Utility Boilers: An Update." National Risk Management Research Laboratory, Office of Research and Development, U.S. EPA. February 18, 2005, available at: *http://www.epa.gov/ttn/atw/utility/utiltoxpg.html*).

Therefore, we are proposing that facilities must have continuous operation of a BLDS with a detection level of 1.0 mg/dscm for PM to ensure their baghouses are working properly as a work practice to limit mercury emissions. This is the same requirement proposed for lead emissions monitoring in this rulemaking under CAA sections 112(f)(2) and 112(d)(6), and will therefore pose no additional burden to the industry. Further, the proposed stack standards for lead will also adequately control mercury such that no further standard is necessary. The standard would be implemented continuously for all metals by the BLDS measurement.

Nevertheless, we also investigated the feasibility of additional work practices to determine if there were other cost-effective pollution prevention measures that could be applied to this industry to further minimize mercury emissions such as source separation approaches. Based on available information, analyses, and discussion with industry, we understand that the vast majority of input materials have very low mercury content (*e.g.*, lead acid batteries). However, we also understand that other types of scrap such as industrial batteries, various construction materials, and other scrap materials are occasionally processed in these furnaces materials. To ensure that mercury-bearing materials are not included in such scrap, we considered proposing that facilities inspect their input scrap materials daily to ensure that mercury-bearing materials are not fed to the furnaces. However, we are not aware of any identifiable or recoverable sources of mercury in the scrap fed to secondary lead smelters and we are also concerned that such work practices could be infeasible. Therefore, we are not proposing such a standard in today's action. However, we are soliciting comments on the appropriateness and feasibility of implementing such a work practice standard for mercury. We are also interested in information regarding any other pollution prevention practices for mercury that may be feasible or appropriate for this source category.

B. What are the results of the risk assessments and analyses?

As described above, for the Secondary Lead Smelting source category, we conducted an inhalation risk assessment for all HAP emitted. We also conducted multipathway analyses for cadmium, dioxins and furans, mercury, and POM, as well as air-related multipathway

analyses for lead. With respect to lead, we used the recently promulgated lead NAAQS to evaluate the potential for air-related multipathway and environmental effects. Furthermore, we conducted a demographic analysis of population risks. Details of the risk assessments and additional analyses can be found in the residual risk documentation referenced in Section III.B of this preamble, which is available in the docket for this action. The Agency considered the available health information—the MIR; the numbers of persons in various risk ranges; cancer incidence; the maximum non-cancer hazard index (HI); the maximum acute non-cancer hazard; the extent of non-cancer risks; the potential for adverse environmental effects; and distribution of risks in the exposed population (54 FR 38044, September 14, 1989)—in developing the proposed CAA section 112(f)(2) standards for the Secondary Lead source category.

1. Inhalation Risk Assessment Results

Table 3 of this preamble provides an overall summary of the results of the inhalation risk assessment.

TABLE 3—SECONDARY LEAD SMELTING INHALATION RISK ASSESSMENT RESULTS

Maximum individual cancer risk (in 1 million) [1]		Estimated population at increased risk of cancer ≥1-in-1 million	Estimated annual cancer incidence (cases per year)	Maximum chronic non-cancer TOSHI [2]		Maximum screening acute non-cancer HQ [3]
Based on actual emissions level	Based on allowable emissions level			Based on actual emissions level	Based on allowable emissions level	
50	200	128,000	0.02	0.6	3	30

[1] Estimated maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[2] Maximum TOSHI. The target organ with the highest TOSHI for the Secondary Lead Smelting source category is the kidney.
[3] The maximum HQ acute value of 30, driven by emissions of arsenic, is based on the only available acute dose-response value available for arsenic, which is the REL. See Section III.B of this preamble for explanation of acute dose-response values.

The results of the chronic inhalation cancer risk assessment indicate that, based on estimates of current actual emissions, the maximum individual lifetime cancer risk (MIR) could be up to 50-in-1 million, with fugitive dust emissions of arsenic, and to a lesser extent fugitive dust emissions of cadmium (see below), driving these risks. The total estimated cancer incidence from this source category based on actual emission levels is 0.02 excess cancer cases per year or one case in every 50 years, with emissions of arsenic and cadmium contributing 73 percent and 15 percent respectively, to this cancer incidence. In addition, we note that approximately 1,500 people are estimated to have cancer risks greater than 10-in-1 million, and approximately 128,000 people are estimated to have risks greater than 1-in-1 million. When considering the risks associated with MACT-allowable emissions, the MIR could be up to 200-in-1 million.

The maximum modeled chronic non-cancer TOSHI value is 0.6 based on actual emissions, driven primarily by fugitive dust emissions of arsenic. When considering MACT allowable emissions, the maximum chronic non-cancer TOSHI value could be up to 3.

Based on using the acute REL to assess possible acute non-cancer effects due to emissions of arsenic, our screening analysis estimates that the maximum acute HQ value for a facility in this source category could be up to 30. Moreover, this analysis estimates that acute HQ values could exceed a value of 1 at nine facilities.[21] These exceedances are mainly due to fugitive emissions at most of these nine facilities. However, stack emissions, while generally not the principle driver of maximum acute HQ values greater than 1, contribute about 90 percent of the risk at the facility which has the maximum acute HQ screening value of 30. We note that the California REL is the only acute value available, and we request comments on the use of this value as well as comments on the existence of other peer reviewed values that may be used to inform acute risks.

In summary, the analysis indicates that arsenic and cadmium emissions pose risks to public health due to inhalation exposures resulting from both fugitive and stack emissions (see above). Lead and dioxin and furan emissions also pose risks to public health, but these HAP are assessed separately as part of multipathway assessments described below. Based on our risk assessment, no other HAP were identified as contributing significant risks.

With respect to the potential for adverse environmental effects from non PB–HAP, we note that that there is a lack of information about specific adverse environmental effects occurring at a given concentration of HAP for this source category. However, given that all chronic non-cancer HQ values considering actual emissions are less than 1 using human health reference values, we believe that it is unlikely that adverse environmental effects would occur at the actual HAP concentrations estimated in our human health risk assessment.

2. Multipathway Risk Assessments and Results

As noted above, in evaluating the potential for multipathway effects from emissions of lead, we compared modeled maximum 3-month rolling average lead concentrations (based on estimates of actual emissions) with the lead NAAQS. Results of this analysis indicate that, if current emission levels continue, the lead NAAQS could be exceeded at 12 of the 14 facilities and that nine facilities could have ambient levels that are at least 2–3 times above the NAAQS, largely due to actual fugitive dust emissions. Moreover, available ambient monitoring data for lead confirms that ambient air concentrations of lead are well above the lead NAAQS near seven of these facilities. As described in the technical document *Draft Summary of Ambient Lead Monitoring Data near Secondary Lead Smelting Facilities,* which is available the docket, the measured ambient levels (for 3-month maximum rolling concentrations) for year 2010 range from 1.00 to 0.26 $\mu g/m^3$ for the seven facilities, and for year 2008, the measured values were up to 2.49 $\mu g/m^3$.

When considering actual stack emissions only (*i.e.*, in the theoretical absence of fugitive dust emissions), we estimate that one facility would be about 3 times above the NAAQS. Moreover, we estimate that the risks

[21] Individual facility acute HQ values for all facilities can be found in Appendix 5, Table 3, of the risk assessment document that is included in the docket for this proposed rulemaking. Acute HQ values exceeding a value of 1 were as follows: 2, 2, 2, 3, 4, 5, 6, 20 and 30.

associated with MACT-allowable stack emissions would be significantly higher. For example, we estimate that based on MACT-allowable emissions from stacks alone (not including fugitive dust emissions), the ambient lead concentrations could be about 10 times above the NAAQS at two facilities.

Considering the results presented above, fugitive dust emissions, and to a lesser extent emissions from stacks, resulted in modeled lead concentrations above the NAAQS. We also note when considering all emissions (*i.e.,* stack and fugitive dust emissions), our analysis indicates that maximum off-site 3-month rolling average lead concentrations could be up to 20 times the lead NAAQS near one facility's fenceline.[22]

To evaluate the potential for adverse environmental effects from lead, we compared modeled maximum 3-month rolling average lead ambient air concentrations with the current secondary lead NAAQS, which is identical to the primary, public health-based standard (see Section III.B.3 of this preamble). Thus, our analyses discussed above also indicate the potential for adverse environmental effects from emissions of lead.

As noted above (section III.B.4), based on a multipathway screening analysis for emissions of non-lead PB–HAP from this source category, emissions of cadmium, dioxins and furans, and POM were all above the *de minimis* emissions rates that suggest the potential for non-negligible (*i.e.,* greater than 1-in-1 million cancer risk or greater than a noncancer hazard quotient of 1) risk of adverse health effects from multipathway exposures.[23] With regard to mercury, emissions are quite low for this category. In fact, most emissions tests for mercury for this source category were below MDL. Nevertheless, using conservative worst-case assumptions (*e.g.,* assuming all non-detects for mercury were equal to the detection limit, as described in Sections IV.A and IV.B of this preamble), we estimated that mercury emissions could be above the *de minimis* emissions rates described above (see Section III.B of this preamble).

As a result of this conservative screening analysis, we performed two detailed case study multipathway analyses for these four PB–HAP in areas near the Frisco Recycling (Frisco, TX) and Revere Smelting & Refining (Middletown, NY) facilities.[24] Moreover, as previously mentioned above (section III.B.4), in order to more fully characterize the potential multipathway risks associated with high end consumption of PB–HAP contaminated food, we present results based on RME and CTE scenarios. The RME scenario utilizes 90th percentile ingestion rates for farmers, recreational anglers, and for three subpopulations of recreational anglers) who have higher rates of fish consumption (Hispanic, Laotian, and Vietnamese descent), while the CTE scenario utilizes mean ingestion rates for each of these groups. We provide results from both scenarios to illustrate the range of potential modeled exposures and risks that may exist in the high-end of the complete distribution of potential multipathway risks for this source category.

Considering the RME scenario, results of this analysis estimate the MIR for dioxin to be 30 in a million (based on Laotian anglers near the Frisco, TX facility). Using the CTE scenario, the maximum individual cancer risk from dioxins is estimated to be 6 in a million (also for Laotian anglers near the Frisco, TX facility). We note that, for the entire distribution of recreational anglers, the individual risk estimates for the CTE and RME scenarios ranged from 3 to 7 in a million. Considering both exposure scenarios, the MIR for POM was less than 1 in a million. With respect to chronic noncancer risk, in both case studies, using both exposure scenarios, we did not estimate chronic HQ values greater than 1 for dioxin, mercury (even using the conservative emission assumptions just mentioned above) or cadmium. Detailed methods and results of the multipathway analysis are presented in the document Human Health Multipathway Residual Risk Assessment for the Secondary Lead Smelting Source Category, which can be found in the docket for the proposed rule.

With respect to the potential for adverse environmental effects from the non-lead PB–HAP included in the case study multipathway assessments described above (*i.e.,* multipathway assessment for cadmium, dioxins and furans, POM, and mercury), similar to non PB–HAP, there is a lack of information about specific adverse environmental effects occurring at a given concentration for these pollutants. However, given that the multipathway assessments for these pollutants estimated that all chronic non-cancer HQ values are less than 1 using human health reference values, we believe that it is unlikely that adverse environmental effects would occur at the PB–HAP concentrations estimated in the multipathway assessment.

3. Facility-Wide Risk Assessment Results

For this source category, there are no other significant HAP emissions sources present. All significant HAP sources have been included in the source category risk analysis. Therefore, we conclude that the facility-wide risk is essentially the same as the source category risk and that no separate facility-wide analysis is necessary.

4. Demographic Risk Analysis Results

To identify specific groups that may be affected by this rulemaking, EPA conducted demographic analyses. These analyses provide information about the demographic makeup of populations with: (1) Estimated cancer risks at or above 1-in-1 million; and (2) estimated ambient air lead concentrations above the NAAQS for lead. Results are summarized in Table 4 of this preamble and are based on modeling using estimated actual emissions levels for the populations living within 50 km of any secondary lead smelting facility.

[22] Secondary lead smelting modeled ambient lead concentrations for all facilities can be found in Table 3.2–3 of the risk assessment document that is included in the docket for this proposed rulemaking. Facilities with modeled ambient lead concentrations exceeding the NAAQS did so by 23, 19, 10, 6, 5, 4, 4, 3, 3, 1.5, 1.4 and 1.3 fold.

[23] For facilities in this source category: Cadmium, BaP, dioxins and furans, and mercury estimated emission rates were up to about 8, 24, 23,000, and 4 times above their respective *de minimis* emissions rates.

[24] 24 As previously noted above, the reasons that EPA selected these two facilities for analysis are described in detail in section 2.5.1 of the document Human Health Multipathway Residual Risk Assessment for the Secondary Lead Smelting Source Category, which can be found in the docket for the proposed rule. The selection criteria for modeling these two facilities included emissions rates of PB–HAPs, proximity to water bodies, proximity to farmland, average rainfall, average wind speed and direction, smelting furnace type, local change in elevation, and geographic representativeness of sites throughout the U.S.

TABLE 4—SECONDARY LEAD SMELTING DEMOGRAPHIC RISK ANALYSIS RESULTS

Population	Nationwide	Population with cancer risk greater than 1-in-1 million	Population with ambient air lead concentrations exceeding the NAAQS
Total population	285,000,000	128,000	500
Race by percent			
White	75	58	94
All Other Races	25	42	6
Race by percent			
White	75	58	94
African American	12	7	2
Native American	0.9	0.8	0.6
Other and Multiracial	12	34	3
Ethnicity by percent			
Hispanic	14	56	5
Non-Hispanic	86	44	95
Income by percent			
Below poverty level	13	22	10
Above poverty level	87	78	90
Children			
Children, Ages 0–18	27	32	26

Results of the cancer risk assessment indicate that there are approximately 128,000 people exposed to a cancer risk greater than 1-in-1 million. For informational purposes, it can further be determined that about 42 percent of this population can be classified as a minority (listed as "all Other Races" in the table), which is above the national percentage of 25 percent. More specifically, this analysis estimates a greater percentage of this population is "Hispanic" (56 percent) and "Other and Multiracial" (34 percent) when compared to the corresponding national percentages (14 percent and 12 percent, respectively). We also note that in the cancer demographics analysis there is a larger percentage of individuals "Below Poverty Level" (22 percent) when compared to the national percentage (13 percent). In contrast, this analysis estimates the percentage of those classified as "African American" (7 percent) and "Native American" (0.8 percent) to be below corresponding national percentages (12 and 0.9 percent, respectively).

With respect to lead, the risk analysis estimates that 500 people are living in areas around this source category with modeled ambient air lead concentrations above the NAAQS for lead. The lead demographics analysis estimates that about 6 percent of this population can be classified as a minority (listed as "all Other Races" in the table). Moreover, all minority or below the poverty level populations considered in the demographics analysis for lead are below the corresponding national percentages for these groups.

Moreover, given the extent to which lead may impact children's health, we further note that our demographic analysis doesn't indicate the presence of a higher percentage of children than one would normally expect around facilities in this source category. The national percentage of people who are children 18 years and younger is 27 percent; the percentage of people who are children 18 years or younger living near secondary lead smelting facilities who are estimated to be exposed to lead concentrations above the lead NAAQS is 26 percent (see *Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Secondary Lead Smelting Facilities* in the docket for this proposed rulemaking).

C. What are our proposed decisions based on risk acceptability and ample margin of safety?

1. Risk Acceptability

As noted in Section III.C of this preamble, we weigh all health risk factors in our risk acceptability determination, including cancer risks to the individual most exposed, risk estimation uncertainty, and other health information, including population risks and risks for non-cancer health effects. The following sections discuss our decisions on risk acceptability based on three analyses: (1) Comparison of modeled ambient lead concentrations with the lead NAAQS, (2) the inhalation risk assessment, and (3) the multipathway risk assessment.

a. Comparison of Modeled Ambient Lead Concentrations With the Lead NAAQS

With regard to lead emissions, because ambient air lead concentrations resulting from current emissions from nine facilities were estimated to be well above the lead NAAQS, the risks associated with lead emissions from this source category are judged to be unacceptable. Based on our modeling analysis, we estimate that ambient air lead concentrations near the facility boundary resulting from actual

emissions from one of these facilities could be as high as 20 times above the lead NAAQS, due primarily to fugitive dust emissions. Additionally, approximately 500 individuals could be exposed to three-month-rolling average lead concentrations in excess of the NAAQS due to emissions from this source category. Moreover, we estimate that the risks would be significantly higher based on MACT-allowable emissions of lead from this source category. Exposure to levels this much in excess of a primary NAAQS raises obvious issues of adequacy of protection afforded by the current MACT standard. Among other things, the lead NAAQS was set to "provide increased protection for children and other at-risk populations against an array of adverse health effects, most notably including neurological effects in children, including neurocognitive and neurobehavioral effects" (73 FR 67007). EPA is thus proposing that these ambient lead levels need to be reduced to provide protection to public health with an ample margin of safety.

b. Inhalation Risk Assessment

Based on the inhalation risk assessment, we estimate that the cancer risks to the individual most exposed could be as high as 50-in-1 million due to actual emissions and as high as 200-in-1 million due to MACT-allowable emissions, mainly due to arsenic stack emissions and, to a lesser extent, cadmium emissions. We estimate that the incidence of cancer based on actual emissions is 0.02 excess cancer cases per year, or one case every 50 years. Based on these results, we conclude that the cancer risks due to MACT-allowable emissions from this source category are unacceptable. The cancer risks due to actual emissions are below 100-in-1 million and population risks are relatively low. Therefore, cancer risks due to actual emissions are considered acceptable.

With respect to potential acute non-cancer health risks, we estimate that, based on our screening analysis, the worst-case HQ value could be up to 30 (based on the REL) at one facility, due primarily to arsenic emissions. Additionally, we estimated that nine facilities had potential worst-case HQs greater than 1 in our screening analysis, also due primarily to arsenic emissions. These results suggest that arsenic emissions have the potential to cause acute non-cancer health effects. However, the worst-case nature of our acute screening assessment suggests that the potential for these effects carries a relatively low probability of occurrence. Nevertheless, we seek comments regarding this conclusion.

c. Multipathway Risk Assessment

Based on our multipathway risk assessment, we estimate that the MIR for cancer using a reasonable maximum or a central tendency exposure scenario (see above) could be up to 30-in-1 million and 6-in-1 million respectively, due to actual emissions of dioxins and furans. Because the MIR is less than the 100-in-1 million threshold, we conclude that the risks due to actual dioxin and furan emissions are acceptable. Because emissions of other HAP (*i.e.,* cadmium and POM) analyzed in the multipathway risk assessments did not result in MIRs above 1-in-1 million, we also conclude that the risks due to emissions of these HAP are acceptable.

d. Summary of Conclusions

In summary, we conclude that, based on our lead NAAQS analysis, the risks due to lead emissions under the MACT standard for this source category are unacceptable. Based on the inhalation risk assessment, we conclude that cancer risks associated with MACT-allowable emissions from this source category are unacceptable, primarily due to arsenic emissions from stacks, and to a lesser extent cadmium emissions. The cancer risks associated with actual emissions from this source category were determined to be acceptable, but will be investigated further in the ample margin of safety analysis because the risks are greater than 1-in-1 million, primarily due to fugitive emissions of arsenic and cadmium.

We will also evaluate the arsenic emissions further under the ample margin of safety because of the potential for acute non-cancer risks. Lastly, the risks from emissions of all HAP considered in the multipathway assessment are acceptable. Nevertheless, as described in section 2 below, we evaluate the HAP further under the ample margin of safety analysis.

2. Proposed Controls and Analysis of the Resulting Risk

a. Allowable Stack Emissions

In order to ensure that the risks associated with MACT-allowable stack emissions from this source category are acceptable, the MIR, resulting primarily from allowable stack emissions of arsenic, would need to be reduced by at least a factor of 2 (*i.e.,* from 200-in-1 million to 100-in-1 million or lower). Also, based on our analyses, MACT allowable emissions of lead from stacks alone (not including fugitive dust emissions) could result in ambient lead concentrations about 10 times above the NAAQS for two facilities. Because the controls for stack emissions of arsenic are the same as those for lead, and because the relationship between emissions and the MIR and ambient air lead concentrations is predominantly linear, we estimated that the current stack lead concentration limit would need to be reduced by approximately an order of magnitude to ensure acceptable risk from MACT-allowable emissions of lead and arsenic from this source category. Therefore, we considered lowering the existing lead concentration limit by an order of magnitude (*i.e.,* from 2.0 mg/dscm to 0.2 mg/dscm) for all stacks. We also considered different forms of a revised lead emissions limit that would achieve similar reductions in MACT-allowable emissions. However, based on a combination of data analysis, evaluation of each facility's processes, and communication with the industry, we have determined that a concentration-based limit continues to be the most appropriate form for this source category.

We also evaluated an approach that would implement a facility-wide, flow-weighted average lead concentration limit of 0.20 mg/dscm with a maximum concentration limit of 1.0 mg/dscm for any individual stack. For the 0.2 mg/dscm flow-weighted average limit, facilities would assign a weighting factor to the measured lead concentrations of each stack based on the exhaust flow rates of each control device. The sum of all the flow-weighted concentrations at each stack within a facility would then be calculated and compared to the proposed limit to demonstrate compliance. A limit in this form would ensure that the risks associated with MACT-allowable stack emissions of lead and arsenic from this source category are acceptable, and that the rule provides an ample margin of safety, while providing flexibility to the facilities in determining the most efficient approach to achieve the necessary reductions. Proposing a maximum concentration limit of 1.0 mg/dscm for any individual stack will also ensure that stack emissions of lead from any one stack in this source category will not result in exceedances of the lead NAAQS. Furthermore, our analysis of available control technologies, presented in Section IV.D of this preamble, confirms that this is a technologically feasible standard.

For these reasons, under the authority of CAA section 112(f)(2), we are proposing a facility-wide, flow-weighted average lead concentration limit of 0.20 mg/dscm to cover all stacks in this

source category. We are also proposing a maximum lead concentration limit of 1.0 mg/dscm to apply to any individual stack at existing facilities. For new sources, we are proposing that a limit of 0.20 mg/dscm applies to all individual stacks at the facility. As in the existing MACT standard, compliance for existing sources will be demonstrated by annual stack testing and installation and operation of BLDSs for both new and existing sources.

We are also proposing that new affected sources would be required to demonstrate compliance using a lead continuous emissions monitoring systems (CEMS).[25] However, since the Agency has not finalized the performance specification for the use of these instruments, we are deferring the effective date of the requirement to install, calibrate, maintain and operate lead CEMS until these actions can be completed. The lead CEMS installation deadline will be established through future rulemaking, along with other pertinent requirements. In the event operations commence at a new affected source prior to promulgation of the performance specification, compliance would be demonstrated through annual stack testing and installation of a BLDS until promulgation of the lead CEMS performance specification. With regard to existing sources, we considered the possibility of proposing CEMs as the method to demonstrate compliance with the MACT limits. However, since the Agency has not yet finalized the performance specification for this method and since the costs could be high for applying this technology to multiple stacks, we are not proposing a requirement for CEMs for existing sources. However, we are allowing the option of a CEMS in lieu of annual stack tests for lead for existing sources in this industry when the technology is available and the EPA has established performance specifications. We are seeking comments and information on the feasibility of applying this technology for monitoring lead emissions from these sources and the potential to require CEMs on existing sources in this source category. Nevertheless, depending on comments received and other factors we may consider requiring CEMs for existing sources in the future, if appropriate.

b. Fugitive Dust Emissions

As described in Section IV.C.1 of this preamble, we have determined that fugitive dust emissions must be reduced such that ambient lead concentrations near the facility boundaries are below the lead NAAQS (*i.e.,* 0.15 mg/dscm). Based on our review of information submitted in the ICR, we have identified a combination of specific fugitive control measures that are generally able to achieve lead concentrations near the boundaries of facilities that are below the lead NAAQS (see *Draft Technology Review for the Secondary Lead Smelting Source Category*). These controls include total enclosure of process fugitive emissions sources and material storage and handling areas and implementation of a list of prescribed work practices to further limit the formation of fugitive dust in other areas of the facilities. Examples of these prescribed work practices include: Pavement of all grounds on the facility or sufficient groundcover to prevent wind-blown dust, monthly cleaning of building rooftops, timely cleaning of any accidental releases, inspection of battery storage areas outside of enclosures for broken batteries, and performance of maintenance on equipment that may be contaminated with lead inside total enclosures. Our analysis indicates that these controls are necessary to ensure that three-month rolling average lead concentrations near the boundaries at all facilities in this source category do not exceed the lead NAAQS. Furthermore, our analysis of available control technologies in Section IV.D of this preamble confirms that this is a technologically feasible standard for this source category.

For the reasons described above, we are proposing under CAA section 112(f)(2) that each facility must totally enclose the following emissions sources and operate the total enclosure under negative pressure:

(1) Smelting furnaces;

(2) Smelting furnace charging areas;

(3) Lead taps, slag taps, and molds during tapping;

(4) Battery breakers;

(5) Refining kettles, casting areas;

(6) Dryers;

(7) Agglomerating furnaces and agglomerating furnace product taps;

(8) Material handling areas for any lead bearing materials (drosses, slag, other raw materials), excluding areas where unbroken lead acid batteries and finished lead products are stored; and

(9) Areas where dust from fabric filters, sweepings or used fabric filters are handled or processed.

The ventilation air from the total enclosures must be conveyed to a control device. We are also proposing that the emissions from the enclosure control devices will be subject to the proposed stack lead emissions limits described in this section.

In addition, we are proposing that facilities must implement the following fugitive control work practices: Pavement cleaning and vehicle washing; cleaning of building rooftops on a regular schedule (*e.g.,* at least once per month); cleaning of all affected areas after accidental releases; inspection of the battery storage areas for broken batteries; performance of maintenance activities inside enclosures; and transport of lead bearing material in closed systems. Additionally, each facility will be required to prepare, and at all times operate according to, a SOP manual that describes in detail how the additional work practices will be implemented.

We acknowledge that there may be other control measures and alternative approaches that we have not identified that are effective in reducing fugitive dust emissions at other facilities. Therefore, as an alternative to the requirement for full enclosure, we are proposing under CAA section 112(f)(2) that facilities may choose to implement the work practices, maintain partial enclosures and enclosure hoods as the 1997 NESHAP requires, prepare an SOP as described above and establish an ambient air monitoring network to ensure that lead concentrations in air near the facility boundaries remain at or below 0.15 $\mu g/m^3$ based on 3-month rolling averages (the level and averaging time of the lead NAAQS). The monitoring plan must include a minimum of two monitoring sites that are placed in locations that are most likely to capture measurements of the maximum concentrations at or near the facility boundaries. For example, at least one monitor must be placed in the predominant downwind direction from main emissions sources based on historical weather patterns in the area. This alternative regulatory requirement based on partial enclosures, work practices plus monitoring lead concentrations in air would provide flexibility to facilities in determining the within-facility sources that should be enclosed and vented to a control device that are most effective for reducing fugitive emissions at their facilities. These proposed requirements will ensure that the risks associated with fugitive lead emissions from this

[25] We do not believe that use of a lead CEM to meet the flow-weighted average of 0.2 mg/dscm poses issues of feasibility, even though our present data for the source data comes from stack tests rather than continuous measurements. This is because so many sources are achieving levels considerably less than 0.2 mg/dscm in their performance tests. (See "Summary of the Technology Review for Secondary Lead Smelters", which is available in the docket.)

source category are acceptable. Nevertheless, we are seeking comments on this proposed alternative requirement, including whether two monitors would be sufficient or if more monitors may be warranted.

If this alternative approach is chosen by the facility, the work practices and SOP along with the lead concentration in air monitoring would be established as the enforceable requirements to address fugitive emissions under the NESHAP. For both new and existing facilities, compliance with the lead concentration in air monitoring component would be demonstrated based on rolling 3-month average concentrations as measured by the lead compliance monitoring devices, consistent with the averaging time of the lead NAAQS (see documentation for EPA's Lead NAAQS, available at: *http://www.epa.gov/ttnnaaqs/standards/pb*). We are proposing that approval by EPA is required for each source electing to comply by means of this alternative approach that includes a monitoring network plus work practices rather than compliance based on full enclosure plus work practices. Thus, the proposed alternative requires development of a monitoring plan for approval by the Administrator that includes the minimum sampling and analysis methods and compliance demonstration criteria. Under this alternative, facilities would also be required to provide a work practice SOP manual to the Administrator.[26]

As part of this alternative, we are also proposing a provision that would allow for reduced monitoring if the facility demonstrates ambient lead concentrations less than 50 percent of the ambient lead concentration limit for three consecutive years at each monitor. We propose that a revised monitoring plan may be submitted (for review and possible approval by the Administrator) to reduce the sampling and analysis frequency if all of the 3-month rolling average concentrations at each monitor are less than 50 percent of the limit of 0.15 μg/m^3 over a 3-year period. The monitoring requirements discussed above were designed to allow for flexibility, prevention of redundant requirements, and also to provide consistency with current monitoring programs that may be required at some of the facilities in this source category.

[26] The proposed lead concentration in air alternative appears to be an "emissions standard", as required by section 112 (f)(2), since it "limits the quantity, rate, or concentration" of lead—to the level of the NAAQS at a location of maximum exposure—albeit compliance with the standard is measured by means of ambient monitoring. CAA section 302 (k). Nonetheless, EPA solicits comment on this issue.

c. Risks Considering Proposed Control Options

We conducted an assessment to estimate the risks based on a post-control scenario reflecting the proposed requirements for stack and fugitive emissions described above. (Details are provided in the Draft Risk Assessment report which is available in the docket for this action). Based on that modeling assessment, we estimated that the ambient lead concentrations would be at or below the lead NAAQS for all facilities once this rule is fully implemented, except for possibly one facility in California. Our modeling analysis indicated that this one facility in California may still be above the lead NAAQS after controls. Therefore, we gathered additional information and did further evaluation of this facility. Based on communications with the company, it is our understanding that the facility is currently constructing an additional enclosure of certain equipment (*e.g.,* baghouse row, abatement equipment, and slurry tanks) that we had not included in our post-control scenario. Moreover, it is our understanding that the company has recently implemented, or is currently implementing, other measures (*e.g.,* repaired asphalt and additional cleaning of road surfaces) that will significantly reduce their fugitive emissions further as part of their efforts to comply with a California State regulation (reference: based on verbal communications during meeting with Exide Corporation on February 23, 2011, in RTP, NC; and a phone conversation on April 25, 2011). The California regulation has a compliance deadline of late 2011 and requires that ambient concentrations of lead near this facility remain at or below 0.15 μg/m^3 per 3-month rolling averages. Therefore, we conclude that this facility will achieve levels at or below the NAAQS.

In summary, we are proposing that the MACT standard, with the changes we are proposing under the CAA section 112(f)(2) residual risk review, will reduce risks from fugitive lead emissions to an acceptable level.

Our analysis indicates that the MIR for cancer due to inhalation exposure associated with actual emissions from this source category would be reduced from 50-in-1 million to 10-in-1 million as a result of the actions proposed under 112(f)(2), while the MIR from MACT-allowable emissions would be reduced from 200-in-1 million to 10-in-1 million. The cancer incidence rate will be reduced from 0.02 to 0.01. Furthermore, the maximum worst-case screening acute HQ value will be reduced from potentially as high as 30 to less than or equal to 5. Based on these metrics, the actions proposed above under CAA section 112(f)(2) ensure acceptable risks from actual and MACT-allowable stack emissions of all HAP for this source category.

3. Ample Margin of Safety

Under the ample margin of safety analysis, we evaluate the cost and feasibility of available control technologies and other measures (including the controls, measures and costs reviewed under the technology review) that could be applied in this source category to further reduce the risks due to emissions of HAP identified in our risk assessment. We estimate that the actions proposed under CAA section 112(f)(2), as described above, will reduce the MIR associated with arsenic and cadmium from 200-in-1 to 10-in-1 million for MACT-allowable emissions and from 50-in-1 to 10-in-1 million for actual emissions. The cancer incidence will be reduced from 0.02 to 0.01 and the maximum acute HQ value will be reduced from potentially up to 30 to less than or equal to 5. Although these risks are considered acceptable based on the 100-in-1 million threshold established in the Benzene NESHAP, the MIR remains greater than 1-in-1 million, due primarily to fugitive emissions of arsenic and cadmium. Also, the maximum acute non-cancer HQ could be up to 5. Our ample margin of safety analysis is provided below. We have performed these analyses for emissions sources of the following five groups of HAP for which standards were proposed in today's action: (1) Arsenic and cadmium, (2) lead compounds, (3) dioxins and furans, (4) organic HAP, and (5) mercury compounds. The results of these analyses are presented in the following sections.

a. Arsenic and Cadmium Emissions

Because the estimated MIR of 10-in-1 million remaining after implementation of our proposed revisions to the MACT standard is driven primarily by fugitive emissions of arsenic and cadmium, we performed an ample margin of safety analysis on these emissions. Based on our research and analyses, we have not identified any feasible control options beyond what we are requiring in our proposed standards for fugitive emissions sources described above, and are therefore not proposing additional fugitive controls based on our ample margin of safety analysis. Nevertheless, we are soliciting comments and information regarding additional fugitive control measures, work

practices that may be available and their feasibility in further reducing fugitive emissions of metal HAP, or additional monitoring that may be warranted to ensure adequate control of fugitive emissions.

We also conducted additional analyses to determine whether reductions in stack emissions of arsenic and cadmium emissions beyond those required by our proposed standards are appropriate and necessary to provide an ample margin of safety. We identified one control technology that could achieve reductions beyond those that will occur due to the actions we are proposing under CAA section 112(f)(2), which are described above. The device is a wet electrostatic precipitator (WESP) that provides an estimated lead control efficiency of greater than 99 percent on the outlet of the baghouse. The combination of the baghouses with the WESP achieves greater than 99.99 percent control efficiency (see: *Wet Electrostatic Precipitator (WESP) Control for Meeting Metals Emissions Standards*). This technology is currently used at one facility in California. However, this control configuration is quite expensive. We estimated that installing a WESP at the other 13 facilities would result in total capital costs to the industry of $400 million and a total annualized cost of $55 million. We estimate that the cost-effectiveness would be about $4.0 million per ton of reductions in metal HAP emissions (mainly lead compounds). A detailed analysis of the costs associated with the WESP unit can be found in the technical document for this action available in the docket (see D*raft Cost Impacts of the Revised NESHAP for the Secondary Lead Smelting Source Category*). Stack emissions of arsenic and cadmium do not appreciably contribute to the 10-in-1 million cancer risks remaining after implementation of the proposed revisions. Moreover, we conclude that the likelihood of significant noncancer effects due to arsenic emissions (after the proposed controls described above are in place) is very low because the maximum acute noncancer HQ (which could be as high as 5) is based on a very conservative analysis using some worst case assumptions. Furthermore, the costs for these additional controls are high. Therefore, we are not proposing a requirement for the installation of a WESP under this ample margin of safety analysis.

b. Lead Emissions

With regard to emissions of lead, by lowering the facility-wide emissions limit to a flow-weighted average of 0.20 mg/dscm, limiting the emissions from any one stack to no more than 1.0 mg/dscm, and requiring facilities to either fully enclose their facility and implement comprehensive fugitive work practices or implement comprehensive fugitive work practices and lead air monitoring, we conclude that the actual and MACT-allowable lead emissions from this source category would be reduced to the point that they would not result in off-site concentrations above the NAAQS. Moreover, we have not identified any further feasible and cost-effective controls. See Section IV.C.2.a of this preamble explaining that adding a wet electrostatic precipitator as supplementary HAP metal control would be excessively costly and not cost-effective. Moreover, as described above, we have not identified other measures (beyond those proposed above) to further reduce fugitive emissions. Thus, we are proposing that revisions to the MACT standard that we are proposing under CAA section 112(f)(2), as described above, will provide an ample margin of safety with regard to emissions of lead from this source category.

c. Dioxin and Furan Emissions

With regard to dioxin and furan emissions, as outlined in Section IV.A of this preamble, we are proposing various emissions limits under CAA section 112(d)(3). Results of the multipathway risk assessment indicate that the cancer MIR associated with dioxin and furan emissions is 30-in-1 million, less than the acceptability threshold of 100-in-1 million. However, because the MIR is greater than 1-in-1 million, we are required to investigate whether reductions in emissions of dioxins and furans beyond that required in the limits we are proposing under CAA section 112(d)(3) are needed to provide an ample margin of safety to the public.

We identified one option to reduce emissions of dioxins and furans beyond that required by the limits proposed in today's action. This option is the installation of additional afterburner capacity at the facilities operating blast furnaces. We evaluated this option because of the higher potential of formation of dioxins and furans in the blast furnace exhaust due to its relatively cooler exit temperature. This option would include operating the currently installed afterburners at a temperature of 1600 °F with a residence time of 2.5 seconds, or installation of new or additional afterburner capacity with this capability. Based on the current level of performance identified in the ICR surveys, we believe that this option would require four facilities to install additional afterburner capacity or install new afterburners at their facility in order to operate the units at these conditions. The estimated total capital cost for the additional controls is $5.9 million, with a total annualized cost of $2.9 million. Based on an estimated control efficiency of 98 percent, TEQ emissions would be reduced by an estimated 28 grams per year and organic HAP emissions by 200 tons per year (see *Draft Cost Impacts of the Revised NESHAP for the Secondary Lead Smelting Source Category* for a detailed analysis). However, this option would result in increases of NO_X and CO_2 emissions. Considering the costs associated with this option, the potential for increased emissions of NO_X and CO_2, and the fact that risks associated with emissions of dioxins and furans are clearly less than 100-in-1 million, we are not proposing this option as part of our ample margin of safety analysis. We also considered various beyond the floor options for establishing MACT limits for dioxins and furans under the Section 112(d)(3) review (as described in section IV.A.2), but we are not proposing any of those options in this action for the reasons described in that section.

d. Organic HAP Emissions

With regard to organic HAP (other than dioxins and furans), we estimate that actual emissions do not result in a cancer risk above 1-in-1 million at any facilities in this source category. Given that actual emissions from blast furnaces do not result in a cancer risk above 1-in-1 million in this source category, and that the actual THC emissions modeled from blast furnaces were at levels close to the allowable emissions, we conclude that the cancer risk associated with actual and allowable emissions of organic HAP from all other furnace types are not likely to be greater than 1-in-1 million since the THC limit for blast furnaces is considerably higher than for other furnace types. The one exception is for rotary furnaces, for which we are proposing a THC limit (*i.e.,* 610 ppmv) in today's action that is higher than the limit in the 1997 NESHAP for blast furnaces (*i.e.,* 360 ppmv). Based on our risk assessment, we estimate that the highest possible MIR due to allowable organic HAP emissions from the one rotary furnace in operation today would be 2-in-1 million (given the proposed emissions limits in today's action). This is based on the conservative assumption that this rotary furnace will continuously emit THC at exactly 610 ppmv, which is a highly unlikely scenario. Additionally, emissions of

organic HAP from this source category do not appreciably contribute to any chronic-non cancer risk. For these reasons, we are proposing that the MACT standards for organic HAP, as proposed in today's action, provide an ample margin of safety.

e. Mercury Emissions

Lastly, with regard to mercury emissions from this source category, our risk assessment indicates that, even based on our highly conservative estimates of mercury emissions (see Section III.B.7 of this preamble for further discussion on the conservative nature of our mercury emissions estimates), emissions of mercury did not appreciably contribute to risk based on both the inhalation and multipathway risk analyses. Given that the work practice standard proposed in today's action for mercury is based on actual performance of the industry, we are proposing that these standards provide an ample margin of safety with regards to risk from mercury emissions from this source category.

D. What are the results and proposed decisions based on our technology review?

Based on our technology review, we determined that there have been advances in emissions control measures since the Secondary Lead Smelting NESHAP was originally promulgated in 1997. Since promulgation, we estimate that industry-wide metal HAP emissions (including lead) from process and process fugitive sources have been reduced by approximately 80 percent. As a result, and due to other factors, actual lead emissions from process and process fugitive sources at most secondary lead smelting facilities are significantly lower than are allowed under the 1997 NESHAP.

Based on our technology review, we believe that the reductions in metal HAP emissions since promulgation of the 1997 NESHAP are mainly directly related to improvements in two areas: (1) Improvements in fabric filter control technology (*e.g.,* improved bag materials, replacement of older baghouses) and (2) total enclosure of process fugitive emissions sources and raw material storage and handling areas and improvements in emissions controls and work practices for fugitive dust emissions sources. Additional reductions have been achieved due to the use of a WESP at one facility and also HEPA filters in some cases. The results of our analyses and our proposed decisions for these areas under CAA section 112(d)(6) are presented in the following sections. Additional details regarding these analyses can be found in the following technical document for this action which is available in the docket: *Draft Technology Review for the Secondary Lead Smelting Source Category.*

1. Fabric Filter Improvements

The improvements in fabric filter control technology are reflected in the emissions test data collected under the ICR. The emissions limit for lead under the 1997 NESHAP is a concentration-based limit of 2.0 mg/dscm applicable to all stacks whether they are classified as process, process fugitives, or building or enclosure ventilation systems. Based on our analysis of survey responses and test data collected under the ICR, this industry primarily uses fabric filters to control emissions of lead and other metal HAP, and the vast majority of sources affected by the current lead limit are achieving lead concentrations at control device outlets that are far below the current limit (see: *Draft Technology Review for the Secondary Lead Smelting Source Category*). Several facilities have also installed HEPA filters downstream of their fabric filters that have an estimated 99.97 percent add-on control efficiency for particles with an aerodynamic diameter of 0.3 microns. More than 95 percent of all sources reported lead concentrations (coming out of the stacks after the control devices) that are less than half of the current limit, with several sources achieving lead concentrations that are two to three orders of magnitude lower than the current limit. Based on the available data, the average lead outlet concentration of all affected sources in this source category is 0.16 mg/dscm, with a median of 0.04 mg/dscm. Based on these data, we believe that developments in practices, processes, and control technologies warrant revisions to the 1997 NESHAP to reflect emissions levels achieved in practice. Our analysis of emissions data provided in the ICR indicates that stacks equipped with a well-performing fabric filter can achieve exhaust lead concentrations of less than 0.20 mg/dscm (see: *Draft Technology Review for the Secondary Lead Smelting Source Category*). In fact, of the 93 stacks identified in the ICR that are controlled using a baghouse, 74 reported average lead concentrations of less than 0.20 mg/dscm. Based on these data, we considered the costs and feasibility of revising the emissions limit down to 0.20 mg/dscm as a facility-wide, flow-weighted average, identical to the limit proposed under CAA section 112(f)(2) in today's action. We estimate that if we proposed such a limit, two of the 14 facilities would be required to replace one of their large old baghouses with a newer, more efficient baghouse in order to comply. We estimate that this would result in about 5.9 tons of reductions of metal HAP emissions. We estimate that the total capital costs would be about $7.6 million with annualized costs of $1.7 million and cost-effectiveness of $0.3 million per ton of metal HAP (or $150 per pound of metal HAP). As a co-benefit to implementation of this revised standard, we estimate reductions of 56 tons of PM at a cost-effectiveness of $30,000 per ton of PM. We do not anticipate additional energy use associated with this revised limit, as only replacement baghouses, as opposed to new units, are anticipated. Furthermore, we do not anticipate any adverse non-air environmental impacts associated with the implementation of this revised limit.[27]

For the reasons described above, under the authority of CAA section 112(d)(6), we are proposing a facility-wide, flow-weighted average lead concentration limit of 0.20 mg/dscm to cover all stacks. Additionally, because 89 of the 93 stacks identified in the ICR that are controlled using a baghouse are achieving lead concentrations below 1.0 mg/dscm, we conclude that this level of emissions is technologically feasible and demonstrated, therefore we are also proposing a maximum lead concentration limit of 1.0 mg/dscm to apply to any individual stack at existing facilities. For new sources, we are proposing that the 0.20 mg/dscm limit applies to all individual stacks at the facility. Consistent with the standards proposed under CAA section 112(f)(2) in today's action, compliance for existing sources will be demonstrated either by annual stack testing and installation and operation of BLDS or by use of a lead CEMS once performance specifications have been promulgated. New affected sources would be required to demonstrate compliance using a lead CEMS, pending promulgation of the lead CEMS performance specifications. Any new affected sources commencing operations prior to promulgation of the performance specifications may demonstrate compliance through annual stack testing and operation of a BLDS until the CEMS performance specifications are promulgated.

We believe that these proposed revisions, identical to those proposed under CAA section 112(f)(2), are cost-effective revisions that reflect the level

[27] As explained in section C above, we conclude that requiring an additional wet electrostatic precipitator as a form of supplementary metal control at all facilities would be excessively costly and not cost effective.

of control achievable in practice by a well performing fabric filter.

2. Total Enclosure of Process Fugitive Sources and Raw Material Storage and Handling Areas and Work Practices for Fugitive Dust Sources

Facilities have achieved some of their reductions since 1997 through total enclosure of process fugitive emissions sources and material storage and handling areas. Based on responses to the ICR survey, the process fugitive emissions sources regulated under the 1997 NESHAP are totally enclosed and vented to a control device at seven of the 14 existing facilities. Additionally, an eighth facility has a current project to install total enclosures and associated control devices for their process fugitive emissions sources. This level of enclosure is well beyond the requirements of the 1997 NESHAP that provides facilities the option of using negative pressure hoods to capture process fugitive emissions and route them to a control device. The other six facilities have some degree of enclosure, but the extent of enclosure among these six facilities varies considerably. With regard to material storage and handling areas, the ICR surveys indicate that all of the facilities with process fugitive emissions sources in total enclosures have enclosed the storage areas for all lead-bearing materials such as processed raw materials and slag.

The information and data collected under the ICR also indicate that at least four facilities conduct work practices beyond those required in the 1997 NESHAP to further limit the formation of fugitive dust from material handling operations and re-entrainment of lead dust deposited within the facility fence line. Examples of these work practices include: pavement of all grounds on the facility, monthly cleaning of building rooftops, timely cleaning of any accidental releases, inspection of battery storage areas outside of enclosures for broken batteries, and performance of maintenance on equipment that may be contaminated with lead inside total enclosures.

We estimate that for the six facilities to implement total enclosures with negative pressure ventilation to their process fugitive emissions sources, the total capital cost would be about $40 million (about $6.7 million per facility) with total annualized costs of about $6.4 million (or about $1.1 million per facility). These controls would achieve an estimated 5.3 tons reduction of metal HAP (mainly lead compounds, but also arsenic, and cadmium). Additionally, as a co-benefit, these controls would achieve an estimated 58 tons reduction of PM at a cost effectiveness of $100,000 per ton of PM. We do anticipate approximately 23 million kilowatt hours (KWH) of additional energy use associated with the operation of additional baghouses controlling the building ventilation systems. However, we do not anticipate any adverse non-air environmental impacts associated with the implementation of these potential controls. Additionally, for ten facilities to implement the additional fugitive control work practices mentioned above, we estimate no capital cost and a total annualized cost of about $3.0 million (about $0.2 million per facility). These work practices would achieve an estimated 4.2 tons reduction of metal HAP (mainly lead, arsenic, and cadmium). Additionally, as a co-benefit, these work practices would achieve an estimated 46 tons reduction of PM at a cost-effectiveness of $100,000 per ton of PM. The total cost effectiveness of implementing total enclosures with negative pressure ventilation as well as additional fugitive emissions control work practices is estimated at $1.0 million per ton of metal HAP (or $500 per pound of metal HAP). Because the primary HAP reduced are lead compounds, arsenic, and cadmium, and given the co-benefit PM reductions, we believe that these costs and cost-effectiveness values are reasonable.

Therefore, for the reasons described above, we are proposing under CAA section 112(d)(6) that each facility must totally enclose the following emissions sources and operate the total enclosure under negative pressure:

(1) Smelting furnaces.

(2) Smelting furnace charging areas.

(3) Lead taps, slag taps, and molds during tapping.

(4) Battery breakers.

(5) Refining kettles, casting areas.

(6) Dryers.

(7) Agglomerating furnaces and agglomerating furnace product taps.

(8) Material handling areas for any lead bearing materials (drosses, slag, other raw materials), excluding areas where unbroken lead acid batteries and finished lead products are stored.

(9) Areas where dust from fabric filters, sweepings or used fabric filters are handled or processed.

The ventilation air from the total enclosures must be conveyed to a control device. We are also proposing that the emissions from the enclosure control devices be subject to the proposed stack lead emissions limits proposed in Section IV.D.1 of this preamble and also previously under CAA section 112(f)(2).

Additionally, we are proposing under CAA section 112(d)(6) that each facility must implement the following fugitive control work practices: pavement cleaning and vehicle washing; cleaning of building rooftops on a regular (*e.g.*, at least once per month) schedule; cleaning of all affected areas after accidental releases; inspection of the battery storage areas for broken batteries; performance of maintenance activities inside enclosures; and transport of lead bearing material in closed systems.

For both new and existing facilities, compliance with the total enclosure and work practice requirements described above would require construction of total enclosures (where they do not already exist) capable of being operated under negative pressure and venting of the enclosure exhaust to a control device. Additionally, each facility would be required to prepare, and at all times operate according to, a SOP manual that describes in detail how the additional work practices will be implemented. We believe this standard, identical to that proposed under CAA section 112(f)(2), is a cost-effective control option that reflects the level of fugitive control achieved in practice by several facilities in this source category.

3. Alternative Compliance Option for Fugitive Dust Emissions Under CAA Section 112(d)(6)

Similar to the previous discussion regarding the fugitive emissions limits proposed in under CAA section 112(f)(2), we acknowledge that there may be other control measures that we have not identified that are effective in reducing fugitive dust emissions at other facilities. Therefore, as an alternative to the requirements for full enclosure, we are proposing under CAA section 112(d)(6) that facilities may choose to implement comprehensive fugitive control work practices, maintain the partial enclosures and enclosure hoods required in the 1997 NESHAP, plus establish an air monitoring network, similar to that required in the lead NAAQS, to ensure that fugitive emissions are minimized and that lead concentrations in air near the facility boundaries remain at or below 0.15 μg/m3 based on 3-month rolling averages. This compliance alternative is identical to that proposed under CAA section 112(f)(2). The implementation of this proposed alternative is thus identical and is presented in Section IV.C of this preamble.

For facilities that choose the alternative compliance option for fugitive dust emissions and do not

install total enclosures, we are proposing to keep the requirements for enclosure hoods and partial enclosures specified in the 1997 NESHAP in order to ensure a level of containment for process fugitive emissions. We are seeking comment on other control measures that should be prescribed for facilities that choose the alternative compliance option.

E. What other actions are we proposing?

1. Startup, Shutdown, Malfunction

The United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in EPA's CAA section 112 regulations governing the emissions of HAP during periods of startup, shutdown, and malfunction (SSM). *Sierra Club* v. *EPA*, 551 F.3d 1019 (DC Cir. 2008), *cert. denied*, 130 S. Ct. 1735 (U.S. 2010). Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), that are part of a regulation, commonly referred to as the "General Provisions Rule," that EPA promulgated under CAA section 112. When incorporated into CAA section 112(d) regulations for specific source categories, these two provisions exempt sources from the requirement to comply with the otherwise applicable CAA section 112(d) emissions standard during periods of SSM.

We are proposing the elimination of the SSM exemption in this rule. Consistent with *Sierra Club* v. *EPA*, EPA is proposing standards in this rule that apply at all times. We are also proposing several revisions to Table 1 to subpart X of part 63 (the General Provisions Applicability table). For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. We also are proposing to eliminate or revise certain recordkeeping and reporting that related to the SSM exemption. EPA has attempted to ensure that we have not included in the proposed regulatory language any provisions that are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether there are any such provisions that we have inadvertently incorporated or overlooked.

In proposing the standards in this rule, EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not proposed different standards for those periods.

Information on periods of startup and shutdown received from the industry in the ICR indicate that emissions during these periods do not increase. Control devices such as afterburners for organics and dioxin control and baghouses for lead and metal HAP particulate control are started up before the process units, and are operational during the shutdown phase of a process. Therefore, no increase in emissions is expected during these periods. Enclosures and work practices for fugitive emissions will be in place at all times. Therefore, separate standards for periods of startup and shutdown are not being proposed.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. However, by contrast, malfunction is defined as a "sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner * * *" (40 CFR 63.2). EPA has determined that CAA section 112 does not require that emissions that occur during periods of malfunction be factored into development of CAA section 112 standards. Under CAA section 112, emissions standards for new sources must be no less stringent than the level "achieved" by the best controlled similar source and for existing sources generally must be no less stringent than the average emissions limitation "achieved" by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the Agency to consider malfunctions in determining the level "achieved" by the best performing or best controlled sources when setting emissions standards. Moreover, while EPA accounts for variability in setting emissions standards consistent with the CAA section 112 case law, nothing in that case law requires the Agency to consider malfunctions as part of that analysis. Section 112 of the CAA uses the concept of "best controlled" and "best performing" unit in defining the level of stringency that CAA section 112 performance standards must meet. Applying the concept of "best controlled" or "best performing" to a unit that is malfunctioning presents significant difficulties, as malfunctions are sudden and unexpected events.

Further, accounting for malfunctions would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. As such, the performance of units that are malfunctioning is not "reasonably" foreseeable. See, *e.g.*, *Sierra Club* v. *EPA*, 167 F.3d 658, 662 (DC Cir. 1999) (EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to "invest the resources to conduct the perfect study."). *See* also, *Weyerhaeuser* v. *Costle*, 590 F.2d 1011, 1058 (DC Cir. 1978) ("In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation"). In addition, the goal of a best controlled or best performing source is to operate in such a way as to avoid malfunctions of the source and accounting for malfunctions could lead to standards that are significantly less stringent than levels that are achieved by a well-performing non-malfunctioning source. EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, "sudden, infrequent, not reasonably preventable" and was not instead "caused in part by poor maintenance or careless operation" 40 CFR 63.2 (definition of malfunction).

Finally, EPA recognizes that even equipment that is properly designed and maintained can sometimes fail and that such failure can sometimes cause an exceedance of the relevant emissions standard. (See, *e.g.*, State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown (Sept. 20, 1999); Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions (Feb. 15, 1983)). EPA is therefore proposing to add to the final rule an affirmative defense to civil penalties for

exceedances of emissions limits that are caused by malfunctions. See 40 CFR 63.542 (defining "affirmative defense" to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding). We also are proposing other regulatory provisions to specify the elements that are necessary to establish this affirmative defense; the source must prove by a preponderance of the evidence that it has met all of the elements set forth in 40 CFR 63.552 (40 CFR 22.24). The criteria ensure that the affirmative defense is available only where the event that causes an exceedance of the emissions limit meets the narrow definition of malfunction in 40 CFR 63.2 (sudden, infrequent, not reasonable preventable and not caused by poor maintenance and or careless operation). For example, to successfully assert the affirmative defense, the source must prove by a preponderance of the evidence that excess emissions "[w]ere caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner * * *" The criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions in accordance with 40 CFR 63.543(j) and to prevent future malfunctions. For example, the source must prove by a preponderance of the evidence that "[r]epairs were made as expeditiously as possible when the applicable emissions limitations were being exceeded * * *" and that "[a]ll possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health * * *." In any judicial or administrative proceeding, the Administrator may challenge the assertion of the affirmative defense and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties may be assessed in accordance with CAA section 113 (see also 40 CFR 22.77).

Specifically, we are proposing the following changes to the rule.

Added general duty requirements in 40 CFR 63.543(j) to replace General Provision requirements that reference vacated SSM provisions.

Added replacement language that eliminates the reference to SSM exemptions applicable to performance tests in 40 CFR 63.543(i).

Added paragraphs in 40 CFR 63.550(d) requiring the reporting of malfunctions as part of the affirmative defense provisions.

Added paragraphs in 40 CFR 63.550(c) requiring the keeping of certain records during malfunctions as part of the affirmative defense provisions.

Revised Table 1 to subpart X of part 63 to reflect changes in the applicability of the General Provisions to this subpart resulting from a court vacatur of certain SSM requirements in the General Provisions.

2. Electronic Reporting

EPA must have performance test data to conduct effective reviews of CAA sections 112 and 129 standards, as well as for many other purposes including compliance determinations, emissions factor development, and annual emissions rate determinations. In conducting these required reviews, EPA has found it ineffective and time consuming, not only for us, but also for regulatory agencies and source owners and operators, to locate, collect, and submit performance test data because of varied locations for data storage and varied data storage methods. In recent years, though, stack testing firms have typically collected performance test data in electronic format, making it possible to move to an electronic data submittal system that would increase the ease and efficiency of data submittal and improve data accessibility.

Through this proposal EPA is presenting a step to increase the ease and efficiency of data submittal and improve data accessibility. Specifically, EPA is proposing that owners and operators of Secondary Lead Smelting facilities submit electronic copies of required performance test reports to EPA's WebFIRE database. The WebFIRE database was constructed to store performance test data for use in developing emissions factors. A description of the WebFIRE database is available at *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main.*

As proposed above, data entry would be through an electronic emissions test report structure called the Electronic Reporting Tool. The ERT would be able to transmit the electronic report through EPA's Central Data Exchange network for storage in the WebFIRE database making submittal of data very straightforward and easy. A description of the ERT can be found at *http://www.epa.gov/ttn/chief/ert/ert_tool.html.*

The proposal to submit performance test data electronically to EPA would apply only to those performance tests conducted using test methods that will be supported by the ERT. The ERT contains a specific electronic data entry form for most of the commonly used EPA reference methods. A listing of the pollutants and test methods supported by the ERT is available at *http://www.epa.gov/ttn/chief/ert/ert_tool.html.* We believe that industry would benefit from this proposed approach to electronic data submittal. Having these data, EPA would be able to develop improved emissions factors, make fewer information requests, and promulgate better regulations.

One major advantage of the proposed submittal of performance test data through the ERT is a standardized method to compile and store much of the documentation required to be reported by this rule. Another advantage is that the ERT clearly states what testing information would be required. Another important proposed benefit of submitting these data to EPA at the time the source test is conducted is that it should substantially reduce the effort involved in data collection activities in the future. When EPA has performance test data in hand, there will likely be fewer or less substantial data collection requests in conjunction with prospective required residual risk assessments or technology reviews. This would result in a reduced burden on both affected facilities (in terms of reduced manpower to respond to data collection requests) and EPA (in terms of preparing and distributing data collection requests and assessing the results).

State, local, and Tribal agencies could also benefit from more streamlined and accurate review of electronic data submitted to them. The ERT would allow for an electronic review process rather than a manual data assessment making review and evaluation of the source provided data and calculations easier and more efficient. Finally, another benefit of the proposed data submittal to WebFIRE electronically is that these data would greatly improve the overall quality of existing and new emissions factors by supplementing the pool of emissions test data for establishing emissions factors and by ensuring that the factors are more representative of current industry operational procedures. A common complaint heard from industry and regulators is that emissions factors are outdated or not representative of a particular source category. With timely receipt and incorporation of data from most performance tests, EPA would be able to ensure that emissions factors, when updated, represent the most current range of operational practices. In summary, in addition to supporting regulation development, control strategy development, and other air pollution

control activities, having an electronic database populated with performance test data would save industry, state, local, Tribal agencies, and EPA significant time, money, and effort while also improving the quality of emissions inventories and, as a result, air quality regulations.

Records must be maintained in a form suitable and readily available for expeditious review, according to 63.10(b)(1). Electronic recordkeeping and reporting is available for many records, and is the form considered most suitable for expeditious review if available. Electronic recordkeeping and reporting is encouraged in this proposal and some records and reports are required to be kept in electronic format. Records required to be maintained electronically include the output of continuous monitors and the output of the bag leak detection systems. Additionally, standard operating procedures for the bag leak detection system and fugitive emissions control are required to be submitted to the Administrator for approval in electronic format.

3. Other Changes

The following lists additional minor changes to the NESHAP we are proposing. This list includes proposed rule changes that address editorial corrections and plain language revisions:

- Revise the definition for collocated blast and reverberatory furnaces to apply to systems "where the vent streams of the furnaces are mixed before cooling". This proposed revision clarifies the intent of the original definition which was to establish the conditions under which a reverberatory furnace stream would control the emissions of a blast furnace stream.
- Add a definition for "maintenance activity." This definition is necessary for the proposed work practice requirement concerning fugitive emissions during maintenance activities that could generate lead dust.
- Delete definitions no longer referenced in the proposed NESHAP.
- Eliminate the exemption for areas used exclusively for the storage of blast furnace slag from the raw materials storage area definition.
- Change the title of 40 CFR 63.543 ("Standards for process sources") to "What are my standards for atmospheric vents?". This change is being made to better reflect the description of the proposed standards in this section.
- Change the title of 40 CFR 63.544 ("Standards for process fugitive sources") to "What are my process enclosure standards?" to better reflect the description of the proposed requirements for enclosure of sources of process fugitive emissions.
- Eliminate the provision in 40 CFR 63.544(f) allowing up to 24 months to conduct a compliance test for lead if the previous test was less than 1.0 mg/dscm. We do not believe a reduced testing frequency is appropriate considering the proposed changes to the existing standard, and the proposed requirement to calculate a flow-weighted average on an annual basis.
- Add a requirement to conduct a performance test for THC on the same schedule as the stack test for lead. The 1997 NESHAP requires an initial test for THC, but does not require periodic testing. We are proposing that a performance test for total hydrocarbon be conducted on the same schedule as the stack test for lead. This proposed requirement will ensure any changes in operation that could affect the organic HAP content of the furnace vents are monitored on a routine basis.
- Consolidate the requirements for atmospheric vents to be conveyed to a control device into one section of the rule (40 CFR 63.543(f)).
- Clarify the requirements for plant roadway cleaning in 40 CFR 63.545 to specify equipment requirements for the mobile vacuum sweeper.
- Clarify the requirement to wash vehicles at the exit of a material storage area by specifying that the wash must include washing of tires, undercarriage and exterior surface of the vehicle followed by an inspection.
- Accompanying edits are being proposed for the standard operating procedures for baghouses in 40 CFR 63.548 and for control of fugitive emissions in 40 CFR 63.545 to reflect the proposed changes described for baghouses, enclosures and work practices for control of fugitive emissions.
- Update the monitoring requirements for building differential pressure to reflect the requirements for the pressure monitor to have the capability of detecting 0.01 mm Hg and to continuously record pressure readings.
- Update the recordkeeping and reporting sections to reflect the new monitoring requirements and monitoring options described above.
- Update the compliance dates to include the anticipated dates the proposed requirements will become effective.
- Added the requirement in 40 CFR 63.548(l) for new or modified sources to install a CEMS for measuring lead emissions when performance specifications for lead CEMS are promulgated.
- Included provisions for existing sources to use a CEMS instead of operating a BLDS and performing annual stack tests.

F. What is the relationship of the Secondary Lead Smelting standards proposed in today's action and implementation of the lead NAAQS?

Although EPA's obligation to conduct technology reviews and risk analyses for the secondary lead smelting source category is independent of the process of developing, revising, and implementing the National Ambient Air Quality Standard (NAAQS) for lead, EPA is interested in harmonizing these separate regulatory processes to the extent possible. EPA revised the primary NAAQS for lead in 2008. See 73 FR 66,964 (Nov. 12, 2008); see also *Coalition of Battery Recyclers* v. *EPA,* 604 F. 3d 613 (DC Cir. 2010) (upholding those standards). EPA designated 16 areas as non-attainment for the lead NAAQS, effective December 21, 2010, 75 FR 71,033 (November 22, 2010). EPA intends to complete designations for remaining areas of the country for the lead NAAQS in October, 2011, effective December 31, 2011. States have 18 months following a nonattainment designation for lead to submit a State Implementation Plan (SIP) demonstrating how the area will timely attain the NAAQS. See CAA section 191(a). Accordingly, attainment SIPs for lead will be due by July 2012 for areas designated in 2010 and July 2013 for areas designated in 2011. States are required to attain the standard as expeditiously as practicable, but no later than 5 years following a nonattainment designation (*i.e.,* Dec. 31, 2015 or 2016, respectively). As part of the attainment demonstration, SIPs may consider regulatory controls which have been adopted as of the date the SIP is submitted and will achieve timely reductions for attaining the standard.

The standards proposed in this rule would likely harmonize with this implementation schedule both procedurally and substantively. Pursuant to consent decree, EPA is obligated to promulgate the final NESHAP rule by December 31, 2011. Assuming EPA adopts the proposed standards and the rule is published in the **Federal Register** in early 2012, the standards would become effective in early 2012, with a compliance date of March 2014 (assuming a two year compliance date is necessary to allow sufficient time for the controls to be adopted). This schedule should allow for states to take any controls required under the NESHAP rule into consideration for attainment planning purposes.

As described above, EPA is proposing standards either predicated on individual sources emitting lead at levels that would result in ambient concentrations less than the primary lead NAAQS (the proposed stack standards), or (in the case of the alternative to enclosure standards for lead) actually demonstrating that source emissions do not exceed the primary lead NAAQS at a point of maximum projected concentration. EPA anticipates that, at least in areas where nonattainment is attributable to single sources that are subject to this rule, if the proposed controls are sufficient to attain the NAAQS by the attainment

deadline, then adoption of additional controls in the SIP for the area would not be necessary.

EPA solicits comments on the interplay between implementation of the primary lead NAAQS and the proposed standards in today's action and steps EPA might permissibly take to harmonize the two regulatory processes.

G. Compliance Dates

We are proposing that facilities must comply with all the requirements in this action (which are being proposed under CAA sections 112(d)(2), 112(d)(3), 112(d)(6), 112(f)(2), and 112(h) for all affected sources), no later than two years after the effective date of this rule. Under section 63.6(i)(4)(ii), "the owner or operator of an existing source unable to comply with a relevant standard established * * * pursuant to section 112(f) * * * may request that the Administrator grant an extension allowing the source up to 2 years after the standard's effective date to comply with the standard." The rule further specifies a written application for such a request. Here, EPA is already fully aware of the steps needed for each source to comply with the proposed standards and to reasonably estimate the amount of time it will take each source to do so. We believe that the two year extension would be warranted in all cases for sources needing to upgrade current practice. This includes the time needed to: Construct required enclosures and install associated control devices for fugitive sources; purchase, install and test replacement bags, or if the facility decides to replace an existing baghouse or add a new baghouse in series with an existing baghouse, seek bids, select a vendor, install and test the new equipment; prepare and submit the required monitoring plan to monitor lead concentrations in air; and, purchase, install and conduct quality assurance and quality control measures on compliance monitoring equipment (see *Estimated Time Needed to Achieve Compliance with The Proposed Revisions to the MACT standard for Secondary Lead Smelters,* which is available in the docket for this proposed action). EPA believes it reasonable to interpret section 63.6(i)(4)(ii) to allow this plenary finding, rather than utilizing a facility-by-facility application process, when the facts are already known and a category-wide adjudication is therefore possible. In addition, utilizing this process allows for public comment on the issue which would not be possible if a case-by-case application process with a 90-day window for completion were used.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

We anticipate that the 14 secondary lead smelting facilities currently operating in the United States will be affected by these proposed amendments. No new facilities are expected to be constructed in the foreseeable future; however, one facility is currently undergoing an expansion.

B. What are the air quality impacts?

EPA estimated the emissions reductions that are expected to result from the proposed amendments to the 1997 NESHAP compared to the 2009 baseline emissions estimates. A detailed documentation of the analysis can be found in:

Draft Cost Impacts of the Revised NESHAP for the Secondary Lead Smelting Source Category

Emissions of lead and arsenic from secondary lead smelters have declined over the last 15 years as a result of Federal rules, state rules and on the industry's own initiative. The current proposal would cut lead and arsenic emissions by 63 percent from their current levels, for a total reduction of more than 95% over that last 15 years. Under the proposed emissions limit for lead, we estimated that the lead emissions reductions would be 9,400 lb/yr from process and process fugitive sources and 17,200 lb/yr from fugitive dust sources. The expected reduction in total metal HAP is 11,800 lb/yr from process and process fugitive sources and 19,000 lb/yr from fugitive dust sources. We estimate that these controls will also reduce emissions of PM by 319,000 lb/yr.

Based on the emissions data available to the EPA, we believe that all facilities will be able to comply with the proposed emissions limits for THC and dioxins and furans without additional controls. However, we expect that some emissions reductions will occur due to increased temperatures of afterburners and from improved work practices. Nevertheless, it is quite difficult to estimate accurate reductions from these actions, and therefore, we are not providing estimates of reductions for THC and dioxin and furans.

C. What are the cost impacts?

Under the proposed amendments, secondary lead smelting facilities are expected to incur capital costs for the following types of control measures: Replacement of existing baghouses with new, higher-performing baghouses, replacement of bags in existing baghouses with better-performing materials, construction of new enclosures for processes not currently enclosed, modification of partially-enclosed structures to meet the requirements of total enclosure, and installation of BLDS on baghouses that are not currently equipped with these systems.

The capital costs for each facility were estimated based on the number and types of upgrades required. Each facility was evaluated for its ability to meet the proposed limits for lead emissions, THC emissions, dioxin and furan emissions, and proposed fugitive dust emissions requirements. The memorandum *Cost Impacts of the Revised NESHAP for the Secondary Lead Smelting Source Category* includes a complete description of the cost estimate methods used for this analysis and is available in the docket.

The majority of the capital costs estimated for compliance with the amendments proposed in this action are for purchasing new enclosures and the associated control devices that would be required for these enclosures. Although the proposed amendments would provide the alternative option to install monitors at or near the property boundary to demonstrate compliance with the enclosure requirements, we assumed that each facility would need to install enclosures for each of the processes described in proposed 40 CFR 63.544 if the facility did not already have the required enclosures. For each facility, we estimated the square footage of new enclosures required based on the size of enclosures currently in place compared to facilities that we considered to be totally enclosed with a similar production capacity. We further assumed that the facilities that required a substantial degree of new enclosure would re-configure their facility, particularly the storage areas, to reduce their footprint.

Based on our analysis of the facility configurations, seven facilities were considered to be totally enclosed. Another facility is currently installing enclosure structures and equipment that we anticipate will meet the proposed requirements. Consequently, capital costs were not estimated for these eight facilities. The remaining six facilities will require new building installations, thereby incurring capital costs.

Typical enclosure costs were estimated using information and algorithms from the Permanent Total Enclosures chapter in the EPA Air Pollution Control Cost Manual. New baghouse costs were estimated using a model based primarily on the cost information for recent baghouse

installations submitted by facilities in the ICR survey. The total capital cost estimate for the enclosures, the ductwork system, and control devices at the six facilities is approximately $40 million, at an annualized cost of $6.6 million in 2009 dollars (an average of about $1.1 million per facility).

We also estimated annual costs for the work practices proposed in this action. Based on the ICR survey information, we estimated that additional costs would be required to implement the work practices at 10 of the 14 existing facilities. The total annual costs to implement the proposed fugitive emissions work practices are approximately $3 million per year.

For compliance with the stack lead concentration limit, we compared each stack emissions point's lead concentration (reported under the ICR) to the proposed requirement of 1.0 mg/dscm of lead for any one stack. If the reported concentration was over 1.0 mg/dscm, we assumed that the corresponding facility would either upgrade the baghouse with new bags and additional maintenance or completely replace the baghouse, depending on the age of the unit. If the baghouse was less than 10 years old and the lead concentration in the outlet was not appreciably over the proposed standard, we assumed that the baghouse could be upgraded for minimal capital. If the baghouse was more than 10 years old and the lead concentration was appreciably over the proposed standard, we assumed the baghouse would be replaced. We then compared each facility's emissions with the proposed flow-weighted, facility-wide concentration limit of 0.20 mg/dscm using the assumption that baghouses needing replacement based on the 1.0 mg/dscm individual stack limit would be replaced with units that performed at least as well as the average baghouse identified in our data set. We estimated that three baghouses would need to be replaced based on these analyses. To estimate costs, we used a model based primarily on the cost information submitted in the ICR for recent baghouse installations in this industry. We assumed an increase in maintenance cost based on more frequent bag changes (from once every 5 years to once every 2 years). The total capital cost for three new baghouses at two facilities is estimated to be approximately $7.6 million, and total annual costs were estimated to be approximately $1.7 million.

New limits for THC are being proposed for reverberatory, electric, and rotary furnaces. Dioxin and furan limits are being proposed for all furnaces. We anticipate all operating affected units will be able to meet the proposed limits without installing additional controls, however, we have estimated additional costs of $260,000 per year for facilities to increase the temperature of their existing afterburners to ensure continuous compliance with the proposed standards.

The estimated costs for the proposed change to the monitoring requirements for baghouses, including installation of seven new BLDS for existing baghouses, is $230,000 of capital cost and $84,000 total annualized cost. The capital cost estimated for additional differential pressure monitors for total enclosures is $97,000. The cost for all additional monitoring and recordkeeping requirements, including the baghouse monitoring proposed, is estimated at $1,016,000.

The total annualized costs for the proposed rule are estimated at $12.6 million (2009 dollars). Table 5 provides a summary of the estimated costs and emissions reductions associated with the proposed amendments to the Secondary Lead Smelting NESHAP presented in today's action.

TABLE 5—ESTIMATED COSTS AND REDUCTIONS FOR THE PROPOSED STANDARDS IN THIS ACTION

Proposed amendment	Estimated capital cost ($MM)	Estimated annual cost ($MM)	Total HAP emissions reductions (tons per year)	Cost effectiveness in $ per ton total HAP reduction (and in $ per pound)
Revised stack lead emissions limit	7.6	1.7	5.9 (of metal HAP)	$0.3 MM per ton. ($150 per pound).
Total enclosure of fugitive emissions sources	40	6.6	5.5 (of metal HAP)	$1.2 MM per ton. ($600 per pound).
Fugitive control work practices	0	3.0	4.0 (of metal HAP)	$0.8 MM per ton. ($400 per pound).
THC and D/F concentration limits	0	0.3	[1] 30.0	$0.01 MM per ton.
Additional testing and monitoring	0.3	1.0	N/A	N/A.

[1] Based on total organic HAP.

D. What are the economic impacts?

We performed an economic impact analysis for secondary lead consumers and producers nationally using the annual compliance costs estimated for this proposed rule. The impacts to producers affected by this proposed rule are annualized costs of less than 0.9 percent of their revenues using the most current year available for revenue data. Prices and output for secondary lead should increase by no more than the impact on cost to revenues for producers, thus secondary lead prices should increase by less than 0.9 percent. Hence, the overall economic impact of this proposed rule should be low on the affected industry and its consumers. For more information, please refer to the Economic Impact Analysis for this proposed rulemaking that is available in the public docket.

E. What are the benefits?

The estimated reductions in lead emissions to meet the 2008 NAAQS standards that will be achieved by this proposed rule would provide benefits to public health, although we have not made a detailed quantitative assessment of them. For example, as described in the EPA's 2008 Regulatory Impact Analysis (RIA) that was completed for the lead NAAQS (which is available in the docket for this action and also on the EPA's Web site) populations aged less than age 7 would receive significant benefits from reductions in lead exposure (in the form of averted IQ loss among children less than 7 years of age).

As noted in that RIA, there were also several other lead-related health effects that EPA was unable to quantify—particularly among adults. These potential impacts included hypertension, non-fatal strokes,

reproductive effects and premature mortality, among others.

When viewed in this context, the reductions in concentrations of ambient lead that would be achieved with this proposed RTR for secondary lead smelters are expected to provide significant benefits to both children and adult populations, but these benefits cannot be quantified due to resource and data limitations.

In addition to the benefits likely to be achieved for lead reductions, we also estimate that this proposed RTR rule will achieve about 48 to 76 tons reductions in PM 2.5 emissions as a co-benefit of the HAP reductions. These PM 2.5 reductions would result in an average of about $8.6 to $13.6 million in benefits per year. Finally, the proposed rule will provide human health benefits through reductions in arsenic and cadmium emissions. We estimate that cancer cases from these emissions would be reduced from 0.02 per year to 0.01 per year.

VI. Request for Comments

We are soliciting comments on all aspects of this proposed action. In addition to general comments on this proposed action, we are also interested in any additional data that may help to reduce the uncertainties inherent in the risk assessments and other analyses. We are specifically interested in receiving corrections to the site-specific emissions profiles used for risk modeling. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Section VII of this preamble provides more information on submitting data.

VII. Submitting Data Corrections

The site-specific emissions profiles used in the source category risk and demographic analyses are available for download on the RTR Web page at: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* The data files include detailed information for each HAP emissions release point for the facility included in the source category.

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any "improved" data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes. To submit comments on the data downloaded from the RTR Web page, complete the following steps:

1. Within this downloaded file, enter suggested revisions to the data fields appropriate for that information. The data fields that may be revised include the following:

Data element	Definition
Control Measure	Are control measures in place? (yes or no)
Control Measure Comment	Select control measure from list provided, and briefly describe the control measure.
Delete	Indicate here if the facility or record should be deleted.
Delete Comment	Describes the reason for deletion.
Emissions Calculation Method Code for Revised Emissions.	Code description of the method used to derive emissions. For example, CEM, material balance, stack test, etc.
Emissions Process Group	Enter the general type of emissions process associated with the specified emissions point.
Fugitive Angle	Enter release angle (clockwise from true North); orientation of the y-dimension relative to true North, measured positive for clockwise starting at 0 degrees (maximum 89 degrees).
Fugitive Length	Enter dimension of the source in the east-west (x-) direction, commonly referred to as length (ft).
Fugitive Width	Enter dimension of the source in the north-south (y-) direction, commonly referred to as width (ft).
Malfunction Emissions	Enter total annual emissions due to malfunctions (tpy).
Malfunction Emissions Max Hourly	Enter maximum hourly malfunction emissions here (lb/hr).
North American Datum	Enter datum for latitude/longitude coordinates (NAD27 or NAD83); if left blank, NAD83 is assumed.
Process Comment	Enter general comments about process sources of emissions.
REVISED Address	Enter revised physical street address for MACT facility here.
REVISED City	Enter revised city name here.
REVISED County Name	Enter revised county name here.
REVISED Emissions Release Point Type	Enter revised Emissions Release Point Type here.
REVISED End Date	Enter revised End Date here.
REVISED Exit Gas Flow Rate	Enter revised Exit Gas Flowrate here (ft^3/sec).
REVISED Exit Gas Temperature	Enter revised Exit Gas Temperature here (F).
REVISED Exit Gas Velocity	Enter revised Exit Gas Velocity here (ft/sec).
REVISED Facility Category Code	Enter revised Facility Category Code here, which indicates whether facility is a major or area source.
REVISED Facility Name	Enter revised Facility Name here.
REVISED Facility Registry Identifier	Enter revised Facility Registry Identifier here, which is an ID assigned by the EPA Facility Registry System.
REVISED HAP Emissions Performance Level Code	Enter revised HAP Emissions Performance Level here.
REVISED Latitude	Enter revised Latitude here (decimal degrees).
REVISED Longitude	Enter revised Longitude here (decimal degrees).
REVISED MACT Code	Enter revised MACT Code here.
REVISED Pollutant Code	Enter revised Pollutant Code here.
REVISED Routine Emissions	Enter revised routine emissions value here (tpy).
REVISED SCC Code	Enter revised SCC Code here.
REVISED Stack Diameter	Enter revised Stack Diameter here (ft).
REVISED Stack Height	Enter revised Stack Height here (ft).
REVISED Start Date	Enter revised Start Date here.
REVISED State	Enter revised State here.
REVISED Tribal Code	Enter revised Tribal Code here.
REVISED Zip Code	Enter revised Zip Code here.

Data element	Definition
Shutdown Emissions	Enter total annual emissions due to shutdown events (tpy).
Shutdown Emissions Max Hourly	Enter maximum hourly shutdown emissions here (lb/hr).
Stack Comment	Enter general comments about emissions release points.
Startup Emissions	Enter total annual emissions due to startup events (tpy).
Startup Emissions Max Hourly	Enter maximum hourly startup emissions here (lb/hr).
Year Closed	Enter date facility stopped operations.

2. Fill in the commenter information fields for each suggested revision (*i.e.,* commenter name, commenter organization, commenter e-mail address, commenter phone number, and revision comments).

3. Gather documentation for any suggested emissions revisions (*e.g.,* performance test reports, material balance calculations).

4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Docket ID Number EPA–HQ–OAR–2011–0344 (through one of the methods described in the **ADDRESSES** section of this preamble). To expedite review of the revisions, it would also be helpful if you submitted a copy of your revisions to the EPA directly at *RTR@epa.gov* in addition to submitting them to the docket.

5. If you are providing comments on a facility, you need only submit one file for that facility, which should contain all suggested changes for all sources at that facility. We request that all data revision comments be submitted in the form of updated Microsoft® Access files, which are provided on the RTR Web Page at: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.*

VIII. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a significant regulatory action because it raises novel legal and policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1856.07. The information collection requirements are not enforceable until OMB approves them. The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emissions standards. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

We are proposing new paperwork requirements to the Secondary Lead Smelting source category in the form of increased frequency for stack testing as described in 40 CFR 63.540(f)–(h). More specifically, we are proposing the elimination of the provisions allowing reduced stack testing for lead and the addition of annual stack testing for THC and stack testing every 5 years for dioxins and furans. In conjunction with setting THC limits for reverberatory, electric, and rotary furnaces, additional monitoring and recordkeeping is required for furnace outlet temperature on these units. We believe temperature monitors currently exist in these locations and that the facilities will not incur a capital cost due to this requirement. Additionally, increased monitoring is required for demonstrating negative pressure in all total enclosures if this compliance option is selected. If the lead concentration in air limit is chosen, additional monitoring and recordkeeping will be required. Bag leak detection monitors will be required for HEPA filtration systems where no BLDS are currently installed. We estimate a total of seven new BLDS will be required as a result of this proposed rule at an estimated capital cost of $230,000.

For this proposed rule, EPA is adding affirmative defense to the estimate of burden in the ICR. To provide the public with an estimate of the relative magnitude of the burden associated with an assertion of the affirmative defense position adopted by a source, EPA has provided administrative adjustments to this ICR to show what the notification, recordkeeping and reporting requirements associated with the assertion of the affirmative defense might entail. EPA's estimate for the required notification, reports and records for any individual incident, including the root cause analysis, totals $3,141 and is based on the time and effort required of a source to review relevant data, interview plant employees, and document the events surrounding a malfunction that has caused an exceedance of an emissions limit. The estimate also includes time to produce and retain the record and reports for submission to EPA. EPA provides this illustrative estimate of this burden because these costs are only incurred if there has been a violation and a source chooses to take advantage of the affirmative defense.

Given the variety of circumstances under which malfunctions could occur, as well as differences among sources' operation and maintenance practices, we cannot reliably predict the severity and frequency of malfunction-related excess emissions events for a particular source. It is important to note that EPA has no basis currently for estimating the number of malfunctions that would qualify for an affirmative defense. Current historical records would be an inappropriate basis, as source owners or operators previously operated their facilities in recognition that they were exempt from the requirement to comply with emissions standards during malfunctions. Of the number of excess emissions events reported by source operators, only a small number would be expected to result from a malfunction (based on the definition above), and only a subset of excess emissions caused by malfunctions would result in the source choosing to assert the affirmative defense. Thus we believe the number of instances in which source operators might be expected to avail themselves of the affirmative defense will be extremely small. For this reason, we estimate no more than 2 or 3 such occurrences for all sources subject to subpart X over the 3-year period covered by this ICR. We expect to gather

information on such events in the future and will revise this estimate as better information becomes available. We estimate 14 regulated entities are currently subject to subpart X and will be subject to all proposed standards. The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the standards) for these amendments to subpart X (Secondary Lead Smelting) is estimated to be $1.01 million per year. This includes 4,200 labor hours per year at a total labor cost of $330,000 per year, and total non-labor capital and operation and maintenance (O&M) costs of $690,000 per year. This estimate includes performance tests, notifications, reporting, and recordkeeping associated with the new requirements for front-end process vents and back-end process operations. The total burden for the Federal government (averaged over the first 3 years after the effective date of the standard) is estimated to be 1,300 hours per year at a total labor cost of $67,000 per year. Burden is defined at 5 CFR 1320.3(b).

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 40 CFR are listed in 40 CFR part 9. When these ICRs are approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control numbers for the approved information collection requirements contained in the final rules.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2011–0344. Submit any comments related to the ICR to EPA and OMB. See the **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 19, 2011, a comment to OMB is best assured of having its full effect if OMB receives it by June 20, 2011. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of this proposed rule on small entities, 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. For this source category, which has the NAICS code 331419 (*i.e.,* Secondary Smelting and Refining of Nonferrous Metal (except copper and aluminum)), the SBA small business size standard is 750 employees according to the SBA small business standards definitions. We have estimated the cost impacts and have determined that the impacts do not constitute a significant economic impact on a substantial number of small entities (see: *Small Business Analysis for the Secondary Lead Smelting Source Category*, which is available in the docket for this proposed rule). After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. One of the six parent companies affected is considered a small entity per the definition provided in this section. However, we estimate that this proposed action will not have a significant economic impact on that company. The impact of this proposed action on this company will be an annualized compliance cost of less than one percent of its revenues. (See: *Small Business Analysis for the Secondary Lead Smelting Source Category*). All other affected parent companies are not small businesses according to the SBA small business size standard for the affected NAICS code (NAICS 331419). Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. To reduce the impacts, we are proposing an alternative option to enclosure standards to address fugitive emissions in order to allow companies flexibility on how best to minimize fugitive emissions at their facilities most efficiently. Moreover, we are proposing stack limits that are based on a weighted average approach (as described in Sections V.C and V.D of this preamble) and have been established at the least stringent levels that we estimate will still result in acceptable risks to public health. Thus, the proposed stack limits are based on the least costly approach that will still provide an ample margin of safety for human health and the environment. In addition, the proposed compliance testing requirements were established in a way that minimizes the costs for testing and reporting while still providing the Agency the necessary information needed to ensure continuous compliance with the proposed standards. For more information, please refer to the small business analysis that is in the docket. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed rule does not contain a Federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. The proposed rule would not result in expenditures of $100 million or more for State, local, and Tribal governments, in aggregate, or the private sector in any 1 year. The proposed rule imposes no enforceable duties on any State, local or Tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 or 205 of the UMRA.

This proposed rule 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 because it contains no requirements that apply to such governments nor does it impose obligations upon them.

E. Executive Order 13132: Federalism

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132. None of the facilities subject to this action are owned or operated by State governments, and, because no new requirements are being promulgated, nothing in this proposed rule will supersede State regulations. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from Tribal officials.

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

This proposed rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866. However, the Agency does believe there is a disproportionate risk to children due to current emissions of lead from this source category. Modeled ambient air lead concentrations from about 10 of the 14 facilities in this source category are in excess of the NAAQS for lead, which was set to "provide increased protection for children and other at-risk populations against an array of adverse health effects, most notably including neurological effects in children, including neurocognitive and neurobehavioral effects" (73 FR 67007). However, the control measures proposed in this notice will result in lead concentration levels at or below the lead NAAQS at all facilities, thereby mitigating the risk of adverse health effects to children.

The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to lead, arsenic, or cadmium.

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

This action is not a "significant energy action" as defined under Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not likely to have significant adverse effect on the supply, distribution, or use of energy. This action will not create any new requirements and therefore no additional costs for sources in the energy supply, distribution, or use sectors.

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 (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposed rulemaking involves technical standards. EPA proposes to use ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses," for its manual methods of measuring the oxygen or carbon dioxide content of the exhaust gas. These parts of ASME PTC 19.10–1981 are acceptable alternatives to EPA Method 3B. This standard is available from the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–5990 and ASTM D6420–99 (2004) as an acceptable alternative to EPA Method 18. EPA has also decided to use EPA Methods 1, 2, 3, 3A, 3B, 4, 5D, 23, a Procedure in Subpart X to measure doorway in-draft, and a method for measuring lead in ambient air (*i.e.,* 40 CFR Part 50 Appendix G). Although the Agency has identified 16 VCS as being potentially applicable to these methods cited in this rule, we have decided not to use these standards in this proposed rulemaking. The use of these VCS would have been impractical because they do not meet the objectives of the standards cited in this rule. The search and review results are in the docket for this proposed rule.

EPA welcomes comments on this aspect of this proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

Under section 63.7(f) and section 63.8(f) of Subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the proposed rule. J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

To examine the potential for any environmental justice issues that might be associated with each source category, we evaluated the distributions of HAP-related cancer and non-cancer risks across different social, demographic, and economic groups within the populations living near the facilities where these source categories are located. The methods used to conduct demographic analyses for this rule are described in Section III.B of this preamble. The development of demographic analyses to inform the consideration of environmental justice issues in EPA rulemakings is an evolving science. EPA offers the demographic analyses in today's proposed rulemaking as examples of how such analyses might be developed to inform such consideration, and invites public comment on the approaches used and the interpretations made from the results, with the hope that this will support the refinement and improve utility of such analyses.

In the case of Secondary Lead Smelting, we focused on populations within 50 km of the 14 facilities in this source category with emissions sources subject to the MACT standard. More specifically, for these populations we evaluated exposures to HAP that could result in cancer risks of 1-in-1 million or greater, or population exposures to

ambient air lead concentrations above the level of the NAAQS for lead. We compared the percentages of particular demographic groups within the focused populations to the total percentages of those demographic groups nationwide. The results of this analysis are documented in Section IV of this preamble (see Table 4 of this preamble), as well as in a technical report located in the docket for this proposed rulemaking.

As described in Section IV of this preamble, with regard to cancer risks, there are some potential disproportionate impacts to some minority populations due to emissions of arsenic and cadmium from this source category. However, with regard to lead, the analysis does not indicate significant disproportionate impacts. Nevertheless, the proposed actions in today's notice will significantly decrease the risks due to HAP emissions from this source category and mitigate any disproportionate risks due to those emissions.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Incorporation by reference, Lead, Reporting and recordkeeping requirements.

Dated: April 29, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is proposed to be 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. Part 63 is amended by revising subpart X to read as follows:

Subpart X—National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting

Sec.

63.541 Applicability.
63.542 Definitions.
63.543 What are my standards for process vents?
63.544 What are my process enclosure standards?
63.545 What are my standards for fugitive dust sources?
63.546 Compliance dates.
63.547 Test methods.
63.548 Monitoring requirements.
63.549 Notification requirements.
63.550 Recordkeeping and reporting requirements.
63.551 Implementation and enforcement.
63.552 Affirmative Defense for Exceedance of Emissions Limit During Malfunction.
Table 1 to Subpart X of Part 63—General Provisions Applicability to Subpart X
Table 2 to Subpart X of Part 63—Emissions Limits for Secondary Lead Smelting Furnaces
Table 3 to Subpart X of Part 60—Toxic Equivalency Factors

Subpart X—National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting

§ 63.541 Applicability.

(a) You are subject to this subpart if you own or operate any of the following equipment or processes at a secondary lead smelter: Blast, reverberatory, rotary, and electric furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive emissions sources; and fugitive dust sources. The provisions of this subpart do not apply to primary lead smelters, lead refiners, or lead remelters.

(b) Table 1 to this subpart specifies the provisions of subpart A of this part that apply to owners and operators of secondary lead smelters subject to this subpart.

(c) If you are subject to the provisions of this subpart, you are also subject to title V permitting requirements under 40 CFR parts 70 or 71, as applicable.

(d) Emissions standards in this subpart apply at all times.

§ 63.542 Definitions.

Terms used in this subpart are defined in the Clean Air Act, in subpart A of this part, or in this section as follows:

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

Agglomerating furnace means a furnace used to melt into a solid mass flue dust that is collected from a baghouse.

Bag leak detection system means an instrument that is capable of monitoring particulate matter (dust) loadings in the exhaust of a baghouse in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, transmittance or other effect to monitor relative particulate matter loadings.

Battery breaking area means the plant location at which lead-acid batteries are broken, crushed, or disassembled and separated into components.

Blast furnace means a smelting furnace consisting of a vertical cylinder atop a crucible, into which lead-bearing charge materials are introduced at the top of the furnace and combustion air is introduced through tuyeres at the bottom of the cylinder, and that uses coke as a fuel source and that is operated at such a temperature in the combustion zone (greater than 980 °C) that lead compounds are chemically reduced to elemental lead metal.

Blast furnace charging location means the physical opening through which raw materials are introduced into a blast furnace.

Collocated blast furnace and reverberatory furnace means operation at the same location of a blast furnace and a reverberatory furnace where the vent streams of the furnaces are mixed before cooling, with the volumetric flow rate discharged from the blast furnace being equal to or less than that discharged from the reverberatory furnace.

Dryer means a chamber that is heated and that is used to remove moisture from lead-bearing materials before they are charged to a smelting furnace.

Dryer transition equipment means the junction between a dryer and the charge hopper or conveyor, or the junction between the dryer and the smelting furnace feed chute or hopper located at the ends of the dryer.

Electric furnace means a smelting furnace consisting of a vessel into which reverberatory furnace slag is introduced and that uses electrical energy to heat the reverberatory furnace slag to such a temperature (greater than 980 °C) that lead compounds are reduced to elemental lead metal.

Enclosure hood means a hood that covers a process fugitive emission source on the top and on all sides, with openings only for access to introduce or remove materials to or from the source and through which an induced flow of air is ventilated.

Fugitive dust source means a stationary source of hazardous air pollutant emissions at a secondary lead smelter that is not associated with a specific process or process fugitive vent or stack. Fugitive dust sources include, but are not limited to, roadways, storage piles, materials handling transfer points, materials transport areas, storage areas, process areas, and buildings.

Furnace and refining/casting area means any area of a secondary lead smelter in which:

(1) Smelting furnaces are located; or

(2) Refining operations occur; or

(3) Casting operations occur.

Lead alloy means an alloy in which the predominant component is lead.

Maintenance activity means any of the following routine maintenance and repair activities that generate fugitive lead dust:

(1) Replacement or repair of refractory, filter bags, or any internal or external part of equipment used to process, handle or control lead-containing materials.

(2) Replacement of any duct section used to convey lead-containing exhaust.

(3) Metal cutting or welding that penetrates the metal structure of any equipment, and its associated components, used to process lead-containing material such that lead dust within the internal structure or its components can become fugitive lead dust.

(4) Resurfacing, repair or removal of ground, pavement, concrete, or asphalt.

Materials storage and handling area means any area of a secondary lead smelter in which lead-bearing materials (including, but not limited to, broken battery components, reverberatory furnace slag, flue dust, and dross) are stored or handled between process steps including, but not limited to, areas in which materials are stored in piles, bins, or tubs, and areas in which material is prepared for charging to a smelting furnace.

Partial enclosure means a structure comprised of walls or partitions on at least three sides or three-quarters of the perimeter surrounding stored materials or process equipment to prevent the entrainment of particulate matter into the air.

*Pavement cleanin*g means the use of vacuum equipment, water sprays, or a combination thereof to remove dust or other accumulated material from the paved areas of a secondary lead smelter.

Plant roadway means any area of a secondary lead smelter that is subject to vehicle traffic, including traffic by forklifts, front-end loaders, or vehicles carrying whole batteries or cast lead ingots. Excluded from this definition are employee and visitor parking areas, provided they are not subject to traffic by vehicles carrying lead-bearing materials.

Pressurized dryer breaching seal means a seal system connecting the dryer transition pieces which is maintained at a higher pressure than the inside of the dryer.

Process fugitive emissions source means a source of hazardous air pollutant emissions at a secondary lead smelter that is associated with lead smelting or refining, but is not the primary exhaust stream from a smelting furnace, and is not a fugitive dust source. Process fugitive sources include, but are not limited to, smelting furnace charging points, smelting furnace lead and slag taps, refining kettles, agglomerating furnaces, and drying kiln transition pieces.

Process vent means furnace vents, dryer vents, agglomeration furnace vents, vents from battery breakers, building vents, and any ventilation system controlling lead emissions.

Refining kettle means an open-top vessel that is constructed of cast iron or steel and is indirectly heated from below and contains molten lead for the purpose of refining and alloying the lead. Included are pot furnaces, receiving kettles, and holding kettles.

Reverberatory furnace means a refractory-lined furnace that uses one or more flames to heat the walls and roof of the furnace and lead-bearing scrap to such a temperature (greater than 980 °C) that lead compounds are chemically reduced to elemental lead metal.

Rotary furnace (also known as a rotary reverberatory furnace) means a furnace consisting of a refractory-lined chamber that rotates about a horizontal axis and that uses one or more flames to heat the walls of the furnace and lead-bearing scrap to such a temperature (greater than 980 °C) that lead compounds are chemically reduced to elemental lead metal.

Secondary lead smelter means any facility at which lead-bearing scrap material, primarily, but not limited to, lead-acid batteries, is recycled into elemental lead or lead alloys by smelting.

Smelting means the chemical reduction of lead compounds to elemental lead or lead alloys through processing in high-temperature (greater than 980 °C) furnaces including, but not limited to, blast furnaces, reverberatory furnaces, rotary furnaces, and electric furnaces.

Total enclosure means a roofed and walled structure with limited openings to allow access and egress for people and vehicles that meets the requirements of § 265.1101(a)(1), (a)(2)(i), and (c)(1)(i).

Vehicle wash means a device for removing dust and other accumulated material from the wheels, body, and underside of a vehicle to prevent the inadvertent transfer of lead contaminated material to another area of a secondary lead smelter or to public roadways.

Wet suppression means the use of water, water combined with a chemical surfactant, or a chemical binding agent to prevent the entrainment of dust into the air from fugitive dust sources.

§ 63.543 What are my standards for process vents?

(a) You must maintain the concentration of lead compounds in any process vent gas at or below 1.0 milligrams of lead per dry standard cubic meter (0.00043 grains of lead per dry standard cubic foot). You must maintain the flow-weighted average concentration of lead compounds in vent gases from a secondary lead facility at or below 0.20 milligrams of lead per dry standard cubic meter (0.000087 grains of lead per dry standard cubic foot).

(1) You must demonstrate compliance with the flow weighted average emissions limit on a 12-month rolling average basis, calculated monthly.

(2) Until 12 monthly weighted average emissions rates have been accumulated, calculate only the monthly average weighted emissions rate.

(3) You must use Equation 1 of this section to calculate the flow-weighted average concentration of lead compounds from process vents:

$$C_{FWA} = \frac{\sum_{i=1}^{n} F_i \times C_i}{\sum_{i}^{n} F_i} \qquad \text{(Eq. 1)}$$

Where:

C_{FWA} = Flow-weighted average concentration of all process vents.

n = Number of process vents.

F_i = Flow rate from process vent *i* in dry standard cubic feet per minute, as measured during the most recent compliance test.

C_i = Concentration of lead in process vent *i*, as measured during the most recent compliance test.

(4) Each month, you must use the concentration of lead and flow rate obtained during the most recent compliance test performed prior to or during that month to perform the calculation.

(5) If a continuous emissions monitoring system (CEMS) is used to measure the concentration of lead in a vent, the monthly average lead concentration and monthly average flow must be used rather than the most recent compliance test data.

(b) You must meet the applicable emissions limits for total hydrocarbons and dioxins and furans from furnace sources specified in Table 2 of this subpart.

(c) If you combine furnace emissions from multiple types of furnaces and these furnaces do not meet the definition of collocated blast and reverberatory furnaces, you must calculate your emissions limit for the combined furnace stream using Equation 2.

$$C_{EL} = \frac{\sum_{i=1}^{n} F_i \times C_{ELi}}{\sum_{i}^{n} F_i} \qquad \text{(Eq. 2)}$$

Where:

C_{EL} = Flow-weighted average emissions limit (concentration) of combined furnace vents.

n = Number of furnace vents.

F_i = Flow rate from furnace vent *i* in dry standard cubic feet per minute.

C_{ELi} = Emissions limit (concentration) of lead in furnace vent *i* as specified in Table 2 of this subpart.

(d) If you combine furnace emissions with the furnace charging process fugitive emissions and discharge them to the atmosphere through a common emissions point, you must demonstrate compliance with the applicable total hydrocarbons concentration limit specified in paragraph (b) of this section at a location downstream from the point at which the two emissions streams are combined.

(e) If you do not combine the furnace charging process fugitive emissions with the furnace process emissions, and discharge such emissions to the atmosphere through separate emissions points, you must maintain the total hydrocarbons concentration in the exhaust gas at or below 20 parts per million by volume, expressed as propane.

(f) Following the initial performance or compliance test to demonstrate compliance with the lead emissions limits specified in paragraph (a) of this section, you must conduct an annual performance test for lead compounds from each process vent (no later than 12 calendar months following the previous compliance test), unless you install and operate a CEMS and continuous emissions rate monitoring system meeting the requirements of § 63.548(m).

(g) Following the initial performance or compliance test to demonstrate compliance with the total hydrocarbons emissions limits in paragraphs (b) and (e) of this section, you must conduct an annual performance test for total hydrocarbons emissions from each process vent (no later than 12 calendar months following the previous compliance test).

(h) Following the initial performance or compliance test to demonstrate compliance with the dioxins and furans emissions limits specified in paragraph (b) of this section, you must conduct a performance test for dioxins and furans emissions at least once every 5 years following the previous compliance test.

(i) You must conduct the performance tests specified in paragraphs (f) through (h) of this section under such conditions as the Administrator specifies based on representative performance of the affected source for the period being tested. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(j) At all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(k) In addition to complying with the applicable emissions limits for dioxins and furans listed in Table 2 to this subpart, you must operate a process to separate plastic battery casing materials prior to introducing feed into a blast furnace.

§ 63.544 What are my process enclosure standards?

(a) Except as provided in paragraph (d) of this section, you must locate the fugitive emissions sources listed in paragraphs (a)(1) through (a)(9) of this section in a total enclosure that is maintained at negative pressure at all times. The total enclosure must meet the requirements specified in paragraphs (b)(1) and (b)(2) of this section.

(1) Smelting furnaces.

(2) Smelting furnace charging areas.

(3) Lead taps, slag taps, and molds during tapping.

(4) Battery breakers.

(5) Refining kettles, casting areas.

(6) Dryers.

(7) Agglomerating furnaces and agglomerating furnace product taps.

(8) Material handling areas for any lead bearing materials (drosses, slag, other raw materials), excluding areas where unbroken lead acid batteries and finished lead products are stored.

(9) Areas where dust from fabric filters, sweepings or used fabric filters are handled or processed.

(b) You must construct and operate total enclosures for the sources listed in paragraph (a) of this section as specified in paragraphs (b)(1) and (b)(2) of this section.

(1) You must ventilate the total enclosure continuously to ensure negative pressure values of at least 0.02 mm of mercury (0.011 inches of water).

(2) You must maintain the in-draft velocity of the total enclosure at greater than or equal to 300 feet per minute at any opening including, but not limited to, vents, windows, passages, doorways, bay doors and roll-ups doors.

(c) You must inspect enclosures and facility structures that contain any lead-bearing materials at least once per month. You must repair any gaps, breaks, separations, leak points or other

possible routes for emissions of lead to the atmosphere within 72 hours of identification unless you obtain approval for an extension from the Administrator before the repair period is exceeded.

(d) As an alternative to the requirements specified in paragraphs (a) through (c) of this section, you can elect to demonstrate compliance by meeting the requirements of (d)(1) through (d)(4) of this section.

(1) You must install compliance monitors on or near the plant property boundary, at locations approved by the Administrator, to demonstrate that the lead concentration in air is at all times maintained below a 3-month rolling average value of 0.15 $\mu g/m^3$ at each monitor. This must include at least two such monitors and at least one of these monitors must be in a location that is expected to have the highest air concentrations at or near the facility boundary based on ambient dispersion modeling or other methods approved by the Administrator.

(2) You must control the process fugitive emission sources listed in paragraphs (d)(2)(i) through (d)(2)(vi) of this section in accordance with the equipment and operational standards presented in paragraphs (d)(3) through (d)(8) of this section.

(i) Smelting furnace and dryer charging hoppers, chutes, and skip hoists.

(ii) Smelting furnace lead taps, and molds during tapping.

(iii) Smelting furnace slag taps, and molds during tapping.

(iv) Refining kettles.

(v) Dryer transition pieces.

(vi) Agglomerating furnace product taps.

(3) Process fugitive emission sources must be equipped with an enclosure hood meeting the requirements of (d)(3)(i), (d)(3)(ii), or (d)(3)(iii) of this section.

(i) All process fugitive enclosure hoods except those specified for refining kettles and dryer transition pieces must be ventilated to maintain a face velocity of at least 90 meters per minute (300 feet per minute) at all hood openings.

(ii) Process fugitive enclosure hoods required for refining kettles must be ventilated to maintain a face velocity of at least 75 meters per minute (250 feet per minute).

(iii) Process fugitive enclosure hoods required over dryer transition pieces must be ventilated to maintain a face velocity of at least 110 meters per minute (350 feet per minute).

(iv) Ventilation air from all enclosure hoods must be conveyed to a control device meeting the applicable requirements of § 63.543.

(4) As an alternative to paragraph (d)(3)(iii) of this section, you may elect to control the process fugitive emissions from dryer transition pieces by installing and operating pressurized dryer breaching seals at each transition piece.

(5) For the battery breaking area, partial enclosure of storage piles, wet suppression applied to storage piles with sufficient frequency and quantity to prevent the formation of dust, and pavement cleaning twice per day.

(6) For the furnace area, partial enclosure and pavement cleaning twice per day.

(7) For the refining and casting area, partial enclosure and pavement cleaning twice per day.

(8) For the materials storage and handling area, partial enclosure of storage piles, wet suppression applied to storage piles with sufficient frequency and quantity to prevent the formation of dust.

§ 63.545 What are my standards for fugitive dust sources?

(a) You must prepare, and at all times operate according to, a standard operating procedures manual that describes in detail the measures that will be put in place and implemented to control the fugitive dust emissions from the sources listed in paragraphs (a)(1) through (a)(8) of this section.

(1) Plant roadways.

(2) Plant buildings.

(3) Plant building exteriors.

(4) Accidental releases.

(5) Battery storage area.

(6) Equipment maintenance areas.

(7) Material storage areas.

(8) Material handling areas.

(b) You must submit the standard operating procedures manual to the Administrator or delegated authority for review and approval.

(c) The controls specified in the standard operating procedures manual must at a minimum include the requirements specified in paragraphs (c)(1) through (c)(8) of this section, unless you satisfy the requirements specified in paragraph (f) of this section.

(1) *Cleaning.* Where a cleaning practice is specified, you must clean by wet wash or a vacuum equipped with a filter rated by the manufacturer to achieve 99.97 percent capture efficiency for 0.3 micron particles in a manner that does not generate fugitive lead dust.

(2) *Plant roadways and paved areas.* You must pave all areas subject to vehicle traffic and you must clean the pavement twice per day, except on days when natural precipitation makes cleaning unnecessary or when sand or a similar material has been spread on plant roadways to provide traction on ice or snow. If you use a mobile vacuum sweeper for pavement cleaning, the sweeper must meet the requirements specified in paragraphs (c)(2)(i) or (c)(2)(ii) of this section.

(i) If the vacuum sweeper uses water flushing followed by sweeping, the water flush must use a minimum application of 0.48 gallons of water per square yard of pavement cleaned.

(ii) The vacuum sweeper must be equipped with a filter rated by the manufacturer to achieve a capture efficiency of 99.97 for 0.3 micron particles.

(3) *Plant building exterior.* For all buildings that house areas associated with storage, handling, or processing of lead bearing materials, you must perform a monthly cleaning of building rooftops on structures that are less than 45 feet in height and quarterly cleaning of buildings that are greater than 45 feet in height.

(4) *Accidental releases.* You must initiate cleaning of all affected areas within one hour after any accidental release of lead dust.

(5) *Battery storage areas.* You must inspect any unenclosed battery storage areas twice each day and immediately move any broken batteries identified to an enclosure. You must clean residue from broken batteries within one hour of identification.

(6) *Materials storage and handling areas.* You must wash each vehicle at each exit of the material storage and handling areas. The vehicle wash must include washing of tires, undercarriage and exterior surface of the vehicle followed by vehicle inspection. You must collect all wash water and store the wash water in a container that is not open to the atmosphere if the wash water is not immediately sent to treatment.

(7) *Equipment maintenance.* You must perform all maintenance activities for any equipment potentially contaminated with lead bearing material or lead dust inside an enclosure maintained at negative pressure. You must conduct any maintenance activity that cannot be conducted in a negative pressure enclosure due to physical constraints or safety issues inside a partial or temporary enclosure and use wet suppression and/or a vacuum system equipped with a filter rated by the manufacturer to achieve a capture efficiency of 99.97 percent for 0.3 micron particles.

(8) *Material transport.* You must transport all lead bearing materials including, but not limited to, furnace

charging material, baghouse dust, slag and any material generated from cleaning activities, capable of generating any amount of fugitive lead dust within closed conveyor systems or in sealed, leak-proof containers unless the transport activities are contained within an enclosure.

(d) Your standard operating procedures manual must specify that records be maintained of all pavement cleaning, vehicle washing, wet suppression, exterior building cleaning, and battery storage inspection activities performed to control fugitive dust emissions.

(e) You must pave all grounds on the facility or plant groundcover sufficient to prevent wind-blown dust. You may use dust suppressants on unpaved areas that will not support a groundcover (*e.g.,* roadway shoulders, steep slopes).

(f) As an alternative to the requirements specified in paragraphs (c)(1) through (c)(8) of this section, you can demonstrate to the Administrator (or delegated State, local, or Tribal authority) that an alternative measure(s) is equivalent or better than a practice(s) described in paragraphs (c)(1) through (c)(8) of this section.

§ 63.546 Compliance dates.

(a) For affected sources that commenced construction or reconstruction on or before May 19, 2011, you must demonstrate compliance with the requirements of this subpart no later than [*DATE TWO YEARS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*].

(b) For affected sources that commenced construction or reconstruction after May 19, 2011, you must demonstrate compliance with the requirements of this subpart by [*DATE TWO YEARS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*] or upon startup of operations, whichever is later.

§ 63.547 Test methods.

(a) You must use the test methods from appendix A of part 60 as listed in paragraphs (a)(1) through (a)(5) of this section to determine compliance with the emissions standards for lead compounds specified in § 63.543(a).

(1) EPA Method 1 at 40 CFR part 60, appendix A–1 to select the sampling port location and the number of traverse points.

(2) EPA Method 2 at 40 CFR part 60, appendix A–1 or EPA Method 5D at 40 CFR part 60, appendix A–3, section 8.3 for positive pressure fabric filters, to measure volumetric flow rate.

(3) EPA Method 3, 3A, or 3B at 40 CFR part 60, appendix A–2 to determine the dry molecular weight of the stack gas.

(4) EPA Method 4 at 40 CFR part 60, appendix A–3 to determine moisture content of the stack gas.

(5) EPA Method 29 at 40 CFR part 60, appendix A–8 to determine compliance with the lead compound emissions standards. The minimum sample volume must be 2.0 dry standard cubic meters (70 dry standard cubic feet) for each run. You must perform three test runs and you must determine compliance using the average of the three runs.

(b) You must use the following test methods in appendix A of part 60 listed in paragraphs (b)(1) through (b)(4) of this section, as specified, to determine compliance with the emissions standards for total hydrocarbons specified in § 63.543(b) and (e).

(1) EPA Method 1 at 40 CFR part 60, appendix A–1 to select the sampling port location and number of traverse points.

(2) The Single Point Integrated Sampling and Analytical Procedure of Method 3B to measure the carbon dioxide content of the stack gases when using either EPA Method 3A or 3B at 40 CFR part 60, appendix A–2.

(3) EPA Method 4 at 40 CFR part 60, appendix A–3 to measure moisture content of the stack gases.

(4) EPA Method 25A at 40 CFR part 60, appendix A–7 to measure total hydrocarbons emissions. The minimum sampling time must be 1 hour for each run. You must perform a minimum of three test runs. You must calculate a 1-hour average total hydrocarbons concentration for each run and use the average of the three 1-hour averages to determine compliance.

(c) You must correct the measured total hydrocarbons concentrations to 4 percent carbon dioxide as specified in paragraphs (c)(1) through (c)(3) of this section.

(1) If the measured percent carbon dioxide is greater than 0.4 percent in each compliance test, you must determine the correction factor using Equation (2) of this section.

$$F = \frac{4.0}{CO_2} \quad \text{(Eq. 2)}$$

Where:

F = Correction factor (no units).

CO_2 = Percent carbon dioxide measured using EPA Method 3A or 3B at 40 CFR part 60, appendix A–2, where the measured carbon dioxide is greater than 0.4 percent.

(2) If the measured percent carbon dioxide is equal to or less than 0.4 percent, you must use a correction factor (F) of 10.

(3) You must determine the corrected total hydrocarbons concentration by multiplying the measured total hydrocarbons concentration by the correction factor (F) determined for each compliance test.

(d) You must use the following test methods in appendix A of part 60 listed in paragraphs (d)(1) through (d)(5) of this section, as specified, to determine compliance with the emissions standards for dioxins and furans specified in § 63.543(b).

(1) EPA Method 1 at 40 CFR part 60, appendix A–1 to select the sampling port location and the number of traverse points.

(2) EPA Method 2 at 40 CFR part 60, appendix A–1 or EPA Method 5D at 40 CFR part 60, appendix A–3, section 8.3 for positive pressure fabric filters to measure volumetric flow rate.

(3) EPA Method 3A or 3B at 40 CFR part 60, appendix A–2 to determine the oxygen and carbon dioxide concentrations of the stack gas.

(4) EPA Method 4 at 40 CFR part 60, appendix A–3 to determine moisture content of the stack gas.

(5) EPA Method 23 at 40 CFR part 60, appendix A–7 to determine the dioxins and furans concentration.

(e) You must determine the dioxins and furans toxic equivalency by following the procedures in paragraphs (e)(1) through (e)(3) of this section.

(1) Measure the concentration of each dioxins and furans congener shown in Table 3 of this subpart using EPA Method 23 at 40 CFR part 60, appendix A–7. You must correct the concentration of dioxins and furans in terms of toxic equivalency to 7 percent O2 using Equation (3) of this section.

$$Cadj = \frac{Cmeas(20.9 - 7)}{(20.9 - \%O2)} \quad \text{(Eq. 3)}$$

Where:

C_{adj} = Dioxins and furans concentration adjusted to 7 percent oxygen.

C_{meas} = Dioxins and furans concentration measured in nanograms per dry standard cubic meter.

(20.9 − 7) = 20.9 percent oxygen − 7 percent oxygen (defined oxygen correction basis).

20.9 = Oxygen concentration in air, percent.

$\%O_2$ = Oxygen concentration measured on a dry basis, percent.

(2) For each dioxins and furans congener measured as specified in paragraph (e)(1) of this section, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 3 to this subpart.

(3) Sum the values calculated as specified in paragraph (e)(2) of this section to obtain the total concentration of dioxins and furans emitted in terms of toxic equivalency.

(f) You must determine compliance with the doorway in-draft requirement for enclosed buildings in § 63.544(b) using the procedures specified in paragraphs (f)(1) through (f)(3) of this section.

(1) You must use a propeller anemometer or equivalent device meeting the requirements of paragraphs (f)(1)(i) through (f)(1)(iii) of this section.

(i) The propeller of the anemometer must be made of a material of uniform density and must be properly balanced to optimize performance.

(ii) The measurement range of the anemometer must extend to at least 300 meters per minute (1,000 feet per minute).

(iii) A known relationship must exist between the anemometer signal output and air velocity, and the anemometer must be equipped with a suitable readout system.

(2) You must determine the doorway in-draft by placing the anemometer in the plane of the doorway opening near its center.

(3) You must demonstrate the doorway in-draft for each doorway that is open during normal operation with all other doorways remaining in the position they are in during normal operation.

(g) If you comply with the requirements specified in § 63.544(d)(1), you must use the EPA method at 40 CFR part 50, appendix G to measure the concentration of lead in air.

(h) If you comply with the requirements specified in § 63.544(d)(2) and (d)(3) for enclosure hoods, you must determine compliance with the face velocity requirements by using the test methods in paragraph (h)(1) or (h)(2) of this section.

(1) Calculate face velocity using the procedures in paragraphs (h)(1)(i) through (h)(1)(iv) of this section.

(i) Method 1 at 40 CFR part 60, appendix A–1 must be used to select the sampling port location in the duct leading from the process fugitive enclosure hood to the control device.

(ii) Method 2 at 40 CFR part 60, appendix A–1 must be used to measure the volumetric flow rate in the duct from the process fugitive enclosure hood to the control device.

(iii) The face area of the hood must be determined from measurement of the hood. If the hood has access doors, then the face area must be determined with the access doors in the position they are in during normal operating conditions.

(iv) Face velocity must be determined by dividing the volumetric flow rate as determined in paragraph (h)(1)(ii) of this section by the total face area for the hood determined in paragraph (h)(2)(iii) of this section.

(2) The face velocity may be measured directly using the procedures in paragraphs (h)(2)(i) through (h)(2)(v) of this section.

(i) A propeller anemometer or equivalent device must be used to measure hood face velocity.

(ii) The propeller of the anemometer must be made of a material of uniform density and must be properly balanced to optimize performance.

(iii) The measurement range of the anemometer must extend to at least 300 meters per minute (1,000 feet per minute).

(iv) A known relationship must exist between the anemometer signal output and air velocity, and the anemometer must be equipped with a suitable readout system.

(v) Hood face velocity must be determined for each hood open during normal operation by placing the anemometer in the plane of the hood opening. Access doors must be positioned consistent with normal operation.

§ 63.548 Monitoring requirements.

(a) You must prepare, and at all times operate according to, a standard operating procedures manual that describes in detail procedures for inspection, maintenance, and bag leak detection and corrective action plans for all baghouses (fabric filters or cartridge filters) that are used to control process vents, process fugitive, or fugitive dust emissions from any source subject to the lead emissions standards in §§ 63.543, 63.544, and 63.545, including those used to control emissions from building ventilation.

(b) You must submit the standard operating procedures manual for baghouses required by paragraph (a) of this section to the Administrator or delegated authority for review and approval.

(c) The procedures that you specify in the standard operating procedures manual for inspections and routine maintenance must, at a minimum, include the requirements of paragraphs (c)(1) through (c)(9) of this section.

(1) Daily monitoring of pressure drop across each baghouse cell.

(2) Weekly confirmation that dust is being removed from hoppers through visual inspection, or equivalent means of ensuring the proper functioning of removal mechanisms.

(3) Daily check of compressed air supply for pulse-jet baghouses.

(4) An appropriate methodology for monitoring cleaning cycles to ensure proper operation.

(5) Monthly check of bag cleaning mechanisms for proper functioning through visual inspection or equivalent means.

(6) Monthly check of bag tension on reverse air and shaker-type baghouses. Such checks are not required for shaker-type baghouses using self-tensioning (spring loaded) devices.

(7) Quarterly confirmation of the physical integrity of the baghouse through visual inspection of the baghouse interior for air leaks.

(8) Quarterly inspection of fans for wear, material buildup, and corrosion through visual inspection, vibration detectors, or equivalent means.

(9) Continuous operation of a bag leak detection system, unless a system meeting the requirements of paragraph (m) of this section, for a CEMS and continuous emissions rate monitoring system is installed for monitoring the concentration of lead.

(d) The procedures you specified in the standard operating procedures manual for baghouse maintenance must include, at a minimum, a preventative maintenance schedule that is consistent with the baghouse manufacturer's instructions for routine and long-term maintenance.

(e) The bag leak detection system required by paragraph (c)(9) of this section, must meet the specification and requirements of paragraphs (e)(1) through (e)(8) of this section.

(1) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 1.0 milligram per actual cubic meter (0.00044 grains per actual cubic foot) or less.

(2) The bag leak detection system sensor must provide output of relative particulate matter loadings.

(3) The bag leak detection system must be equipped with an alarm system that will alarm when an increase in relative particulate loadings is detected over a preset level.

(4) You must install and operate the bag leak detection system in a manner consistent with the guidance provided in "Office of Air Quality Planning and Standards (OAQPS) Fabric Filter Bag Leak Detection Guidance" EPA–454/R–98–015, September 1997 (incorporated by reference) and the manufacturer's written specifications and recommendations for installation, operation, and adjustment of the system.

(5) The initial adjustment of the system must, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time.

(6) Following initial adjustment, you must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in the approved standard operating procedures manual required under paragraph (a) of this section. You cannot increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365 day period unless such adjustment follows a complete baghouse inspection that demonstrates that the baghouse is in good operating condition.

(7) For negative pressure, induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, you must install the bag leak detector downstream of the baghouse and upstream of any wet acid gas scrubber.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(f) You must include in the standard operating procedures manual required by paragraph (a) of this section a corrective action plan that specifies the procedures to be followed in the case of a bag leak detection system alarm. The corrective action plan must include, at a minimum, the procedures that you will use to determine and record the time and cause of the alarm as well as the corrective actions taken to minimize emissions as specified in paragraphs (f)(1) and (f)(2) of this section.

(1) The procedures used to determine the cause of the alarm must be initiated within 30 minutes of the alarm.

(2) The cause of the alarm must be alleviated by taking the necessary corrective action(s) that may include, but not be limited to, those listed in paragraphs (f)(2)(i) through (f)(2)(vi) of this section.

(i) Inspecting the baghouse for air leaks, torn or broken filter elements, or any other malfunction that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media, or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system.

(vi) Shutting down the process producing the particulate emissions.

(g) If you use a wet scrubber to control particulate matter and metal hazardous air pollutant emissions from an affected source to demonstrate continuous compliance with the emissions standards, you must monitor and record the pressure drop and water flow rate of the wet scrubber during the initial performance or compliance test conducted to demonstrate compliance with the lead emissions limit under § 63.543(a). Thereafter, you must monitor and record the pressure drop and water flow rate values at least once every hour and you must maintain the pressure drop and water flow rate at levels no lower than 30 percent below the pressure drop and water flow rate measured during the initial performance or compliance test.

(h) You must comply with the requirements specified in paragraphs (h)(1) through (h)(5) of this section to demonstrate continuous compliance with the total hydrocarbons and dioxins and furans emissions standards.

(1) Continuous temperature monitoring. You must install, calibrate, maintain, and continuously operate a device to monitor and record the temperature of the afterburner or furnace exhaust streams consistent with the requirements for continuous monitoring systems in subpart A of this part.

(2) Prior to or in conjunction with the initial performance or compliance test to determine compliance with § 63.543(b), you must conduct a performance evaluation for the temperature monitoring device according to § 63.8(e). The definitions, installation specifications, test procedures, and data reduction procedures for determining calibration drift, relative accuracy, and reporting described in Performance Specification 2, 40 CFR part 60, appendix B, sections 2, 3, 5, 7, 8, 9, and 10 must be used to conduct the evaluation. The temperature monitoring device must meet the following performance and equipment specifications:

(i) The recorder response range must include zero and 1.5 times the average temperature identified in paragraph (h)(3) of this section.

(ii) The monitoring system calibration drift must not exceed 2 percent of 1.5 times the average temperature identified in paragraph (h)(3) of this section.

(iii) The monitoring system relative accuracy must not exceed 20 percent.

(iv) The reference method must be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system or an alternate reference, subject to the approval of the Administrator.

(3) You must monitor and record the temperature of the afterburner or the furnace exhaust streams every 15 minutes during the initial performance or compliance test for total hydrocarbons and dioxins and furans and determine an arithmetic average for the recorded temperature measurements.

(4) To demonstrate continuous compliance with the standards for total hydrocarbons and dioxins and furans, you must maintain an afterburner or exhaust temperature such that the average temperature in any 3-hour period does not fall more than 28 °C (50 °F) below the average established in paragraph (h)(3) of this section.

(i) You must install, operate, and maintain a digital differential pressure monitoring system to continuously monitor each total enclosure as described in paragraphs (i)(1) through (i)(6) of this section.

(1) You must install and maintain a minimum of one building digital differential pressure monitoring system at each of the following three walls in each total enclosure that has a total ground surface area of 10,000 square feet or more:

(i) The leeward wall.

(ii) The windward wall.

(iii) An exterior wall that connects the leeward and windward wall at a location defined by the intersection of a perpendicular line between a point on the connecting wall and a point on its furthest opposite exterior wall, and intersecting within plus or minus ten meters of the midpoint of a straight line between the two other monitors specified. The midpoint monitor must not be located on the same wall as either of the other two monitors.

(2) You must install and maintain a minimum of one building digital differential pressure monitoring system at the leeward wall of each total

enclosure that has a total ground surface area of less than 10,000 square feet.

(3) The digital differential pressure monitoring systems must be certified by the manufacturer to be capable of measuring and displaying negative pressure in the range of 0.01 to 0.2 mm mercury (0.005 to 0.11 inches of water) with a minimum accuracy of plus or minus 0.001 mm mercury (0.0005 inches of water).

(4) You must equip each digital differential pressure monitoring system with a continuous recorder.

(5) You must calibrate each digital differential pressure monitoring system in accordance with manufacturer's specifications at least once every 12 calendar months or more frequently if recommended by the manufacturer.

(6) You must equip the digital differential pressure monitoring system with a backup, uninterruptible power supply to ensure continuous operation of the monitoring system during a power outage.

(j) You must monitor the doorway in-draft velocity at each building opening once per day to demonstrate continuous compliance with the in-draft requirements in § 63.544(b)(2).

(k) If you comply with the requirements specified in § 63.544(d), you must comply with the requirements specified in paragraphs (k)(1) through (3) of this section.

(1) You must install, operate and maintain a continuous monitoring system for the measurement of lead compound concentrations in air as specified in paragraphs (k)(1)(i) through (k)(1)(v) of this section.

(i) You must operate a minimum of two compliance monitors sufficient in location and frequency of sample collection to detect expected maximum concentrations of lead compounds in air due to emissions from the affected source(s) in accordance with a written plan as described in paragraph (k)(1)(ii) of this section and approved by the Administrator. The plan must include descriptions of the sampling and analytical methods used. The plan may take into consideration existing monitoring being conducted under a State monitoring plan in accordance with 40 CFR part 58. At least one 24-hour sample must be collected from each monitor every 6 days except during periods or seasons exempted by the Administrator.

(ii) You must submit a written plan describing and explaining the basis for the design and adequacy of the compliance monitoring network, the sampling, analytical, and quality assurance procedures, and any other related procedures, and the justification for any seasonal, background, or other data adjustments within 45 days after the effective date of this subpart.

(iii) The Administrator at any time may require changes in, or expansion of, the monitoring program, including additional sampling and, more frequent sampling, revisions to the analytical protocols and network design.

(iv) If all rolling 3-month average concentrations of lead in air measured by the compliance monitoring system are less than 50 percent of the lead concentration limits specified in § 63.544(d)(1) for 3 consecutive years, you may submit a proposed revised plan to reduce the monitoring sampling and analysis frequency to the Administrator for review. If approved by the Administrator, you may adjust your monitoring accordingly.

(v) For any subsequent period, if any rolling 3-month average lead concentration in air measured at any monitor in the monitoring system exceeds 50 percent of the concentration limits specified in § 63.544(d)(1), you must resume monitoring pursuant to paragraph (k)(1)(i) of this section at all monitors until another 3 consecutive years of lead concentration measurements is demonstrated to be less than 50 percent of the lead concentration limits specified in § 63.544(d)(1).

(2) You must monitor the enclosure hood face velocity at each hood once per week to demonstrate continuous compliance with the in-draft requirements in § 63.544(d)(3).

(3) If you use pressurized dryer breaching seals in order to comply with the requirements of § 63.544(d)(4), you must equip each seal with an alarm that will "sound" or "go off" if the pressurized dryer breaching seal malfunctions.

(l) All new or modified sources subject to the requirements under § 63.543 must install, calibrate, maintain, and operate a CEMS for measuring lead emissions and a continuous emissions rate monitoring system subject to Performance Specification 6 of appendix B to part 60 of this chapter. You must comply with the requirements for CEMS and continuous emissions rate monitoring system specified in paragraph (m) of this section.

(1) Sources subject to the emissions limits for lead compounds under § 63.543(a) must install a CEMS for measuring lead emissions within 180 days of promulgation of performance specifications for lead CEMS.

(2) Prior to promulgation of performance specifications for CEMS used to measure lead concentrations, you must use the procedure described in § 63.543(a)(1) through (a)(4) to determine compliance.

(m) If a CEMS is used to measure lead emissions, you must install a continuous emissions rate monitoring system with a sensor in a location that provides representative measurement of the exhaust gas flow rate at the sampling location of the CEMS used to measure lead emissions, taking into account the manufacturer's recommendations. The flow rate sensor is that portion of the system that senses the volumetric flow rate and generates an output proportional to that flow rate.

(1) The continuous emissions rate monitoring system must be designed to measure the exhaust gas flow rate over a range that extends from a value of at least 20 percent less than the lowest expected exhaust flow rate to a value of at least 20 percent greater than the highest expected exhaust gas flow rate.

(2) The continuous emissions rate monitoring system must be equipped with a data acquisition and recording system that is capable of recording values over the entire range specified in paragraph (m)(1) of this section.

(3) You must perform an initial relative accuracy test of the continuous emissions rate monitoring system in accordance with the applicable Performance Specification in appendix B to part 60 of this chapter.

(4) You must operate the continuous emissions rate monitoring system and record data during all periods of operation of the affected facility including periods of startup, shutdown, and malfunction, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities including, as applicable, calibration checks and required zero and span adjustments.

(5) You must calculate the average lead concentration and flow rate monthly to determine compliance with § 63.543(a).

(6) When the continuous emissions rate monitoring system is unable to provide quality assured data, the following apply:

(i) When data are not available for periods of up to 48 hours, the highest recorded hourly emissions rate from the previous 24 hours must be used.

(ii) When data are not available for 48 or more hours, the maximum daily emissions rate based on the previous 30 days must be used.

§ 63.549 Notification requirements.

(a) You must comply with all of the notification requirements of § 63.9 of

subpart A, General Provisions. Electronic notifications are encouraged when possible.

(b) You must submit the fugitive dust control standard operating procedures manual required under § 63.545(a) and the standard operating procedures manual for baghouses required under § 63.548(a) to the Administrator or delegated authority along with a notification that the smelter is seeking review and approval of these plans and procedures. You must submit this notification no later than [*DATE ONE YEAR AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*]. For sources that commenced construction or reconstruction after [*INSERT THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*], you must submit this notification no later than 180 days before startup of the constructed or reconstructed secondary lead smelter, but no sooner than [*DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*]. For an affected source that has received a construction permit from the Administrator or delegated authority on or before [*INSERT DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*], you must submit this notification no later than [*DATE ONE YEAR AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER*].

§ 63.550 Recordkeeping and reporting requirements.

(a) You must comply with all of the recordkeeping and reporting requirements specified in § 63.10 of the General Provisions that are referenced in Table 1 to this subpart.

(1) Records must be maintained in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). However, electronic recordkeeping and reporting is encouraged, and required for some records and reports.

(2) Records must be kept on site for at least 2 years after the date of occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1).

(b) The standard operating procedures manuals required in § 63.545(a) and § 63.548(a) must be submitted to the Administrator in electronic format for review and approval of the initial submittal and whenever an update is made to the procedure.

(c) You must maintain for a period of 5 years, records of the information listed in paragraphs (c)(1) through (c)(15) of this section.

(1) Electronic records of the bag leak detection system output.

(2) An identification of the date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, the cause of the alarm, an explanation of the corrective actions taken, and the date and time the cause of the alarm was corrected.

(3) All records of inspections and maintenance activities required under § 63.548(c) as part of the practices described in the standard operating procedures manual for baghouses required under § 63.548(a).

(4) Electronic records of the pressure drop and water flow rate values for wet scrubbers used to control metal hazardous air pollutant emissions from process fugitive sources as required in § 63.548(g).

(5) Electronic records of the output from the continuous temperature monitor required in § 63.548(h)(1), and an identification of periods when the 3-hour average temperature fell below the minimum established under § 63.548(h)(3), and an explanation of the corrective actions taken.

(6) Electronic records of the continuous pressure monitors for total enclosures required in § 63.548(i), and an identification of periods when the pressure was not maintained as required in § 63.544(b)(1).

(7) Records of the daily measurements of doorway in-draft velocity required in § 63.548(j), and an identification of the periods when the velocity was not maintained as required in § 63.544(b)(2).

(8) Records of the inspections of facility enclosures required in § 63.544(c).

(9) Records of all cleaning and inspections required as part of the practices described in the standard operating procedures manual required under § 63.545(a) for the control of fugitive dust emissions.

(10) Records of the compliance monitoring required in § 63.548(k)(1), if applicable.

(11) Records of the face velocity measurements required in § 63.548(k)(2), if applicable, and an identification of periods when the face velocity was not maintained as required in § 63.544(d)(2) and (d)(3).

(12) Records of the dryer breaching seal alarms required in § 63.548(k)(3).

(13) Electronic records of the output of any CEMS installed to monitor lead emissions meeting the requirements of § 63.548(m).

(14) Records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control equipment and monitoring equipment.

(15) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.543(j), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

(d) You must comply with all of the reporting requirements specified in § 63.10 of the General Provisions that are referenced in Table 1 to this subpart.

(1) You must submit reports no less frequent than specified under § 63.10(e)(3) of the General Provisions.

(2) Once a source reports a violation of the standard or excess emissions, you must follow the reporting format required under § 63.10(e)(3) until a request to reduce reporting frequency is approved by the Administrator.

(e) In addition to the information required under the applicable sections of § 63.10, you must include in the reports required under paragraph (d) of this section the information specified in paragraphs (e)(1) through (e)(14) of this section.

(1) Records of the concentration of lead in each process vent, and records of the rolling 12-month flow-weighted average concentration of lead compounds in vent gases calculated monthly as required in § 63.543(a).

(2) Records of all alarms from the bag leak detection system specified in § 63.548.

(3) A description of the procedures taken following each bag leak detection system alarm pursuant to § 63.548(f)(1) and (2).

(4) A summary of the records maintained as part of the practices described in the standard operating procedures manual for baghouses required under § 63.548(a), including an explanation of the periods when the procedures were not followed and the corrective actions taken.

(5) An identification of the periods when the pressure drop and water flow rate of wet scrubbers used to control process fugitive sources dropped below the levels established in § 63.548(g), and an explanation of the corrective actions taken.

(6) Records of the temperature monitor output, in 3-hour block averages, for those periods when the temperature monitored pursuant to § 63.548(h) fell below the level established in § 63.548(h)(4).

(7) Certification that the plastic separation process for battery breakers required in § 63.543(k) was operated at all times the battery breaker was in service.

(8) Records of periods when the pressure was not maintained as required in § 63.544(b)(1), or the in-draft velocity was not maintained as required in § 63.544(b)(2).

(9) If a malfunction occurred during the reporting period, the report must include the number, duration, and a brief description for each type of malfunction that occurred during the reporting period and caused or may have caused any applicable emissions limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.543(j), including actions taken to correct a malfunction.

(10) A summary of the fugitive dust control measures performed during the required reporting period, including an explanation of the periods when the procedures outlined in the standard operating procedures manual pursuant to § 63.545(a) were not followed and the corrective actions taken. The reports must not contain copies of the daily records required to demonstrate compliance with the requirements of the standard operating procedures manuals required under § 63.545(a).

(11) If you comply with the requirements in § 63.544(d)(1), you must provide records of all results of air monitoring required in § 63.548(k)(1).

(12) Records of periods when the enclosure hood face velocity was not maintained as required in § 63.544(d)(3).

(13) Records of the dryer seal breaching alarms required in § 63.548(k)(3).

(14) You must submit records pursuant to paragraphs (e)(14)(i) through (iii) of this section.

(i) As of January 1, 2012 and within 60 days after the date of completing each performance test, as defined in § 63.2 and as required in this subpart, you must submit performance test data, except opacity data, electronically to EPA's Central Data Exchange by using the Electronic Reporting Tool (see *http://www.epa.gov/ttn/chief/ert/ert_tool.html/*). Only data collected using test methods compatible with the Electronic Reporting Tool are subject to this requirement to be submitted electronically into EPA's WebFIRE database.

(ii) Within 60 days after the date of completing each CEMS performance evaluation test, as defined in § 63.2 and required by this subpart, you must submit the relative accuracy test audit data electronically into EPA's Central Data Exchange by using the Electronic Reporting Tool as mentioned in paragraph (e)(14)(i) of this section. Only data collected using test methods compatible with the Electronic Reporting Tool are subject to this requirement to be submitted electronically into EPA's WebFIRE database.

(iii) All reports required by this subpart not subject to the requirements in paragraphs (e)(14)(i) and (ii) of this section must be sent to the Administrator at the appropriate address listed in § 63.13. The Administrator or the delegated authority may request a report in any form suitable for the specific case (*e.g.,* by electronic media such as Excel spreadsheet, on CD or hard copy). The Administrator retains the right to require submittal of reports subject to paragraphs (e)(14)(i) and (ii) of this section in paper format.

§ 63.551 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or Tribal agency.

(c) The authorities that cannot be delegated to State, local, or Tribal agencies are as specified in paragraphs (c)(1) through (c)(4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.541, 63.543 through 63.544, § 63.545, and § 63.546.

(2) Approval of major alternatives to test methods for under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

§ 63.552 Affirmative defense for exceedance of emissions limit during malfunction.

In response to an action to enforce the standards set forth in this subpart, you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined at § 63.2. Appropriate penalties may be assessed, however, if you fail to meet your burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) *Affirmative defense.* To establish the affirmative defense in any action to enforce such a limit, you must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that:

(1) The excess emissions:

(i) Were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner.

(ii) Could not have been prevented through careful planning, proper design or better operation and maintenance practices.

(iii) Did not stem from any activity or event that could have been foreseen and avoided, or planned for.

(iv) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

(2) Repairs were made as expeditiously as possible when the applicable emissions limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs.

(3) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions.

(4) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

(5) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health.

(6) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices.

(7) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs.

(8) At all times, the affected source was operated in a manner consistent with good practices for minimizing emissions.

(9) A written root cause analysis has been prepared, the purpose of which is

to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(b) *Notification.* The owner or operator of the affected source experiencing an exceedance of its emissions limit(s) during a malfunction, shall notify the Administrator by telephone or facsimile transmission as soon as possible, but no later than two business days after the initial occurrence of the malfunction, it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense, shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standard in this subpart to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (a) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45 day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

TABLE 1 TO SUBPART X OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART X

Reference	Applies to subpart X	Comment
63.1	Yes.	
63.2	Yes.	
63.3	Yes.	
63.4	Yes.	
63.5	Yes.	
63.6(a), (b), (c)	Yes.	
63.6(d)	No	Section reserved.
63.6(e)(1)(i)	No	See 63.543(j) for general duty requirement.
63.6(e)(1)(ii)	No.	
63.6(e)(1)(iii)	Yes.	
63.6(e)(2)	No	Section reserved.
63.6(e)(3)	No.	
63.6(f)(1)	No.	
63.6(g)	Yes.	
63.6(h)	No	No opacity limits in rule.
63.6(i)	Yes.	
63.6(j)	Yes.	
§63.7(a)–(d)	Yes.	
§63.7(e)(1)	No	See 63.543(i).
§63.7(e)(2)–(e)(4)	Yes.	
63.7(f), (g), (h)	Yes.	
63.8(a)–(b)	Yes.	
63.8(c)(1)(i)	No	See 63.543(j) for general duty requirement.
63.8(c)(1)(ii)	Yes.	
63.8(c)(1)(iii)	No.	
63.8(c)(2)–(d)(2)	Yes.	
63.8(d)(3)	Yes, except for last sentence	
63.8(e)–(g)	Yes.	
63.9(a), (b), (c), (e), (g), (h)(1) through (3), (h)(5) and (6), (i) and (j).	Yes.	
63.9(f)	No.	
63.9(h)(4)	No	Reserved.
63.10 (a)	Yes.	
63.10 (b)(1)	Yes.	
63.10(b)(2)(i)	No.	
63.10(b)(2)(ii)	No	See 63.550 for recordkeeping of occurrence and duration of malfunctions and recordkeeping of actions taken during malfunction.
63.10(b)(2)(iii)	Yes.	
63.10(b)(2)(iv)–(b)(2)(v)	No.	
63.10(b)(2)(vi)–(b)(2)(xiv)	Yes.	
63.(10)(b)(3)	Yes.	
63.10(c)(1)–(9)	Yes.	
63.10(c)(10)–(11)	No	See 63.550 for recordkeeping of malfunctions.
63.10(c)(12)–(c)(14)	Yes.	
63.10(c)(15)	No.	
63.10(d)(1)–(4)	Yes.	
63.10(d)(5)	No	See 63.550(c)(7) for reporting of malfunctions.
63.10(e)–((f)	Yes.	
63.11	No	Flares will not be used to comply with the emission limits.
63.12 to 63.15	Yes.	

TABLE 2 TO SUBPART X OF PART 63—EMISSIONS LIMITS FOR SECONDARY LEAD SMELTING FURNACES

For vents from these processes	You must meet the following emissions limits	
	Total hydrocarbon ppm by volume expressed as propane corrected to 4 percent carbon dioxide	Dioxin and furan (dioxins and furans) nanograms/dscm expressed as TEQ corrected to 7 percent O_2
Collocated blast and reverberatory furnace	20 ppmv	0.50 ng/dscm.
Collocated blast and reverberatory furnace when the Reverberatory furnace is not operating	360 ppmv	170 ng/dscm.
Collocated blast and reverberatory furnace that commence construction after June 9, 1994	20 ppmv	0.50 ng/dscm.
Collocated blast and reverberatory furnace that commence construction after [INSERT DATE 24 MONTHS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].	20 ppmv	0.50 ng/dscm.
Blast furnace	360 ppmv	170 ng/dscm.
Blast furnaces that commence construction or reconstruction after June 9, 1994	70 ppmv	10 ng/dscm.
Reverberatory and electric furnace	12 ppmv	0.20 ng/dscm.
Reverberatory and electric furnace that commence construction or reconstruction after [INSERT DATE 24 MONTHS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].	12 ppmv	0.10 ng/dscm.
Rotary furnaces	610 ppmv	1.0 ng/dscm.
Rotary Furnaces that commence construction or reconstruction after [INSERT DATE 24 MONTHS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].	610 ppmv	1.0 ng/dscm.

TABLE 3 TO SUBPART X OF PART 60—TOXIC EQUIVALENCY FACTORS

Dioxin/Furan congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
octachlorinated dibenzo-p-dioxin	0.001
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.05
1,2,3,7,8-pentachlorinated dibenzofuran	0.5
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1

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Part III

Department of Agriculture

Farm Service Agency

7 CFR Part 789
Agriculture Priorities and Allocations System; Proposed Rule

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 789

RIN 0560–AH68

Agriculture Priorities and Allocations System

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) is establishing the regulation for the Agriculture Priorities and Allocations System (APAS). Food is a critical commodity essential to the national defense (including civil emergency preparedness and response). To avoid civilian hardship during national defense emergencies it may be necessary to regulate the production, processing, storage, and wholesale distribution of food. Through the APAS rule, the U.S. Department of Agriculture (USDA) will respond to requests to place priority ratings on contracts, or orders of agriculture commodities up through the wholesale levels for agriculture production and equipment, allocate resources, and handle food claims as specified in the Defense Production Act (DPA) of 1950, as amended, if the necessity arises. FSA needs to implement this rule to direct the agriculture commodities and resources to areas of hardship or potential hardship due to national emergencies. For example, APAS is designed to use the DPA authority to help ensure that food is available when and where it is needed most, such as after a hurricane or earthquake. In most cases, there is likely to be no economic impact in filling priority orders because it would generally just be changing the timing in which orders are completed.

DATES: We will consider comments that we receive by July 18, 2011.

ADDRESSES: We invite you to submit comments on this proposed rule and the information collection. In your comment, include the Regulation Identifier Number (RIN) and volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* USDA FSA, 1400 Independence Ave., SW., Mail Stop 0543, Washington, DC 20250–0543.
- *Hand Delivery or Courier:* Deliver comments to the above address.

Comments may be inspected at the mail address listed above between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is available through the FSA home page at *http://www.fsa.usda.gov/.*

FOR FURTHER INFORMATION CONTACT: Josh Bornstein, telephone (202) 690–4770. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Summary

APAS is a USDA program that supports not only national defense needs (such as for combat rations), but also emergency preparedness initiatives by addressing essential civilian needs (food and food resources) through the placing of priorities on contracts for items and services or allocate resources, as necessary. Although a specific disaster designation is not required, the ability to prioritize or allocate items or services can be triggered by a determination by the President or designated entities that this action is necessary and essential to promote national defense including the imminent need for emergency preparedness. Under DPA (50 U.S.C. App. 2061 to 2170, 2171, and 2172), the term "national defense" includes emergency preparedness, response, and critical infrastructure and key resources protection. Authority for priorities and allocations of contracts is specified in DPA and further defined in Executive Order 12919, ''National Defense Industrial Resources Preparedness,'' dated June 3, 1994.

History of DPA

DPA was enacted into law as a means to combat military and civilian hardships as a result of the Korean War and other Cold War events. Until recently, only the Department of Commerce (DOC) implemented regulations to use the authority under DPA. The Department of Defense and DOC have used DPA authority to timely procure military and construction items. Items not under Department of Defense and DOC jurisdiction were procured using DPA priority ratings only after entering into a memorandum of understanding (MOU) with the Department that had jurisdiction over those items. For example, USDA has had MOUs with DOC for items under USDA jurisdiction; as a result, enabling DOC to establish priority ratings for food and food resources. Recent events such as acts of terrorism, hurricane disasters, and severe floods and droughts have increased the need for DPA priority ratings, requiring USDA to implement the APAS regulations to relieve DOC from the implementation responsibility for food and food resources and to directly assist other Departments in achieving national defense including emergency preparedness initiatives.

Jurisdiction

Title I of DPA and Executive Order 12919 authorize jurisdictional areas for each Department that is involved in national defense including emergency preparedness. USDA has jurisdiction for items that fall under the categories of:

(1) Food;

(2) Food resource facilities; and

(3) Distribution of farm equipment and commercial fertilizer.

USDA cannot use its DPA authority for items or services not in its jurisdiction. Those persons [1] in need of items or services that do not fall under the jurisdiction of USDA will request priorities or allocations assistance from the applicable Department. USDA will direct the requesters to the appropriate Department if the request comes into USDA.

APAS Process

If a Federal, State, or local government agency or private industry has placed, or wishes to place, a contract for items or services that are necessary or appropriate for the promotion of national defense, the agencies or private industry can request authorization from USDA to place a priority rating on the contract for the items or services. This process will allow the contractor (department or person requesting the priority rating) with the means to meet the requirements of maintaining or restoring national defense operations. To request priority authorization, the contractor must submit form AD–2102 (Request for Special Priorities Assistance) and include a written justification for the need to use APAS to establish the priority rating. USDA would only use APAS when the items or services required cannot be obtained in a timely manner through normal market channels.

[1] The word "person" as used in this rule refers to the requester of the priority rating. A person is an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof, or any State or local government or agency thereof, or any Federal agency.

Priorities

In the priorities component of APAS, certain contracts between the government and private parties, or contracts between private parties, would be given priority over other contracts to ensure timely delivery of items or services needed to support the national defense. Contracts for these items may already be in place, but may need to be amended (quantity and delivery dates), or new contracts may be required for immediate action as a means to support national defense requirements. Through APAS, USDA will work with the contracted vendor [2] to establish the new required priority.

Allocations

The second part of APAS is the allocations component. Allocation authority will only be used when there is an insufficient supply of an item or service to satisfy national defense supply requirements through the use of priorities authority or when the use of the priorities authority would cause a severe and prolonged disruption in the retail market place. Allocation orders would be distributed equitably among the suppliers of the resource(s) being allocated and would not require any person to relinquish a disproportionate share of the civilian market. Under no circumstances would allocations be used to ration materials or services at the retail level. No department of the Federal government has used its allocation authority in more than 50 years.

APAS Programs Approved for Use by USDA

USDA has three approved programs for priorities and allocations support under section 202(c) of Executive Order 12919. Items or services that USDA may establish a priority rating for must fall under either of the following programs:

(1) Food and food resources (civilian): Programs involving food and food resources processing and storage in support of emergency preparedness activities conducted pursuant to Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, 42 U.S.C. 5195–5197h).

(2) Agriculture and food critical infrastructure protection and restoration (civilian): Programs to protect or restore the agriculture and food system from terrorist attacks, major disasters, and other emergencies.

(3) Military food rations: Programs to provide the Department of Defense with food resources for combat rations.

For all other requests for items under USDA's jurisdiction that are not covered by these three programs, USDA will request concurrence from the Secretary of Homeland Security before placing a priority rating on the items.

Acceptance and Rejection of a Rated Order

A contract on which a priority rating has been placed is called a "rated order." Rated orders require a supplier to fill the order before all other unrated orders. DPA provides liability protection to suppliers if they breach other unrated contracts in order to fill rated orders.

A vendor must accept a rated order and follow provisions contained in the priority rated contract if the vendor normally supplies the materials or services covered by the order. A vendor must not discriminate against rated orders in any manner such as charging higher prices or by imposing different terms and conditions than for comparable unrated orders. A person who was in receipt of a rated order and did not comply with the provisions of the contract is subject to penalties and fines.

If a vendor is unable to accept the rated order, they must immediately notify USDA and the requester (if a USDA agency is not the requester). A vendor must not accept a rated order for delivery on a specific date if they are unable to fill it by that date or if they are unable to fill it because they are in receipt of other rated orders. However, the vendor still must offer to accept the order on the earliest delivery date otherwise possible.

Appeals

Appeal rights are available to vendors seeking an adjustment to or exception from a rated order due to exceptional hardships or if such vendor believes that the order is contrary to the intent of DPA or other applicable statutes.

Responsibilities

APAS responsibilities have been delegated to FSA from the Secretary of Agriculture (the Secretary). The Emergency Preparedness Division (EPD) implements APAS for FSA. FSA's Deputy Administrator for Management is responsible for the initial determination of placing a priority rating on a contract. The FSA Administrator is responsible for resolving conflicts and hearing appeals on requests for an adjustment or exception.

Scope

APAS covers only those Government and public agencies that have national defense, or emergency preparedness, response, and recovery responsibilities. This environment strictly limits the participants eligible to request assistance through APAS. Also, the vendors that supply agriculture related items (food, food resources) and in the quantity that is expected to be requested is inherently limited in scope. Only a select few are able to produce or deliver the large quantities of items that will require priority rating requests through APAS. For example, for preparations in advance of Hurricane Ike hitting the Texas Coast in 2008, one Federal agency considered requesting 1 million meals-ready-to-eat. In this example, it is clear that there would be limited companies that would be able to quickly supply 1 million meals-ready-to-eat. This is a representative example of the type of needs for which a priority rating would be requested through APAS. As a result, this program has a very limited customer base of large manufacturers and suppliers as well as those Government and public agencies (for example, the Red Cross), having national defense, or emergency preparedness, response, and recovery responsibilities.

Government organizations will request priority ratings through APAS to ensure that they are able to obtain critical resources during or in anticipation of an emergency to lessen the effects of the hazard on civilian populations.

As an example of how DOC has needed to use DPAS, during the aftermath of Hurricane Katrina, after the request was endorsed by the Federal Emergency Management Agency (FEMA), DOC authorized a railroad to place a priority rated order with Company X for equipment to repair the damages to the railroad system supporting commodity movements in and around the New Orleans area. This rated order allowed the vendor responsible for repairing the railroad infrastructure around the New Orleans area to complete repairs in the fastest time possible. This allowed the response organizations to quickly receive items in bulk quantities needed to support the mass care and housing of those displaced by the hurricane and its aftermath. When the railroad placed the rated order for equipment, Company X was required to fill the railroad's order first, before any other orders, unless Company X had a legal basis for rejecting the rated order. In addition, all customers currently under contract

[2] The word "vendor" as used in this rule refers to the vendor, manufacturer, or supplier of the items or services. The person requesting an APAS priority rating has or will place a contract with the vendor for which the priority rating is requested.

obligations from Company X would not have breach-of-contract cause of action against Company X if their orders could not be filled by the original agreed-to time due to unplanned delays due to filling the rated order.

DPA Priorities and Allocations Authority

Section 101 of the DPA of 1950 (50 U.S.C. App. 2071) establishes the broad authority for the President to require the acceptance and priority performance of contracts or orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, and to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense. This is commonly referred to as "priorities and allocations" authority. Through Executive Order 12919 the President delegated the DPA section 101 priorities and allocations authority to the following agency heads:

- The Secretary of Agriculture with respect to food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer.
- The Secretary of Energy with respect to all forms of energy.
- The Secretary of Health and Human Services with respect to health resources.
- The Secretary of Transportation with respect to all forms of civil transportation.
- The Secretary of Defense with respect to water resources.
- The Secretary of Commerce for all other materials, services, and facilities, including construction materials.

Since the initial enactment, Congress has continued to reauthorize DPA. Most recently, on September 30, 2009, Congress enacted the Defense Production Act Reauthorization (DPAR) of 2009 (Pub. L. 111–67). A significant difference in this reauthorization was the requirement for Departments other than DOC to initiate rulemaking to implement their responsibilities under DPA. Specifically, section 101(d) of DPA (50 U.S.C. App. 2071(d)), as added by DPAR, directs the head of each Federal agency to issue final rules that establish standards and procedures to use the authority of section 101 to promote the national defense under both emergency and nonemergency conditions and, as appropriate and to the extent necessary, consult with the heads of other Federal agencies to develop a consistent and unified Federal Priorities and Allocations System (FPAS).

FEMA in the Department of Homeland Security (DHS) is responsible for coordinating priorities and allocations rulemaking efforts among the six Federal agencies that have been delegated DPA section 101 authority (referred to as "resource agencies") to ensure consistency and uniformity of rule language and provisions across resource agency jurisdictions. Each of the six resource agencies is either revising existing priorities and allocations regulations to meet this statutory requirement or is in the process of developing and publishing its initial regulation. Together, the priorities and allocations system regulations of each resource agency will constitute FPAS.

USDA is working with FEMA and the other Departments to have common rules for the implementation of APAS and the other Departments' regulations; that common rule language is the basis for this rule. DOC published proposed revisions to the DPAS regulations on June 7, 2010 (75 FR 32122–32140); Energy published the proposed rule for EPAS on July 16, 2010 (75 FR 41405–41421); and Transportation published the proposed rule for TPAS on February 15, 2011 (76 FR 8675–8699).

Within USDA, authority to administer APAS has been delegated to the FSA Administrator. FSA will manage APAS for all USDA.

This rule establishes APAS, one-part of the FPAS, to implement USDA's administration of its delegated authority under DPA section 101 and other related statutes such as the priorities provisions of the Military Selective Service Act [3] (50 U.S.C. App. 468) (see Executive Order 12742, "National Security Industrial Responsiveness," dated Jan. 8, 1991). As explained in further detail below, APAS is consistent with the existing Defense Priorities and Allocations System (DPAS) (15 CFR part 700) implemented by DOC to provide continuity with long-established priorities system procedures and to make use of a proven foundation for a consistent and unified FPAS.[4]

In other words, the APAS regulations are intended to be consistent with the DOC regulations through which DPAS has operated for approximately 25 years. The only intended differences are those that are unique to USDA's requirements. Specific changes were made as needed due to the focus on food and food resources versus construction materials and other related items or services and to specifically include emergency preparedness. For both of those, one specific change is in the timing allowed to accept or reject priority orders; a shorter time frame is required when dealing with food and food resources for civilian hardships due to emergencies. Therefore, instead of having 15 days, the APAS regulation allows for 6 to 12 hours.

APAS Description

APAS provides guidance and procedures for use of DPA priorities and allocations authority with respect to the resource areas delegated by the President to USDA as specified in Executive Order 12919: Food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer. As specified in Executive Order 12919, section 202, priorities and allocations may be used only to support programs that have been determined in writing "as necessary or appropriate to promote the national defense" by:

(a) The Secretary of Defense with respect to military production and construction, military assistance to foreign nations, stockpiling, outer space, and directly related activities;

(b) The Secretary of Energy with respect to energy production and construction, distribution and use, and directly related activities; or

(c) The Secretary of Homeland Security, with respect to essential civilian needs supporting national defense, including civil defense and continuity of government and directly related activities.

Under DPA, the term "national defense" specifically includes emergency preparedness activities conducted pursuant to Title VI of the Stafford Act.[5] The Stafford Act, in section 602(b) of Title VI, also cross-references DPA by stating that "[t]he terms 'national defense' and 'defense,' as used in [DPA], include emergency preparedness activities conducted pursuant to this title." (See 42 U.S.C. 5195a(b).) Emergency preparedness activities include a broad range of measures to be taken in preparation for, during, and in response to natural

[3] References to the Military Selective Service Act apply to those required deliveries to the Government exclusively for the use of the armed forces or for the use of the Atomic Energy Commission.

[4] DPAS regulations provided the starting point for development of the common rule language discussed above.

[5] The term "national defense" is defined in section 702(14) of DPA as "programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to title VI of the [Stafford Act] and critical infrastructure protection and restoration." See 50 U.S.C. App. 2152(14).

disasters or accidental or man-caused events (that is, hazards).[6] For APAS, emergency preparedness is expected to be used most for:

(1) Preparedness, including actions taken before an event occurs to lessen the severity of hardships to civilians,

(2) Response, including actions taken immediately after the event happens, but before any recovery actions are taken, to relieve the effects on civilians; and

(3) Recovery, including actions taken to restore critical infrastructure and key resources as close as can be to normal operations to approve priority ratings in cases of imminent hazard; response includes both the anticipation of the event and the immediate response to it.

USDA expects the requests for priority ratings will predominately be from Federal government agencies, and the few State and local governments with a responsibility in emergency preparedness. When the request is from a private entity, it is expected to be for the purpose of fulfilling a government contract.

As mentioned above, according to Executive Order 12919 the priorities and allocations authority of DPA may only be used by the Secretary of Agriculture to support programs that have been determined in writing as necessary or appropriate to promote the national defense. Therefore, to be ready to use the priorities and allocations authority for food and food resources, USDA has already coordinated with the Secretary of Homeland Security and the Secretary of Defense to approve programs that will cover everything for which we expect to need to provide priorities and allocations in the near future.

USDA has two programs that have been approved by the Secretary of Homeland Security for priorities and allocations support pursuant to section 202(c) of Executive Order 12919:

(1) *Food and food resources (civilian):* Programs involving food and food resources processing and storage in support of emergency preparedness activities conducted pursuant to Title VI of the Stafford Act. Such programs involve activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions that would be created by the hazard, and to make emergency repairs to, or the emergency restoration of, vital utilities and food resource facilities destroyed or damaged by the hazard.

(2) *Agricultural and food critical infrastructure protection and restoration:* Programs to protect or restore the agriculture and food system from terrorist attacks, major disasters, and other emergencies. In Homeland Security Presidential Directive HSPD–9, "Defense of United States Agriculture and Food, "dated January 30, 2004, such programs involve activities and measures to:

- Identify and prioritize critical infrastructure and key resources in the agriculture and food system for establishing protection requirements;
- Develop awareness and early warning capabilities to recognize threats;
- Mitigate vulnerabilities at critical production and processing nodes;
- Enhance screening procedures for domestic and imported products; and
- Enhance response and recovery procedures.

These programs support the national defense by providing for essential civilian needs to ensure a viable food and agriculture sector during an emergency preparedness event or a military conflict. Both programs involve emergency preparedness activities and the maintenance and restoration of the critical infrastructure and key resources.

USDA has one program, Food Resources (combat rations), that has been approved by the Secretary of Defense for priorities and allocations support under section 202(a) of Executive Order 12919. As mentioned above, prior to implementation of DPAR, USDA delegated implementation authority of the agricultural portion of DPA to DOC. DOC in turn delegated authority to the Department of Defense to administer a "priorities" program for combat rations to meet troop requirements. The combat rations program was established by an agreement between DOC and USDA, dated January 28, 1991, and approved by FEMA on February 1, 1991. USDA's current intention is to continue the policy established under DOC granting authority to the Department of Defense to administer the combat rations program.

The approved programs are listed in Schedule I of the APAS regulation (see Schedule I for a complete list of approved programs).

Before USDA can exercise its priorities or allocations authority for any requirements not covered under the approved programs, as specified in section 202 of Executive Order 12919, the Secretaries of Defense, Energy, or Homeland Security, as appropriate, would have to concur, in writing, with USDA that use of priorities or allocations authority by USDA would be necessary or appropriate to promote the national defense.

Commodities covered under the APAS regulation include those items required for production of agriculture commodities (including fertilizer, agriculture seed and livestock feed), raw and processed agriculture products for wholesale distribution, and agriculture production equipment.

Priorities and Allocations

APAS has two principal components: Priorities and allocations.

Priorities

In the "priorities" component of APAS, certain contracts between the government and private parties, or contracts between private parties, would be required to be given priority over other respective contracts to ensure timely delivery of an item needed for an "approved program." "Approved program" is defined in 7 CFR 789.8 to mean "a program determined by the Secretary of Defense, the Secretary of Energy, or the Secretary of Homeland Security to be necessary or appropriate to promote the national defense, in accordance with section 202 of Executive Order 12919." As stated above, certain USDA programs have been approved by the Secretary of Homeland Security and by the Secretary of Defense as necessary or appropriate to promote the national defense. Other programs could be approved in the future.

Priority Rating Authority

During a disaster event that impacts or threatens the national defense, Government and private agencies that have a role in emergency preparedness may require additional items or materials and delivery of these items in a short time span to meet the demands of emergency preparedness, response, and recovery efforts. Contracts for these items may already be in place, but may need to be altered (quantity and delivery dates) to meet national defense including emergency preparedness requirements. If no contract is in place to supply specific items at a specific time, a new contract may be required to obtain these items to meet emergency preparedness requirements. Specific

[6] The term "emergency preparedness" is defined in section 602(a) of the Stafford Act as "all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard." (See 42 U.S.C. 5195a(a).) Section 602(a) also provides a non-exhaustive list of specific measures that constitute emergency preparedness.

contracts for emergency preparedness items may require prioritization (ranked above non-essential contracts) to allow for timely delivery of specific materials to meet the requirements of national defense.

If a Government or private agency has placed, or wishes to place, a contract for an item that is necessary or appropriate for the promotion of national defense (including emergency preparedness activities under the Stafford Act or the protection or restoration of the agriculture and food system), the agency or private entity can request from USDA authorization to place a priority rating on the contract for the items to provide the contractor with the means to meet the requirements of maintaining or restoring national defense operations.

A contract on which a priority rating has been placed is called a "rated order." Rated orders require a vendor or supplier to fill the order before all other unrated orders. Procedures for the placement of rated orders and the effect of rated orders on unrated orders are specified in §§ 789.10 through 789.18 as described below.

In addition, APAS priority authority provided by USDA provides the vendor or supplier with legal protection from other customers without rated orders with respect to timeliness of filling their other unrated orders as specified § 789.70, "Protection Against Claims."

Example

If a Federal agency with emergency preparedness authorities placed an order with Company X for shelf stable meals in anticipation of or response to a hurricane, and Company X told the Federal agency that there were 19 other orders to be filled before the Federal agency's order, the Federal agency could request from USDA authority to place a priority rating on its order with Company X. USDA would then determine if the acquisition of shelf stable meals was necessary or appropriate to support emergency preparedness activities or promote the national defense. (Note: If USDA determines that the item would support a program that has not yet been approved by the Secretaries of Defense, Energy, or Homeland Security, as appropriate, in accordance with section 202 of Executive Order 12919, USDA could not authorize the contractor to place a priority rating on its contract unless USDA were to receive from the appropriate Secretary (Defense, Energy, or Homeland Security) a written determination that the particular program is necessary or appropriate to promote the national defense.) If so, USDA then would authorize the Federal agency to place a priority rating on the order for the item(s). Company X would be required to meet the delivery requirements of the Federal agency's rated order, and modify production or delivery schedules of any of the other 19 unrated orders only when required delivery dates for the rated order cannot otherwise be met, unless Company X had a basis for rejecting the rated order as specified in § 789.13. Customers 1 through 19 on the list would not have a cause of action against Company X for not filling their orders by the original agreed-to time, as specified in § 789.70 if the rated order was the reason why they could not fulfill other orders by the agreed-upon time.

Use of Priority Ratings

If you (as a vendor) receive a rated order, you must give it preferential treatment as required by subpart C, §§ 789.10 through 789.18 (the sections of the regulations are discussed below). Generally, this means that you must accept and fill rated orders for items that you normally supply and consistent with regularly established terms of sale (see § 789.13(a)). Failure to comply with the provisions of the rated order may result in legal actions and fines against the recipient of the rated order. However, certain grounds for mandatory rejection or optional rejection of the rated order may apply (see § 789.13(b) and (c)). Rated orders must be accepted or rejected within specified time frames (see §§ 789.13(d) and 789.13(e)).

All rated orders must be scheduled in a manner and to the extent possible to ensure timely delivery by the required delivery date contained in each order (see § 789.14(a)).

The existence of previously accepted unrated orders or contracts or lower rated orders is not sufficient reason for rejecting a rated order. In fact, you (as a supplier or vendor) are required to displace or defer lower rated or unrated orders if they conflict with your performance against a higher rated order (see § 789.14(b)). When you receive multiple rated orders for specific goods or services and the orders have the same rating level, you must first place and fill those orders that you received first (see § 789.14(c)).

To ensure that contracts and orders for authorized programs are completed in a timely fashion, you (as a supplier or vendor) must place, as necessary, a priority rating on all the contracts and orders you issue with suppliers for items needed to fill rated orders you have received (see § 789.15). This requirement ensures that priority treatment will be afforded your orders by your suppliers and from vendor to vendor throughout the supply chain. Other requirements apply to changes or cancellations of priority ratings and rated orders (see § 789.16) and use of rated orders for certain items (see § 789.17).

Finally, you may place a priority rating on your contracts or orders only if you are in receipt of a rated order or if you have been otherwise explicitly authorized to do so by USDA or a delegate agency (see § 789.18 for other limitations on placing rated orders).

Example

If a Federal agency with responsibilities in mass care and feeding during an emergency has a need for bread, and its current inventory is not sufficient to handle the short term needs of the dependents, nor would its existing contracts with vendors be sufficient to resupply its inventory in the timeframe that is required. The Federal agency requests from USDA authorization to place a priority rating on an order for the bread. USDA authorizes the Federal agency to place a priority rating on the order for the bread, and the agency places a priority rating on an order issued to Company Z, the manufacturer and supplier of the bread. Upon receipt of the rated order from the agency, Company Z must schedule operations to satisfy the delivery requirements of the rated order. Company Z must use the rated order received from the Federal agency to place prioritt ratings on contracts with other vendors that supply Company Z with items used to process the bread (ingredients, packaging materials), as necessary.

Although packaging materials would fall under the jurisdiction of DOC, USDA is working with DOC to establish a delegation of authority from DOC to USDA to assign priority ratings to orders for industrial resources falling within the priorities authority of DOC that are needed for use in USDA programs (see § 789.10). This would allow for a rated order placed using authorization from USDA to cross multiple jurisdictions and remain valid.

Allocations

An "allocation" is defined in § 789.8 as "the control of the distribution of materials, services, or facilities for a purpose deemed necessary or appropriate to promote the national defense." As specified in the allocations component of the APAS regulation (see subpart E, §§ 789.30 through 789.37), USDA has the authority to allocate specified items to promote the national defense.

Allocation authority would be used only when there is insufficient supply of a material, service, or facility to satisfy national defense supply requirements through the use of priorities authority or when the use of the priorities authority would cause a severe and prolonged disruption in the supply of materials, services, or facilities available to support normal U.S. economic activities (see § 789.30(a)). Under no circumstances would allocations be used to ration materials or services at the retail level (see § 789.30(a)). Allocation orders would be distributed equitably among the suppliers of the resource(s) being allocated and would not require any person to relinquish a disproportionate share of the civilian market (see § 789.30(b)).

Additionally, as specified in DPA § 101(b) and section 201(d) of Executive Order 12919, USDA may not use an allocation to control the general distribution of a material in the civilian market unless:

- The Secretary has made a written finding that such material is a scarce and critical material essential to the national defense and the requirements of the national defense for such material cannot otherwise be met without a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship;
- The Secretary has submitted the finding for the President's approval through the Assistant to the President for National Security Affairs; and
- The President has approved the finding (see § 789.33).

DOC has extensive experience using its priorities authority (under their DPAS regulation), but has not used its allocation authority in more than 50 years. Much like DPAS, APAS is expected to primarily be used for prioritizing contracts and to a much lesser extent for making allocations. However, USDA is proposing to include allocations in the regulation to have the option ready, if needed. The proposed allocation standards and procedures provide strong assurance that allocations would only be used in situations where the circumstances justify such orders.

For example, dairy operations are brought to a standstill due to a detected presence of Foot and Mouth disease. The output of milk produced in the United States is curtailed by 80 percent as a result of reduced herd numbers in response to the outbreak. Prices for processed and unprocessed milk would skyrocket. USDA determines that allocating milk commodities to processors or wholesalers is necessary to promote the national defense, namely, as an emergency response action under Title VI of the Stafford Act (which is an approved program by the Secretary of Homeland Security under section 202(c) of Executive Order 12919). Because allocating this commodity would involve controlling its general distribution in the market, USDA then makes the required finding as specified in DPA section 101(b) for allocating this food commodity and forwards that finding to the President through the National Security Advisor. After Presidential concurrence with the determination, per Executive Order 12919, USDA may allocate this commodity on a pre-determined basis to processors or wholesalers. The purpose of this allocation would be to control the distribution of milk to ensure civilian hardships are minimized. USDA would allocate existing and new milk sources to redistribute milk products in a way that ensures previously established priorities for this food product (for example, school food programs and nutritional programs for mothers and infant children to continue to provide some level of resources for those already enrolled in such programs) are met and would continue implementing allocation policies until USDA determines that this food source shortfall no longer meets the requirements for allocation programs.

Section by Section Discussion of Rule

As stated throughout this document, the APAS regulation was developed in consultation with the other relevant Federal departments and agencies. The majority of the regulation is based on the regulations DOC has used for DPAS for many years. Specific differences from DPAS are noted below in the relevant sections.

The purpose of the APAS regulation, as specified in § 789.1, "Purpose," states that the regulation provides guidance and procedures for use of the DPA priorities and allocations authorities delegated by the President to the Secretary of Agriculture as specified in Executive Order 12919 with respect to food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer.

Section 789.2, "Priorities and Allocations Authority," summarizes the delegations of priorities and allocations authority in Part II of Executive Order 12919. In addition to listing the delegations of authority to the six resource agencies (described above), § 789.2 clarifies that the delegated priorities and allocations authority may be used only to support programs that have been determined in writing as necessary or appropriate to promote the national defense by the Secretary of Defense, Energy, or Homeland Security in their respective areas of jurisdiction.

Section 789.3, "Program Eligibility," lists the categories of programs eligible for priorities and allocations support, in accordance with the definition of "national defense" in DPA section 702. Programs approved and eligible for priorities and allocation support by USDA are contained in Schedule I. Other agencies with priorities and allocations authority list their programs eligible for priorities and allocation support in their respective regulations.

Section 789.8, "Definitions," defines terms used in the regulation. Most of the definitions are drawn from other sources, which are noted below, and used in each agency's priorities and allocations regulations for consistency across the agencies, while certain definitions are distinct to APAS, as follows:

- DPA section 702 (50 U.S.C. App. 2152)—"critical infrastructure;" "facilities;" "homeland security;" "materials;" "national defense;" and "services." The term "person" is drawn from DPA section 702, but is expanded to also include any Federal agency.
- Section 902 of Executive Order 12919—"civil transportation;" "energy;" "farm equipment;" "fertilizer;" "food resources;" "food resource facilities;" "health resources;" and "water resources."
- The current DPAS regulation (15 CFR part 700)—"allotment" (with technical modifications); "approved program" (with technical modifications); "construction;" "delegate agency" (with technical modifications); "directive;" "industrial resources;" "item;" "maintenance and repair and operating supplies or MRO;" "official action" (with technical modifications); "rated order" (with technical modifications); and "set-aside" (with technical modifications). The technical modifications to the definitions were those required to make them applicable for agriculture.
- Section 602 of the Stafford Act (42 U.S.C. 5195a)—"emergency preparedness" and "hazard."

The "allocation" and "allocation order" definitions are based on language in DPA section 101 that describes the allocation authority of the President. "Defense Production Act" means the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 to 2170, 2171, and 2172). "Resource agency" means one of the six Federal departments that has been delegated DPA priorities and allocations authority under section 201 of Executive Order

12919. "Secretary" means the Secretary of Agriculture. "Stafford Act" means Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5195–5197h). The "feed" and "seed" definitions are consistent with other USDA regulations.

The "civil transportation" definition was only changed for plain language and as required for the Code of Federal Regulations references; there is no intended change from the meaning given in Section 902 of Executive Order 12919. The word "shall," which is not considered plain language was removed; specifically "shall not include" was changed to "does not include" and "shall include" was changed to "includes." In addition, the word "herein" was replaced with the phrase "in this part" to use the correct reference for text in the Code of Federal Regulations.

Section 789.10, "Delegations of Authority," describes the delegation of priorities and allocations authority from the President to the Secretary for all forms of food resources. USDA anticipates receiving a delegation of authority from DOC to assign priority ratings for materials, services, and facilities falling within the priorities authority of the DOC that are needed for use in approved programs for USDA; this means the extension of APAS priority ratings. USDA expects to include a reference to any such delegation from DOC in this section in the final rule in reserved paragraph (a). Within USDA, the authority to administer APAS has been delegated to the FSA Administrator. The FSA Administrator will coordinate APAS implementation and administration through the Director, USDA Office of Homeland Security and Emergency Coordination.

The provisions §§ 789.11 through 789.18 (subpart C) are in general continued from DPAS provisions to provide continuity with long-established priorities system procedures and to make use of a proven foundation for a consistent and uniform FP AS as described in this section.

Section 789.11, "Priority Ratings," describes the: "DO" and "DX" rating symbols; program identification symbols; levels of priority ratings; priority ratings consist of a rating symbol and a program identification symbol; and directives that take precedence over priority ratings. Priority levels designate differences between orders based on national defense including emergency preparedness requirements. "DX" rated orders take precedence over "DO" rated orders and directives take precedence over "DX" and "DO" rated orders. All rated orders will include a program identification symbol to indicate which approved program is being supported by the rated order. DX and DO symbols were created to differentiate between levels of requirements for items. If one person has a higher requirement for an item compared to another person in need of the same item, but both with emergency preparedness and response functions, USDA will place a DX rating symbol on the contract for the higher requirement item(s) and a DO rating symbol on all others, as applicable.

Section 789.12, "Elements of a Rated Order," describes the four elements that must be included in a contract or order to make it a "rated order." The four elements are: (1) A priority rating; (2) specific delivery date(s) for materials or services covered in the rated order; (3) the signature of an individual authorized to sign rated orders (the signature on the request to rate the order certifies that the rated order is authorized); and 4) a statement that describes what is required of the rated order recipient, in accordance with procedures provided in the rule. Section 789.12 includes a new provision (not in the current DPAS regulation), that requires an additional statement to be included in a rated order involving emergency preparedness and requiring quicker action by the recipient to accept or reject the order. In the current DPAS regulation, the recipient of a rated order must accept or reject the rated order within 15 working days for a "DO"-rated order or 10 working days for a "DX"-rated order. Agency-specific deadlines are incorporated into the regulations issued by each agency (see section 789.13(d)). While these deadlines are appropriate for orders under "normal" circumstances, they are too long for emergency conditions, when quick procurement actions may be needed to help save lives and to help protect or restore property (See § 789.13(e)).

Section 789.13, "Acceptance and Rejection of Rated Orders," specifies mandatory and optional conditions for acceptance or rejection of rated orders. In general, a person must accept a rated order if the person normally supplies the materials or services covered by the order. A person must reject an order if unable to fill the order by the specified delivery date(s) or if the order would interfere with delivery under another rated order with a comparable or higher priority rating. A person has the option of rejecting a rated order if any one of a number of other conditions exists. As noted above, the recipient of a rated order must either accept or reject the order by specified deadlines. These deadlines are significantly shorter for orders that are identified in the orders as being placed for the purpose of emergency preparedness. Section 789.13 includes two new provisions that are not in the current DPAS regulation: (1) The shorter deadlines for orders supporting emergency preparedness activities; and (2) a provision that requires a person to reject an order if prohibited by Federal law from meeting the terms of the order. Due to the nature of short time response requirements after an emergency event, vendors have 6 to 12 hours to accept or reject a rated order. In the cases where persons (including Federal Departments) are not responding to an actual emergency, but are restocking inventories depleted from previous emergency response activities, vendors have up to 15 working days to accept or reject a rated order. As proposed, the recipient of a rated order must accept or reject the rated order within 15 working days for a "DO"-rated order or within either 6 hours, 12 hours, or 15 working days for a "DX"-rated order; USDA will specify the required timeframe on the rating authorization.

Section 789.14, "Preferential Scheduling," specifies: (1) When a recipient of a rated order must modify production or delivery schedules to satisfy the delivery requirements of a rated order; (2) the order of precedence for rated, unrated, and conflicting orders; and (3) the use of inventoried production items when needed to fill a rated order. A person must modify production or delivery schedules of other contracts to fulfill the requirements of the rated order if required delivery dates cannot be met under normal operating conditions. For conflicts over rated orders that have the same delivery dates, the person must give precedence to those orders that have the earliest receipt dates. If a person is unable to purchase needed production items in time to fill a rated order by its required delivery date, the person must fill the rated order by using inventoried production items. A person who uses inventoried items to fill a rated order may replace those items with the use of a rated order.

Section 789.15, "Extension of Priority Ratings," states that the recipient of a rated order must use the same rating symbols on rated orders as necessary with suppliers to obtain items or services needed to fill a rated order. For example, if you have a DX–P1 rated order for a food source (milk) and need to purchase packaging materials (milk cartons) from the packaging supplier, you must use a DX–P1 rated order to obtain the needed packaging materials

(milk cartons) required to fulfill the obligations of the rated contract.

Section 789.16, "Changes or Cancellations of Priority Ratings and Rated Orders," describes procedures that apply when a priority rating or the provisions of a rated order are changed or canceled. An official action of USDA or a written notification from the person who requested authorization for a rated order and placed it are the two ways changes or cancellations can be made to rated orders. When a priority rating is added to an unrated order, or is changed or canceled, all suppliers must be promptly notified in writing. If changes are made that make an unrated order a rated order, or a DO rating is changed to a DX rating, the supplier must give the appropriate preferential treatment to the order as of the date the supplier is notified. If an amendment to a rated order significantly alters a supplier's original production or delivery schedule then it constitutes a new rated order as of the date of its receipt. The supplier must accept or reject the amended order as specified in § 789.13. Certain amendments do not constitute a new rated order, such as: a change in shipping destination; a reduction in the total amount of the order; an increase in the total amount of the order that has a negligible impact upon deliveries; a minor variation in size or design; or a change that is agreed upon between the supplier and the customer. If the items or services are no longer needed to fill a rated order, the rated orders must be canceled.

Section 789.17, "Use of Rated Orders," requires that the recipient of a rated order: (1) Must use rated orders as necessary to obtain items and services needed to fulfill the order; (2) may use a rated order to replace inventoried items that were used to fulfill the order; (3) may combine orders with different priority ratings; and (4) may forgo use of a priority rating for orders below certain dollar thresholds.

Section 789.18, "Limitations on Placing Rated Orders," describes general and jurisdictional limitations on the use of rated orders. Rated orders may only be placed by persons with the proper authority for items and services that are needed to support approved programs and that are eligible for priority treatment. In general, the use of rated orders under each resource agency's rule is limited to resources within that agency's jurisdiction, as delegated under section 201 of Executive Order 12919. USDA anticipates receiving a delegation from DOC to authorize USDA certain authority to use DPAS for materials, services, and facilities falling within the priorities and allocations jurisdiction of DOC.

Special Priorities Assistance

The provisions in §§ 789.20 through 789.24 (subpart D) are in general continued from DPAS provisions to provide continuity with long-established priorities system procedures and to make use of a proven foundation for a consistent and uniform FPAS as described in this section.

Section 789.20, "General Provisions," also describes procedures to request assistance in resolving problems with an existing rated order or in dealing with procurement issues involving a program that is eligible for support using the priorities authority.

Section 789.21, "Requests for Priority Rating Authority," describes procedures to request rating authority under special circumstances, such as for: (1) Items and services not normally rated under the regulation and (2) use of rated orders for supplies needed to fulfill a rated prime contract that is anticipated but not yet received. If there are production or delivery problems, a person should immediately contact the FSA Administrator for special priorities assistance (see §§ 789.20 through 789.24 and 789.73). If FSA is unable to resolve the problem, USDA may forward the request to another resource agency, as appropriate, for action. Generally, special priorities assistance is provided to expedite deliveries, resolve delivery conflicts, place rated orders, locate suppliers, or to verify information supplied by customers and vendors. Special priorities assistance may also be used to request rating authority for items that are not normally eligible for priority treatment. To request special priorities assistance or priority rating authority, submit Form AD–2102 to FSA. Form AD–2102 and instruction are available from *http://forms.sc.egov.usda.gov/eForms/welcomeAction.do?Home* or by contacting the FSA Administrator.

Section 789.22, "Examples of Assistance," lists various uses for special priorities assistance, specifically:

- Difficulty in obtaining delivery against a rated order by the required delivery date;
- Cannot locate a supplier for an item or service needed to fill a rated order;
- Ensuring that rated orders receive preferential treatment by suppliers;
- Resolving production or delivery conflicts between various rated orders;
- Assisting in placing rated orders with suppliers;
- Verifying the urgency of rated orders; and
- Determining the validity of rated orders.

Section 789.23, "Criteria for Assistance," states that a request for special priorities assistance must establish that there is an urgent procurement need and that the applicant has made a reasonable effort to resolve the problem for which assistance is needed.

Section 789.24, "Instances Where Assistance May Not be Provided," states that special priorities assistance is provided at the discretion of USDA or a delegate agency and lists examples of when assistance may not be provided. Assistance must not be provided in situations in which a person is attempting to:

- Secure a price advantage;
- Obtain delivery prior to the time required to fill a rated order;
- Gain competitive advantage;
- Disrupt an industry apportionment program in a manner designed to provide a person with an unwarranted share of scarce items; or
- Overcome a supplier's regularly established terms of sale or conditions of doing business.

Allocation Actions

Section, 789.30, "Policy," states the policy of the Federal Government regarding use of the allocations authority, based on statutory language in DPA section 101 and its legislative history. USDA is only authorized to use the allocations authority when there is insufficient supply of a material, service, or facility to satisfy national defense supply requirements through the use of the priorities authority or when the use of the priorities authority would cause a severe and prolonged disruption in the supply of materials, services, or facilities available to support normal U.S. economic activities. The allocations authority may not be used to ration materials or services at the retail level. Allocation orders, when used, will be distributed equitably among the suppliers of the materials, services, or facilities being allocated and not require any person to relinquish a disproportionate share of the civilian market.

Legislative history indicates that Congress was concerned that national defense requirements, during times of emergency, could consume much of the output of key industrial sectors and selected producers within some sectors. The allocations authority was viewed as a means to ensure an equitable distribution of national defense demand among potential suppliers to avoid disproportionate impacts on each supplier's share of the civilian market.

Congress prohibits the use of the allocation authority to ration at the retail level.

If it is determined that meeting defense needs could only be satisfied by a significant dislocation of consumer goods for household or personal use, use of the allocation authority first requires the DPA section 101(b) findings by the President. DPA section 101(b) states that the priorities and allocations authority will not be used to control the general distribution of any material in the civilian market unless the President finds (1) that such material is a scarce and critical material essential to the national defense, and (2) that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship.

Section 789.31, "General Procedures," states that USDA will develop a plan when planning to execute the allocations authority to address a supply problem within the USDA resource jurisdiction. The information that USDA will include in the plan is specified in § 789.31.

Section 789.32, "Precedence over Priority Rated Order," states that all allocation orders take precedence over unrelated rated orders or prioritization directives (see § 789.42 for a description of directives).

Section 789.33, "Controlling the General Distribution of a Material in the Civilian Market," provides procedures for the findings required by DPA section 101(b) and section 201(d) of Executive Order 12919. DPA section 101(b) requires Presidential findings. (See description of findings above in § 789.30.) Section 201(d) directs heads of resource agencies to make the findings required under DPA section 101(b) and to submit the findings for the President's approval through the Assistant to the President for National Security Affairs.

Section 789.34, "Types of Allocation Orders," identifies the three types of allocations orders: (1) Set-asides; (2) directives; and (3) allotments.

Section 789.35, "Elements of an Allocation Order," describes the elements of an allocation order. These elements are: (1) A detailed description of the required allocation action(s); (2) specific start and end calendar dates for each required allocation action; (3) the signature of the Secretary of Agriculture, certifying that the order is authorized under the APAS regulation and that the requirements are being followed; (4) a statement that the order is certified for national defense use and that recipients are required to comply with the order; and (5) a copy of 7 CFR part 789.

Section 789.36, "Mandatory Acceptance of an Allocation Order," states that persons must: (1) Accept and comply with allocation orders; and (2) not discriminate against an allocation order in any manner (such as by charging higher prices). Persons are required to notify USDA immediately if unable to comply with an allocation order.

Section 789.37, "Changes or Cancellations of an Allocation Order," states that USDA may change or cancel the order by an official action.

Official Actions

The provisions in §§ 789.40 through 789.43 (subpart F) are in general continued from DPAS provisions to provide continuity with long-established priorities system procedures and to make use of a proven foundation for a consistent and uniform FPAS as described in this section.

Section 789.40, "General Provisions," states that USDA may take specific official actions to implement the provisions of the APAS regulation and that the official actions may take the form of Rating Authorizations, Directives, and Letters of Understanding which are covered in the remaining sections of the subpart. Each is addressed below in this section.

Section 789.41, "Rating Authorizations," states that a rating authorization is an official action that grants specific priority-rating authority. A rating authorization permits a person to place a priority rating on an order for an item or service not normally ratable under APAS, or authorizes a person to modify a priority rating on a specific order or series of contracts or orders.

Section 789.42, "Directives," specifies the order of preference for directives and rated orders. Specifically, a directive is an official action and a person must comply with a directive. In addition, § 789.42 specifies: (1) A priorities directive takes precedence over rated orders; and (2) an allocations directive takes precedence over a priorities directive.

Section 789.43, "Letters of Understanding," specifies that a letter of understanding is used to confirm production or shipping schedules that do not require modifications to other rated orders. A letter of understanding may not be used to alter scheduling between rated orders, authorize the use of priority ratings, impose restrictions under the APAS regulation, or take other official actions. A letter of understanding is an official action that may be issued to reflect an agreement resolving a request for special priorities assistance.

Compliance

The provisions in §§ 789.50 through 789.55 (subpart G) are in general continued from DPAS provisions to provide continuity with long-established priorities system procedures and to make use of a proven foundation for a consistent and uniform FPAS as described in this section.

Section 789.50, "General Provisions," states that: (1) USDA may take specific official actions to enforce or administer DPA, the APAS regulation, or an official action; (2) a person who places or receives a rated order or an allocations order must comply with the provisions of the APAS regulation; and (3) willful violation of Title I and section 705 of DPA, other related statutes, 7 CFR part 789, or an official action is a punishable criminal act.

Section 789.51, "Audits and Investigations," provides procedures for conducting audits and investigations to ensure that the provisions of DPA and other related statutes, the APAS regulation, and official actions have been properly followed.

Section 789.52, "Compulsory Process," specifies that a representative of USDA may seek compulsory process if a person refuses to permit a duly authorized representative of USDA to have access to any premises or source of information necessary to the administration or the enforcement of DPA and other applicable statutes, the APAS regulation, or an APAS official action.

Section 789.53, "Notification of Failure to Comply," states that USDA may inform a person in writing if USDA determines that the requirements of DPA and other related statutes, the APAS regulation, or an APAS official action were not complied with.

Section 789.54, "Violations, Penalties, and Remedies," describes penalties and related actions by the Federal Government for violations of the provisions of DPA, this APAS regulation, or an APAS official action.

Section, 789.55, "Compliance Conflicts," states that a person must notify USDA immediately, if compliance with any provision of DPA and other applicable statutes, the APAS regulation, or an APAS official action would prevent a person from filling a rated order or from complying with another provision of the DPA and other related statutes, the APAS regulation, or an official action.

Adjustments, Exceptions, and Appeals

The provisions in §§ 789.60 through 789.61 (subpart H) are in general continued from DPAS provisions to provide continuity with long-established priorities system procedures and to make use of a proven foundation for a consistent and uniform FPAS as described in this section.

Section 789.60, "Adjustments or Exceptions," provides procedures for a person to request an adjustment or exception to a provision of the APAS regulation or an official action. The request for adjustment or exception must be submitted to the Deputy Administrator for Management of USDA's Farm Service Agency. Decisions of the Deputy Administrator for Management may be appealed to the Administrator of the Farm Service Agency as specified in section 789.61.

Section 789.61, "Appeals," provides procedures for a person to appeal the denial of a request for an adjustment or exception to a provision of the APAS regulation or an APAS official action. In addition to current DPAS procedures, § 789.61 also includes an expedited procedure for dealing with a request involving a rated order placed for the purpose of emergency preparedness. Any person whose request for adjustment or exception has been denied by the FSA Deputy Administrator for Management as specified in § 789.60, may appeal to the FSA Administrator who will review and reconsider the denial. The person must submit their appeal in writing to the FSA Administrator. For requests for adjustment or exception involving rated orders placed for the purpose of emergency preparedness, the appeal must be received by the FSA Administrator no later than 15 days after receipt of the written notice of denial; other appeals must be received no later than 45 days after receipt of a written notice of denial. To be accepted, the appeal must show good cause. The appeal must contain a complete statement of all the facts and circumstances related to the appealed action from and a full and precise statement of the reasons the decision should be modified or reversed. An appellant may also request, in writing, an opportunity for an informal hearing. The FSA Administrator may grant or deny the request for an informal hearing. When a hearing is granted, if the hearing officer decides that a printed transcript is necessary, the transcript expenses must be paid by the appellant. When determining an appeal, the FSA Administrator may consider all information submitted during the appeal as well as any recommendations, reports, or other relevant information and documents available to USDA, or consult with any other person or group. The FSA Administrator will decide on the appeal within 5 days after receipt of the appeal, or within 1 day for appeals pertaining to emergency preparedness, and that decision will be the final administrative action. The Administrator will issue a written statement of the reasons for the decision to the appellant. Contract performance under the order may not be stayed pending resolution of the appeal. An appeal will not relieve any person from the obligation of complying with the provision of APAS or official action in question while the appeal is being considered unless such relief is granted in writing by the FSA Administrator.

Miscellaneous Provisions

The provisions in §§ 789.70 through 789.73 (subpart I) are in general from DPAS provisions to provide continuity with long-established priorities system procedures and to make use of a proven foundation for a consistent and uniform FPAS as described in this section.

Section 789.70, "Protection Against Claims," states that a person will not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any provision of the APAS regulation, or an official action, notwithstanding that such provision or action may subsequently be declared invalid by judicial or other competent authority.

Section 789.71, "Records and Reports," requires that records regarding any transaction covered in the APAS regulation or an official action must be maintained for at least 3 years.

Section 789.72, "Applicability of this Part and Official Actions," states that the APAS regulation and all official actions, unless specifically stated otherwise, apply to transactions in any State, territory, or possession of the United States and the District of Columbia. Section 789.72 also provides that the APAS regulation and all official actions apply not only to deliveries to other persons but also to affiliates and subsidiaries of a person. In addition, § 789.72 specifies that APAS does not affect any administrative actions taken by USDA, or outstanding contracts or orders placed pursuant to any regulations, orders, schedules, or delegations of authority previously issued by USDA pursuant to its delegated authority under DPA.

Section 789.73 "Communications," explains that all communications concerning the APAS regulation, including requests for copies of the regulation and explanatory information, requests for guidance or clarification, requests for adjustment or exception, and appeals of denials of requests are to be sent to the FSA Administrator and provides the mailing address and the e-mail address.

Executive Order 12866

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866, "Regulatory Planning and Review," and has reviewed this rule. A summary of the cost benefit analysis is provided below and is available from the contact information listed above.

Summary of Cost Benefit Analysis

DPAR requires the head of each Federal agency to which the President delegates authority to prioritize contracts and orders to meet the needs of national defense. In Executive Order 12919 the President delegated DPA authorities with respect to food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer to the Secretary of Agriculture. Under previous implementation of DPA, the Secretary of Agriculture delegated certain implementation authority to DOC. For current implementation of DPA, the Secretary of Agriculture has retained implementation authority and has assigned FSA as lead agency. To implement DPA, FSA is proposing the APAS regulation, which is modeled after DPAS.

Food is essential to national defense including civil emergency response. APAS is designed to use the DPA authority to help ensure that food is available when and where it is needed most, such as after a hurricane or earthquake. The authority under DPA extends beyond emergency conditions to also cover nonemergency conditions. Under DPA, USDA may develop plans and programs to expedite and expand the supply of critical resources from the private sector for the production, processing, storage, and distribution of agricultural commodities to promote national defense and to prevent civilian hardship in the food marketplace. In addition, DPA enables USDA to more effectively support domestic emergency preparedness, response, and recovery activities, critical infrastructure protection and restoration, and homeland security activities.

The impact of APAS on private companies receiving priority orders is expected to vary. In most cases, there is likely to be no economic impact in filling priority orders because it would

generally just be changing the timing in which orders are completed.

APAS is expected to primarily be used for prioritizing contracts and to a much lesser extent for making allocations. USDA does not expect any program outlays for APAS for prioritizing contracts and potentially making allocations. USDA will likely incur administrative expenses associated with assessing priorities and allocations requests and providing oversight for approved requests. The administrative expenses are expected to be marginal as APAS will presumably be administered using existing USDA personnel.

APAS is expected to have an overall positive impact on the U.S. public and industry by maintaining and restoring the production, processing, storage, and distribution of agricultural commodities during times of both emergency and nonemergency conditions to promote national defense and to prevent civilian hardship in the food marketplace. While USDA has not yet administered APAS under DPA authority, the continued use of DPAS by the Department of Defense proves the utility of a priorities and allocations system.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) 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. FSA has determined that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, FSA has not prepared a regulatory flexibility analysis.

Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, a small business, as described in the Small Business Administration's Table of Small Business Size Standards Matched to North American Industry Classification System Codes (August 2008 Edition), has a maximum annual revenue of $33.5 million and a maximum of 1,500 employees (for some business categories, these numbers are lower). Due to the scope of this rule and for consistency with DPAS and other FPAS regulations, these general size standards were used for this analysis. The range of small business size standards varies. For example, SBA classifies a small business for Food Manufacturing as one that has a maximum annual revenue of $750,000 and for Crop or Animal Production a maximum of 500 employees. Due to the wide variety of businesses that could be involved in APAS, and that the potential impacts are expected to be minor, the more narrow categories were not used for this analysis. A small governmental jurisdiction is a government of a city, town, school district or special district with a population of less than 50,000. A small organization is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

This rule sets criteria under which USDA (or agencies to which USDA delegates authority) will authorize prioritization of certain orders or contracts as well as criteria under which USDA would issue orders allocating resources or production facilities. Because the rule affects commercial transactions, USDA believes that small organizations and small governmental jurisdictions are unlikely to be affected by this rule. However, FSA has no basis on which to estimate the number of small businesses that are likely to be affected by this rule.

FSA believes that any impact that this rule might have on small businesses would be minor. The rule has two principle components: prioritization and allocation. Prioritization is the process that is, by far, more likely to be used. Under prioritization, USDA designates certain orders, which may be placed by Government or by private entities, and assigned under one of two possible priority levels. Once so designated, such orders are referred to as "rated orders." The recipient of a rated order must give it priority over an unrated order. The recipient of a rated order with the higher priority rating must give that order priority over any rated orders with the lower priority rating and over unrated orders as necessary to meet the delivery requirements of each rated order. A recipient of a rated order may place two or more orders at the same priority level with suppliers and subcontractors for supplies and services necessary to fulfill the recipient's rated order and the suppliers and subcontractors must treat the request from the rated order recipient as a rated order with the same priority level as the original rated order. The rule does not require recipients to fulfill rated orders if the price or terms of sale are not consistent with the price or terms of sale of similar non-rated orders. The rule provides a defense from any liability for damages or penalties for actions or inactions made in compliance with the rule.

Although rated orders could require a firm to fill one order prior to filling another, they would not require a reduction in the total volume of orders nor would they require the recipient to reduce prices or provide rated orders with more favorable terms than a similar non-rated order. Under these circumstances, the economic effects on the rated order recipient of substituting one order for another are likely to be mutually offsetting, resulting in no net loss.

Allocations could be used to control the general distribution of materials or services in the civilian market. Specific allocation actions that FSA might take are set-asides, allocations directives, and allotments. Any allocations actions would be used only in extraordinary circumstances. As required by section 101(b) of DPA (50 U.S.C. App. 2071) and by Section 201(d) of Executive Order 12919, as amended, allocations may be implemented only if the Secretary of Agriculture made, and the President approved, a finding:

> (1) That the material [or service] is a scarce and critical material [or service] essential to the national defense, and (2) that the requirements of the national defense for such material [or service] cannot otherwise be met without creating a significant dislocation of the normal distribution of such material [or service] in the civilian market to such a degree as to create appreciable hardship.

Any allocation actions would also have to comply with Section 701(e) of DPA (50 U.S.C. app. 2151(e)), which provides that small business concerns be accorded, to the extent practicable, a fair share of the material, including services, in proportion to the share received by such business concerns under normal conditions, giving such special consideration as may be possible to emerging business concerns.

Although FSA cannot determine precisely the number of small entities that would be affected by this rule, FSA believes that the overall impact on such entities would not be significant. In most instances, rated contracts would be in addition to other (unrated) contracts and not reduce the total amount of business of the firm that receives a rated contract.

Because allocations can be imposed only after a determination by the President, and the fact that there have been no allocations actions under DPA authority in more than 50 years, allocations are expected to be a rare

occurrence. Therefore, estimating the impact of an allocation, should one occur, is difficult. However, FSA believes that the requirement for a Presidential determination and the provisions of section 701 of the DPA provide reasonable assurance that any impact on small business will not be significant.

Therefore, for the reasons set forth above, FSA certifies that this action would not have a significant impact on a substantial number of small entities.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The provisions of this rule are specifically related to acquisition and are considered solely administrative in nature. Therefore, FSA has determined that NEPA does not apply to this proposed rule and no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

Executive Order 12372, "Intergovernmental Review of Federal Programs," requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. This rule neither provides Federal financial assistance or direct Federal development; it does not provide either grants or cooperative agreements. Therefore, this program is not subject to Executive Order 12372.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, "Civil Justice Reform." This rule would not preempt State and or local laws, and regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought concerning the provisions of this rule, appeal provisions of 7 CFR parts 11 and 780 would need to be exhausted. This proposed rule would not preempt a State or Tribal government law, including any State or Tribal government liability law.

Executive Order 13132

This proposed rule has been reviewed under Executive Order 13132, "Federalism." The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This proposed rule has been reviewed for compliance with Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." The policies contained in this rule do not have Tribal implications that preempt Tribal law. FSA continues to consult with Tribal officials to have a meaningful consultation and collaboration on the development and strengthening of FSA regulations.

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates as defined by Title II of UMRA for State, local, or Tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, FSA is seeking comments on Request for Special Priorities Assistance information collection activities for APAS. The information collection established by the regulation is necessary for the program applicant (person) to request prioritizing of a contract above all other contracts. Data required will include: name, location, contact information, items for which the applicant is requesting assistance on, quantity, and delivery date. The estimated time for a person to complete and submit a request for a priority rating on a contract is 30 minutes. The intent of the priority rating is to obtain item(s) in support of national defense programs that they are not able to obtain in time through normal market channels.

Title: Request for Special Priorities Assistance for APAS.

OMB Control Number: 0560–New.

Type of Request: New Collection.

Abstract: APAS would efficiently place priority ratings on contracts or orders of agriculture commodities up through the wholesale levels, agriculture production equipment, allocate resources, and handle food claims within its authority as specified in the Defense Production Act (DPA) of 1950, as amended, when necessary. It was determined that food is a scarce and critical commodity essential to the national defense (including civil emergency preparedness and response). Unless its production, processing, storage, and wholesale distribution are regulated during times of emergencies, the national defense requirement for food and food production may not be met without creating hardship in the civilian marketplace. Applicants (Government agencies or private individuals with a role in emergency preparedness, response, and recovery functions) will request authorization from USDA to place a rating on a contract for items to support national defense activities. Priority rating request procedures and forms can be found on USDA's Web site. Applicants must supply, at time of request, their name, location, contact information, items for which the applicant is requesting assistance on, quantity, and delivery date. Applicants can submit the request by mail or fax.

Estimated of Burden: Public reporting for this collection of information is estimated to average 30 minutes per response.

Type of Respondents: Individuals, businesses, and Agencies with responsibilities for emergency preparedness and response.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondents: 0.95.

Estimated Total Number of Respondents: 95.

Estimate Total Annual Burden Hours on Respondents: 50 hours.

We are requesting comments on all aspects of this information collection to help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA,

including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

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

(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.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government Information and services, and for other purposes.

List of Subjects in 7 CFR Part 789

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, FSA proposes to add 7 CFR part 789 as follows:

PART 789—AGRICULTURE PRIORITIES AND ALLOCATIONS SYSTEM (APAS)

Subpart A—General

Sec.

789.1 Purpose.
789.2 Priorities and allocations authority.
789.3 Program eligibility.

Subpart B—Definitions

789.8 Definitions.

Subpart C—Placement of Rated Orders

789.10 Delegation of authority.
789.11 Priority ratings.
789.12 Elements of a rated order.
789.13 Acceptance and rejection of rated orders.
789.14 Preferential scheduling.
789.15 Extension of priority ratings.
789.16 Changes or cancellations of priority ratings and rated orders.
789.17 Use of rated orders.
789.18 Limitations on placing rated orders.

Subpart D—Special Priorities Assistance

789.20 General provisions.
789.21 Requests for priority rating authority.
789.22 Examples of assistance.
789.23 Criteria for assistance.
789.24 Instances where assistance must not be provided.

Subpart E—Allocation Actions

789.30 Policy.
789.31 General procedures.
789.32 Precedence over priority rated orders.
789.33 Controlling the general distribution of a material in the civilian market.
789.34 Types of allocation orders.
789.35 Elements of an allocation order.
789.36 Mandatory acceptance of allocation orders.
789.37 Changes or cancellations of allocation orders.

Subpart F—Official Actions

789.40 General provisions.
789.41 Rating authorizations.
789.42 Directives.
789.43 Letters of understanding.

Subpart G—Compliance

789.50 General provisions.
789.51 Audits and investigations.
789.52 Compulsory process.
789.53 Notification of failure to comply.
789.54 Violations, penalties, and remedies.
789.55 Compliance conflicts.

Subpart H—Adjustments, Exceptions, and Appeals

789.60 Adjustments or exceptions.
789.61 Appeals.

Subpart I—Miscellaneous Provisions

789.70 Protection against claims.
789.71 Records and reports.
789.72 Applicability of this part and official actions.
789.73 Communications.
Schedule I to Part 789—Approved Programs and Delegate Agencies

Authority: 50 U.S.C. App. 2061–2170, 2171, and 2172; 42 U.S.C. 5195–5197h.

Subpart A—General

§ 789.1 Purpose.

This part provides guidance and procedures for use of the Defense Production Act priorities and allocations authority by the United States Department of Agriculture (USDA) with respect to food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer in this part. (The guidance and procedures in this part are consistent with the guidance and procedures provided in other regulations that, as a whole, form the Federal Priorities and Allocations System. Guidance and procedures for use of the Defense Production Act priorities and allocations authority with respect to other types of resources are provided for: All forms of energy refer to the Department of Energy; all forms of civil transportation refer to the Department of Transportation; for water resources refer to the Department of Defense; and for health resources refer to Health and Human Services; all other materials, services, and facilities, including construction materials in the Defense Priorities and Allocations System (DPAS) regulation in 15 CFR part 700.)

§ 789.2 Priorities and allocations authority.

(a) Section 201 of Executive Order 12919 delegates the President's authority under section 101 of the Defense Production Act to require acceptance and priority performance of contracts and orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, and to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense to the following agencies. Essentially, this allows the following agencies to place priority on the performance of contracts for items and materials under their jurisdiction as required for national defense initiatives including emergency preparedness activities.

(1) The Secretary of Agriculture with respect to food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer;

(2) The Secretary of Energy with respect to all forms of energy;

(3) The Secretary of Health and Human Services with respect to health resources;

(4) The Secretary of Transportation with respect to all forms of civil transportation;

(5) The Secretary of Defense with respect to water resources; and

(6) The Secretary of Commerce for all other materials, services, and facilities, including construction materials.

(b) Section 202 of Executive Order 12919 specifies that the priorities and allocations authority may be used only to support programs that have been determined in writing as necessary or appropriate to promote the national defense by:

(1) The Secretary of Defense with respect to military production and construction, military assistance to foreign nations, stockpiling, outer space, and directly related activities;

(2) The Secretary of Energy with respect to energy production and construction, distribution and use, and directly related activities; or

(3) The Secretary of Homeland Security with respect to essential civilian needs supporting national

defense, including civil defense and continuity of government and directly related activities.

§ 789.3 Program eligibility.

Certain programs that promote the national defense are eligible for priorities and allocations support. These include programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. Other eligible programs include emergency preparedness activities conducted pursuant to Title VI of the Stafford Act and critical infrastructure protection and restoration.

Subpart B—Definitions

§ 789.8 Definitions.

As used in this part:

Allocation means the control of the distribution of materials, services, or facilities for a purpose deemed necessary or appropriate to promote the national defense.

Allocation order means an official action to control the distribution of materials, services, or facilities for a purpose deemed necessary or appropriate to promote the national defense.

Allotment means an official action that specifies the maximum quantity for a specific use of a material, service, or facility authorized to promote the national defense.

Applicant means the person applying for assistance under APAS. (See definition of "person.")

Approved program means a program determined by the Secretary of Defense, the Secretary of Energy, or the Secretary of Homeland Security to be necessary or appropriate to promote the national defense, as specified in section 202 of Executive Order 12919.

Civil transportation includes movement of persons and property by all modes of transportation in interstate, intrastate, or foreign commerce within the United States, its territories and possessions, and the District of Columbia, and, without limitation, related public storage and warehousing, ports, services, equipment and facilities, such as transportation carrier shop and repair facilities. However, civil transportation does not include transportation owned or controlled by the Department of Defense, use of petroleum and gas pipelines, and coal slurry pipelines used only to supply energy production facilities directly. As applied in this part, civil transportation includes direction, control, and coordination of civil transportation capacity regardless of ownership.

Construction means the erection, addition, extension, or alteration of any building, structure, or project, using materials or products that are to be an integral and permanent part of the building, structure, or project. Construction does not include maintenance and repair.

Critical infrastructure means any systems and assets, whether physical or cyber-based, so vital to the United States that the degradation or destruction of such systems and assets would have a debilitating impact on national security, including, but not limited to, national economic security and national public health or safety.

Defense Production Act means the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 to 2170, 2171, and 2172).

Delegate Agency means a government agency authorized by delegation from USDA to place priority ratings on contracts or orders needed to support approved programs.

Directive means an official action that requires a person to take or refrain from taking certain actions in accordance with the provisions.

Emergency preparedness means all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions that would be created by the hazard, and to make emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard. Emergency preparedness includes the following:

(1) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the nonmilitary evacuation of the civilian population).

(2) Measures to be undertaken during a hazard (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications).

(3) Measures to be undertaken following a hazard (including activities for fire fighting, rescue, emergency medical, health and sanitation services, monitoring for specific dangers of special weapons, unexploded bomb reconnaissance, essential debris clearance, emergency welfare measures, and immediately essential emergency repair or restoration of damaged vital facilities).

Energy means all forms of energy including petroleum, gas (both natural and manufactured), electricity, solid fuels (including all forms of coal, coke, coal chemicals, coal liquefaction and coal gasification), and atomic energy, and the production, conservation, use, control, and distribution (including pipelines) of all of these forms of energy.

Facilities includes all types of buildings, structures, or other improvements to real property (but excluding farms, churches or other places of worship, and private dwelling houses), and services relating to the use of any such building, structure, or other improvement.

Farm equipment means equipment, machinery, and repair parts manufactured for use on farms in connection with the production or preparation for market use of food resources.

Feed is a nutritionally adequate manufactured food for animals (livestock and poultry raised for agriculture production) other than man; and by specific formula is compounded to be fed as the sole ration and is capable of maintaining life and promoting production without any additional substance being consumed except water.

Fertilizer means any product or combination of products that contain one or more of the elements—nitrogen, phosphorus, and potassium—for use as a plant nutrient.

Food resources means all commodities and products, simple, mixed, or compound, or complements to such commodities or products, that are capable of being ingested by either human beings or animals, irrespective of other uses to which such commodities or products may be put, at all stages of processing from the raw commodity to the products suitable for sale for human or animal consumption. Food resources also means all starches, sugars, vegetable and animal or marine fats and oils, seed, cotton, hemp, and flax fiber, but does not mean any such material after it loses its identity as an agricultural commodity or agricultural product.

Food resource facilities means plants, machinery, vehicles (including on-farm), and other facilities required for

the production, processing, distribution, and storage (including cold storage) of food resources, livestock and poultry feed and seed, and for the domestic distribution of farm equipment and fertilizer (excluding transportation for that distribution).

Hazard means an emergency or disaster resulting from a natural disaster; or an accidental or man-caused event.

Health resources means materials, facilities, health supplies, and equipment (including pharmaceutical, blood collecting and dispensing supplies, biological, surgical textiles, and emergency surgical instruments and supplies) required to prevent the impairment of, improve, or restore the physical and mental health conditions of the population.

Homeland security includes efforts—

(1) To prevent terrorist attacks within the United States;

(2) To reduce the vulnerability of the United States to terrorism;

(3) To minimize damage from a terrorist attack in the United States; and

(4) To recover from a terrorist attack in the United States.

Industrial resources means all materials, services, and facilities, including construction materials, but not including: Food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer; all forms of energy; health resources; all forms of civil transportation; and water resources.

Item means any raw, in process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service.

Letter of understanding means an official action that may be issued in resolving special priorities assistance cases to reflect an agreement reached by all parties (USDA, the Department of Commerce (if applicable), a delegate agency (if applicable), the supplier, and the customer).

Maintenance and repair and operating supplies or MRO—

(1) *Maintenance* is the upkeep necessary to continue any plant, facility, or equipment in working condition.

(2) *Repair* is the restoration of any plant, facility, or equipment to working condition when it has been rendered unsafe or unfit for service by wear and tear, damage, or failure of parts.

(3) *Operating supplies* are any resources carried as operating supplies according to a person's established accounting practice. Operating supplies may include hand tools and expendable tools, jigs, dies, fixtures used on production equipment, lubricants, cleaners, chemicals, and other expendable items.

(4) MRO does not include items produced or obtained for sale to other persons or for installation upon or attachment to the property of another person, or items required for the production of such items; items needed for the replacement of any plant, facility, or equipment; or items for the improvement of any plant, facility, or equipment by replacing items that are still in working condition with items of a new or different kind, quality, or design.

Materials includes—

(1) Any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and

(2) Any technical information or services ancillary to the use of any such materials, commodities, articles, components, products, or items.

National defense means programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to Title VI of the Stafford Act and critical infrastructure protection and restoration.

Official action means an action taken by USDA or another resource agency under the authority of the Defense Production Act, Executive Order 12919, or this part. Such actions also include the issuance of rating authorizations, directives, set-asides, allotments, letters of understanding, demands for information, inspection authorizations, and administrative subpoenas.

Person includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof, or any State or local government or agency thereof, or any Federal agency.

Rated order means a prime contract, a subcontract, or a purchase order in support of an approved program issued as specified in the provisions of this part. Persons may request an order (contract) be rated in response to a need that is defined in this part. However, an order does not become rated until the request is approved by USDA. USDA will assign a rating priority for each rating request approved that designates the priority of that order over other orders that have similar order specifics.

Resource agency means any agency that is delegated priorities and allocations authority as specified in § 789.2.

Secretary means the Secretary of Agriculture.

Seed is used with its commonly understood meaning and includes all seed grown for and customarily sold to users for planting for the production of agriculture crops.

Services includes any effort that is needed for or incidental to—

(1) The development, production, processing, distribution, delivery, or use of an industrial resource or a critical technology item;

(2) The construction of facilities;

(3) The movement of individuals and property by all modes of civil transportation; or

(4) Other national defense programs and activities.

Set-aside means an official action that requires a person to reserve materials, services, or facilities capacity in anticipation of the receipt of rated orders.

Stafford Act means Title VI (Emergency Preparedness) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5195–5197h).

Water resources means all usable water, from all sources, within the jurisdiction of the United States, that can be managed, controlled, and allocated to meet emergency requirements.

Subpart C—Placement of Rated Orders

§ 789.10 Delegations of authority.

(a) [Reserved].

(b) Within USDA, authority to administer APAS has been delegated to the Administrator, Farm Service Agency, through the Under Secretary for Farm and Foreign Agricultural Services. (See §§ 2.16(a)(6); 2.42(a)(5) of this title.) The Farm Service Agency Administrator will coordinate APAS implementation and administration through the Director, USDA Office of Homeland Security and Emergency Coordination, as delegated by the Assistant Secretary for Administration. (See §§ 2.24(a)(8)(ii)(A) and 2.24(a)(8)(v); 2.95(b)(1)(i) and 2.95(b)(4) of this title.)

§ 789.11 Priority ratings.

(a) *Levels of priority.* Priority levels designate differences between orders based on national defense including emergency preparedness requirements.

(1) There are two levels of priority established by APAS, identified by the rating symbols "DO" and "DX."

(2) All DO-rated orders have equal priority with each other and take

precedence over unrated orders. All DX-rated orders have equal priority with each other and take precedence over DO-rated orders and unrated orders. (For resolution of conflicts among rated orders of equal priority, see § 789.14(c).)

(3) In addition, a directive regarding priority treatment for a given item issued by the resource agency with priorities jurisdiction for that item takes precedence over any DX-rated order, DO-rated order, or unrated order, as stipulated in the Directive. (For more information on Directives, see § 789.42.)

(b) *Program identification symbols.* Program identification symbols indicate which approved program is being supported by a rated order. The list of currently approved programs and their identification symbols are listed in Schedule I. For example, P1 identifies a program involving food and food resources processing and storage. Program identification symbols, in themselves, do not connote any priority. Additional programs may be approved under the procedures of Executive Order 12919 at any time.

(c) *Priority ratings.* A priority rating consists of the rating symbol DO or DX followed by the program identification symbol, such as P1 or P2. Thus, a contract for the supply of livestock feed will contain a DO–P1 or DX–P1 priority rating.

§ 789.12 Elements of a rated order.

(a) Each rated order must include:

(1) The appropriate priority rating (for example, DO–P1 for food and food resources processing and storage);

(2) A required delivery date or dates. The words "immediately" or "as soon as possible" do not constitute a delivery date. Some purchase orders, such as a "requirements contract basic ordering agreement," "prime vendor contract," or similar procurement document, bearing a priority rating may contain no specific delivery date or dates if it provides for the furnishing of items or services from time-to-time or within a stated period against specific purchase orders, such as calls, requisitions, and delivery orders. Specific purchase orders must specify a required delivery date or dates and are to be considered as rated as of the date of their receipt by the supplier and not as of the date of the original procurement document;

(3) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of an individual authorized to sign rated orders for the person placing the order. The signature or use of the name certifies that the rated order is authorized under this part and that the requirements of this part are being followed; and

(4) A statement requirement must be placed on the order as follows:

(i) A statement that reads:

This is a rated order certified for national defense use, and you are required to follow all the provisions of the Agriculture Priorities and Allocations System regulation in 7 CFR part 789.

(ii) If the rated order is placed in support of emergency preparedness requirements and expedited action is necessary and appropriate to meet these requirements, the following sentences should be added following the statement specified in paragraph (a)(4)(i) of this section:

This rated order is placed for the purpose of emergency preparedness. It must be accepted or rejected within six (6) hours after receipt of the order if the order is issued in response to a hazard that has occurred; or within the greater of twelve (12) hours or the time specified in the order, if the order is issued to prepare for an imminent hazard, in accordance with 7 CFR 789.13(e).

(b) [Reserved]

§ 789.13 Acceptance and rejection of rated orders.

(a) *Mandatory acceptance.* A person must accept a rated order if the person normally supplies the materials or services covered by the order in accordance with the following requirements:

(1) Except as otherwise specified in this section, a person must accept every rated order received and must fill such orders regardless of any other rated or unrated orders that have been accepted.

(2) A person will not discriminate against rated orders in any manner such as by charging higher prices or by imposing different terms and conditions than for comparable unrated orders.

(b) *Mandatory rejection.* Unless otherwise directed by USDA for a rated order involving food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer:

(1) A person must not accept a rated order for delivery on a specific date if unable to fill the order by that date. However, the person must inform the customer of the earliest date on which delivery can be made and offer to accept the order on the basis of that date. Scheduling conflicts with previously accepted lower rated or unrated orders are not sufficient reason for rejection in this section.

(2) A person must not accept a DO-rated order for delivery on a date that would interfere with delivery of any previously accepted DO- or DX-rated orders. However, the person must offer to accept the order based on the earliest delivery date otherwise possible.

(3) A person must not accept a DX-rated order for delivery on a date that would interfere with delivery of any previously accepted DX-rated orders, but must offer to accept the order based on the earliest delivery date otherwise possible.

(4) If a person is unable to fill all of the rated orders of equal priority status received on the same day, the person must accept, based upon the earliest delivery dates, only those orders that can be filled, and reject the other orders. For example, a person must accept order A requiring delivery on December 15 before accepting order B requiring delivery on December 31. However, the person must offer to accept the rejected orders based on the earliest delivery dates otherwise possible.

(5) A person must reject the rated order if the person is prohibited by Federal law from meeting the terms of the order.

(c) *Optional rejection.* Unless otherwise directed by USDA for a rated order involving food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer, rated orders may be rejected in any of the following cases as long as a supplier does not discriminate among customers:

(1) If the person placing the order is unwilling or unable to meet regularly established terms of sale or payment;

(2) If the order is for an item not supplied or for a service not capable of being performed;

(3) If the order is for an item or service produced, acquired, or provided only for the supplier's own use for which no orders have been filled for 2 years prior to the date of receipt of the rated order. If, however, a supplier has sold some of these items or provided similar services, the supplier is obligated to accept rated orders up to that quantity or portion of production or service, whichever is greater, sold or provided within the past 2 years;

(4) If the person placing the rated order, other than the Federal Government, makes the item or performs the service being ordered;

(5) If acceptance of a rated order or performance against a rated order would violate any other regulation, official action, or order of USDA, issued under the authority of the Defense Production Act or another relevant statute.

(d) *Customer notification requirements.* A person in receipt of a rated order is required to provide to the customer placing the order written or electronic notification of acceptance or rejection of the order.

(1) Except as provided in paragraph (e) of this section, a person must accept or reject a rated order in writing or electronically within fifteen (15) working days after receipt of a DO rated order and within ten (10) working days after receipt of a DX rated order. If the order is rejected, the person must give reasons in writing or electronically for the rejection.

(2) If a person has accepted a rated order and subsequently finds that shipment or performance will be delayed, the person must notify the customer immediately, give the reasons for the delay, and advise of a new shipment or performance date. If notification is given verbally, written or electronic confirmation must be provided within five (5) working days.

(e) *Exception for emergency preparedness conditions.* If the rated order is placed for the purpose of emergency preparedness and includes the additional statement as specified in § 789.12(a)(4)(ii), a person must accept or reject a rated order and send the acceptance or rejection in writing or in an electronic format:

(1) Within 6 hours after receipt of the order if the order is issued in response to a hazard that has occurred; or

(2) Within the greater of 12 hours or the time specified in the order, if the order is issued to prepare for an imminent hazard.

§ 789.14 Preferential scheduling.

(a) A person must schedule operations, including the acquisition of all needed production items or services, in a timely manner to satisfy the delivery requirements of each rated order. Modifying production or delivery schedules is necessary only when required delivery dates for rated orders cannot otherwise be met.

(b) DO-rated orders must be given production preference over unrated orders, if necessary to meet required delivery dates, even if this requires the diversion of items being processed or ready for delivery or services being performed against unrated orders. Similarly, DX-rated orders must be given preference over DO-rated orders and unrated orders. (Examples: If a person receives a DO-rated order with a delivery date of June 3 and if meeting that date would mean delaying production or delivery of an item for an unrated order, the unrated order must be delayed. If a DX-rated order is received calling for delivery on July 15 and a person has a DO-rated order requiring delivery on June 2 and operations can be scheduled to meet both deliveries, there is no need to alter production schedules to give any additional preference to the DX-rated order.)

(c) For conflicting rated orders:

(1) If a person finds that delivery or performance against any accepted rated orders conflicts with the delivery or performance against other accepted rated orders of equal priority status, the person must give precedence to the conflicting orders in the sequence in which they are to be delivered or performed (not to the receipt dates). If the conflicting orders are scheduled to be delivered or performed on the same day, the person must give precedence to those orders that have the earliest receipt dates.

(2) If a person is unable to resolve rated order delivery or performance conflicts as specified in this section, the person should promptly seek special priorities assistance as provided in §§ 789.20 through 789.24. If the person's customer objects to the rescheduling of delivery or performance of a rated order, the customer should promptly seek special priorities assistance as specified in §§ 789.20 through 789.24. For any rated order against which delivery or performance will be delayed, the person must notify the customer as provided in § 789.13(d)(2).

(d) If a person is unable to purchase needed production items in time to fill a rated order by its required delivery date, the person must fill the rated order by using inventoried production items. A person who uses inventoried items to fill a rated order may replace those items with the use of a rated order as provided in § 789.17(b).

§ 789.15 Extension of priority ratings.

(a) A person must use rated orders as necessary with suppliers to obtain items or services needed to fill a rated order. The person must use the priority rating indicated on the customer's rated order, except as otherwise provided in this part or as directed by USDA. For example, if a person is in receipt of a DX–P1 rated order for a food resource (milk) and needs to purchase packaging materials (milk cartons) from the packaging supplier, that person must use a DX–P1 rated order to obtain the needed packaging materials (milk cartons).

(b) The priority rating must be included as necessary on each successive order placed to obtain items or services needed to fill a customer's rated order. This continues from contractor to subcontractor to supplier throughout the entire procurement chain.

§ 789.16 Changes or cancellations of priority ratings and rated orders.

(a) The priority rating on a rated order may be changed or canceled by:

(1) An official action of USDA; or

(2) Written notification from the person who placed the rated order or from a delegate agency with resource jurisdiction.

(b) If an unrated order is amended so as to make it a rated order, or a DO rating is changed to a DX rating, the supplier must give the appropriate preferential treatment to the order as of the date the change is received by the supplier.

(c) An amendment to a rated order that significantly alters a supplier's original production or delivery schedule constitutes a new rated order as of the date of its receipt. The supplier must accept or reject the amended order according to the provisions of § 789.13.

(d) The following amendments do not constitute a new rated order:

(1) A change in shipping destination;

(2) A reduction in the total amount of the order;

(3) An increase in the total amount of the order that has a negligible impact upon deliveries;

(4) A minor variation in size or design; or

(5) A change that is agreed upon between the supplier and the customer.

(e) If a person no longer needs items or services to fill a rated order, any rated orders placed with suppliers for the items or services, or the priority rating on those orders, must be canceled.

(f) When a priority rating is added to an unrated order, or is changed or canceled, all suppliers must be promptly notified in writing.

§ 789.17 Use of rated orders.

(a) A person must use rated orders as necessary to obtain:

(1) Items that will be physically incorporated into other items to fill rated orders, including that portion of such items normally consumed or converted into scrap or by-products in the course of processing;

(2) Containers or other packaging materials required to make delivery of the finished items against rated orders;

(3) Services, other than contracts of employment, needed to fill rated orders; and

(4) MRO needed to produce the finished items to fill rated orders.

(b) A person may use a rated order to replace inventoried items (including finished items) if such items were used to fill rated orders, as follows:

(1) The order must be placed within 90 days of the date of use of the inventory.

(2) A DO rating and the program identification symbol indicated on the customer's rated order must be used on the order. A DX rating must not be used even if the inventory was used to fill a DX-rated order.

(3) If the priority ratings on rated orders from one customer or several customers contain different program identification symbols, the rated orders may be combined. In this case, the program identification symbol P4 must be used (that is DO–P4).

(c) A person may combine DX—and DO-rated orders from one customer or several customers if the items or services covered by each level of priority are identified separately and clearly. If different program identification symbols are indicated on those rated orders of equal priority, the person must use the program identification symbol P4 (that is DO–P4 or DX–P4).

(d) For combining rated and unrated orders:

(1) A person may combine rated and unrated order quantities on one purchase order provided that:

(i) The rated quantities are separately and clearly identified; and

(ii) The four elements of a rated order, as required by § 789.12, are included on the order with the statement required in § 789.12(a)(4)(i) modified to read:

This purchase order contains rated order quantities certified for national defense use, and you are required to follow all the provisions of the Agriculture Priorities and Allocations System regulation in 7 CFR part 789 only as it pertains to the rated quantities.

(2) A supplier must accept or reject the rated portion of the purchase order as provided in § 789.13 and give preferential treatment only to the rated quantities as required by this part. This part must not be used to require preferential treatment for the unrated portion of the order.

(3) Any supplier who believes that rated and unrated orders are being combined in a manner contrary to the intent of this part or in a fashion that causes undue or exceptional hardship may submit a request for adjustment or exception as specified in § 789.60.

(e) A person may place a rated order for the minimum commercially procurable quantity even if the quantity needed to fill a rated order is less than that minimum. However, a person must combine rated orders as provided in paragraph (c), if possible, to obtain minimum procurable quantities.

(f) A person is not required to place a priority rating on an order for less than $75,000 or one-half of the Simplified Acquisition Threshold (as established in the Federal Acquisition Regulation (FAR) (see 48 CFR 2.101) or in other authorized acquisition regulatory or management systems) whichever amount is greater, provided that delivery can be obtained in a timely fashion without the use of the priority rating.

§ 789.18 Limitations on placing rated orders.

(a) *General limitations.* Rated orders may only be placed by persons with the proper authority for items and services that are needed to support approved programs and that are eligible for priority treatment.

(1) A person must not place a DO— or DX-rated order unless authorized by USDA or the appropriate delegate agency to do so under this part.

(2) Rated orders must not be used to obtain:

(i) Delivery on a date earlier than needed;

(ii) A greater quantity of the item or services than needed, except to obtain a minimum procurable quantity. Separate rated orders must not be placed solely for the purpose of obtaining minimum procurable quantities on each order;

(iii) Items or services in advance of the receipt of a rated order, except as specifically authorized by USDA (see § 789.21(c) for information on obtaining authorization for a priority rating in advance of a rated order);

(iv) Items that are not needed to fill a rated order, except as specifically authorized by USDA or as otherwise permitted by this part;

(v) Any of the following items unless specific priority rating authority has been obtained from USDA, a delegate agency, or the Department of Commerce, as appropriate:

(A) Items for plant improvement, expansion, or construction, unless they will be physically incorporated into a construction project covered by a rated order; and

(B) Production or construction equipment or items to be used for the manufacture of production equipment. For information on requesting priority rating authority, see § 789.21; or

(vi) Any items related to the development of chemical or biological warfare capabilities or the production of chemical or biological weapons, unless such development or production has been authorized by the President or the Secretary of Defense.

(b) *Jurisdictional limitations.* Unless authorized by the resource agency with jurisdiction (see § 789.10), the provisions of this part are not applicable to the following resources:

(1) All forms of energy, including radioisotopes, stable isotopes, source material, and special nuclear material produced in Government-owned plants or facilities operated by or for the Department of Energy (Resource agency with jurisdiction—Department of Energy);

(2) Health resources (Resource agency with jurisdiction—Department of Health and Human Services);

(3) All forms of civil transportation (Resource agency with jurisdiction—Department of Transportation);

(4) Water resources (Resource agency with jurisdiction—Department of Defense, U.S. Army Corps of Engineers); and

(5) All other materials, services, and facilities, including construction materials (Resource agency with jurisdiction—Department of Commerce).

Subpart D—Special Priorities Assistance

§ 789.20 General provisions.

(a) APAS is designed to be largely self-executing. However, if production or delivery problems arise, a person should immediately contact the Farm Service Agency Administrator for special priorities assistance pursuant to §§ 789.20 through 789.24 and as directed by § 789.73. If the Farm Service Agency is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, USDA may forward the request to another resource agency, as appropriate, for action. Special priorities assistance is a service provided to alleviate problems.

(b) Special priorities assistance is available for any reason consistent with this part. Generally, special priorities assistance is provided to expedite deliveries, resolve delivery conflicts, place rated orders, locate suppliers, or to verify information supplied by customers and vendors. Special priorities assistance may also be used to request rating authority for items that are not normally eligible for priority treatment.

(c) A request for special priorities assistance or priority rating authority must be submitted on Form AD–2102 (OMB Control Number 0560–XXX) to the Farm Service Agency as provided in paragraph (a) of this section. Form AD–2102 may be obtained from USDA by downloading the form and instruction from *http://forms.sc.egov.usda.gov/eForms/welcomeAction.do?Home* or by contacting the Administrator of Farm Service Agency as specified in § 789.73. Either mail or fax the form to USDA, using the address or fax number shown on the form.

§ 789.21 Requests for priority rating authority.

(a) *Rating authority for items or services not normally rated.* If a rated order is likely to be delayed because a person is unable to obtain items or services not normally rated under this part, the person may request the authority to use a priority rating in ordering the needed items or services.

(b) *Rating authority for production or construction equipment.* For a rated order for production or construction equipment not under the resource jurisdiction of USDA, follow the regulations in 15 CFR part 700.

(1) A request for priority rating authority for production or construction equipment must be submitted to the U.S. Department of Commerce on Form BIS–999. Form BIS–999 may be obtained from USDA as specified in § 789.20(c) or from the Department of Commerce as specified in 15 CFR 700.81.

(2) When the use of a priority rating is authorized for the procurement of production or construction equipment, a rated order may be used either to purchase or to lease such equipment. However, in the latter case, the equipment may be leased only from a person engaged in the business of leasing such equipment or from a person willing to lease rather than sell.

(c) For rating authority in advance of a rated prime contract:

(1) In certain cases and upon specific request, USDA, in order to promote the national defense, may authorize a person to place a priority rating on an order to a supplier in advance of the issuance of a rated prime contract. In these instances, the person requesting advance rating authority must obtain sponsorship of the request from USDA or the appropriate delegate agency. The person assumes any business risk associated with the placing of a rated order if the order has to be cancelled in the event the rated prime contract is not issued.

(2) The person must state the following in the request:

> It is understood that the authorization of a priority rating in advance of our receiving a rated prime contract from USDA and our use of that priority rating with our suppliers in no way commits USDA or any other government agency to enter into a contract or order or to expend funds. Further, we understand that the Federal Government will not be liable for any cancellation charges, termination costs, or other damages that may accrue if a rated prime contract is not eventually placed and, as a result, we must subsequently cancel orders placed with the use of the priority rating authorized as a result of this request.

(3) In reviewing requests for rating authority in advance of a rated prime contract, USDA will consider, among other things, the following criteria:

(i) The probability that the prime contract will be awarded;

(ii) The impact of the resulting rated orders on suppliers and on other authorized programs;

(iii) Whether the contractor is the sole source;

(iv) Whether the item being produced has a long lead time; and

(v) The time period for which the rating is being requested.

(4) USDA may require periodic reports on the use of the rating authority granted through paragraph (c) of this section.

(5) If a rated prime contract is not issued, the person will promptly notify each supplier who has received any rated order related to the advanced rating authority that the priority rating on the order is cancelled.

§ 789.22 Examples of assistance.

(a) While special priorities assistance may be provided for any reason in support of this part, it is usually provided in situations in which:

(1) A person is experiencing difficulty in obtaining delivery against a rated order by the required delivery date; or

(2) A person cannot locate a supplier for an item or service needed to fill a rated order.

(b) Other examples of special priorities assistance include:

(1) Ensuring that rated orders receive preferential treatment by suppliers;

(2) Resolving production or delivery conflicts between various rated orders;

(3) Assisting in placing rated orders with suppliers;

(4) Verifying the urgency of rated orders; and

(5) Determining the validity of rated orders.

§ 789.23 Criteria for assistance.

(a) Requests for special priorities assistance should be timely (for example, the request has been submitted promptly and enough time exists for USDA or the delegate agency to meaningfully resolve the problem), and must establish that:

(1) There is an urgent need for the item; and

(2) The applicant has made a reasonable effort to resolve the problem.

(b) [Reserved]

§ 789.24 Instances in which assistance must not be provided.

(a) Special priorities assistance is provided at the discretion of USDA or the delegate agency when it is determined that such assistance is warranted to meet the objectives of this part. Examples in which assistance must not be provided include situations in which a person is attempting to:

(1) Secure a price advantage;

(2) Obtain delivery prior to the time required to fill a rated order;

(3) Gain competitive advantage;

(4) Disrupt an industry apportionment program in a manner designed to provide a person with an unwarranted share of scarce items; or

(5) Overcome a supplier's regularly established terms of sale or conditions of doing business.

(b) [Reserved]

Subpart E—Allocation Actions

§ 789.30 Policy.

(a) It is the policy of the Federal Government that the allocations authority under Title I of the Defense Production Act may:

(1) Only be used when there is insufficient supply of a material, service, or facility to satisfy national defense supply requirements through the use of the priorities authority or when the use of the priorities authority would cause a severe and prolonged disruption in the supply of materials, services, or facilities available to support normal U.S. economic activities; and

(2) Not be used to ration materials or services at the retail level.

(b) Allocation orders, when used, will be distributed equitably among the suppliers of the materials, services, or facilities being allocated and not require any person to relinquish a disproportionate share of the civilian market.

§ 789.31 General procedures.

(a) When the Department of Agriculture plans to execute its allocations authority to address a supply problem within its resource jurisdiction, the Department will develop a plan that includes the following information:

(1) A copy of the written determination made in accordance with section 202 of Executive Order 12919, that the program or programs that would be supported by the allocation action are necessary or appropriate to promote the national defense;

(2) A detailed description of the situation to include any unusual events or circumstances that have created the requirement for an allocation action;

(3) A statement of the specific objective(s) of the allocation action;

(4) A list of the materials, services, or facilities to be allocated;

(5) A list of the sources of the materials, services, or facilities that will be subject to the allocation action;

(6) A detailed description of the provisions that will be included in the allocation orders, including the type(s) of allocation orders, the percentages or quantity of capacity or output to be allocated for each purpose, and the duration of the allocation action (for example, anticipated start and end dates);

(7) An evaluation of the impact of the proposed allocation action on the civilian market; and

(8) Proposed actions, if any, to mitigate disruptions to civilian market operations.

(b) [Reserved]

§ 789.32 Precedence over priority rated orders.

If a conflict occurs between an allocation order and an unrelated rated order or prioritization directive, the allocation order takes precedence.

§ 789.33 Controlling the general distribution of a material in the civilian market.

(a) No allocation by USDA may be used to control the general distribution of a material in the civilian market, unless the Secretary has:

(1) Made a written finding that—

(i) Such material is a scarce and critical material essential to the national defense; and

(ii) The requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship;

(2) Submitted the finding for the President's approval through the Assistant to the President for National Security Affairs; and

(3) The President has approved the finding.

(b) [Reserved]

§ 789.34 Types of allocation orders.

(a) The three types of allocation orders that may be used for allocation actions are:

(1) Set-asides;

(2) Directives; and

(3) Allotments.

(b) [Reserved]

§ 789.35 Elements of an allocation order.

(a) Each allocation order will include:

(1) A detailed description of the required allocation action(s);

(2) Specific start and end calendar dates for each required allocation action;

(3) The Secretary's written signature on a manually placed order, or the digital signature or name on an electronically placed order, of the Secretary. The signature or use of the name certifies that the order is authorized as specified in this part and that the requirements of this part are being followed;

(4) A statement that reads: "This is an allocation order certified for national defense use. [Insert the legal name of the person receiving the order] is required to comply with this order, in accordance with the provisions of 7 CFR part 789;" and

(5) A current copy of the APAS regulation (7 CFR part 789).

(b) [Reserved]

§ 789.36 Mandatory acceptance of allocation orders.

(a) A person must accept every allocation order received that the person is capable of fulfilling, and must comply with such orders regardless of any rated order, from any delegate agency, that the person may be in receipt of or other commitments involving the resource(s) covered by the allocation order.

(b) A person must not discriminate against an allocation order in any manner such as by charging higher prices for resources covered by the order or by imposing terms and conditions for contracts and orders involving allocated resources(s) that differ from the person's terms and conditions for contracts and orders for the resource(s) prior to receiving the allocation order.

(c) If circumstances prevent a person from being able to accept an allocation order, the person must comply with the provisions specified in § 789.60 upon realization of the inability to accept the order.

§ 789.37 Changes or cancellations of allocation orders.

An allocation order may be changed or canceled by an official action of USDA.

Subpart F—Official Actions

§ 789.40 General provisions.

(a) USDA may take specific official actions to implement the provisions of this part.

(b) Several of these official actions (rating authorizations, directives, and letters of understanding) are discussed in this subpart. Other official actions that pertain to compliance (administrative subpoenas, demands for information, and inspection authorizations) are discussed in § 789.51(c).

§ 789.41 Rating authorizations.

(a) A rating authorization is an official action granting specific priority rating authority that:

(1) Permits a person to place a priority rating on an order for an item or service not normally ratable under this part; or

(2) Authorizes a person to modify a priority rating on a specific order or series of contracts or orders.

(b) To request priority rating authority, see § 789.21.

§ 789.42 Directives.

(a) A directive is an official action that requires a person to take or refrain from taking certain actions in accordance with the provisions of the directive.

(b) A person must comply with each directive issued. However, a person may not use or extend a directive to obtain any items from a supplier, unless expressly authorized to do so in the directive.

(c) A priorities directive takes precedence over all DX-rated orders, DO-rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the directive.

(d) An allocations directive takes precedence over all priorities directives, DX-rated orders, DO-rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the directive.

§ 789.43 Letters of understanding.

(a) A letter of understanding is an official action that may be issued in resolving special priorities assistance cases to reflect an agreement reached by all parties (USDA, the Department of Commerce (if applicable), a delegate agency (if applicable), the supplier, and the customer).

(b) A letter of understanding is not used to alter scheduling between rated orders, to authorize the use of priority ratings, to impose restrictions under this part, or to take other official actions. Rather, letters of understanding are used to confirm production or shipping schedules that do not require modifications to other rated orders.

Subpart G—Compliance

§ 789.50 General provisions.

(a) USDA may take specific official actions for any reason necessary or appropriate to the enforcement or the administration of the Defense Production Act and other applicable statutes, this part, or an official action. Such actions include administrative subpoenas, demands for information, and inspection authorizations.

(b) Any person who places or receives a rated order or an allocation order must comply with the provisions of this part.

(c) Willful violation of the provisions of Title I or section 705 of the Defense Production Act and other applicable statutes, this part, or an official action of USDA, is a criminal act, punishable as provided in the Defense Production Act and other applicable statutes, and as specified in § 789.54.

§ 789.51 Audits and investigations.

(a) Audits and investigations are official examinations of books, records, documents, other writings, and information to ensure that the provisions of the Defense Production Act and other applicable statutes, this part, and official actions have been properly followed. An audit or investigation may also include interviews and a systems evaluation to detect problems or failures in the implementation of this part.

(b) When undertaking an audit, investigation, or other inquiry, USDA will:

(1) *Scope and purpose.* Define the scope and purpose in the official action given to the person under investigation; and

(2) *Information not available.* Have ascertained that the information sought or other adequate and authoritative data are not available from any Federal or other responsible agency.

(c) In administering this part, USDA may issue the following documents that constitute official actions:

(1) *Administrative subpoenas.* An administrative subpoena requires a person to appear as a witness before an official designated by USDA to testify under oath on matters of which that person has knowledge relating to the enforcement or the administration of the Defense Production Act and other applicable statutes, this part, or official actions. An administrative subpoena may also require the production of books, papers, records, documents, and physical objects or property.

(2) *Demands for information.* A demand for information requires a person to furnish to a duly authorized representative of USDA any information necessary or appropriate to the enforcement or the administration of the Defense Production Act and other applicable statutes, this part, or official actions.

(3) *Inspection authorizations.* An inspection authorization requires a person to permit a duly authorized representative of USDA to interview the person's employees or agents, to inspect books, records, documents, other writings, and information, including electronically-stored information, in the person's possession or control at the place where that person usually keeps them or otherwise, and to inspect a person's property when such interviews and inspections are necessary or appropriate to the enforcement or the administration of the Defense Production Act and other related statutes, this part, or official actions.

(d) The production of books, records, documents, other writings, and information will not be required at any place other than where they are usually kept if, prior to the return date specified in the administrative subpoena or demand for information, a duly authorized official of USDA is furnished with copies of such material that are certified under oath to be true copies. As an alternative, a person may enter into a stipulation with a duly authorized official of USDA as to the content of the material.

(e) An administrative subpoena, demand for information, or inspection authorization will include the name, title, or official position of the person to be served, the evidence sought, and its general relevance to the scope and purpose of the audit, investigation, or other inquiry. If employees or agents are to be interviewed; if books, records, documents, other writings, or information are to be produced; or if property is to be inspected; the administrative subpoena, demand for information, or inspection authorization will describe the requirements.

(f) Service of documents will be made in the following manner:

(1) *In person.* Service of a demand for information or inspection authorization will be made personally, or by certified mail-return receipt requested at the person's last known address. Service of an administrative subpoena will be made personally. Personal service may also be made by leaving a copy of the document with someone at least 18 years old at the person's last known dwelling or place of business.

(2) *Other than to the named individual.* Service upon other than an individual may be made by serving a partner, corporate officer, or a managing or general agent authorized by appointment or by law to accept service of process. If an agent is served, a copy of the document will be mailed to the person named in the document.

(3) *Delivering individual and documentation.* Any individual 18 years of age or over may serve an administrative subpoena, demand for information, or inspection authorization. When personal service is made, the individual making the service must prepare an affidavit specifying the manner in which service was made and the identity of the person served, and return the affidavit, and in the case of subpoenas, the original document, to the issuing officer. In case of failure to make service, the reasons for the failure will be stated on the original document.

§ 789.52 Compulsory process.

(a) If a person refuses to permit a duly authorized representative of USDA to have access to any premises or source of information necessary to the administration or the enforcement of the Defense Production Act and other applicable statutes, this part, or official actions, the USDA representative may seek compulsory process. Compulsory process is the institution of appropriate legal action, including ex parte application for an inspection warrant or its equivalent, in any forum of appropriate jurisdiction.

(b) Compulsory process may be sought in advance of an audit, investigation, or other inquiry, if, in the judgment of USDA, there is reason to believe that a person will refuse to permit an audit, investigation, or other inquiry, or that other circumstances exist that make such process desirable or necessary.

§ 789.53 Notification of failure to comply.

(a) At the conclusion of an audit, investigation, or other inquiry, or at any other time, USDA may inform the person in writing when compliance with the requirements of the Defense Production Act and other applicable statutes, this part, or an official action was not met.

(b) In cases in which USDA determines that failure to comply with the provisions of the Defense Production Act and other applicable statutes, this part, or an official action was inadvertent, the person may be informed in writing of the particulars involved and the corrective action to be taken. Failure to take corrective action may then be construed as a willful violation of the Defense Production Act and other applicable statutes, this part, or an official action.

§ 789.54 Violations, penalties, and remedies.

(a) Willful violation of the Defense Production Act, the priorities provisions of the Military Selective Service Act (50 U.S.C. App. 468), this part, or an official action, is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. The maximum penalty provided by the Defense Production Act is a $10,000 fine, or 1 year in prison, or both. The maximum penalty provided by the

Military Selective Service Act is a $50,000 fine, or 3 years in prison, or both.

(b) The Government may also seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act, this part, or an official action.

(c) In order to secure the effective enforcement of the Defense Production Act and other applicable statutes, this part, and official actions, the following are prohibited:

(1) No person may solicit, influence, or permit another person to perform any act prohibited by, or to omit any act required by, the Defense Production Act and other applicable statutes, this part, or an official action.

(2) No person may conspire or act in concert with any other person to perform any act prohibited by, or to omit any act required by, the Defense Production Act and other applicable statutes, this part, or an official action.

(3) No person will deliver any item if the person knows or has reason to believe that the item will be accepted, redelivered, held, or used in violation of the Defense Production Act and other applicable statutes, this part, or an official action. In such instances, the person must immediately notify USDA that, in accordance with this provision, delivery has not been made.

§ 789.55 Compliance conflicts.

If compliance with any provision of the Defense Production Act and other applicable statutes, this part, or an official action would prevent a person from filling a rated order or from complying with another provision of the Defense Production Act and other applicable statutes, this part, or an official action, the person must immediately notify USDA for resolution of the conflict.

Subpart H—Adjustments, Exceptions, and Appeals

§ 789.60 Adjustments or exceptions.

(a) A person may submit a request to the Farm Service Agency Deputy Administrator for Management, as directed in § 789.73, for an adjustment or exception on the ground that:

(1) A provision of this part or an official action results in an undue or exceptional hardship on that person not suffered generally by others in similar situations and circumstances; or

(2) The consequences of following a provision of this part or an official action is contrary to the intent of the Defense Production Act and other applicable statutes, or this part.

(b) Each request for adjustment or exception must be in writing and contain a complete statement of all the facts and circumstances related to the provision of this part or official action from which adjustment is sought and a full and precise statement of the reasons why relief should be provided.

(c) The submission of a request for adjustment or exception will not relieve any person from the obligation of complying with the provision of this part or official action in question while the request is being considered unless such interim relief is granted in writing by the Farm Service Agency Deputy Administrator for Management.

(d) A decision of the Farm Service Agency Deputy Administrator for Management under this section may be appealed to the Farm Service Agency Administrator. (For information on the appeal procedure, see § 789.61.)

§ 789.61 Appeals.

(a) Any person whose request for adjustment or exception has been denied by the Farm Service Agency Deputy Administrator for Management as specified in § 789.60, may appeal to the Farm Service Agency Administrator who will review and reconsider the denial.

(b) A person must submit their appeal in writing to the Farm Service Agency Administrator as follows:

(1) Except as provided in paragraph (b)(2) of this section, an appeal must be received by the Farm Service Agency Administrator no later than 45 days after receipt of a written notice of denial from the Farm Service Agency Deputy Administrator of Management. After the 45-day period, an appeal may be accepted at the discretion of the Farm Service Agency Administrator if the person shows good cause.

(2) For requests for adjustment or exception involving rated orders placed for the purpose of emergency preparedness (see § 789.13(e)), an appeal must be received by the Farm Service Agency Administrator no later than 15 days after receipt of a written notice of denial from the Farm Service Agency Deputy Administrator for Management.

(c) Contract performance under the order may not be stayed pending resolution of the appeal.

(d) Each appeal must be in writing and contain a complete statement of all the facts and circumstances related to the appealed action from and a full and precise statement of the reasons the decision should be modified or reversed.

(e) In addition to the written materials submitted in support of an appeal, an appellant may request, in writing, an opportunity for an informal hearing. This request may be granted or denied at the discretion of the Farm Service Agency Administrator.

(f) When a hearing is granted, the Farm Service Agency Administrator may designate an employee of the Farm Service Agency to conduct the hearing and to prepare a report. The hearing officer will determine all procedural questions and impose such time or other limitations deemed reasonable. If the hearing officer decides that a printed transcript is necessary, the transcript expenses must be paid by the appellant.

(g) When determining an appeal, the Farm Service Agency Administrator may consider all information submitted during the appeal as well as any recommendations, reports, or other relevant information and documents available to USDA, or consult with any other person or group.

(h) The submission of an appeal under this section will not relieve any person from the obligation of complying with the provision of this part or official action in question while the appeal is being considered unless such relief is granted in writing by the Farm Service Agency Administrator.

(i) The decision of the Farm Service Agency Administrator will be made within 5 days after receipt of the appeal, or within 1 day for appeals pertaining to emergency preparedness, and will be the final administrative action. The Administrator will issue a written statement of the reasons for the decision to the appellant.

Subpart I—Miscellaneous Provisions

§ 789.70 Protection against claims.

A person will not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any provision of this part, or an official action, even if such provision or action is subsequently declared invalid by judicial or other competent authority.

§ 789.71 Records and reports.

(a) Persons are required to make and preserve for at least 3 years, accurate and complete records of any transaction covered by this part or an official action.

(b) Records must be maintained in sufficient detail to permit the determination, upon examination, of whether each transaction complies with the provisions of this part or any official action. However, this part does not specify any particular method or system to be used.

(c) Records required to be maintained by this part must be made available for

examination on demand by duly authorized representatives of USDA as provided in § 789.51.

(d) In addition, persons must develop, maintain, and submit any other records and reports to USDA that may be required for the administration of the Defense Production Act and other applicable statutes, and this part.

(e) Section 705(d) of the Defense Production Act, as implemented by Executive Order 12919, provides that information obtained under that section which the Secretary deems confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, will not be published or disclosed unless the Secretary determines that the withholding of this information is contrary to the interest of the national defense. Information required to be submitted to USDA in connection with the enforcement or administration of the Defense Production Act, this part, or an official action, is deemed to be confidential under section 705(d) of the Defense Production Act and will be handled in accordance with applicable Federal law.

§ 789.72 Applicability of this part and official actions.

(a) This part and all official actions, unless specifically stated otherwise, apply to transactions in any State, territory, or possession of the United States and the District of Columbia.

(b) This part and all official actions apply not only to deliveries to other persons but also include deliveries to affiliates and subsidiaries of a person and deliveries from one branch, division, or section of a single entity to another branch, division, or section under common ownership or control.

(c) This part and its schedules will not be construed to affect any administrative actions taken by USDA, or any outstanding contracts or orders placed based on any of the regulations, orders, schedules, or delegations of authority previously issued by USDA based on authority granted to the President in the Defense Production Act. Such actions, contracts, or orders will continue in full force and effect under this part unless modified or terminated by proper authority.

§ 789.73 Communications.

Except as otherwise provided, all communications concerning this part, including requests for copies of this part and explanatory information, requests for guidance or clarification, and submission of appeals as specified in § 789.61 will be addressed to the Administrator, Farm Service Agency, Room 4752, Mail Stop 0512, USDA, 1400 Independence Ave., SW., Washington, DC 20250–0512 or e-mail: *FSA.EPD@wdc.usda.gov.* This address is also to be used for requests for adjustments or exceptions to the Farm Service Agency Deputy Administrator for Management as specified in § 789.60.

SCHEDULE I TO PART 789—APPROVED PROGRAMS AND DELEGATE AGENCIES

The programs listed in this schedule have been approved for priorities and allocation support under this part. They have equal preferential status. USDA has authorized the Delegate Agencies to use this part in support of those programs assigned to them, as indicated below.

Program identification symbol	Approved program	Authorized agency
Agriculture programs:		
P1	Food and food resources (civilian)	USDA.
P2	Agriculture and food critical infrastructure protection and restoration	USDA.
P3	Food resources (combat rations)	Department of Defense.[1]
P4	Certain combined orders (see 789.17)	USDA.

[1] Department of Defense includes: The Office of the Secretary of Defense, the Military Departments, the Joint Staff, the Combatant Commands, the Defense Agencies, the Defense Field Activities, all other organizational entities in the Department of Defense, and for purpose of this part, the Central Intelligence Agency, and the National Aeronautics and Space Administration as Associated Agencies.

Signed: May 12, 2011.

Bruce Nelson,

Acting Administrator, Farm Service Agency.

[FR Doc. 2011–12153 Filed 5–18–11; 8:45 am]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Final Revised Designation of Critical Habitat for *Astragalus Jaegerianus* (Lane Mountain Milk-Vetch); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0078; MO 99210–0–0009]

RIN 1018–AW53

Endangered and Threatened Wildlife and Plants; Final Revised Designation of Critical Habitat for *Astragalus Jaegerianus* (Lane Mountain Milk-Vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating revised critical habitat for *Astragalus jaegerianus* (Lane Mountain milk-vetch) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 14,069 acres (ac) (5,693 hectares (ha)) of land in 2 units located in the Mojave Desert in San Bernardino County, California, fall within the boundaries of the revised critical habitat designation.

DATES: This rule becomes effective on June 20, 2011.

ADDRESSES: The final rule and the associated final economic analysis, and map of critical habitat are available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0078, and *http://www.fws.gov/ventura/.* Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone 805–644–1766; facsimile 805–644–3958.

FOR FURTHER INFORMATION CONTACT: Diane Noda, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the development and designation of revised critical habitat for *Astragalus jaegerianus* under the Act (16 U.S.C. 1531 *et seq.*). For more information on the biology and ecology of *A. jaegerianus,* refer to the final listing rule published in the **Federal Register** on October 6, 1998 (63 FR 53596), the previous proposed critical habitat that published in the **Federal Register** on April 6, 2004 (69 FR 18018), and the proposed revised designation of critical habitat that published in the **Federal Register** on April 1, 2010 (75 FR 16404). Information on the associated draft economic analysis (DEA) for the proposed rule to designate revised critical habitat was published in the **Federal Register** on November 3, 2010 (75 FR 67676).

Species Description, Life History, Distribution, Ecology, and Habitat

We received no new information pertaining to the description, life history, or distribution of *Astragalus jaegerianus* following the proposed revised designation (April 1, 2010; 75 FR 16404). These subjects are summarized in the final listing rule that published in the **Federal Register** on October 6, 1998 (63 FR 53596), and the proposed revised designation of critical habitat that published in the **Federal Register** on April 1, 2010 (75 FR 16404). However, we did receive and analyze new information related to population dynamics, ecology, and habitat of *A. jaegerianus* primarily from two long-term monitoring reports (U.S. Army: Fort Irwin 2009, 2010) and from research recently conducted on the effects of long-term drought on *A. jaegerianus* and its host shrubs (Huggins *et al.* 2010). In addition, we are clarifying information on recent genetic studies that was briefly mentioned in the proposed revised critical habitat designation. This new information is described below.

New Information

Population Dynamics

Two reports have become available since the proposed revised critical habitat designation was prepared. As part of their Integrated Natural Resources Management Plan (INRMP) responsibilities, the Army established 40 study plots in 2005 to study the demographics of *Astragalus jaegerianus* and submits annual monitoring reports to the Service. Ten study plots were established in each of the four populations of *Astragalus jaegerianus.* This species is an herbaceous perennial that typically dies back at the end of each growing season, and persists through the dry season as a taproot; this taproot may also allow *A. jaegerianus* to survive occasional dry years, while longer periods of drought might be endured by remaining dormant. "Above-ground" refers to those individuals that can be observed each year on the basis of their herbaceous growth. Information summarized from the 2010 annual monitoring report indicates that, while the total number of *A. jaegerianus* individuals observed above-ground within the plots has decreased compared to 2005 levels, the number of individuals has increased annually since 2007 (Hessing 2010, p. 4). Study plot surveys in 2005 documented 224 individuals; in 2007, the total number of individuals observed in the study plots was 4 plants; in 2010, the total number of individuals was 152. Of these 152 plants, 120 were individuals that were observed the previous year, 26 were new recruits, and 6 were resprouts.

Another ongoing population demography study conducted at permanent survey plots at the Montana Mine and Goldstone sites showed that *Astragalus jaegerianus* populations have declined in number of individuals, and in 2009 are less than 13 percent of their population size in 1999 (Sharifi *et al.* 2010, p. 4). The rate of mortality has generally slowed in the last 2 years, although at one subplot, the rate has increased recently compared with earlier years. Little to no observed recruitment is thought to be the result of low seedling survival and a depleted seed bank (Sharifi *et al.* 2010, pp. 11–12). Recruitment is probably episodic and requires two or more uncommon conditions such as: A large seed bank, precipitation greater than 8 inches (in) (200 millimeter (mm)) per year and frequently spaced (rain events approximately four times a month), and a subsequent wet year or summer precipitation (Sharifi *et al.* 2009, p. 10).

Ecology and Habitat

Huggins *et al.* (2010) reported on changes in host shrub canopy over a time period from 1999 to 2009 in the same areas where populations have been monitored by Sharifi *et al.* (2010) (see above). A drought began in the Mojave Desert (and much of the western States) in 1999, according to various researchers (Cook *et al.* 2004, p. 1016; Breshears *et al.* 2005, p. 15144; Hereford *et al.* 2006, p. 19). Such droughts have been documented to result in population diebacks and drought pruning of perennial desert shrubs (for example, see Hamerlynck and McAuliffe 2008). Host shrubs for *Astragalus jaegerianus* have been documented to have experienced a 10 percent decrease in volume and cover between 1999 and 2009, and shrub mortality has been high (Huggins *et al.* 2010, pp. 123–124). Such deterioration in shrub canopy cover results in increased ground temperature and light intensity within the host shrub, and

likely indirectly affects the establishment and survival of *A. jaegerianus.* This hypothesis was supported by the observation that survival of *A. jaegerianus* was higher in host shrubs with more intact canopies. The authors opine that continuing drought in the Mojave Desert will lead to local extirpations of this species (Huggins *et al.* 2010, p. 127).

Genetics

Recent genetic analysis of *Astragalus jaegerianus* using AFLP (amplification fragment length polymorphism) markers showed that the species exhibits levels of genetic variation that are more consistent with species that are geographically widespread with large populations and numerous individuals, with each population exhibiting a high level of genetic variation and significant population structure across the range of the species (Walker and Metcalf 2008, pp. 158–177). The observation of these results in *A. jaegerianus,* a species with a restricted range and few numbers of individuals, leads the authors to opine that the species has or is currently undergoing population contraction. In addition, the authors found that the level of genetic differentiation between the eastern half and the western half of the Coolgardie population was significant, and they recommended these two areas be recognized as separate populations.

In summary, we have considered new information as described above, and have incorporated it into this rule; none of it has altered our analysis of how to designate critical habitat for this species. With respect to the recommendation that two populations of *Astragalus jaegerianus* be recognized on Coolgardie Mesa, we acknowledge that there may be two genetically distinct populations; however, because they are geographically contiguous, it does not alter our delineation of the critical habitat unit in this area.

Previous Federal Actions

The final rule listing *Astragalus jaegerianus* as an endangered species was published on October 6, 1998 (63 FR 53596). On November 15, 2001, our decision not to designate critical habitat for *A. jaegerianus* and seven other plant and wildlife species at the time of listing was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *Norton* (Case No. 01–CV–2101–IEG (S.D. Cal.). On July 1, 2002, the court ordered the Service to reconsider its not prudent determination, and propose critical habitat, if prudent, for the species by September 15, 2003, and issue a final critical habitat designation, if prudent, no later than September 15, 2004. In light of *Natural Resources Defense Council* v. *U.S. Department of the Interior,* 113 F.3d 1121 (9th Cir. 1997), and the diminished threat of overcollection, the Service reconsidered its decision and determined that it was prudent to propose critical habitat for the species. However, the Service exhausted the funding appropriated by Congress to work on critical habitat designations in 2003 prior to completing the proposed rule. On September 8, 2003, the court issued an order extending the date for issuance of the proposed critical habitat designation for *A. jaegerianus* to April 1, 2004, and the final designation to April 1, 2005.

On April 6, 2004 (69 FR 18018), we published a proposed critical habitat designation that included 29,522 ac (11,947 ha) in 4 units in San Bernardino County, California. On April 8, 2005 (70 FR 18220), we published our final designation of critical habitat for *Astragalus jaegerianus.* Because we excluded all proposed acreage from the designation, the final designation included zero (0) ac (0 ha).

On December 19, 2007, the 2005 critical habitat determination was challenged by the Center for Biological Diversity (*Center for Biological Diversity* v. *United States Fish and Wildlife Service et al.,* Case No. CV–07–08221–JFW–JCRx). In a settlement agreement accepted by the court on June 27, 2008, we agreed to reconsider the critical habitat designation for *Astragalus jaegerianus.* The settlement stipulated that we submit a proposed revised critical habitat rule for *A. jaegerianus* to the **Federal Register** for publication on or before April 1, 2010, and submit a final revised determination on the proposed critical habitat rule to the **Federal Register** for publication on or before April 1, 2011; the proposed critical habitat rule was published on April 1, 2010 (75 FR 16404). On November 3, 2010, the document making available the draft economic analysis and reopening the public comment period for the proposed revised critical habitat designation was published in the **Federal Register** (75 FR 67676). On December 28, 2010, the court granted an extension for the submission of the final revised critical habitat determination to the **Federal Register** on or before May 16, 2011. This final revised critical habitat designation complies with the June 27, 2008, and December 28, 2010, court orders.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed revised designation of critical habitat for *Astragalus jaegerianus* during two comment periods. The first comment period associated with the publication of the proposed revised critical habitat designation (75 FR 16404) opened on April 1, 2010, and closed June 1, 2010. We also requested comments on the proposed revised critical habitat designation and associated draft economic analysis during a second comment period that opened November 3, 2010, and closed on December 3, 2010 (75 FR 67676). We did not receive any requests for a public hearing. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed revised rule and draft economic analysis during these comment periods.

During the first comment period, we received seven comment letters directly addressing the proposed revised critical habitat designation. During the second public comment period, we received 14 comment letters directly addressing the proposed revision of critical habitat for this species or the draft economic analysis; 1 of these consisted of an informal "petition," with approximately 870 signatures, to the Bureau of Land Management (Bureau) regarding management of the Coolgardie area, and 1 of the comments was from a party that previously commented in the first comment period. All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below. Comments received were grouped into five general categories specifically relating to the proposed revised critical habitat designation for *Astragalus jaegerianus,* and are addressed in the following summary and incorporated into the final revised critical habitat designation as appropriate.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from four knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which it occurs, or conservation biology principles pertinent to the species. We received responses from one of the four peer reviewers.

We reviewed all comments received from the peer reviewer for substantive issues and new information regarding critical habitat for *Astragalus jaegerianus.* Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

Comment 1: The peer reviewer noted that protection of existing habitat is essential because, as with other *Astragalus* taxa, this species may have very narrow habitat requirements, and translocation may have a low probability of long-term success. The reviewer also noted that the most frequent pollinator of *A. jaegerianus, Anthidium dammersi,* is a solitary bee that nests in the ground, likely in close proximity to *A. jaegerianus* plants. Ground-nesting bees are highly sensitive to activities that may compact soil, as the nests may be damaged or destroyed, such as may occur with off-highway vehicles (OHVs), military vehicles, construction or mining equipment, and livestock grazing. The reviewer concludes that the designation is scientifically sound and essential to protect the viability of *A. jaegerianus* populations.

Our Response: We appreciate the peer reviewer's comments. As discussed in the *Methods* section below, we took into consideration all available information concerning habitat requirements, as well as the needs of pollinators and seed dispersers, in delineating critical habitat for this species.

Comment 2: The peer reviewer commented that, because much of the genetic diversity in *Astragalus jaegerianus* is partitioned among populations, it is important to designate each of the [sites for] existing populations as critical habitat. We also received a comment from one of the researchers that conducted the genetic analysis (Walker and Metcalf 2008). He corrected our characterization of the results of the genetics analysis in the proposed revised critical habitat designation as follows: While DNA sequencing techniques detected no variation between individuals of *A. jaegerianus,* the use of AFLP genetic markers, which screen the whole genome, showed that genetic variation was high among the individuals tested. Even though the results are more typical of species that are geographically widespread with large populations and numerous individuals, the observation of these results in *A. jaegerianus,* a species with a restricted range and few individuals, leads the authors to opine that the species has or is currently undergoing population contraction (Walker and Metcalf 2008 p. 172).

Our Response: We appreciate the clarification on the results of the genetic analyses. We acknowledge the importance of maintaining genetic diversity within the species, and have designated all areas where *Astragalus jaegerianus* occurs as critical habitat, with the exception of those areas on Fort Irwin that have been exempted under 4(a)(3)(b) of the Act. Because all areas where the species occurs were already included in the proposed critical habitat designation, no changes were made based on the information obtained from the genetic studies.

Federal Agency Comments

Comment 3: The Bureau provided an update on the status of lands conservation efforts within the Coolgardie and Paradise Areas of Critical Environmental Concern (ACECs), as per the prescriptions in the West Mojave Plan (WMP) (Bureau 2010, *in litt.*). In particular, they noted that:

- No project permits were issued in this area in 2010 (Prescription (P) 26);
- No grazing has been authorized (P27);
- An additional 7 miles (mi) (11 kilometers (km)) of post and cable barrier fence was installed in 2010 and routes were reclaimed in the southwest corner of the Coolgardie ACEC and Rainbow Basin (P28), and route rehabilitation and signing will continue in 2011;
- The Department of Defense (DOD) intends to transfer management of lands they have acquired for conservation within the ACEC boundaries to the Bureau in 2011 (P29);
- Mining claimholders are being contacted to determine if any of these claims could be surrendered (P30); and
- The Bureau has installed post and cable fencing to prevent access to Coolgardie Mesa from Rainbow Basin (P31).

In addition, the Bureau reports that ranger patrols have increased in the Coolgardie Mesa area with additional funding provided by the DOD.

Our Response: We appreciate receiving these comments and note the Bureau's continuing efforts to implement conservation measures for this species.

State Agency Comments

Section 4(i) of the Act states, "the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition." In 2004, we contacted the California Department of Fish and Game (CDFG) concerning the previous 2004 proposed critical habitat designation; however, the agency chose not to submit comments on the proposed critical habitat designation for *Astragalus jaegerianus.* The State notified us that submitting comments on the proposed critical habitat designation was a low priority for them because they are participants in the WMP planning process, and have previously commented on the conservation measures that were proposed for *A. jaegerianus* in the draft WMP (CDFG 2003, *in litt.,* pp. 71–72). Furthermore, many of the private parcels that would be subject to State environmental regulations have been or are being purchased by DOD and transferred to the Bureau for inclusion in the Coolgardie and Paradise ACECs. Because of this action, the State's concern over private lands issues has been greatly diminished in this area. We contacted the CDFG again in 2010 concerning our most recent proposed revised critical habitat designation; the State provided no comments.

Public Comments

Comment 4: One commenter was concerned that the public did not have adequate notification concerning the proposed revised critical habitat designation and that there should have been a meeting with all concerned parties.

Our Response: The Service conducted outreach by notifying appropriate elected officials, local jurisdictions, interested parties, and members of the public that had been identified during the previous critical habitat designation process in 2004–2005. We also published a legal notice in the *Barstow Dispatch* on April 7, 2010, concerning the proposed revised critical habitat designation and the first open comment period; published a news release; and posted information on the Ventura Fish and Wildlife Office Web site as well as on *www.Regulations.gov.* The second comment period was similarly noticed by a news release and postings on our office's Web site and *www.Regulations.gov.* In addition, we received no requests for a public hearing from members of the public when the proposed revised critical habitat designation was published. We believe we have provided sufficient opportunity for public comment with two open comment periods totaling 90 days.

Comment 5: Several commenters expressed concern over the amount of acreage that was being "set aside" and how this would affect the high desert community and their freedom to enjoy the desert. One commenter thought that

these lands could not be enjoyed by future generations because they are locked away from motorized travel.

Our Response: As discussed in the *Background* of the Critical Habitat section of this rule, the designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands, or require implementation of restoration, recovery, or enhancement measures by private landowners. Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement, and so, will not be affected by critical habitat designation (see Effects of Critical Habitat Designation section below). We anticipate that the Bureau will continue to allow access to and manage vehicle use and other recreational activities within this area according to the provisions of the WMP amendment to the CDCA (California Desert Conservation Area) Plan. The critical habitat designation does not affect private lands or other non-Federal lands unless a Federal agency proposes to authorize, fund, or carry out an activity on those lands.

Comment 6: One commenter questioned whether private landowners would be "excluded" from the area.

Our Response: Private landowners are not excluded and may still access their lands that fall within a critical habitat designation. As discussed above, the designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area, and it does not alter, in any manner, landowners' access to their lands. In addition, it does not require private landowners to implement restoration, recovery, or enhancement measures. See Effects of Critical Habitat Designation section below and the 2010 DEA for additional information on the implications of critical habitat designation to private landowners.

Comment 7: One commenter requested that we expand the habitat of *Astragalus jaegerianus* because it is the "primary food of many species and has potential medical benefits for humans."

Our Response: We have designated all areas where *Astragalus jaegerianus* is known to exist outside of Fort Irwin as critical habitat. Based on numerous surveys, we do not expect to find additional occurrences outside of the designated area; also, given the species' specific ecological needs, we cannot reasonably expect to expand the area that it inhabits. The commenter did not provide information documenting the use of *A. jaegerianus* as a source of food or medicine, and at this time, we have no information to indicate that *A. jaegerianus* is the primary food of any species, although it may have some, as yet undetermined, medical value to humans.

Comment 8: Several commenters noted that they enjoy panning for gold in the open desert or working small mining claims in the Coolgardie Mesa area and do not wish to see the area closed.

Our Response: The designation of critical habitat for *Astragalus jaegerianus* will not result in closure of any areas. As we have noted previously, it will not affect non-Federal lands, unless a Federal agency is proposing to authorize, fund, or carry out an action on that land. Although the designation of critical habitat may require the Bureau to reassess its land use plans, recreational activities such as panning for gold are not expected to negatively affect land use within the area. Under the casual use provisions of the CDCA Plan, individuals may continue to pan for gold. In general, we do not expect that such use, which is conducted on a fairly small scale, will compromise the function of critical habitat for *A. jaegerianus;* consequently, at this time, we do not anticipate requesting that the Bureau reassess the provisions of the CDCA Plan with regard to this activity.

Sites where mining claims have been worked previously are unlikely to support the primary constituent elements (PCEs) of critical habitat because they are typically located in pockets of deeper soils where *Astragalus jaegerianus* does not grow. Because *Astragalus jaegerianus* occurs only under specific habitat conditions, we expect that the Bureau is unlikely to alter the use of those claims.

We note, however, that one of the purposes of the designation of critical habitat is to provide for the conservation of listed species. If we, or the Bureau, identified an area within critical habitat that contained the PCEs and was threatened by mining activities, we would work with the Bureau and claimants to attempt to conserve the critical habitat values of that area. After the close of the comment period for this rule, we received information that "prybar mining" had been observed at one site on Coolgardie Mesa adjacent to known *Astragalus jaegerianus* plants (Silverman 2011 in litt.). Unlike the traditional gold panning or drywash methods of mining, this method uses a prybar to break apart rock outcrops; such outcrops are found adjacent to shallow-soiled areas where *Astragalus jaegerianus* grows. We have notified the Bureau regarding this information and will work with them to evaluate potential impacts to the species.

Comment 9: One commenter notes that "nothing lasts forever" and that we should use our resources to "recultivate" rather than preserving our world as a museum.

Our Response: We recognize that the natural world is one of change. *Astragalus jaegerianus* is, however, threatened by human activities and the designation of critical habitat is one tool we can use to reduce or eliminate those threats. Our goal in conserving *A. jaegerianus* is not to create a static museum display, but to conserve the species and the ecosystem upon which it depends. We acknowledge that this ecosystem may change to the point that it no longer supports this species; however, our goal is to ensure that the changes are effected by the natural world, and not human activities.

Comment 10: One commenter described the level of unauthorized OHV use that they have observed on Coolgardie Mesa, and notes that this use has killed several individuals of *Astragalus jaegerianus.* The commenter notes that this unauthorized use has increased from 2001 to 2010, and that a fence constructed by the Bureau has eliminated one area of extensive unauthorized use, but that the use has shifted to nearby areas.

Our Response: We acknowledge that unauthorized off-highway use of areas occupied by *Astragalus jaegerianus* continues. We will continue to work with the Bureau to attempt to manage off-highway vehicle use within the area of critical habitat so public land users have access to Coolgardie Mesa in a manner that will facilitate the conservation of *A jaegerianus.*

Comment 11: One commenter notes he has never encountered a Bureau ranger or other law enforcement officer on Coolgardie Mesa and anticipates that the Bureau or Service will install a fence to prevent access to public lands.

Our Response: The Service is aware that the Bureau cannot maintain a constant law enforcement presence in the Coolgardie Mesa area; and we continue to work with the Bureau to attempt to increase the public's compliance with existing land-use regulations. We understand that the Bureau will continue to install fencing along designated open routes of travel to prevent unauthorized off-road vehicle use. To the best of our knowledge, the Bureau has no intention of installing a fence around the boundaries of critical

habitat, and the Service has no authority to install such a fence.

Comment 12: One commenter urged the Service to think about how the potential development of large-scale solar and wind projects in the desert could affect *Astragalus jaegerianus,* and questioned whether more critical habitat should be set aside given these future losses of desert habitat.

Our Response: Because extensive surveys have been conducted for *Astragalus jaegerianus,* including in areas outside the known geographic range of the species, we have a high level of certainty that *A. jaegerianus* does not occur in other areas of the Mojave Desert. Therefore, we anticipate that large-scale solar and wind energy projects across the Mojave Desert and future losses of desert habitat that may occur will not affect *A. jaegerianus.*

With respect to the geographic area within the Mojave Desert where *Astragalus jaegerianus* occurs, management of this habitat was discussed in the April 1, 2010, proposed revised critical habitat designation (75 FR 16404). Congress passed the Energy Policy Act of 2005; subsequently, the Bureau issued step-down orders that address more specifically how to implement the Energy Policy Act of 2005 (for example, Order No. 3283 (DOI 2009a pp. 1–2) and Order No. 3285 (DOI 2009b pp. 1–3)). In addition, the Bureau has issued its own guidelines for implementing these policies and orders on Bureau lands. For instance, in 2008, the Bureau issued Instruction Memorandum (IM) 2009–043, the Wind Energy Development Policy, which includes guidelines for the development of wind energy projects within designated ACECs (Bureau 2008, p. 2). No alternative energy projects have been permitted or proposed within areas we are designating as critical habitat for *A. jaegerianus,* although the Bureau has received expressions of interest from wind energy companies that are seeking sites for wind energy development.

Comment 13: One commenter reported seeing *Astragalus jaegerianus* outside of the area included in the proposed revised critical habitat designation, and included photos showing plants growing adjacent to OHV trails.

Our Response: We examined the photos and determined the subject plants are not *Astragalus jaegerianus,* but a species of larkspur (*Delphinium*) in the buttercup family (Ranunculaceae).

Comment 14: One commenter stated that the proposed revised critical habitat designation failed to include adequate critical habitat to protect and conserve all known extant occurrences of *Astragalus jaegerianus.*

Our Response: As per guidance on determining critical habitat, we took into consideration all known extant occurrences of *Astragalus jaegerianus* (see previous April 6, 2004, proposed critical habitat designation (69 FR 18018), and the April 1, 2010, proposed revised critical habitat designation (75 FR 16404). All known occurrences of *A. jaegerianus* are included in our final critical habitat designation, with the exception of lands within Fort Irwin, which are exempted under section 4(a)(3) of the Act due to an approved INRMP that benefits the conservation of the species. See the Exemptions section below.

Comment 15: One commenter asserts that the proposed revised critical habitat designation ignored the recovery goal of critical habitat because we did not include unoccupied habitat for recovery of the species (as per *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service* 378 F.3d 1059, 1069–70 (9th Circuit 2004) ruling). The commenter also refers to an analysis of listed species with and without critical habitat that indicates species with critical habitat are more likely to be recovering than species that lack the designation (and cites Taylor *et al.* 2005). The commenter suggests we should have used robust models for conservation design (and cites Burgman *et al.* 2001) to estimate additional areas important for recovery of the species.

Our Response: A critical habitat designation does not need to include habitat unoccupied at the time of listing for recovery of the species. We can include such habitat areas if we determine that those lands are essential for the conservation of the species. However, in this case, we did not designate any areas outside the geographical area occupied by the species because: (1) We believe the size of the occupied areas are sufficient for the conservation of the species, and (2) based on extensive surveys for the species, these areas best represent what is needed for the conservation of the species.

With respect to the comment that species with critical habitat are more likely to be recovering than species that lack the designation, we note that in Taylor *et al.* (2005), the authors opine that this may be the case because, in practice, land managers have often given significant protection to critical habitats. In the case of *Astragalus jaegerianus,* we note that the Bureau had already developed recommendations to establish ACECs on Coolgardie Mesa and Paradise, and provide conservation-oriented management prescriptions in the draft WMP, prior to the publication of our previous 2004 proposed critical habitat designation.

With respect to using robust models for conservation design, we acknowledge it would be useful to have sufficient biological information to construct such a model. In this case, however, because we do not have the level of detail necessary to develop the type of model used in Burgman *et al.* (2001), we are using the best available scientific information to identify critical habitat, as described in the *Methods* section.

Comment 16: One commenter stated that the critical habitat designation should be based on conservation biology principles and include sufficient lands to maintain connectivity and reduce fragmentation between populations (as cited in the literature, *e.g.,* Debinski, and Holt 2000, Noss *et al.* 1997, Honnay and Jacquemyn 2006), especially since intervening habitat is important for pollinators. Furthermore, genetic studies on *Astragalus jaegerianus* indicate an already limited gene flow between populations, and further isolation may decrease genetic variation and ability of the species to adapt to environmental variation (Noss *et al.* 1997).

Our Response: We agree that principles of conservation biology (including maintaining gene flow between populations) are useful to consider in identifying critical habitat. We have acknowledged their importance in our discussion under the *Physical and Biological Features* and *Methods* sections in this final revised critical habitat designation and the April 1, 2010, proposed revised critical habitat designation (75 FR 16404), and have used the best scientific information available in the development of this designation. The critical habitat designation in and of itself will do nothing one way or the other to affect the degree of fragmentation between populations.

Comment 17: One commenter stated that it is important to include currently unoccupied habitat for the species in the critical habitat designation because of the potential effects of climate change on temperature and precipitation, even if these are not well-understood.

Our Response: While climate change modeling has been undertaken for the Great Basin and Sonoran Desert regions (for example, see Redmond 2010), very little modeling has been conducted for the Mojave Desert region to date. Recent studies, however, have discussed the effects of drought on desert shrubs

including localized diebacks and drought-pruning (for example, see Breshears *et al.* 2005, pp. 15144–15148; Hereford *et al.* 2006, pp. 13–34; Haymerlynck and Huxman 2009, pp. 582–585; and McAuliffe and Haymerlynck 2010, pp.885–896). Huggins *et al.* (2010, pp. 120–128) studied the effects of recent drought on host shrubs that support *Astragalus jaegerianus* and found higher survival rates of *A. jaegerianus* in host shrubs with more intact canopies, providing the first evidence that recent drought conditions in the Mojave Desert could be indirectly affecting the survivorship of *A. jaegerianus.* However, based on the best available scientific information, we are unable to predict at this time additional areas that could support *A. jaegerianus* in the future.

Comment 18: One commenter stated that the Service should not exclude areas that are covered by the Bureau's WMP from the critical habitat designation by using the logic that they do not need "special management" or through an exclusion through section 4(b)(2) of the Act; by definition, these areas qualify as critical habitat.

Our Response: Our revised final critical habitat designation includes all Bureau lands that are included in the WMP.

Comment 19: One commenter notes that Fort Irwin does not seem to be affected by the designation of critical habitat.

Our Response: In 2004, Congress amended the Act to exempt DOD-managed lands from critical habitat designations if the military installation has an INRMP that is determined to provide a benefit to the species. Fort Irwin has such a plan that the Service has reviewed and approved. We acknowledge that military training at Fort Irwin will result in the loss of habitat for *Astragalus jaegerianus;* however, the Army has also established two areas, totaling 6,772 ac (2,741 ha), where all training will be prohibited to protect this species. In another area, comprising 3,700 ac (1,497 ha), all vehicular traffic will be restricted to a limited number of roads to protect *A. jaegerianus.*

Comments Related to the Draft Economic Analysis

Comment 20: One commenter stated that the economic analysis needs to include all habitat currently occupied by *Astragalus jaegerianus,* including lands on Fort Irwin, and not rely on the "flawed" proposed revised critical habitat designation as the basis for the analysis.

Our Response: The DEA includes a discussion of all geographic areas occupied by the species; the areas occupied by the species on Fort Irwin are not included in the designation because they are exempted through section 4(a)(3)(b) of the Act.

Comment 21: One commenter stated that the DEA incorrectly asserts that, "[a]ll Federal land is managed for purposes of *Astragalus jaegerianus* conservation according to the WMP." The comment notes that, while some of the areas proposed for critical habitat are within ACECs designated by the WMP, these areas still allow some level of OHV use, causing habitat fragmentation and opportunities for illegal OHV use in the areas designated as critical habitat.

Our Response: The final EA has been amended to state that all Bureau lands are managed according to the WMP for the purposes of *Astragalus jaegerianus* conservation. The objective of the WMP is to provide a conservation strategy for sensitive plant and animal species, including *A. jaegerianus.* The DEA does not assert that the management of the proposed critical habitat area according to the WMP precludes all OHV use within the boundaries of the proposed critical habitat area. Specifically, Section 3.2.2 of the DEA describes that vehicle routes within the proposed critical habitat area are classified under the WMP as open, closed, or limited, and all OHV-users must comply with the road designations. Section 3.2.2 further describes that because of damage related to unauthorized use, the Bureau has fenced portions of the West Paradise ACEC and the Coolgardie Mesa ACEC. As noted in the final EA, however, "Vehicle use will not be altogether precluded, due to the need to provide access to the private lands and mining claims." The DOD is not permitting any activities on DOD lands within the boundaries of the ACECs, since the intent of their acquisition is to transfer them to the Bureau.

Comment 22: A comment provided on the DEA states that there is some development pressure, particularly with regard to wind energy development, on private parcels within the ACEC areas until these parcels are acquired to consolidate public land ownership.

Our Response: As described in Section 3.1 of the DEA, the private parcels within the proposed designation are primarily homesteads interspersed within the ACECs. No development activities, such as wind energy projects, have been subject to section 7 consultation under the Act regarding the *Astragalus jaegerianus* on these private lands. While it is possible that such projects may be proposed in the future, only those projects subject to a Federal nexus (*i.e.,* projects permitted, funded, or carried out by a Federal agency) may result in section 7 consultation with the Service. No such consultations have occurred for any projects on private lands in *A. jaegerianus* habitat to date. The probability of future wind energy projects being proposed on private lands within the proposed critical habitat area is uncertain; however, we do not anticipate any development of wind energy in the area. See also response to *Comment 12* above and the *Energy Supply, Distribution, or Use* section below.

Comment 23: Multiple comments state that any restrictions placed upon the proposed critical habitat area will result in losses to miners and OHV users. One of these comments further states that recreationists contribute millions of dollars to the regional economy. Another comment asserts the DEA does not correctly assess the effect of restrictions on certain land-use activities on local, regional, and national economies.

Our Response: Section 3.2 of the DEA describes that land use activities, such as mining and OHV recreation, are currently restricted within the proposed critical habitat area, even absent critical habitat designation. The Federal lands in the proposed critical habitat area (79 percent of the proposed critical habitat) are managed for *Astragalus jaegerianus* conservation according to the WMP, which has limited access to the habitat area through closing some vehicle routes and fencing ACECs containing *A. jaegerianus* habitat. Section 3.3.1 of the DEA describes that, due to the existing management of habitat threats through the WMP, critical habitat for *A. jaegerianus* is not expected to result in additional conservation measures for the species on Federal lands. Section 3.3.2 of the DEA further describes that the private land uses within proposed critical habitat (small scattered parcels containing homesteads) are not likely to trigger section 7 consultation or the California Environmental Quality Act (CEQA) requirements and, therefore, critical habitat designation of these lands is not anticipated to restrict land-use activities. Thus, the DEA does not expect critical habitat to generate any additional restrictions on land-use activities that will result in impacts to the local, regional, or national economies.

Comment 24: A comment provided on the DEA suggests that, if there are no economic costs associated with the critical habitat designation due to the existing conservation measures for the

species, it is likely that there is no need for the designation. The comment further states that the designation must result in some economic impacts due to project delays and costs of consultation with the Service.

Our Response: Even though there were no economic costs identified in the final EA associated with the critical habitat designation due to existing conservation measures for the species, the areas proposed for designation meet the definition of critical habitat, and therefore are included in the designation.

Section 3.3.1 of the DEA describes that critical habitat designation is not expected to result in additional section 7 consultations. The section also notes that any future consultations considering *Astragalus jaegerianus* will experience some incremental administrative costs to consider potential adverse modification of critical habitat. Due to the continued management of the critical habitat area by the Bureau according to the WMP, however, the DEA anticipates only a single, informal consultation with the Bureau regarding the pending land transfer between the DOD and the Bureau. The Bureau does not anticipate consulting with the Service on other land management activities, and no consultations are forecast to occur for activities on private lands. Thus, the DEA concludes that the incremental administrative costs of consultation associated with the critical habitat designation are most likely to be negligible; the DEA did not predict any project delays.

Comment 25: One comment asserts that the DEA fails to calculate the benefits of the critical habitat designation, stating that all types of benefits should be assessed and quantified or, where quantification is inappropriate or too speculative, should be described qualitatively to allow for a comparison of costs to benefits.

Our Response: As described in Section 3.4 of the DEA, critical habitat designation is not expected to generate: (1) Additional conservation efforts for *Astragalus jaegerianus;* (2) changes in economic activity; or (3) changes to land management. Absent any changes in the above, no incremental economic benefits are forecast to result from the designation of critical habitat.

We believe the commenter is referring to benefits with respect to broader social values, which are not the same as economic impacts. While the Secretary must consider economic and other relevant impacts as part of the final decisionmaking process under section 4(b)(2) of the Act, the Act explicitly states that it is the government's policy to conserve all threatened and endangered species and the ecosystems upon which they depend. Thus we believe that explicit consideration of broader social values for the species and its habitat, beyond the more traditionally defined economic impacts, is not necessary, because Congress has already clarified the social importance of the species and its habitat. As a practical matter, we note the difficulty in being able to develop credible estimates of such values as they are not readily observed through typical market transactions. In sum, we believe that society places the utmost value on conserving any and all threatened and endangered species and the habitats upon which they depend and thus we need only to consider whether the economic impacts (both positive and negative) are significant enough to merit exclusion of any particular area without causing the species to go extinct.

Comment 26: A comment provided on the DEA states that the document should explain the differences between the October 2004 DEA of the previous proposed critical habitat designation for *Astragalus jaegerianus* and the 2010 DEA of the proposed revised critical habitat designation. The 2004 analysis quantified both pre-designation (occurring from the time of listing to final critical habitat designation) and post-designation impacts, estimating $5.84 million to $13.01 million in post-designation impacts. The 2010 DEA, however, does not quantify any impacts. The comment further asserts that there must be some economic impact associated with fencing areas, effects on military activities, relocating OHV use, and precluding mining and energy projects.

Our Response: Section 1.3 of the DEA describes the differences between the 2005 Economic Analysis (which is the final version of the October 2004 DEA referenced in this comment) and the 2010 DEA of the revised proposed critical habitat.

First, the 2005 Economic Analysis and the 2010 DEA apply different analytic frameworks. The 2005 Economic Analysis quantified impacts of all *Astragalus jaegerianus* conservation in the areas being proposed as critical habitat, regardless of whether the conservation efforts were occurring due to critical habitat designation or other baseline regulations or conservation plans. As a result, the impacts quantified in the 2005 Economic Analysis include impacts due to such baseline protections as Federal listing of *A. jaegerianus,* implementation of the West Mojave Plan, and DOD conservation efforts for *A. jaegerianus* at the National Training Center at Fort Irwin (NTC). The 2010 DEA, however, focuses on those impacts resulting incrementally from critical habitat designation, as described in Chapter 2. That is, we do not include impacts of *A. jaegerianus* conservation occurring due to the implementation of baseline protections, plans, or regulations. Thus, impacts of activities such as fencing, limiting OHV activity, mining, and energy projects are not quantified in the 2010 DEA, as they are expected to occur regardless of the critical habitat designation.

Second, the proposed critical habitat area considered in the 2005 Economic Analysis was more than double the proposed critical habitat area being considered in the 2010 DEA. The primary reason for the difference in scope is that the Service's 2010 proposed revised critical habitat designation exempted 16,462 ac (6,662 ha) located within DOD's National Training Center at Fort Irwin from critical habitat designation. Because this area is exempt from critical habitat designation, no impacts of critical habitat are expected to occur on these lands.

Summary of Changes From the Proposed Revised Rule and Previous Critical Habitat Designation

In our final revised critical habitat rules, we typically provide a Summary of Changes that compares the final revised critical habitat designation with the previously proposed revised critical habitat designation as well as with previously designated critical habitat. However, we designated zero (0) ac (0 ha) in our previous designation. Therefore, we are also providing comparison between the previously proposed critical habitat designation from April 6, 2004 (69 FR 18018), the proposed revised critical habitat designation from April 1, 2010 (75 FR 16404), and this final revised critical habitat designation. There are no changes from the April 1, 2010, proposed revised critical habitat designation and this final revised critical habitat designation. This final revised critical habitat designation compares with the previous April 6, 2004, proposed designation (69 FR 18018) as follows:

(1) In 2004, we proposed 9,627 ac (3,896 ha) of Bureau lands and 4,427 ac (1,792 ha) of private lands. Currently we are designating 9,888 ac (4,002 ha) of Bureau lands and 2,899 ac (1,169 ha) of private lands.

(2) In 2004, we proposed 211 ac (85 ha) of lands inaccurately identified as

State lands. In this revised designation we are not including, through exemption under section 4(a)(3) of the Act, 211 ac (85 ha) of the NTC lands covered under the Army's INRMP. The land was inaccurately identified as State Lands in our 2004 proposed critical habitat rule.

(3) In this revised designation we are including 1,282 ac (519 ha) of lands that were formerly in private ownership but have been acquired by the DOD for the purposes of conservation of *Astragalus jaegerianus.* These lands are not contiguous with the NTC and are not covered under the Army's INRMP.

(4) We are not designating through exemption under section 4(a)(3) of the Act, 16,462 ac (6,662 ha) of the NTC lands covered under the Army's INRMP.

Below, table 1 compares the acreage by land ownership included in the previous 2004 proposed critical habitat designation and the previous 2005 final critical habitat designation, with what we proposed in the 2010 revision and are including in this final revised critical habitat designation.

TABLE 1—COMPARISON OF ACREAGES INCLUDED IN PREVIOUS AND CURRENT RULEMAKING ACTIONS FOR *Astragalus jaegerianus*

Name of critical habitat unit	2004 proposed designation of critical habitat (69 FR 18018)	2005 final revision to the critical habitat designation (70 FR 18220)	2010 proposed revised critical habitat designation (75 FR 16404)	2011 final revised critical habitat designation
Goldstone-Brinkman	9,906 ac (4,008 ha)	Excluded (all) 0 ac (0 ha)	10,394 ac (4,206 ha) exempted due to INRMP on NTC lands.	10,394 ac (4,206 ha) exempted due to INRMP on NTC lands.
Paradise	6,828 ac (2,763 ha)	Excluded (all) 0 ac (0 ha)	A portion exempted due to INRMP on NTC lands, 6,068 ac (2,456 ha); a portion included 964 ac (390 ha).	A portion exempted due to INRMP on NTC lands, 6,068 ac (2,456 ha); a portion included 964 ac (390 ha).
Coolgardie	12,788 ac (5,175 ha)	Excluded (all) 0 ac (0 ha)	13,105 ac (5,303 ha) included.	13,105 ac (5,303 ha) included.
Totals	29,522 ac (11,947 ha)	0 ac (0 ha)	14,069 ac (5,693 ha)	14,069 ac (5,693 ha).

Note: Land areas may not sum due to rounding.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot otherwise be relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies insure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization of an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain physical and biological features (PBFs) which are essential to the conservation of the species and which may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, those PBFs that are essential to the conservation of the species (such as space, food, cover, and protected habitat), focusing on the principal biological or physical constituent elements (primary constituent elements) within an area that are essential to the conservation of the species (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type). Primary constituent elements are the elements of PBFs that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. According to regulations at 50 CFR 424.12, we designate critical habitat in areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species. When the best available scientific data do not demonstrate that the

conservation needs of the species require such additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species. An area currently occupied by the species but that was not occupied at the time of listing may, however, be essential to the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species and any previous designation of critical habitat. Additional information sources may include the recovery plan, 5-year reviews for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. Climate change will be a particular challenge for biodiversity because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah *et al.* 2005, p. 4). Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change 2007, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015).

Some efforts have been made to predict the effects of climate change in the Western States region (see Redmond 2010). However, predictions of climatic conditions for smaller subregions, such as the Mojave Desert in California, remain uncertain. It is unknown at this time if climate change in the Mojave Desert in California will result in a warmer trend with localized drying, higher precipitation events, or other effects. Thus, the information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects. Nor are we currently aware of any climate change information specific to the habitat of *Astragalus jaegerianus* that would indicate what areas may become important to the species in the future. Therefore, we are unable to determine what additional areas, if any, may be appropriate to include in the final revised critical habitat for this species to respond to potential effects of climate change.

We specifically requested information from the public on the currently predicted effects of climate change on *Astragalus jaegerianus* and its habitat, and we have included a discussion of potential effects of the current drought on host shrubs and indirect effects on *A. jaegerianus* (Huggins *et al.* 2010, pp. 120–128). Should drought conditions continue in the Mojave Desert, regardless of whether it is caused by climate change or other short-term weather variation, it may affect the long-term persistence of *A. jaegerianus.* We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated critical habitat area is unimportant or may not be required for recovery of the species.

Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical and Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to propose as critical habitat, we consider the physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the specific PBFs required for *Astragalus jaegerianus* from studies of this species' habitat, ecology, and life history as described in the Critical Habitat section of the proposed revised rule to designate critical habitat published in the **Federal Register** on April 1, 2010 (75 FR 16404), and in the information presented below. Additional information can be found in the final listing rule published in the **Federal Register** on October 6, 1998 (63 FR 53596), and the previous proposed critical habitat designation (69 FR 18018; April 6, 2004).

The revised critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of

Astragalus jaegerianus throughout its range and to provide those habitat components essential for the conservation of the species. We have determined for the revised critical habitat that *A. jaegerianus* requires the following PBFs: (1) Habitat for individual and population growth, including sites for germination, pollination, reproduction, pollen and seed dispersal, and seed banks; (2) sites for the host plants that provide structural support for *A. jaegerianus;* (3) intervening areas that allow gene flow and provide connectivity or linkage within segments of the larger population; and (4) areas that provide basic requirements for growth, such as water, light, and minerals.

Primary Constituent Elements for *Astragalus jaegerianus*

Under the Act and its implementing regulations, we are required to identify the PBFs essential to the conservation of *Astragalus jaegerianus* in areas occupied at the time of listing, focusing on the features' PCEs. We consider PCEs to be the elements of the PBFs that are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the PCEs specific to *Astragalus jaegerianus* are:

(1) Shallow soils at elevations between 3,100 and 4,200 feet (ft) (945 to 1,280 meters (m)) derived primarily from Jurassic or Cretaceous granitic bedrock, and less frequently on soils derived from diorite or gabbroid bedrock, or on granitic soils overlain by scattered rhyolitic cobble, gravel, and sand.

(2) Host shrubs at elevations between 3,100 and 4,200 ft (945 to 1,280 m). The primary host shrubs include but are not limited to: *Thamnosma montana* (turpentine bush), *Ambrosia dumosa* (burro bush), *Eriogonum fasciculatum* ssp. *Polifolium* (California buckwheat), *Ericameria cooperi* var. *cooperi* (golden bush), *Ephedra nevadensis* (Mormon tea), and *Salazaria mexicana* (paperbag bush) that are usually found in mixed-desert-shrub communities.

With this designation of critical habitat, we intend to identify the PBFs essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the PCEs sufficient to support the life-history processes of the species. All units and subunits designated as critical habitat are currently occupied by *Astragalus jaegerianus* and contain the PCEs in the appropriate quantity and spatial arrangement sufficient to support the life-history needs of the species.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain the features that are essential to the conservation of the species and may require special management considerations or protection.

A detailed discussion of threats affecting the PBFs essential to the conservation of *Astragalus jaegerianus,* and that may require special management considerations or protection, can be found in the previous proposed critical habitat designation of April 6, 2004 (69 FR 18018), and the 5-year review (Service 2008, pp. 1–21). In summary, these threats include surface mining, unauthorized OHV recreation, military training activities, competition with nonnative species, and habitat fragmentation. In addition, the Bureau has received interest from wind energy companies that are seeking sites for wind energy development, although no specific plans for the areas occupied by *Astragalus jaegerianus* are currently being considered for any energy development projects.

The areas included in this revised critical habitat designation will require some level of management to address the current and future threats to *Astragalus jaegerianus* and to maintain the PBFs essential to the conservation of the species. In units that were occupied at the time of listing and are currently occupied, special management will be needed to ensure that designated habitat is able to provide areas for germination, pollination, reproduction, and sites for the host plants that provide structural support for *A. jaegerianus;* intervening areas that allow gene flow and provide connectivity or linkage within segments of the larger population; and areas that provide basic requirements for growth, such as water, light, and minerals.

There will be impacts from military activities on *Astragalus jaegerianus* and its habitat at NTC. We will not discuss these impacts any further, because areas where *A. jaegerianus* occurs on NTC are being exempted (see Exemptions section below). Army-owned lands in the Paradise and Coolgardie units that are not part of the NTC were purchased for *A. jaegerianus* conservation and will not be impacted by military activities.

The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of *Astragalus jaegerianus.* Activities with a Federal nexus that may affect those areas outside of critical habitat, such as surface mining, off-highway vehicle recreation, land transfer programs, and military training activities, are still subject to review under section 7 of the Act, if they may affect *A. jaegerianus.* The prohibitions of section 9 of the Act applicable to plants also continue to apply both inside and outside of designated critical habitat. With respect to plants, section 9 of the Act includes among its prohibitions the import or export of listed species, the removal to possession or malicious damage or destruction of species on areas under Federal jurisdiction, or the removal, damage, or destruction of species in violation of State law (16 U.S.C. 1538(a)(2)).

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial data available to designate critical habitat. We reviewed available information pertaining to the habitat requirements of this species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—is necessary to ensure the conservation of the species. We are not designating any areas outside the geographical area occupied by the species because occupied areas are sufficient for the conservation of the species.

The material we used to determine critical habitat for *Astragalus jaegerianus* included the 1998 final listing rule (63 FR 53596; October 6, 1998), the 2004 proposed critical habitat designation (69 FR 18018; April 6, 2004), data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits, research published in peer-reviewed articles and presented in academic theses and agency reports, the 5-year review for *A. jaegerianus* (Service 2008, pp. 1–21), Army surveys of 2001 (Charis 2002, pp. 1–85), and regional geographic information system (GIS) coverages. We analyzed this information to develop criteria for identifying areas that contain the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of the *A. jaegerianus* that may require special management considerations or protection, or that are essential for the conservation of *A. jaegerianus.* Extensive surveys funded by the Army were conducted in 2001 (Charis 2002).

The 2001 surveys were conducted under optimal growing conditions for the species and contributed greatly to our knowledge of the overall distribution and abundance of *A. jaegerianus.*

We are designating all habitat occupied by *Astragalus jaegerianus* during the extensive Army surveys conducted in 2001, other than those lands exempted under section 4(a)(3) of the Act (see discussion in Exemptions section below). Because the species is long-lived and the 2001 surveys were conducted under optimal conditions, we believe the survey results capture the fullest expression of *A. jaegerianus* and provide an accurate representation of habitat occupied by the species.

Methods

As required by section 4(b) of the Act and 50 CFR 424.12, we used the best scientific information available in determining which areas within the geographic area occupied by the species at the time of listing contain the features essential to the conservation of *Astragalus jaegerianus,* and which areas outside the geographic area occupied at the time of listing are essential for the conservation of the species. We reviewed information used to prepare the 2004 proposed critical habitat rule (69 FR 18018; April 6, 2004); the 5-year review (Service 2008, pp. 1–21); published peer-reviewed articles; data from our files that we used for listing the species; geologic maps (California Geologic Survey 1953); recent biological surveys and reports, particularly from the Army surveys of 2001 (Charis 2002, pp. 1–85); additional information provided by the Army, the Bureau, and other interested parties; and discussions with botanical experts. We also conducted site visits to all three known general geographic areas that are occupied and are considered essential to the conservation of the species.

The long-term probability of the survival and recovery of *Astragalus jaegerianus* is dependent upon: The protection of existing population sites; the maintenance of ecologic functions within these sites, including connectivity within and between populations in close geographic proximity to one another (to facilitate pollinator activity and seed dispersal mechanisms); and keeping these areas free of major ground-disturbing activities. The areas we are proposing to designate as critical habitat provide all of the features essential for the conservation of *A. jaegerianus.*

In our delineation of the proposed critical habitat units in 2004, we initially selected three areas to provide for the conservation of *Astragalus jaegerianus* that comprise the four specific population sites where it is known to occur. As discussed under the "Current Distribution" section of the April 1, 2010 proposed revised critical habitat rule (75 FR 16404), at the time of listing, *A. jaegerianus* was known to occur from Brinkman Wash and Montana Mine (the populations at these two sites were subsequently determined to be contiguous and thus are considered one population), Paradise Wash, and Coolgardie; due to our understanding of the lifespan of the species, we also conclude that the Goldstone site was occupied at the time of listing even though this was not confirmed until 3 years subsequent to listing. All four populations are important because *A. jaegerianus* exhibits life-history attributes, including variable seed production, low germination rates, and habitat specificity in the form of a dependence on a co-occurring organism (host shrubs), that make it vulnerable to extinction (see previous rules (69 FR 18018 and 70 FR 18220) and Gilpin and Soule 1986, p. 33; Keith 1998, p. 1080). We believe the 2004 proposed critical habitat designation (69 FR 18018) is of sufficient size to maintain landscape-scale processes and to minimize the secondary impacts resulting from human occupancy and human activities occurring in adjacent areas. We mapped the units with a degree of precision commensurate with the best available information and the size of the unit.

Of principle importance in the process of delineating the proposed critical habitat units are data in a GIS format provided by the Army, depicting the results of Army field surveys for *Astragalus jaegerianus* conducted in 2001 (Charis 2002, pp. 1–85). These data consisted of three files depicting the locations of transects that were surveyed for *A. jaegerianus,* the locations of *A. jaegerianus* individuals found during the surveys, and minimum convex polygons (MCP) calculated to represent the outer bounds of *A. jaegerianus* populations (Charis 2002, pp. 1–85).

For mapping proposed critical habitat units, we proceeded through a multi-step process. First, we started with the MCPs that had been calculated by the Army (Charis 2002, pp. 1–85) based on the presence of documented individuals. We then expanded these boundaries outward from the edge of each of the four populations by a distance of 0.25 mi (0.4 km). We did this to include *Astragalus jaegerianus* individuals that are part of these populations, but were not noted during surveys. The basis for determining that these additional land areas are occupied is as follows:

(1) This habitat has the appropriate elevational range, and includes the granitic soils and plant communities that support host plants required by *A. jaegerianus;*

(2) botanists involved in the Army surveys stated that "the estimate of [*A. jaegerianus*] distribution is a minimum" (SAIC 2003, pp. 1–2), and that additional individuals of *A. jaegerianus* most likely occurred on the fringes of the MCPs (SAIC 2003, pp. 1–2);

(3) this 0.25-mi (0.4-km) distance is commensurate in scale with the distance between transects where individuals were found and the distance between individuals along one transect, and it is well within the distance that can be traversed by pollinators and seed dispersers;

(4) mapping errors during the 2001 surveys indicated that the location of individuals did not match up precisely with the location of the transect boundaries (Charis 2002 pp. 36–37); and

(5) limited surveys were conducted in 2003, and despite the unfavorable climatic conditions for *A. jaegerianus,* 13 additional individuals were located outside the MCPs (SAIC 2003 pp. 1–2). Three of the four areas where new plants were found were within the 0.25-mi (0.4-km) distance around the MCPs.

We next removed areas on the margins of the resultant polygons where we determined, by referring to digital raster graphic maps, the topography is either too steep or the elevation too high to support additional *Astragalus jaegerianus* individuals. This boundary modification involved editing the eastern and southeastern edge of the Coolgardie MCP and a cirque-shaped sliver from the central portion of the southern boundary of the Brinkman-Montana MCP.

For the Goldstone and Brinkman-Montana populations, expansion of the MCP boundaries by 0.25 mi (0.4 km) left a narrow corridor (about 0.125 mi- (0.2 km-) wide) between the revised polygons. We chose to bridge the gap between the two polygons by incorporating the intervening habitat that is within the geographic area occupied by the species between the Goldstone and Brinkman-Montana polygons into a single critical habitat unit, called the Goldstone-Brinkman unit. We did this for several reasons: The intervening habitat between the two MCPs contains the PCEs with the appropriate elevational range, granitic soils, and plant communities (based on topographic maps, geologic maps, and aerial photos) that *Astragalus jaegerianus* requires; there were no

obvious physical barriers between the two MCPs; the distance between the two closest *A. jaegerianus* individuals across the gap of the two MCPs was smaller than the distance between individuals within the MCPs; and the distance between the two MCPs was small enough that it could be easily traversed by a pollinator with a potential flight distance of 0.6 mi (1 km), or a seed disperser such as certain small mammals and birds. Granitic soil and the plant community in the intervening area between the two polygons also provide habitat for the pollinators that visit *A. jaegerianus* flowers, as well as habitat for seed dispersers (birds, small mammals, and large insects) that carry seed between the coppices of suitable host shrubs, and the area functions as long-term storage for the soil seedbank of *A. jaegerianus.*

Finally, the boundaries of the critical habitat units were modified slightly in the process of creating the legal descriptions of the critical habitat units. This process consisted of overlaying the critical habitat units with grid lines spaced at 100-m intervals; the grid lines following the Universal Transverse Mercator (UTM) coordinate system ties to the North American Datum of 1927. Vertices defining the critical habitat boundary polygon were then moved to the closest vertex on the 100-m UTM grid lying inside of the critical habitat boundary. Vertices not necessary to define the shape of the boundary polygon were deleted. Changing the boundaries in this fashion serves two purposes: (1) It creates a list of coordinates that is easier for the public to use when looking at USGS 7.5-minute topographic maps, and (2) it minimizes the number of coordinates necessary to define the shapes of the critical habitat units.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack PBFs for *Astragalus jaegerianus.* The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. In addition, old mining sites, where the soil profile and topography have been altered such that no native vegetation can grow, also do not and likey will not contain any of the PBFs for *A. jaegerianus* in the future. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the PBFs in the adjacent critical habitat.

For the proposed revised critical habitat designation of April 1, 2010 (75 FR 16404), we made no changes to the boundaries of the critical habitat units that were proposed in 2004 (69 FR 18018), other than to exempt DOD lands on Fort Irwin that are included in the INRMP (see Exemptions section below). Other changes between the previous 2004 proposed critical habitat designation and the 2010 proposed revised critical habitat designation address changes and corrections in the acreage attributed to various landowners; these changes are detailed in the Summary of Changes From the Proposed Revised Rule and Previous Critical Habitat Designation section above.

We are designating as critical habitat lands that we have determined are occupied at the time of listing and contain sufficient PBFs to support life-history processes essential for the conservation of *Astragalus jaegerianus* and for which special management may be required.

Two units are being designated based on sufficient elements of PBFs being present to support *Astragalus jaegerianus* life processes. Both units contain all of the identified elements of PBFs and support multiple life processes; the Paradise Unit supports a portion of the Paradise population, and the Coolgardie Unit supports all of the Coolgardie population.

Final Revised Critical Habitat Designation

We are designating two units as critical habitat for *Astragalus jaegerianus.* The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat. Those two units are: (1) Paradise, and (2) Coolgardie. Table 2 shows the land ownership and approximate area of each critical habitat unit. Both units are within an area that is north of the town of Barstow in the Mojave Desert in San Bernardino County, California, were occupied at the time of listing, are currently occupied, and contain the PCEs that sustain *A. jaegerianus.* We are exempting the previously proposed Goldstone-Brinkman unit and a large portion of the previously proposed Paradise unit (from the 2004 proposed critical habitat rule (69 FR 18018)) because NTC now has a Service-approved INRMP that benefits the species. Please see discussion in Exemptions section below for a description of the importance of these exempted areas to *A. jaegerianus.*

TABLE 2—DESIGNATED CRITICAL HABITAT UNITS FOR ASTRAGALUS JAEGERIANUS

[Areas estimates reflect all land within critical habitat unit boundaries.]

Unit name	Army lands (Federal)	Bureau of Land Management (Federal)	State lands	Private lands	Totals
Paradise	318 ac (129 ha)	409 ac (166 ha)	0 ac (0 ha)	237 ac (96 ha)	964 ac (390 ha).
Coolgardie	964 ac (390 ha)	9,479 ac (3,836 ha)	0 ac (0 ha)	2,662 ac (1,077 ha)	13,105 ac (5,303 ha).
Totals	1,282 ac (519 ha)	9,888 ac (4,002 ha)	0 ac (0 ha)	2,899 ac (1,173 ha)	14,069 ac (5,693 ha).

Note: Approximate acres have been converted to hectares (1 ac = 0.4047 ha). Fractions of acres and hectares have been rounded to the nearest whole number. Totals are sums of units. Area sizes may not sum due to rounding.

We present brief descriptions of both units, and reasons why they meet the definition of critical habitat for *Astragalus jaegerianus* below.

Paradise Unit

The Paradise unit consists of approximately 7,032 ac (2,846 ha). We are designating critical habitat for *Astragalus jaegerianus* on 964 ac (390 ha). Of this, 318 ac (129 ha) is Army-owned land adjacent to the NTC (off Fort Irwin), 237 ac (96 ha) is privately owned land located adjacent to the NTC, and approximately 409 ac (166 ha) is on adjacent Federal lands managed by

the Bureau. The remaining 6,068 acres (2,456 ha) within this unit are on Army lands at NTC subject to the INRMP and have been exempted under section 4(a)(3) of the Act (see Exemptions section below).

As part of the plan amendments to the CDCA, the Bureau in 2005 designated an area of approximately 1,000 ac (405 ha) as part of the West Paradise Valley Conservation Area. It generally overlaps with the 964 ac (390 ha) in this designation of critical habitat. The boundary of the West Paradise Valley Conservation Area encompasses some Army lands not on NTC and some private inholdings. This unit contains the PBFs essential to the conservation of the species. The unit supports a portion of the Paradise population which is one of the four populations of *Astragalus jaegerianus.* In 2001, approximately 1,667 individuals were observed in this population. The land within this unit supports the granitic soils (PCE 1) and host shrubs (PCE 2) that are necessary for the growth, reproduction, and establishment of *A. jaegerianus* individuals. These granitic soils and host shrubs also provide habitat for (1) the pollinators that visit *A. jaegerianus* flowers that result in the production of seed; (2) seed dispersers (birds, small mammals, and large insects) that carry seed between the coppices of suitable host shrubs; and (3) sites for long-term storage for seedbank of *A. jaegerianus.*

The Paradise unit may require special management considerations or protection due to the threats to the species and its habitat posed by: Invasions of nonnative plants such as Sahara mustard (*Brassica tournefortii*) and other plant species that may take over habitat for the species; habitat fragmentation that detrimentally affects plant-host plant and plant-pollinator interactions (*i.e.,* composition and structure of the desert scrub community), leading to a decline in species reproduction and increasing susceptibility to nonnative plant invasion; and vehicles that cause direct and indirect impacts, such as excessive dust, to the plant. Habitat for *Astragalus jaegerianus* in the Paradise unit has been fragmented to a minor extent. We anticipate that, in the future, habitat fragmentation may increase, composition and structure of the plant community may be altered by the spread of nonnative plants, and direct and indirect effects of dust may increase. All of these threats would render the habitat less suitable for *A. jaegerianus,* and special management may be needed to address them.

Coolgardie Unit

The Coolgardie unit consists of approximately 13,105 ac (5,303 ha), primarily on Federal lands managed by the Bureau. The designated Coolgardie critical habitat unit overlaps to a great extent with the Bureau's Coolgardie Mesa Conservation Area (CMCA). Of this acreage, approximately 9,479 ac (3,836 ha) are managed by the Bureau, and approximately 964 ac (390 ha) were formerly in private ownership, but have been acquired by the Army since 2005 for the purposes of conservation of *Astragalus jaegerianus.* These lands are not contiguous with the NTC and are not covered under the Army's INRMP. Parcels of private land are scattered throughout this unit and total approximately 2,662 ac (1,077 ha). Some of these parcels may be acquired by the Bureau and added to the CMCA. This unit supports one of only four populations of *A. jaegerianus.* In 2001, surveyors observed 2,014 plants in this population.

The land within this unit contains the PBFs essential to the conservation of the species and supports the granitic soils (PCE 1) and host shrubs (PCE 2) that are necessary for the growth, reproduction, and establishment of *Astragalus jaegerianus* individuals. It should be noted that the proposed critical habitat does not include the "donut hole" in the center of the unit, where granitic soils are absent. Within the proposed unit, the granitic soils and host shrubs: (1) Provide habitat for the pollinators that visit *A. jaegerianus* flowers and result in the production of seed; (2) provide habitat for seed dispersers (birds, small mammals, and large insects) that carry seed between the coppices of suitable host shrubs; and (3) provide for long-term seedbank storage for *A. jaegerianus.*

The Coolgardie unit may require special management considerations or protection due to the threats to the species and its habitat posed by: Invasions of nonnative plants such as Sahara mustard (*Brassica tournefortii*) and other plant species that may take over habitat for the species; habitat fragmentation that detrimentally affects plant-host plant and plant-pollinator interactions (composition and structure of the desert scrub community), leading to a decline in species reproduction and increasing susceptibility to nonnative plant invasion; vehicles that cause direct and indirect impacts, such as excessive dust, to the plant; and limited mining activities that can lead to changes in habitat conditions (*e.g.,* decreases in plant cover, and increases in nonnative species). Habitat for *Astragalus jaegerianus* in the Coolgardie unit has been fragmented to a moderate extent from current and historical mining and from off-road vehicle use, and non-native species have been introduced into the area. We anticipate that in the future, habitat fragmentation may increase, and composition and structure of the plant community may be altered by the continued spread of nonnative plants. Due to increased recreational pressure, off-road vehicle use has increased in the past 4 years. All of these threats would render the habitat less suitable for *A. jaegerianus,* and special management may be needed to address them.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our regulatory definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442F (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33

U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) of the Act through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the PBFs to an extent that appreciably reduces the conservation value of critical habitat for *Astragalus jaegerianus.* As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Examples of activities that, when authorized, funded, or carried out by a Federal agency, may affect critical habitat and therefore should result in consultation for *Astragalus jaegerianus* include, but are not limited to:

(1) Activities that would disturb the upper layers of soil, including disturbance of the soil crust, soil compaction, soil displacement, and soil destabilization. These activities include, but are not limited to, military-related and construction activities of the Army on its lands or lands under its jurisdiction not covered by an INRMP; activities of the Bureau on its lands or lands under its jurisdiction, including livestock grazing, fire management, and recreational use; and habitat restoration projects on private lands receiving funding from Federal agencies, such as from the Natural Resources Conservation Service (NRCS), that would include mechanical disturbance such as would occur with tracked vehicles, heavy-wheeled vehicles, vehicles used in restoration projects (*e.g.,* rippers or discers), off-highway vehicles (including motorcycles), and mining activities, such as "club mining" with drywashers and sluices. These activities could alter soil conditions in ways that would affect the germination of seed, the growth of individual plants, and successful reproduction, and result in direct or cumulative adverse effects to these individuals and their life cycles.

(2) Activities that appreciably degrade or destroy the native desert scrub communities that support host shrubs, including but not limited to military-related and construction activities of the Army on its lands or lands under its jurisdiction not covered by an INRMP; activities of the Bureau on its lands or lands under its jurisdiction, including livestock grazing, fire management, and recreational use; and habitat restoration projects on private lands receiving funding from Federal agencies, such as from the NRCS that would include mechanical disturbance such as would occur with tracked vehicles, heavy-wheeled vehicles, vehicles used in restoration projects (*e.g.,* rippers or discers), off-highway vehicles (including motorcycles), and mining activities such as "club mining" with drywashers and sluices. These activities could alter the plant communities, particularly the host shrubs and habitat for pollinators, in ways that would affect the germination of seed, the growth of individual plants, and successful reproduction, and result in direct or cumulative adverse effects to these individuals and their life cycles.

(3) Activities that would appreciably degrade the normal metabolic processes in individual plants through aerial application of chemical compounds, such as the application or runoff of chemical or biological agents into the air, onto the soil, or onto native vegetation, including substances such as pesticides, herbicides, fertilizers, tackifiers, obscurants, and chemical fire retardants used by the Bureau, the Army, NRCS, and the Animal and Plant Health Inspection Service, in the control of nonnative plant and animal species, firefighting, military training activities, and restoration activities. These activities could interfere with normal plant metabolic processes such as gas exchange in leaf tissues, and water and mineral uptake in root tissues. In addition, aerial spraying can affect reproduction through a reduction in successful pollen transfer; pollinator availability may also be affected, which, could in turn affect seed set.

As discussed previously in the revised proposed rule (75 FR 16404), we completed consultation with both the Army and the Bureau on activities that were being proposed on their lands. We consulted with the Army on its proposed addition of training lands on the NTC (Charis 2003; Service 2005); see

discussion below under "Approved INRMPs". We also consulted with the Bureau as the lead Federal agency on the plan amendments to the CDCA plan (Bureau 2005; Service 2005); for a complete discussion of actions and conservation measures undertaken through this consultation, please refer to the revised proposed critical habitat designation (75 FR 16404).

Where Federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure an incidental take permit, under section 10(a)(1)(B) of the Act, would be subject to the section 7 consultation process. The Superior-Cronese Critical Habitat Unit for the desert tortoise (*Gopherus agassizii*), a species that is listed as threatened under the Act, overlaps with the distribution of *Astragalus jaegerianus* in a portion of the Paradise population of the species. We anticipate that most of the activities occurring on private lands within the range of *A. jaegerianus* will eventually be included under the umbrella of the HCP to be prepared by the County of San Bernardino. However, there may be activities proposed for private lands that either need to be completed prior to the approval of the HCP, or there may be a proposed activity that is not covered by the HCP and, therefore, may require a separate habitat conservation plan.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Amendment of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an INRMP by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the critical habitat designation for *Astragalus jaegerianus* to determine if they are exempt under section 4(a)(3) of the Act. The following areas are DOD lands with completed, Service-approved INRMPs within the revised critical habitat designation.

Approved INRMPs

Army lands within the boundaries of the NTC at Fort Irwin are subject to an INRMP for 2006–2011 (NTC 2005), which includes management guidelines in place that provide a benefit for *Astragalus jaegerianus.* As part of the Army's consultation on the proposed expansion of training lands at NTC (Service 2005), the Army established the 4,300-ac (1,740-ha) East Paradise Conservation Area on NTC. This area contains approximately 80 percent of the East Paradise population of *A. jaegerianus.* The Army established the 3,700-ac (1497-ha) Brinkman Wash Restricted Access Area (no-dig zone) on NTC. This area contains 1,872 ac (758 ha) of *A. jaegerianus* habitat and approximately 51 percent of the Montana Mine population of *A. jaegerianus.* The Army also maintains the 2,471-ac (1,000-ha) Goldstone Conservation Area. The Army's INRMP management guidelines provide a benefit to *A. jaegerianus* through the following measures: the Army will prohibit off-road activity; they will reduce threats to *A. jaegerianus* caused by dust through the application of soil binders. They will also collect and store site-specific seed from host plants to restore closed routes and other disturbed areas within *A. jaegerianus* habitat. Contingent on funds, the Army will perform intensive nonnative species control and eradication efforts at conservation areas, if such species are found there. We will continue to monitor the status of the INRMP to ensure that it adequately addresses management guidelines for *A. jaegerianus.*

In the April 6, 2004, proposed critical habitat designation (69 FR 18018), the Army had not yet completed its INRMP and, therefore, was not exempted under section 4(a)(3)(B) of the Act. However, the Army was excluded under section 4(b)(2) of the Act for reasons of national security and because existing management plans provided a benefit to *Astragalus jaegerianus.* The Army's INRMP was approved in 2006, and includes management actions that the Secretary has determined benefit *A. jaegerianus.* With our current exemption of all areas within the Army's NTC (see "Relationships to Sections 4(a)(3) of the Act" section), the entire 10,394-ac (4,206-ha) Goldstone-Brinkman unit has been exempted from revised critical habitat designation. Similarly, almost all (6,068 ac (2,456 ha) of 7,032 ac (2,846 ha)) of the Paradise Unit on NTC has been exempted from designation as revised critical habitat. Army lands outside the NTC are not subject to the INRMP and, therefore, not exempted. The 2006 INRMP is due to be revised in 2011; the Army is currently reviewing the draft INRMP for 2011–2016. It contains all the same measures for *A. jaegerianus* as the existing INRMP (Everly 2011 *in litt.*).

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the NTC at Fort Irwin INRMP, and that conservation efforts identified in the INRMP will provide a benefit to *Astragalus jaegerianus* occurring in habitats within, or adjacent to, the NTC at Fort Irwin INRMP. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. Approximately 16,462 ac (6,662 ha) of *A. jaegerianus* habitat are not included in this revised critical habitat designation because of this exemption.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying

any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, the Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis of the proposed critical habitat designation and related factors (Industrial Economics Incorporated (IEC) 2010, pp. 1–44). The draft analysis, dated September 30, 2010, was made available for public review on November 3, 2010, and the comment period for the draft analysis and proposed revised designation of critical habitat was opened for an additional 30 days, extending through December 3, 2010 (75 FR 67676). Following the close of the comment period, a final analysis (dated March 1, 2011) of the potential economic effects of the designation was developed taking into consideration the public comments and any new information (IEC 2011).

The intent of the final economic analysis (FEA) is to quantify the economic impacts of all potential conservation efforts for *Astragalus jaegerianus;* some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (*e.g.,* under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the FEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (*i.e.,* incremental impacts).

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA looks qualitatively at costs that have been incurred since 1998 (year of the species' listing) (63 FR 53596), and considers those costs that may occur in the 20 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond a 20-year timeframe. The FEA quantifies incremental economic impacts of *Astragalus jaegerianus* conservation efforts associated with the following categories of activity: recreational OHV use, recreational surface mining, and wind energy development. It also assessed possible indirect impacts to economic activities as the result of possible applications of the CEQA, and regulatory uncertainty or delay associated with consultations with the Service.

The FEA estimates that no economic impacts from additional conservation measures are likely to result from the designation of critical habitat. The main reason for this conclusion is that approximately 79 percent of the designated critical habitat is Federal land that is either being managed for *Astragalus jaegerianus* conservation by the Bureau under the guidance of the California Desert Conservation Area Plan, as modified by the West Mojave Plan, or is being held by the DOD. Because the DOD acquired these lands as mitigation for the expansion of Fort Irwin, it will not permit any ground-disturbing activities on them. Ultimately, the DOD will transfer the lands to the Bureau, and the Bureau will manage them as part of the Coolgardie Mesa and West Paradise Areas of Critical Environmental Concern. The Service, DOD, and the Bureau do anticipate section 7 consultation on the land transfer, but expect that the consultation will be informal and not require a formal biological opinion under section 7 of the Act. An additional reason that no economic impacts are likely to result from the designation of critical habitat is that the private lands (remaining 21 percent of designation interspersed in a checkerboard fashion among the Bureau ACECs lands) occur in a remote region where access, development, and construction are limited. Also land-use activities specifically within ACECs are limited. These private lands are being targeted through the WMP for acquisition by Federal agencies from willing sellers to eventually become part of one of the two ACECs. No section 7 consultations have occurred regarding activities on private lands within the area since the listing of the desert tortoise in 1990. The federally threatened desert tortoise occurs throughout the area that we have proposed as critical habitat; critical habitat for the desert tortoise also completely overlaps the areas designated as revised critical habitat for *A. jaegerianus.* Consequently, based on discussions with land managers and the lack of consultations on private lands in this area since the listing of the desert

tortoise, we do not anticipate any land use changes that will result in future consultations.

Our economic analysis identified that there could be "insignificant additional administrative costs to conduct the adverse modification analysis for those projects with a Federal nexus"; no attempt was made to quantify the administrative costs associated with this designation. As a result, there are no disproportionate costs that are likely to result from the designation. Consequently, the Secretary has determined not to exert his discretion to exclude any areas from this designation of critical habitat for *Astragalus jaegerianus* based on economic impacts.

A copy of the FEA with supporting documents may be obtained by contacting the Ventura Fish and Wildlife Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov.*

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the DOD where a national security impact might exist. In preparing this final rule, we have determined that there are lands within the designation of critical habitat for *Astragalus jaegerianus* that are owned by the DOD. These lands were acquired as mitigation for the expansion of Fort Irwin, and the DOD will not permit any ground-disturbing activities on them. Ultimately, the DOD will transfer the lands to the Bureau, and the Bureau will manage them as part of the Coolgardie Mesa and West Paradise ACEC. The Service, DOD, and the Bureau anticipate consultation on the land transfer, but expect that the consultation would be informal and not require a formal biological opinion under section 7 of the Act. No military operations or training for national security occurs on these lands. Consequently, the Secretary has determined not to exert his discretion to exclude any areas from this final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that there are currently no HCPs or other management plans for *Astragalus jaegerianus,* and the final designation does not include any Tribal lands or trust resources. We anticipate no impact on Tribal lands, partnerships, or HCPs from this critical habitat designation. Accordingly, the Secretary has determined not to exert his discretion to exclude any areas from this final designation based on other relevant impacts.

Table 3 below provides approximate areas (ac, ha) of lands that meet the definition of critical habitat but are exempt from designation under section 4(a)(3) of the Act. Table 3 also provides our reasons for the exemption.

TABLE 3—EXEMPTIONS FROM THE CRITICAL HABITAT DESIGNATION FOR *Astragalus jaegerianus* BY CRITICAL HABITAT UNIT

Unit	Specific area	Basis for exclusion/exemption	Areas meeting the definition of critical habitat in acres (hectares)	Areas exempted in acres (hectares)
Goldstone-Brinkman.	National Training Center, Fort Irwin Integrated Natural Resources Management Plan.	Exemption under section 4(a)(3) of the Act.	10,394 ac (4,206 ha)	10,394 ac (4,206 ha) exempted due to INRMP* on NTC** lands.
Paradise	National Training Center, Fort Irwin Integrated Natural Resources Management Plan.	Exemption under section 4(a)(3) of the Act.	6,068 ac (2,456 ha)	6,068 ac (2,456 ha) exempted due to INRMP on NTC lands.
Total	.....	.....	16,462 ac (2,456 ha)	16,462 ac (2,456 ha).

*INRMP = Integrated Natural Resources Management Plan.
**NTC = National Training Center.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (Regulatory Planning and Review). OMB bases its determination upon the following criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency must 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 effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that a rule will not

have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for *Astragalus jaegerianus* will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts on these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.,* recreational OHV use and recreational mining). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect *Astragalus jaegerianus.* Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the* "*Adverse Modification Standard*" section).

In our final economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of *Astragalus jaegerianus* and the designation of critical habitat. The analysis is based on the estimated impacts associated with the rulemaking as described in Section 3.5 of the analysis and evaluates the potential for economic impacts related to: (1) Recreational OHV use; (2) recreational surface mining; and (3) wind energy development. In this case, the analysis discusses that, because there are no incremental impacts resulting from the critical habitat designation, there are no impacts on small entities.

In summary, we considered whether this designation would result in a significant economic effect on a substantial number of small entities. Based on the above reasoning and currently available information, we concluded that this rule would not result in a significant economic impact on a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for *A. jaegerianus* will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute "a significant adverse effect" when compared to not taking the regulatory action under consideration.

This final revised critical habitat designation for *Astragalus jaegerianus,* as described above, is not expected to significantly affect energy supplies, distribution, or use. There are no transmission power lines identified on the designated critical habitat, or energy extraction activities (Bureau of Land Management 1980). In addition, according to the FEA, no future wind energy developments will be permitted within the Paradise Unit due to the DOD concerns regarding use of the air space (IEC 2011). Further, reserve-level management of the ACECs for *Astragalus jaegerianus* conservation in both proposed units indicate it is unlikely that wind energy developments will be permitted by the Bureau within the critical habitat designation (IEC 2011, Section 3.2.4).

Thus, based on information in the economic analysis, energy-related impacts associated with *Astragalus jaegerianus* conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or Tribal governments," with two exceptions. First, it excludes "a condition of Federal assistance." Second, it also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide

funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments and a small Government Agency Plan is not required. State lands were not included in this revised critical habitat designation. Given the distribution of this species, small governments will not be uniquely affected by this rule. Small governments will not be affected at all unless they propose an action requiring Federal funds, permits, or other authorization. Any such activity will require that the involved Federal agency ensure that the action is not likely to adversely modify or destroy designated critical habitat. However, as discussed above, Federal agencies are currently required to ensure that any such activity is not likely to jeopardize the species, and no further regulatory impacts from this revised designation of critical habitat are anticipated. Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for *Astragalus jaegerianus* in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for *A. jaegerianus* does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in California. We solicited, but did not receive, comments from the CDFG and have noted this in the Summary of Comments and Recommendations section of the rule. As discussed above, the designation of critical habitat in areas currently occupied by *Astragalus jaegerianus* would have little incremental impact on State and local governments and their activities. This is because the proposed revised critical habitat occurs to a great extent on Federal lands managed by the DOD and the Bureau, and less than 2 percent occurs on private lands that would involve State and local agencies. The designation may have some benefit to these governments, in that the areas that contain the PBFs essential to the conservation of these species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what Federally sponsored activities may occur. However, it may assist these local governments in long-range planning (rather than having them wait for case-by-case section 7 consultation to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the elements of PBFs essential to the conservation of *Astragalus jaegerianus* within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act (42 U.S.C. 4321, et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the 9th Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We determined that there are no Tribal lands occupied by *Astragalus jaegerianus* at the time of listing that contain the features essential for conservation of the species, and no Tribal lands unoccupied by *A. jaegerianus* that are essential for the conservation of the species. Therefore, the designation of critical habitat for *A. jaegerianus* will not affect Tribes or Tribal lands.

Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

References Cited

A complete list of all references cited herein is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0078 and upon request from the Field Supervisor, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this rulemaking are the staff of the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.96, amend paragraph (a) by revising the critical habitat designation for "*Astragalus jaegerianus* (Lane Mountain milk-vetch)," under the family Fabaceae, to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Fabaceae: *Astragalus jaegerianus* (Lane Mountain milk-vetch)

(1) Critical habitat units are depicted for San Bernardino County, California, on the map below.

(2) Critical habitat consists of the mixed desert scrub community within the range of *Astragalus jaegerianus* that is characterized by the following primary constituent elements:

(i) Shallow soils at elevations between 3,100 and 4,200 ft (945 to 1,280 m) derived primarily from Jurassic or Cretaceous granitic bedrock, and less frequently on soils derived from diorite or gabbroid bedrock, or on granitic soils overlain by scattered rhyolitic cobble, gravel, and sand.

(ii) Host shrubs at elevations between 3,100 and 4,200 ft (945 to 1,280 m). The primary host shrubs include, but are not limited to: *Thamnosma montana* (turpentine bush), *Ambrosia dumosa* (burro bush), *Eriogonum fasciculatum* ssp. *Polifolium* (California buckwheat), *Ericameria cooperi* var. *cooperi* (golden bush), *Ephedra nevadensis* (Mormon tea), and *Salazaria mexicana* (paperbag bush) that are usually found in mixed desert shrub communities.

(3) Critical habitat does not include manmade structures (including, but not limited to, buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule and not containing one or more of the PCEs.

(4) *Critical habitat map units.* These critical habitat units were mapped using Universal Transverse Mercator (UTM), Zone 10, North American Datum (NAD) 1983 (UTM NAD 83) coordinates. These coordinates establish the vertices and endpoints of the boundaries of the units.

(5) Coolgardie Unit: San Bernardino County, California. From USGS 1:24,000 quadrangle maps Lane Mountain and Mud Hills, San Bernardino County, California.

(i) Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 495500, 3884300; 495700, 3884600; 496400, 3885100; 497100, 3885400; 497300, 3885500; 497700, 3885700; 498000, 3885800; 498200, 3885800; 498900, 3885900; 500400, 3886100; 501100, 3886200; 501800, 3886300; 502500, 3886400; 503300, 3886500; 503600, 3886500; 503900, 3886400; 504100, 3886300; 504600, 3886100; 504900, 3886000; 505100, 3885900; 505200, 3885700; 505300, 3885500; 505400, 3885400; 505300, 3885200; 505100, 3884600; 505100, 3881000; 505000, 3880900; 504700, 3880200; 504600, 3879900; 503900, 3879600; 503800, 3879500; 503600, 3879500; 503000, 3879400; 502400, 3879300; 502000, 3879200; 501900, 3878900; 501900, 3878800; 501200, 3878700; 500400, 3878600; 499700, 3878500; 499600, 3878400; 499400, 3878500; 499100, 3878600; 498700, 3878700; 498400, 3878800; 498300, 3879000; 498200, 3879400; 497800, 3880900; 497700, 3881200; 496400, 3881700; 496200, 3881800; 496100, 3881800; 496000, 3882000; 495600, 3883700; 495500, 3884100; returning to 495500, 3884300; excluding land bounded by: 498800, 3883900; 499200, 3883200; 499300, 3882900; 499500, 3882100; 499800, 3881900; 501200, 3881100; 501700, 3881100; 501900, 3881200; 501900, 3881300; 501800, 3882000; 501700, 3882600; 501600, 3883100; 501200, 3883600; 500900, 3883900; 500200, 3884000; 499000, 3884000; returning to 498800, 3883900.

(ii) **Note:** Map of Coolgardie Unit is provided at paragraph (6)(ii) of this entry.

(6) Paradise Unit: San Bernardino County, California. From USGS 1:24,000 quadrangle map Williams Well, San Bernardino County, California.

(i) Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 509089 3890369; 507600, 3889500; 507400, 3889400; 507300, 3889500; 506900, 3889600; 506800, 3889700; 506400, 3890300; 506300, 3890400; 506000, 3891600; 505900, 3892000; 505800, 3892300; 505500, 3892600; 504900, 3893000; 504600, 3893200; 504500, 3893300; 504000, 3894100; 503800, 3894400; 503700, 3894800; 503800, 3895100; 503857, 3895157; 503873, 3895157; 503874, 3894353; 504678, 3894353; 504679, 3893549; 505510, 3893550; 505512, 3892977; 505912, 3892974; 505909, 3892573; 506314, 3892571; 506314, 3891767; 506804, 3891767; 506804, 3891244; 506820, 3890426; 508454, 3890415; returning to 509089, 3890369.

(ii) **Note:** Map of Coolgardie and Paradise Units follows:

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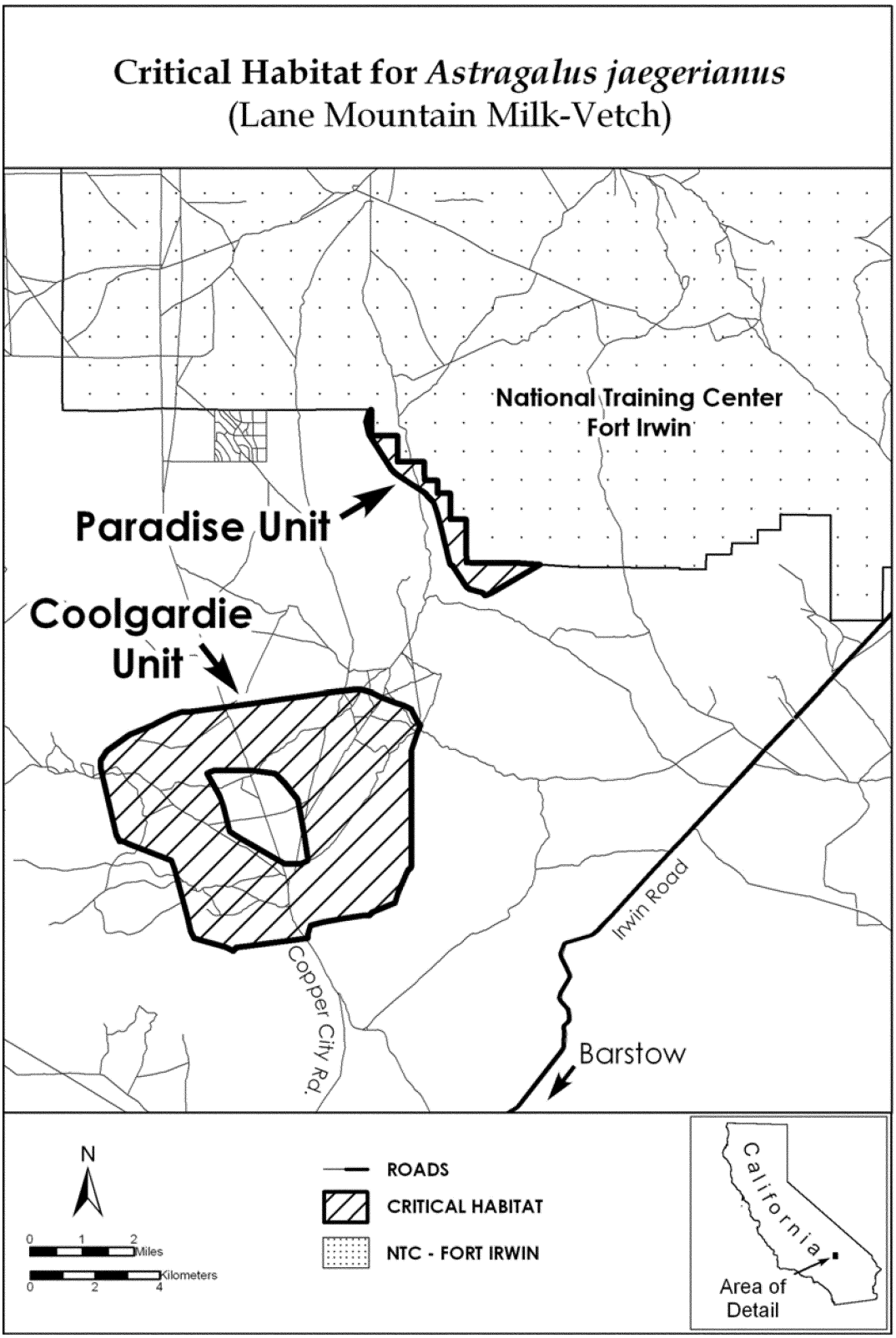

* * * * *

Dated: April 28, 2011.

Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–12330 Filed 5–18–11; 8:45 am]

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FEDERAL REGISTER

Vol. 76 Thursday,
No. 97 May 19, 2011

Part V

The President

Proclamation 8674—Emergency Medical Services Week, 2011
Proclamation 8675—National Defense Transportation Day and National Transportation Week, 2011
Proclamation 8676—Peace Officers Memorial Day and Police Week, 2011
Proclamation 8677—World Trade Week, 2011
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Federal Register
Vol. 76, No. 97
Thursday, May 19, 2011

Presidential Documents

Title 3—

The President

Proclamation 8674 of May 13, 2011

Emergency Medical Services Week, 2011

By the President of the United States of America

A Proclamation

Each day, Americans rely on emergency medical service (EMS) systems to help them in their hour of greatest need. In communities across our Nation, we take comfort in knowing that well-trained, caring men and women are only a phone call away from treating injuries sustained in a car crash, responding to a cardiac emergency, or helping a child with asthma breathe easier. When accidents and illnesses strike unexpectedly, EMS personnel are the first on the scene, and their timely actions often make the difference between life and death.

Emergency medical technicians (EMTs), paramedics, and first responders serve on the front lines of our health care and public health system. Working with them are many others whose dedication makes the EMS system function, including emergency dispatchers, physicians, nurses, and researchers, as well as colleagues in the fire service and law enforcement. Our Nation's EMS system represents the American spirit at its best, with many ambulances in the United States partially or fully staffed by volunteers. They devote countless hours to keeping their communities, including often underserved rural areas, safe.

My Administration is committed to supporting the brave men and women who help keep America secure and resilient. This year, I signed the James Zadroga 9/11 Health and Compensation Act into law, ensuring that rescue and recovery workers, and others suffering from health consequences related to the World Trade Center disaster, have access to the medical monitoring and treatment they need and deserve. As a Nation, we must never forget the selfless courage demonstrated by the EMTs, paramedics, and first responders who risked their lives to save others.

During EMS Week, we recognize the importance of ensuring our Nation's children have full access to high-quality EMS care. Reauthorized in the Affordable Care Act, the Federal EMS for Children program works with public and private sector partners across the United States to make certain that all children—regardless of where they live, attend school, or travel—receive appropriate EMS care.

EMS agencies are an integral part of our Nation's health security strategy, and they help to build community resilience by strengthening all aspects of the emergency response system. Whether responding by car, ambulance, helicopter, boat, or plane, this diverse group of dedicated Americans provides crucial pre-hospital medical care to fellow citizens when they need it most. This week, we take time to recognize the inspiring contributions of our Nation's EMS practitioners and honor their dedication to serving their country and fellow citizens.

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 Emergency Medical Services Week. I encourage all Americans to observe this occasion by sharing their support with their local

EMS providers and taking steps to improve their personal safety and preparedness.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth 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. 2011–12546
Filed 5–18–11; 11:15 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8675 of May 13, 2011

National Defense Transportation Day and National Transportation Week, 2011

By the President of the United States of America

A Proclamation

America has long depended on a robust and reliable transportation network to support our drive towards lasting security and prosperity. Our highways, railroads, ports, and airways allow us to move around our country quickly and efficiently. Effective transportation systems have helped our economy grow, our first responders save lives, and our Armed Forces mobilize.

The freedom of movement created by America's transportation infrastructure facilitates our Nation's economic vitality. Our ability to travel safely enables us to trade with our neighbors and visit our friends and family. It provides Americans from every corner of our country access to the first-rate products and services that define our economy, increasing the productivity of our people and our land. Our transportation system also permits our military to move personnel and supplies at a moment's notice. The ability to deploy rapidly empowers our men and women in uniform to respond to crises or natural disasters at home and abroad with urgency.

Maintaining the transportation networks that earlier generations bequeathed to us is a challenge, and we must do more than preserve the status quo. We need to develop a 21st-century transportation network—one that is safer, more energy-efficient, more environmentally sustainable, and offers more transportation choices to our citizens than the one we inherited.

As we celebrate the legacy of our Nation's transportation arteries, we recognize the world is now more connected and more competitive than ever before. New companies around the world look for the fastest and most reliable ways to move people and goods. To attract new businesses to our shores, we must rebuild crumbling roads and bridges and continue to invest in the modernization of our infrastructure. We must repair our highways, reengineer our railroads into high-speed rail networks, and ready ourselves for the next revolutionary breakthroughs in transportation technology. We must provide increased transportation options that cut commuting time, ease traffic congestion, reduce oil consumption, lower greenhouse gas emissions, and expand access to job opportunities and housing that American families can afford. Together, we can continue the work started by the American Recovery and Reinvestment Act to maintain a world-class logistics network, create new jobs, and win the future for our children.

In recognition of the importance of our Nation's transportation infrastructure, and of the men and women who build, maintain, and utilize it, the Congress has requested, by joint resolution approved May 16, 1957, as amended (36 U.S.C. 120), that the President designate the third Friday in May of each year as "National Defense Transportation Day," and, by joint resolution approved May 14, 1962, as amended (36 U.S.C. 133), that the week during which that Friday falls be designated as "National Transportation Week."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim Friday, May 20, 2011, as National Defense Transportation Day and May 15 through May 21, 2011, as National Transportation Week. I call upon all Americans to recognize the importance of

our Nation's transportation infrastructure and to acknowledge the contributions of those who build, operate, and maintain it.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth 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. 2011–12547
Filed 5–18–11; 11:15 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8676 of May 13, 2011

Peace Officers Memorial Day and Police Week, 2011

By the President of the United States of America

A Proclamation

Our Nation's public safety officers are heroes who risk their lives to keep our families and communities safe. Each of these brave men and women goes to work not knowing what dangers might lie ahead, making tremendous sacrifices to uphold justice and protect the innocent. This week, we extend our gratitude for their service to our country. We also remember those killed in the line of duty, and we mourn their loss and honor the loved ones they left behind.

Our law enforcement personnel are dedicated to the communities they serve, working tirelessly to transform neighborhoods across our country. Despite facing budget constraints and daily threats, public safety officers embrace innovative approaches to improving our Nation and upholding the rule of law.

Public safety officers put their lives on the line to protect ours, sometimes making the ultimate sacrifice. One death is too many, and every death is an unfathomable loss to the officer's family, colleagues, and community. In the past year, we have seen a tragic wave of police officer fatalities, and have mourned the loss of too many public safety officers. This year also marks 10 years since the tragedy of September 11. We will always remember the selfless courage shown by police officers, fire fighters, and first responders in New York City, Pennsylvania, and at the Pentagon who rushed into unknown dangers to save the lives of others. Their service—and the service of all who have worn the badge—will never be forgotten.

While we can never adequately thank our law enforcement officers for their service, we can use every tool at our disposal to protect them on the job. My Administration is committed to stopping senseless tragedies and keeping our police safe. We will continue to provide funding for resources to keep cops on the street and to collaborate with law enforcement agencies and organizations to develop strategies that reduce injuries and deaths in the line of duty. We have also launched the new Preventing Violence Against Law Enforcement and Ensuring Officer Resilience and Survivability (VALOR) initiative, designed to reduce and prevent law enforcement officer injuries and line-of-duty deaths.

We know that bullet-resistant vests and body armor can save lives. After consulting with members of the law enforcement community, we instituted a new mandatory wear policy as part of our Bulletproof Vest Partnership program beginning this year. We will also continue to seek more efficient ways to share information and invest in evidence-based, smart-on-crime approaches to fighting crime. Moreover, if tragedy does strike, we will provide support to the families of law enforcement officers.

As we commemorate Peace Officers Memorial Day and Police Week, we honor the discipline and distinction our peace officers have shown in conditions we can only imagine. They are continually called upon to remain vigilant and take courageous action. As a country, we promise to stand beside our public safety community and do our part to help keep America safe and secure.

By a joint resolution approved October 1, 1962, as amended (76 Stat. 676), and by Public Law 103–322, as amended (36 U.S.C. 136–137), the President has been authorized and requested to designate May 15 of each year as "Peace Officers Memorial Day" and the week in which it falls as "Police Week."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim May 15, 2011, as Peace Officers Memorial Day and May 15 through May 21, 2011, as Police Week. I call upon all Americans to observe these events with appropriate ceremonies and activities. I also call on Governors of the United States and the Commonwealth of Puerto Rico, officials of the other territories subject to the jurisdiction of the United States, and appropriate officials of all units of government, to direct that the flag be flown at half-staff on Peace Officers Memorial Day. I further encourage all Americans to display the flag at half-staff from their homes and businesses on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth 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. 2011–12548
Filed 5–18–11; 11:15 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8677 of May 13, 2011

World Trade Week, 2011

By the President of the United States of America

A Proclamation

American businesses embody the ingenuity and entrepreneurship that has defined our Nation since its founding, and they consistently reinvent themselves to adapt to changing times. As we recover from a historic economic recession, enterprising commercial leaders continue to look beyond our borders to supply the world with innovative and technologically advanced products and services. Millions of jobs in the United States are tied to exports, and our world continues to grow more interdependent.

World Trade Week is a time to highlight the vital connection between the global economy and the prosperity of our own country. Our 21st-century economy requires American businesses and workers to compete in an international marketplace. To ensure our success, we must advance a robust, forward-looking trade agenda that emphasizes exports and domestic job growth.

Last year, my Administration launched the National Export Initiative, an effort to marshal the full resources of the Federal Government behind America's businesses, large and small, and help them sell their goods, services, and ideas to the world. Though the United States remains a leading exporter, this Initiative is redoubling our efforts to ensure American companies have free and fair access in trade, and it is building on our successes in export-driven growth. Through this effort, we can help even more American companies grow, compete, and thrive in global markets and help reach our goal of doubling exports in 5 years by 2015. In turn, those companies will be able to hire more American workers to produce the goods and services they sell to customers around the world.

By out-innovating, out-educating, and out-building the rest of the world, we can keep Americans working and export more of the high-quality products and services for which our workers and companies are admired. With a commitment to winning the future, we can continue to lead the world in attracting the jobs, businesses, and industries of tomorrow.

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 World Trade Week. I encourage all Americans to observe this week with events, trade shows, and educational programs that celebrate and inform Americans about the benefits of trade to our Nation and the global economy.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth 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. 2011–12549
Filed 5–18–11; 11:15 am]
Billing code 3195–W1–P

Presidential Documents

Notice of May 17, 2011

Continuation of the National Emergency With Respect to the Stabilization of Iraq

On May 22, 2003, by Executive Order 13303, the President declared a national emergency protecting the Development Fund for Iraq and certain other property in which Iraq has an interest, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). The President took this action to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq.

In Executive Order 13315 of August 28, 2003, Executive Order 13350 of July 29, 2004, Executive Order 13364 of November 29, 2004, and Executive Order 13438 of July 17, 2007, the President modified the scope of the national emergency declared in Executive Order 13303 and took additional steps in response to this national emergency.

Because the obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared in Executive Order 13303, as modified in scope and relied upon for additional steps taken in Executive Orders 13315, 13350, 13364, and 13438, must continue in effect beyond May 22, 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 the stabilization of Iraq.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
May 17, 2011.

[FR Doc. 2011–12551
Filed 5–18–11; 11:15 am]
Billing code 3195–W1–P

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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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