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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

Rural Utilities Service

7 CFR Part 1730

RIN 0572–AC16

Emergency Restoration Plan (ERP)

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending the requirements established for Emergency Restoration Plans (ERPs), currently mandated for all borrowers, to include a plan to comply with the eligibility requirements to qualify for the Federal Emergency Management Agency (FEMA) Public Assistance Grant Program in the event of a declared disaster. This amendment will ensure that RUS borrowers have a plan to maintain their eligibility to receive financial assistance from FEMA in the event they incur eligible costs for disaster related system repair and restoration.

DATES: September 6, 2011.

FOR FURTHER INFORMATION CONTACT: Donald Junta, USDA—Rural Utilities Service, 1400 Independence Avenue, SW., Stop 1569, Washington, DC 20250–1569, telephone (202) 720–1900 or e-mail to *donald.junta@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this final rule meets the applicable standards in § 3 of the Executive Order.

Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Rural Utilities Service is not required by 5 U.S.C. 551 *et seq.* or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Information Collection and Recordkeeping Requirements

The information collection burden associated with this rulemaking is approved under OMB control number 0572–0140. This rule contains no additional information collection or recordkeeping requirements under OMB control number 0572–0140 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

E-Government Act Compliance

The Rural Utilities Service is committed to the E-Government Act, which requires government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

National Environmental Policy Act Certification

The Agency has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800 and at *https://www.cfda.gov*.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may otherwise require consultation with State and local officials, pursuant to USDA's regulation at 7 CFR part 3015.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of §§ 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

The policies contained in this final rule do not have any substantial direct effect on 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, nor does this final rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with States is not required.

Background

The Agency published a final rule on October 12, 2004, at 69 FR 60541 requiring all borrowers to maintain an Emergency Response Plan (ERP) that details how the borrower will restore its system in the event of a system-wide outage resulting from a major natural or manmade disaster or other causes. This ERP requirement was not entirely new to the borrowers, as RUS had recommended similar ''plans'' in the past. However, the need for an ERP requirement at that time was catalyzed by increased sensitivities relating to homeland security.

The purpose of the FEMA Public Assistance Grant Program is to provide assistance to State, Tribal, and local governments, and certain types of private non-profit organizations so that communities can quickly respond to and recover from major disasters or emergencies declared by the President.

Recent FEMA audits conducted on applications submitted by RUS borrowers have shown that borrowers have not always followed the policies and procedures set forth by FEMA for disaster related repairs and restoration. FEMA recently created a draft document titled ''FEMA Disaster Assistance Fact Sheet 9580.6 (Electric Utility Repair (Public and Private Nonprofit)). This document contains sections on contracting, category of work, conductor replacement, hazard mitigation, and repair of collateral damage that outline

FEMA requirements in these areas. It is financially advantageous for borrowers to qualify and receive disaster assistance funds for eligible work from FEMA in the event of a declared disaster or emergency. When RUS borrowers do not meet FEMA Public Assistance Grant eligibility requirements, they will be ineligible to receive disaster assistance funds.

Accordingly, the Agency published a proposed rule on January 26, 2010, at 75 FR 4006 proposing to amend the ERP regulatory requirements to add that the ERP reflect compliance with all requirements imposed by FEMA for reimbursement of the cost of repairs and restoration of the borrower's electric system incurred as the result of a declared disaster.

Discussion of Comments and Changes

RUS received one submission electronically on this proposed rule by the March 29, 2010, comment deadline. The submission was received from the National Rural Electric Cooperative Association (NRECA). The submission is summarized below with the Agency's responses as follows:

Issue 1: Commentor proposed modifying the rule as proposed to add a cost/benefit consideration.

Response: The Agency accepts the observation that there are costs to compliance. Money and time spent, delay in service restoration, and the possibility of consumer dissatisfaction in an extended outage are relevant in power restoration decisions and sometimes any additional costs of complying with FEMA's eligibility rules may outweigh the benefits of federal financial assistance for reimbursement and support a decision by a borrower to elect to pursue an alternative to competitively bidding a restoration job as generally required by FEMA. The final rule as published permits the borrower to make such a determination. The rule only requires the borrower develop a plan to comply with the FEMA requirements and be eligible to apply for FEMA assistance.

Issue 2: Commentor proposed a clarifying change that identifies the borrower, rather than the ERP, as the subject that ''must comply with'' FEMA reimbursement rules.

Response: Agency concurs. This clarification is intended to avoid an interpretation that would require the ERP to contain a mini manual of how to comply with the FEMA rules.

List of Subjects in 7 CFR 1730

Electric power; Loan program—energy; Reporting and recordkeeping requirements; Rural areas.

For reasons discussed in the preamble, the Agency amends 7 CFR, Chapter XVII, part 1730 as follows:

PART 1730—ELECTRIC SYSTEM OPERATIONS AND MAINTENANCE

■ 1. The authority citation for part 1730 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

■ 2. Amend § 1730.28 as follows:

■ a. Remove the word ''and'' from the end of paragraph (e)(4);

■ b. Redesignating paragraph (e)(5) as (e)(6); and

■ c. Add paragraph (e)(5) to read as follows:

§ 1730.28 Emergency Restoration Plan (ERP).

* * * * *

(e) * * *

* * * * *

(5) A section describing a plan to comply with the eligibility requirements to qualify for the FEMA Public Assistance Grant Program; and

* * * * *

Dated: July 22, 2011.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2011–19661 Filed 8–3–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1095; Directorate Identifier 2009–NE–40–AD; Amendment 39–16742; AD 2011–14–07]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney (PW) Models PW4074 and PW4077 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires removing the 15th stage HPC disk within 12,000 cycles since new (CSN) or, for any disks that exceed 12,000 CSN after the effective date of this AD using a drawdown plan that includes a borescope inspection (BSI) or eddy current inspection (ECI) of the rim for cracks. This AD was prompted by multiple shop findings of cracked 15th stage HPC disks. We are issuing this AD to prevent cracks from propagating into the disk bolt holes, which could result in a failure of the 15th stage HPC disk, uncontained engine failure, and damage to the airplane.

DATES: This AD is effective September 8, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 8, 2011.

ADDRESSES: For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700; fax (860) 565–1605. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on November 2, 2010, (75 FR 67253). That NPRM proposed to require removing the 15th stage HPC disk before 12,000 CSN, or for any disks that exceed 12,000 CSN after the effective date of this AD, using a drawdown plan that includes a BSI or ECI of the rim for cracks.

Comments

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

on the determination of the cost to the public.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 44 engines installed on airplanes of U.S. registry. Prorated parts life will cost about $66,000 per 15th stage HPC disk. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $2,904,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–14–07 Pratt & Whitney: Amendment 39–16742; Docket No. FAA–2010–1095; Directorate Identifier 2009–NE–40–AD.

Effective Date

(a) This AD is effective September 8, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney (PW) PW4074 and PW4077 turbofan engines with 15th stage high-pressure compressor (HPC) disks, part number (P/N) 55H615, installed.

Unsafe Condition

(d) This AD results from multiple shop findings of cracked 15th stage HPC disks. We are issuing this AD to prevent cracks from propagating into the bolt holes of the 15th stage HPC disk, which could result in a failure of the 15th stage HPC disk, uncontained engine failure, and damage to the airplane.

Compliance

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

(f) For 15th stage HPC disks that have 9,865 or fewer cycles since new (CSN) on the effective date of this AD, remove the disk from service before accumulating 12,000 CSN.

(g) For 15th stage HPC disks that have accumulated more than 9,865 CSN on the effective date of this AD, do the following:

(1) Remove the disk from service at the next piece-part exposure above 12,000 CSN, not to exceed 2,135 cycles-in-service (CIS) after the effective date of this AD.

(2) For 15th stage HPC disks that are installed in the engine and exceed 12,000 CSN on the effective date of this AD, perform a borescope inspection (BSI) or eddy current inspection (ECI) of the disk rim according to the following schedule:

(i) Within 2,400 cycles-since-last fluorescent penetrant inspection or ECI, or

(ii) Within 1,200 cycles-since-last BSI, or

(iii) Within 55 CIS after the effective date of this AD, whichever occurs later.

(3) If the BSI from paragraph (g)(2) of this AD indicates the presence of a crack in the disk rim, but you can't visually confirm a crack, perform an ECI within 5 CIS after the BSI.

(4) If you confirm a crack in the disk rim using any inspection method, remove the disk from service before further flight.

(h) Use paragraph 1.A. or 1.B. of the Accomplishment Instructions ''For Engines Installed on the Aircraft'' or 1.A. or 1.B. of the Accomplishment Instructions ''For Engines Removed from the Aircraft,'' of PW Service Bulletin PW4G–112–72–309, Revision 1, dated July 1, 2010 to perform the inspections.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

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

Material Incorporated by Reference

(k) You must use Pratt & Whitney Service Bulletin PW4G–112–72–309, Revision 1, dated July 1, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700; fax (860) 565–1605.

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

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

Issued in Burlington, Massachusetts, on June 24, 2011.

Peter A. White,

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

[FR Doc. 2011–19476 Filed 8–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 65

[Docket No. FAA–2010–1060]

Policy Clarifying Definition of ''Actively Engaged'' for Purposes of Inspector Authorization

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of policy; disposition of comments.

SUMMARY: This action clarifies the term ''actively engaged'' for the purposes of application for and renewal of an inspection authorization. It also responds to the comments submitted to the proposed policy and revises portions of that proposal. This action amends the Flight Standards Management System FAA Order 8900.1.

DATES: This policy becomes effective September 6, 2011.

FOR FURTHER INFORMATION CONTACT: Ed Hall, Aircraft Maintenance General Aviation Branch, AFS–350, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (804) 222–7494 ext. 240; e-mail: *ed.hall@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 65.91(c) of Title 14 of the Code of Federal Regulations sets forth the eligibility requirements for obtaining an inspection authorization (IA). Among other requirements, an applicant must ''have been actively engaged, for at least the two-year period before the date he applies, in maintaining aircraft certificated and maintained in accordance with [FAA regulations].'' Section 65.93(a) sets forth the eligibility requirements for renewing an IA and incorporates the requirements for obtaining one under § 65.91(c)(1)–(4). Accordingly, an individual must be actively engaged, for at least the prior two-year period, in maintaining aircraft to be eligible to either obtain or renew an IA.

The FAA provides guidance concerning the issuance of IAs in the Flight Standards Information Management System (FSIMS), FAA Order 8900.1, Volume 5, Chapter 5, Sections 7 and 8. These sections assist aviation safety inspectors (ASIs) in evaluating an initial application for an IA or an application for renewing an IA as well as allow a prospective applicant to determine his or her eligibility. IAs are issued for two years and expire on March 31 of odd-numbered years. March 31, 2013, is the next expiration date.

The definition of the term ''actively engaged'' has caused confusion among ASIs and aircraft maintenance personnel. The term is not defined in 14 CFR, and its definition in agency guidance materials has varied over time. In November 2010, the FAA published a notice of proposed policy clarifying the definition of ''actively engaged'' for the purposes of an IA.[1] The notice recognized the FAA's prior inconsistent application of the term and the public's misunderstanding of the regulatory requirements contained under § 65.91(c)(2). The notice proposed to amend FAA Order 8900.1 Volume 5 Chapter 5 to provide a clearer definition of ''actively engaged'' within FAA policy. The FAA reaffirmed longstanding policy that an applicant who is employed full-time in inspecting, overhauling, repairing, preserving, or replacing parts on aircraft consistently are considered actively engaged. For an applicant participating in (regardless of employment status) maintenance activities part time or occasionally, it proposed an ASI would use documentation or other evidence provided by the applicant detailing the maintenance activity to determine whether the type of maintenance activity performed, considering any special expertise required, and the quantity of maintenance activity demonstrated the applicant was actively engaged. The notice also proposed a limited carve-out, or relief, for ASIs holding an IA that are restricted in the type of maintenance they can perform due to ethical considerations.

The comment period closed on January 17, 2011, following an extension of the comment period.[2] The FAA considered late-filed comments through February 4, 2011. As of that date, more than 954 comments had been filed.

Discussion of the Comments and Final Policy

The majority of individual commenters believed the FAA was engaging in rulemaking rather than clarifying an existing rule, and these commenters generally were opposed to the proposed clarification. Many of these commenters expressed the belief the IA was a certificate or license, rather than an FAA authorization. They contended the loss of their IA would result in a loss of knowledge that could affect their existing or future employment as well as lost knowledge to the industry in general. Some commenters contended a shrinking population of IAs would result in increased maintenance and inspection costs. Incidentally, many of these commenters acknowledged they did not perform or supervise any maintenance activities and previously renewed their IA by attending training or through oral testing under § 65.93(a)(4)–(5). Similarly, several commenters expressed the belief that accomplishing any of the activities in § 65.93(a)(1) through (5) were sufficient for IA renewal.[3]

The FAA believes these comments result from a common misunderstanding of the IA renewal requirements under § 65.93. Section 65.93 sets forth five activities, at least one of which must be completed in the first year and at least one of which must be completed in the second year, to be eligible for renewal of an IA. However, § 65.93(a) also states ''an applicant must present evidence * * * that the applicant still meets the requirements of § 65.91(c)(1) through (4).'' Accordingly, IA applicants must hold a current mechanic's certificate with both airframe and powerplant ratings that has been in effect for at least 3 years and must have been actively engaged in maintaining aircraft for 2 years prior to the application. Additionally, IA applicants must identify a fixed base of operation at which he or she may be located in person or by phone during normal working hours. This may be a residence or place of employment. An IA applicant also must have available the equipment, facilities, and inspection data necessary to properly inspect airframes, powerplants, propellers, or related parts or appliances. Technical data includes type certificate data information, airworthiness directives, federal regulations, and availability of manufacturers' service or maintenance information specific to the inspections being performed. Equipment required to properly inspect aircraft, powerplants, propellers, or appliances includes but may not be limited to basic hand tools,

[1] 75 FR 68249 (Nov. 5, 2010).

[2] *See* 75 FR 75649 (Dec. 6, 2010).

[3] Those activities are: (1) Performed at least one annual inspection for each 90 days that the applicant held the current authority; (2) performed at least two major repairs or major alterations for each 90 days that the applicant held the current authority; (3) performed or supervised and approved at least one progressive inspection in accordance with standards prescribed by the Administrator; (4) attended and successfully completed a refresher course, acceptable to the Administrator, of not less than 8 hours of instruction; and (5) passed an oral test by an FAA inspector to determine that the applicant's knowledge of applicable regulations and standards is current. § 65.93(a).

compression testers, magneto timing lights or disk, and devices applicable to determining control surface travels, cable tensions, or blade angles as applicable during the performance of an inspection. Facilities should be available to provide proper environmental protection of the aircraft, powerplant, propeller, or appliance being inspected. Consideration should be given to any adverse effects by wind, rain, temperature, or other inhibiting elements on the product being inspected.

The FAA disagrees with commenters' contention that the IA is a certificate or rating. The FAA consistently has held the IA is an authorization. The FAA also rejects the contention that employment would be affected because employers reasonably expect the FAA to ensure regulatory compliance and expect a person holding an IA has met all FAA requirements to hold that authorization.

Many commenters were concerned ASIs would evaluate individuals engaging in maintenance activities part time or occasionally in a subjective or inconsistent manner. These commenters request further clarification of part-time or occasional engagement to promote consistency and standardization. A commenter suggests any clarification specifically address individuals engaged in personal aircraft maintenance, retired mechanics providing occasional or relief maintenance, individuals providing maintenance in rural areas, and individuals offering specialized expertise in electrical, composites, and rare or vintage aircraft.

The FAA recognizes and values individuals with experience in wood structures, steel tubing, fabric coverings, radial engines, ground adjustable propellers, aging aircraft, and the fatigue inspection issues associated with these aircraft. The FAA also values the experience of individuals who are available on a part-time or occasional basis to inspect vintage or rare aircraft or aircraft that may be located in rural areas of the country not serviced by an abundance of IAs. The FAA does not intend to eliminate eligibility or renewal opportunities of these individuals. Accordingly, the FAA has adopted a broad definition of ''actively engaged'' to include not only part-time employment but also occasional activity, which does not require employment and can occur on an infrequent basis. The FAA believes it problematic to list every situation that could be considered actively engaged, and that approach may exclude situations that an ASI would determine meets the regulatory requirements. Additionally, as indicated in the proposed policy, the FAA values the substantive nature of experience rather than a strict quantity formula.

The FAA has concluded that requiring ASIs to evaluate evidence or documentation provided by the applicant will facilitate a consistent review because the ASI will have more than the applicant's self-certification to make the determination. This documentation, when required, could include records showing performance or supervision of aircraft maintenance, return to service documents, and copies of maintenance record entries. The FAA expects documentation will establish an applicant's continued contributions to the aviation industry and ability to demonstrate compliance with 65.91(c)(1)–(4).

Many commenters, including several associations, requested the definition of actively engaged include supervision, either technical or in an executive capacity, of maintenance or alteration of aircraft because supervision meets the recency of experience requirements for an airframe and powerplant (A & P) certificate. Some commenters also requested actively engaged includes full-time instruction under part 147 and employment directly related to airworthiness (such as, technical representative, maintenance sales, maintenance coordinator, and maintenance auditor).

The FAA agrees that supervision of maintenance activities provides the same sort of experience the actively engaged requirement was intended to require. For that reason, the FAA will include technical supervision and supervision in an executive capacity on either a full-time, part-time, or occasional basis in the definition of actively engaged. The FAA previously determined involvement solely in an academic environment is not actively engaged. However, a technical instructor or part 147 school instructor may maintain aircraft or supervise the maintenance of aircraft in addition to instruction, in which case the instructor could be considered actively engaged. Individuals employed as a manufacturer's technical representative, maintenance coordinator, or maintenance auditor also could be considered actively engaged depending on the activity demonstrated. Without a better understanding of duties involved, it is unclear whether an individual involved in maintenance sales could demonstrate inspecting, overhauling, repairing, preserving, or replacing parts on an aircraft, or supervising those activities.

Several commenters contended the carve-out for ASIs renewing an IA was inconsistent with the definition of actively engaged. One commenter contended an ASI should be required to meet the hands-on experience required of other applicants.

As stated in the proposed policy, FAA Order 8900.1 restricts the types of maintenance that ASIs can perform because of ethical concerns, and the FAA does not intend for ASIs to be prejudiced because of their employment restrictions. The FAA does not intend to change its policy regarding an ASI holding an IA by virtue of the ASI 1825 job description and resulting ASI responsibilities. An ASI retains the ability to maintain a personally-owned aircraft or aircraft owned by another ASI in meeting the actively engaged definition. Additionally, an ASI's job description requires continuous determinations of conformity to aircraft, engine, and propeller type certificates; adherence to manufacturers' maintenance requirements or inspection requirements; compliance with Airworthiness Directives; and the actual issue of recurrent and original airworthiness certificates. Further, an ASI accomplishes or oversees export certificate issuance requirements, oversees maintenance record entries for stated special airworthiness certificate issuance, oversees determinations of major repair/alteration requirements on FAA form 337, and oversees the determination of appropriate maintenance record entries. These job functions parallel the supervision in a technical or executive capacity and therefore these activities could be considered when determining whether the ASI has been actively engaged. After considering the comments, the FAA does not adopt an ASI carve-out because it anticipates ASIs would be able to demonstrate they are actively engaged under the policy as would any applicant supervising maintenance in a technical or executive capacity.

Several commenters, including associations, expressed concern that FAA Order 8900.1 lacked a specific appeal process for applicants denied the initial or renewal IA because of an ASI's determination that the applicant was not actively engaged.

Because the issuance or renewal of an IA is not a certificate action, the FAA does not have a formal appeal process. However, an action on an IA application could be addressed through the Aviation Safety Consistency and Standardization Initiative (CSI), which requires review of a questioned or disputed action at every level of the AVS management chain.

One commenter contended there should be no actively engaged

requirement for an initial or renewal IA. Another commenter suggested the period of active engagement should be extended from two to four years.

These comments are beyond the scope of the policy clarification because they would require rulemaking. Nevertheless, the FAA views the actively engaged requirement as providing maintenance experience relevant to conducting inspections. Similarly, the two-year period provides the recency of experience in maintenance performance or supervision necessary to conduct inspections.

The FAA has determined to make this policy effective for the next renewal cycle in March 2013 to allow IAs and ASIs adequate time to participate in the required activity. The FAA will update FAA Order 8900.1 accordingly.

Amendment

In consideration of the foregoing, the Federal Aviation Administration will revise FAA Order 8900.1, Volume 5, Chapter 5 as follows:

1. Amend Section 7, Paragraph 5–1279 by adding a Note after subparagraph A to read: 5–1279 ELIGIBILITY. The ASI must establish the applicant's eligibility before allowing the applicant to test. None of the requirements of Title 14 of the Code of Federal Regulations (14 CFR) part 65, § 65.91 can be waived by the ASI.

A. The applicant must hold a current mechanic's certificate, with both airframe and powerplant ratings, that has been in effect for at least 3 years. The applicant must have been actively engaged in maintaining certificated aircraft for at least the 2-year period before applying.

Note: Actively engaged means an active role in exercising the privileges of an airframe and powerplant mechanic certificate in the maintenance of civil aircraft. Applicants who inspect, overhaul, repair, preserve, or replace parts on aircraft, or who supervise (i.e., direct and inspect) those activities, are actively engaged. The ASI may use evidence or documentation provided by the applicant showing inspection, overhauling, repairing, preserving, or replacing parts on aircraft or supervision of those activities. This evidence or documentation when required could include employment records showing performance or supervision of aircraft maintenance, return to service documents and or copies of maintenance record entries.

Technical instructors or individuals instructing in a FAA part 147 approved AMT school, who also engage in the maintenance of aircraft certificated and maintained in accordance with 14 CFR, can be considered actively engaged. Individuals instructing in a FAA part 147 AMT school, who also engage in the maintenance of aircraft-related instruction equipment maintained in accordance with 14 CFR standards, can be considered actively engaged.

B. There must be a fixed base of operation at which the applicant can be located in person or by telephone. This base need not be the place where the applicant will exercise the inspection authority.

C. The applicant must have available the equipment, facilities, and inspection data necessary to conduct proper inspection of airframes, powerplants, propellers, or any related part or appliance. This data must be current.

D. The applicant must pass the IA knowledge test, testing the ability to inspect according to safety standards for approval for return to service of an aircraft, related part, or appliance after major repairs or major alterations, and annual or progressive inspections performed under part 43. There is no practical test required for an IA.

Note: The ASI should see paragraph 5–1285 for instructions on determining an applicant's eligibility.

2. Amend Section 8, Paragraph 5–1309 by adding a Note after subparagraph (A)(1) to read:

5–1309 RENEWAL OF INSPECTION AUTHORIZATION.

A. Application Requirements. Application for renewal may be required to comply with the following:

(1) Show evidence the applicant still meets the requirements of § 65.91(c)(1) through (4).

Note: Refer to Paragraph 5–1279(A)–(C) of this document for information on meeting § 65.91(c)(1) through (4) requirements. Refresher training attendance alone does not satisfy those requirements.

(2) Complete Federal Aviation Administration (FAA) Form 8610–1, Mechanic's Application for Inspection Authorization, in duplicate.

(3) Show evidence the applicant meets the requirements of § 65.93(a) for both the first and second year in the form of an activity sheet or log, training certificates, and/or oral test results, as applicable.

Issued in Washington, DC, on July 28, 2011.

John S. Duncan,

Acting Director, Flight Standards Service.

[FR Doc. 2011–19741 Filed 8–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0012; Airspace Docket No. 10–ASO–44]

Amendment of Class D and Class E Airspace; Columbus Lawson AAF, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D and Class E airspace at Lawson Army Airfield (AAF), Columbus, GA, by removing the reference to the Columbus Metropolitan Airport Class C airspace area from the description. Controlled airspace at Columbus Metropolitan Airport is being downgraded due to decreased air traffic volume. This action is necessary for the safety and management of air traffic within the National Airspace System. This action also updates the geographic coordinates of Columbus Lawson AAF.

DATES: Effective 0901 UTC, October 20, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On May 24, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify Class D and E airspace at Lawson Army Airfield (AAF), Columbus, GA by removing the reference to the Columbus Metropolitan Airport Class C airspace area from the description, and modifying the geographic coordinates of Lawson AAF (76 FR 30045) Docket No. FAA–2011–0012. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class D and E airspace designations are published in paragraph 5000 and 6002, respectively, of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace

designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends the Class D airspace and Class E airspace designated as surface area at Columbus Lawson AAF, Columbus, GA by removing the reference to the Columbus Metropolitan Airport Class C airspace from the description. The volume of air traffic has decreased at Columbus Metropolitan Airport, therefore, Class C airspace has been removed. The geographic coordinates for the Lawson AAF are being adjusted to coincide with the FAAs aeronautical database. This action is necessary for the safety and management of IFR operations at the airports.

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, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Columbus Lawson AAF, Columbus, GA.

Lists 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 part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace

* * * * *

ASO GA D Columbus Lawson AAF, GA [Amended]

Columbus Lawson AAF, GA
(Lat. 32°19′55″ N., long 84°59′14″ W.)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 5.2-mile radius of Lawson Army Airfield. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ASO GA E2 Columbus Lawson AAF, GA [Amended]

Columbus Lawson AAF, GA
(Lat. 32°19′55″ N., long. 84°59′14″ W.)

Within a 5.2-mile radius of Lawson Army Airfield. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in College Park, Georgia, on July 19, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–19170 Filed 8–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0005; Airspace Docket No. 10–ASO–42]

Amendment of Class E Airspace; Lakeland, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Lakeland, FL. The Plant City Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures have been developed for Lakeland Linder Regional Airport. This action also updates the geographic coordinates of the airport, as well as Plant City Municipal Airport and Winter Haven's Gilbert Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, October 20, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On May 24, 2011, the FAA published in the Federal Register a notice of proposed rulemaking (NPRM) to amend Class E airspace at Lakeland Linder Regional Airport, Lakeland, FL (75 FR 30047) Docket No. FAA–2011–0005. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found that the geographic coordinates of Lake Linder Regional Airport, Plant City Municipal Airport, and Winter Haven's Gilbert Airport needed to be adjusted. This action makes these updates. Except for editorial changes, and the changes noted above, this rule is the same as published in the NPRM.

Class E airspace designations are published in Paragraph 6005 of FAA

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

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E surface airspace to support new standard instrument approach procedures developed at Lakeland Linder Regional Airport, Lakeland, FL. Airspace reconfiguration is necessary due to the decommissioning of the Plant City NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport. This action also updates the geographic coordinates of Lake Linder Regional, Plant City Municipal, and Winter Haven's Gilbert Airports to coincide with the FAA's aeronautical database.

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, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Lakeland, FL.

Lists 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 part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, 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.

* * * * *

ASO FL E5 Lakeland, FL [Amended]

Lakeland Linder Regional Airport, FL
(Lat. 27°59′20″ N., long. 82°01′07″ W.)
Bartow Municipal Airport
(Lat. 27°56′36″ N., long. 81°47′00″ W.)
Plant City Municipal Airport
(Lat. 28°00′01″ N., long. 82°09′48″ W.
Winter Haven's Gilbert Airport
(Lat. 28°03′47″ N., long. 81°45′12″ W.)
Lakeland VORTAC
(Lat. 27°59′10″ N., long. 82°00′50″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Lakeland Linder Regional Airport, and within a 6.7-mile radius of Bartow Municipal Airport, and within a 6.6-mile radius of Plant City Municipal Airport, and within 3.5 miles each side of the 266° bearing from the Plant City Airport extending from the 6.6-mile radius to 7.5 miles west of the airport, and within a 6.5-mile radius of Winter Haven's Gilbert Airport, and within 2.5 miles each side of the Lakeland VORTAC 071° radial, extending from the 7-mile radius to Winter Haven's Gilbert Airport 6.5-mile radius.

Issued in College Park, Georgia, on July 19, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–19166 Filed 8–3–11; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0157; FRL–9447–6]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone and the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving submittals from the State of West Virginia pursuant to the Clean Air Act (CAA) sections 110(k)(2) and (3). These submittals address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone and fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) and the 2006 $PM_{2.5}$ NAAQS. This final rule is limited to the following infrastructure elements which were subject to EPA's completeness findings pursuant to CAA section 110(k)(1) for the 1997 8-hour ozone NAAQS dated March 27, 2008 and the 1997 $PM_{2.5}$ NAAQS dated October 22, 2008: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.

DATES: *Effective Date:* This final rule is effective on September 6, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2010–0157. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601

57th Street SE, Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by e-mail at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. Background

On May 17, 2010 (75 FR 27510), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. The NPR proposed approval of West Virginia's submittals that provide the basic program elements specified in the CAA section 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, necessary to implement, maintain, and enforce the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS. The formal submittals by the State of West Virginia on December 3, 2007, May 21, 2008, and October 1, 2009 addressed the section 110(a)(2) requirements for the 1997 8-hour ozone NAAQS; the submittals dated April 3, 2008, May 21, 2008, October 1, 2009, and March 18, 2010 addressed the section 110(a)(2) requirements for the 1997 $PM_{2.5}$ NAAQS; and the submittals dated October 1, 2009 and March 18, 2010 addressed the section 110(a)(2) requirements for the 2006 $PM_{2.5}$ NAAQS.

II. Scope of Action on Infrastructure Submissions

EPA is currently acting upon State Implementation Plans (SIPs) that address the infrastructure requirements of CAA section 110(a)(1) and (2) for the ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[1] Those commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (SSM) at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA. EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR'') and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' (67 FR 80186, December 31, 2002), as amended by the NSR Reform Rule (72 FR 32526, June 13, 2007) (NSR Reform). In light of the comments, EPA now believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth.

EPA intended the statements in the other proposals concerning these four issues merely to be informational and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that EPA's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that we believe that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issue in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those proposals, however, we want to explain more fully EPA's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPs are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP''

[1] See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply. EPA did receive specific adverse comments in this action that are discussed in more detail in section IV.

submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[2] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[3]

Notwithstanding that section 110(a)(2) states that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[4] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because EPA bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[5] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[6]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[7] Within this guidance document, EPA described the duty of states to make these submissions to meet what EPA characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.''[8] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements and was merely a ''brief description of the

[2] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[3] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, *e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' (70 FR 25162, May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[4] See, *e.g., Id.,* (70 FR 25162, at 63–65, May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[5] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. See, ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[6] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[7] See, ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance'').

[8] *Id.,* at page 2.

required elements.'' [9] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable states to meet these requirements with assistance from EPA Regions.'' [10] For the one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each state would work with its corresponding EPA regional office to refine the scope of a state's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the state's SIP for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[11] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS, *e.g.,* the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS.

Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's other proposals mentioned these issues not because EPA considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever EPA determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[12] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[13] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA cites in the course of addressing the issue in a subsequent action.[14]

EPA's proposed approval of the infrastructure SIP submissions from West Virginia predated the actions on the submissions of other states and thus occurred before EPA decided to provide the informational statements concerning the SSM, director's discretion, minor source NSR, and NSR Reform issues as specific substantive issues that EPA was not addressing in this context. However, EPA determined that these four issues

[9] *Id.,* at attachment A, page 1.

[10] *Id.,* at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[11] See, ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[12] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' (74 FR 21639, April 18, 2011).

[13] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas-Emitting Sources in State Implementation Plans; Final Rule,'' (75 FR 82536, Dec. 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that EPA determined it had approved in error. See, *e.g.,* (61 FR 38664, July 25, 1996) and (62 FR 34641, June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); (69 FR 67062, November 16, 2004) (corrections to California SIP); and (74 FR 57051, November 3, 2009) (corrections to Arizona and Nevada SIPs).

[14] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* (75 FR 42342–42344, July 21, 2010) (proposed disapproval of director's discretion provisions); (76 FR 4540, Jan. 26, 2011) (final disapproval of such provisions).

should be addressed, as appropriate, separately from the action on the infrastructure SIPs for this state for the same reasons. Given this determination, EPA did not address these substantive issues in the prior proposals. Accordingly, EPA emphasizes that today's action should not be construed as a reapproval of any potential problematic provisions related to these substantive issues that may be buried within the existing SIP of this state. To the extent that there is any such existing problematic provision that EPA determines should be addressed, EPA plans to address such provisions in the future. In the meantime, EPA encourages any state that may have a deficient provision related to these issues to take steps to correct it as soon as possible.

III. Summary of SIP Revision

The submittals referenced in the Background section above address the infrastructure elements specified in the CAA section 110(a)(2). These submittals refer to the implementation, maintenance, and enforcement of the 1997 8-hour ozone, the 1997 $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS. The rationale supporting EPA's proposed action is explained in the NPR and the technical support document (TSD) and will not be restated here. EPA is also revising the portion of the TSD relating to section 110(a)(2)(D)(ii) in order to provide a more accurate and detailed explanation of the rationale supporting EPA's approval. The TSD is available online at *http://www.regulations.gov,* Docket number EPA–R03–OAR–2010–0157. Finally, on June 16, 2010, EPA received comments on its May 17, 2010 NPR. A summary of the comments submitted and EPA's responses are provided in Section IV of this document.

IV. Summary of Public Comments and EPA Responses

Comment: The commenter objected generally to EPA's proposed approval of the infrastructure SIP submissions on the grounds that the existing West Virginia SIP contains provisions addressing excess emissions during periods of SSM that do not meet the requirements of the CAA. The commenter argued that even though the SIP revision that EPA proposed to approve in this action did not contain the provisions to which the commenter objects, the presence of existing startup, shutdown, and malfunction provisions in West Virginia's SIP that are contrary to the CAA compromise the State's ability to ensure compliance with the $PM_{2.5}$ and ozone NAAQS. The commenter specifically objected to EPA's proposed approval because of existing provisions of the West Virginia SIP that pertain to opacity limits applicable to certain indirect heat exchanger sources. According to the commenter, these provisions allow exceedences of the otherwise applicable opacity standards during SSM events.

Response: EPA disagrees with the commenter's view that if a state's existing SIP contains any arguably illegal existing SSM provision, then EPA cannot approve the infrastructure SIP submission of that state. As discussed in more detail in section II of this final rulemaking, EPA does not agree that an action upon the infrastructure SIP required by section 110(a)(1) and (2) requires that EPA address any existing SSM provisions.

EPA shares the commenter's concerns that certain existing SSM provisions may be contrary to the CAA and existing EPA guidance, and that such provisions can have an adverse impact on air quality control efforts in a given state. EPA plans to address such provisions in the future, as appropriate, and in the meantime encourages any state having a deficient SSM provision to take steps to correct it as soon as possible. EPA is not evaluating the merits of the commenter's claims with respect to the particular provisions identified in the comments in this action because EPA considers these to be beyond the scope of this action.

Comment: The commenter also objected to EPA's proposed approval of the infrastructure SIP submission because of existing provisions of the West Virginia SIP that pertain to opacity standards applicable to hot mix asphalt sources. According to the commenter, these provisions enable the sources to have higher opacity during SSM events and that such provisions do not meet EPA guidance with respect to such higher limits in order to minimize excess emissions. The commenter argued that because the emissions limits at issue are part of the existing SIP, the state should be required to remove the provisions unless they meet certain criteria.

Response: As stated in the previous response, EPA disagrees with the commenter's view that if a state's existing SIP contains any arguably illegal existing SSM provision, then EPA cannot approve the infrastructure SIP submission of that state. As discussed in more detail in section II of this final rulemaking, EPA does not agree that an action upon the infrastructure SIP required by section 110(a)(1) and (2) requires that EPA address any existing SSM provisions.

EPA is not evaluating the merits of the commenter's claims with respect to the particular provisions identified in the comments in this action because EPA considers these to be beyond the scope of this action.

Comment: The commenter asserted that the existing West Virginia SIP needs to be strengthened with respect to specific ''affirmative defense'' provisions applicable to indirect heat exchanger sources during malfunctions. The commenter stated that the provisions in question conform to EPA guidance ''in some respects,'' but argued that the provisions do not meet all of the recommendations of EPA guidance and provided its views as to how the provisions should be revised. The commenter argued that such provisions are necessary to ''ensure compliance with the $PM_{2.5}$ NAAQS.''

Response: EPA disagrees with the commenter's view that if a state's existing SIP contains any arguably illegal existing SSM provision, including a provision that includes an ''affirmative defense'' during malfunctions that may not fully comply with EPA's policy for such defenses, then EPA cannot approve the infrastructure SIP submission of that state. As discussed in more detail in section IV of this final rulemaking, EPA does not agree that an action upon the infrastructure SIP required by section 110(a)(1) and (2) requires that EPA address any existing SSM provisions. This would include reviewing any affirmative defense provisions that relate to excess emissions during SSM events. EPA is not evaluating the merits of the commenter's claims with respect to the particular provisions identified in the comments in this action because EPA considers these to be beyond the scope of this action.

Comment: In addition to more general concerns about the impacts of excess emissions during SSM events, the commenter specifically expressed concern that such emissions could have impacts contrary to the CAA ''whether in the State of West Virginia, or elsewhere downwind.'' Thus, the commenter argued that such provisions would be contrary to both section ''110(a)(2)(A) and (D).'' EPA presumes that the commenter's reference to ''D'' was intended to be a reference to the interstate transport provisions of section 110(a)(2)(D)(i)(I), given the context of the statements about impacts of emissions on attainment of the NAAQS in other states.

Response: EPA disagrees with the commenter's assertion. First, as was explained in the proposed action, EPA is not addressing the requirement of

section 110(a)(D)(i) in these actions. Therefore, the comment is not germane to this action. Second, the commenter did not provide support for the contention that excess emissions during such events do have the impacts on other states prohibited by section 110(a)(2)(D)(i). At this time, EPA does not have information indicating that such excess emissions could have such impacts on any areas. Absent information indicating such impacts, EPA believes that there is no factual basis for the commenter's contention.

V. Final Action

EPA is approving the State of West Virginia's submittals that provide the basic program elements specified in the CAA sections 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, necessary to implement, maintain, and enforce the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS to West Virginia's SIP.

EPA made completeness findings for the 1997 8-hour ozone NAAQS on March 27, 2008 (73 FR 16205) and on October 22, 2008 (73 FR 62902) for the 1997 $PM_{2.5}$ NAAQS. These findings pertained only to whether the submissions were complete, pursuant to section 110(k)(1)(A), and did not constitute EPA approval or disapproval of such submissions. The March 27, 2008 (73 FR 16205) action made a completeness finding that the West Virginia submittals of December 3, 2007 and April 3, 2008 addressed some but not all of the 110(a)(2) requirements. Specifically, EPA found that West Virginia failed to address sections 110(a)(2)(B), (E)(i), (G) (with respect to authority comparable to section 303), (H) and (J) (relating to public notification under section 127), (M), and Part C PSD permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made nitrogen oxides (NO_X) a precursor for ozone in the Part C regulations found in 40 CFR 51.166 and in 40 CFR 52.21. The May 21, 2008 West Virginia submittal, described above and in the technical support document, addressed these findings, with the exception of the Part C PSD.

EPA has taken separate action on the portions of section 110(a)(2)(C) and (J) for the 1997 8-hour ozone NAAQS as they relate to West Virginia's PSD permit program. With respect to this permit program, on November 29, 2005 (70 FR 71612), EPA promulgated a change that made NO_X a precursor for ozone in the Part C regulations at 40 CFR 51.166 and 40 CFR 52.21. In the March 27, 2008 completeness findings, EPA determined that while West Virginia had an approved PSD program in its SIP codified at 40 CFR 52.2520, West Virginia's regulation, 45CSR14, did not fully incorporate NO_X as a precursor for ozone. On July 20, 2009, West Virginia submitted revisions to 45CSR14 to include NO_X as a precursor for ozone. EPA has approved this PSD SIP revision and element 110(a)(2)(C) as it pertains to the PSD permit program for the 1997 8-hour ozone NAAQS was addressed in this separate action. A notice of proposed rulemaking was published on December 17, 2010 (75 FR 78949) and a final rulemaking notice was published on May 27, 2011 (76 FR 30832).

Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These elements are: (i) Submissions required by section 110(a)(2)(C) to the extent that subsection pertains to a permit program in Part D Title I of the CAA; and (ii) any submissions required by section 110(a)(2)(I), which pertain to the nonattainment planning requirements of Part D Title I of the CAA. This action does not cover these specific elements. This action also does not address the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS. A portion of these 110(a)(2)(D)(i) requirements have been addressed by separate findings issued by EPA (see (70 FR 21147, April 25, 2005); (75 FR 32673, June 9, 2010); and (75 FR 45210, August 2, 2010)). A portion of these requirements are addressed through 110(a)(2) SIP submittals, which EPA will be addressing through separate action.

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to West Virginia's section 110(a)(2) infrastructure requirements for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 22, 2011.

W.C. Early,

Acting, Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding entries at the end of the table for Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS, Section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS, and Section 110(a)(2) Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQS. The amendments read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS.	Statewide	12/3/07, 5/21/08	8/4/11 [*Insert page number where the document begins*].	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS.	Statewide	4/3/08, 5/21/08, 7/9/08, 3/18/10	8/4/11 [*Insert page number where the document begins*].	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQS.	Statewide	10/1/09, 3/18/10	8/4/11 [*Insert page number where the document begins*].	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2011–19692 Filed 8–3–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0158; FRL–9447–7]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone and the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving submittals from the State of Delaware pursuant to the Clean Air Act (CAA) sections 110(k)(2) and (3). These submittals address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone and fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) and the 2006 $PM_{2.5}$ NAAQS. This final rule is limited to the following infrastructure elements which were subject to EPA's completeness findings pursuant to CAA section (k)(1) for the 1997 8-hour ozone NAAQS dated March 27, 2008 and the 1997 $PM_{2.5}$ NAAQS dated October 22, 2008: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.

DATES: *Effective Date:* This final rule is effective on September 6, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2010–0158. All documents in the docket are listed in the *http://regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever

''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. Background

On June 3, 2010 (75 FR 31340), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of Delaware's submittals that provide the basic program elements specified in the CAA sections 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, necessary to implement, maintain, and enforce the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS. The formal submittals submitted by the State of Delaware on December 13, 2007, September 19, 2008, and September 16, 2009 addressed the section 110(a)(2) requirements for the 1997 8-hour ozone NAAQS; the submittals dated December 13, 2007, March 12, 2008, September 16, 2009, and March 10, 2010 addressed the section 110(a)(2) requirements for the 1997 $PM_{2.5}$ NAAQS; and the submittals dated September 16, 2009 and March 10, 2010 addressed the section 110(a)(2) requirements for the 2006 $PM_{2.5}$ NAAQS.

II. Scope of Action on Infrastructure Submissions

EPA is currently acting upon State Implementation Plans (SIPs) that address the infrastructure requirements of CAA section 110(a)(1) and (2) for the ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[1] Those commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (SSM) at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA. EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR'') and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' (67 FR 80186, December 31, 2002), as amended by the NSR Reform Rule (72 FR 32526, June 13, 2007) (NSR Reform). In light of the comments, EPA now believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth.

EPA intended the statements in the other proposals concerning these four issues merely to be informational and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that EPA's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that we believe that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issue in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those proposals, however, we want to explain more fully EPA's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPs are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to

[1] See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket #EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply. EPA did receive specific adverse comments in this action that are discussed in more detail in section IV.

address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[2] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[3]

Notwithstanding that section 110(a)(2) states that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[4] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because EPA bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[5] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[6]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[7] Within this guidance document, EPA described the duty of states to make these submissions to meet what EPA characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.''[8] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements and was merely a ''brief description of the required elements.''[9] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable states to meet these requirements with

[2] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[3] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, *e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; Final Rule,'' (70 FR 25162, May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[4] See, *e.g., Id.,* (70 FR 25162, at 63–65, May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[5] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. See, ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[6] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[7] See, ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance'').

[8] *Id.,* at page 2.

[9] *Id.,* at attachment A, page 1.

assistance from EPA Regions.'' [10] For the one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each state would work with its corresponding EPA regional office to refine the scope of a state's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the state's SIP for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[11] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS, *e.g.,* the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS.

Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's other proposals mentioned these issues not because EPA considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever EPA determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[12] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[13] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA cites in the course of addressing the issue in a subsequent action.[14]

EPA's proposed approval of the infrastructure SIP submissions from Delaware predated the actions on the submissions of other states and thus occurred before EPA decided to provide the informational statements concerning the SSM, director's discretion, minor source NSR, and NSR Reform issues as specific substantive issues that EPA was not addressing in this context. However, EPA determined that these four issues should be addressed, as appropriate, separately from the action on the infrastructure SIPs for this state for the same reasons. Given this determination, EPA did not address these substantive issues in the prior proposals. Accordingly, EPA emphasizes that

[10] *Id.,* at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[11] See, ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[12] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' (74 FR 21639, April 18, 2011).

[13] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' (75 FR 82536, Dec. 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that EPA determined it had approved in error. See, *e.g.,* (61 FR 38664, July 25, 1996) and (62 FR 34641, June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); (69 FR 67062, November 16, 2004) (corrections to California SIP); and (74 FR 57051, November 3, 2009) (corrections to Arizona and Nevada SIPs).

[14] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* (75 FR 42342–42344, July 21, 2010)(proposed disapproval of director's discretion provisions); (76 FR 4540, Jan. 26, 2011) (final disapproval of such provisions).

today's action should not be construed as a reapproval of any potential problematic provisions related to these substantive issues that may be buried within the existing SIP of this state. To the extent that there is any such existing problematic provision that EPA determines should be addressed, EPA plans to address such provisions in the future. In the meantime, EPA encourages any state that may have a deficient provision related to these issues to take steps to correct it as soon as possible.

III. Summary of Relevant Submissions

The submittals referenced in the Background section above address the infrastructure elements specified in the CAA section 110(a)(2). These submittals refer to the implementation, maintenance and enforcement of the 1997 8-hour ozone, the 1997 $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS. The rationale supporting EPA's proposed action is explained in the NPR and the technical support document (TSD) and will not be restated here. On July 6, 2010, EPA received adverse comments on the June 3, 2010 NPR. A summary of the comments submitted and EPA's responses are provided in Section IV of this document. EPA is also revising the portion of the TSD relating to section 110(a)(2)(D)(ii) in order to provide a more accurate and detailed explanation of the rationale supporting EPA's approval. The TSD is available on line at *http://regulations.gov*, Docket number EPA–R03–OAR–2010–0158.

IV. Summary of Public Comments and EPA Responses

Comment: The commenter objected to EPA's proposed approval of the infrastructure SIP submission on the grounds that the existing Delaware SIP contain provisions addressing excess emissions during periods of SSM, that do not meet the requirements of the CAA. The commenter argued that even though the SIP revisions that EPA proposed to approve in this action did not contain the provisions to which the commenter objects, the presence of existing SSM provisions in Delaware's SIP that are contrary to the CAA compromise the State's ability to ensure compliance with the $PM_{2.5}$ and ozone NAAQS. The commenter provided details on specific regulatory provisions that the commenter characterized as inconsistent with Federal law. According to the commenter, these provisions ''potentially create blanket exemptions'' for emissions during SSM events and these exemptions enable sources to emit excessive amounts of pollutants that could ''compromise the state's ability to achieve and maintain the $PM_{2.5}$ and ozone NAAQS.''

Response: EPA disagrees with the commenter's view that if a state's existing SIP contains any arguably illegal existing SSM provision, then EPA cannot approve the infrastructure SIP submission of that state. As discussed in more detail in section II of this final rulemaking, EPA does not agree that an action upon the infrastructure SIP required by section 110(a)(1) and (2) requires that EPA address any existing SSM provisions.

EPA shares the commenter's concerns that certain existing SSM provisions may be contrary to the CAA and existing EPA guidance, and that such provisions can have an adverse impact on air quality control efforts in a given state. EPA plans to address such provisions in the future, as appropriate, and in the meantime encourages any state having a deficient SSM provision to take steps to correct it as soon as possible. EPA is not evaluating the merits of the commenter's claims with respect to the particular provisions identified in the comments in this action because EPA considers these to be beyond the scope of this action.

Comment: The commenter also objected to EPA's proposed approval of the infrastructure SIP submission because of existing provisions of the Delaware SIP that pertain to NO_X emission from certain stationary sources. According to the commenter, these provisions enable the state to allow sources to avoid otherwise applicable NO_X emissions limits during SSM events. Moreover, the commenter objected to the provisions on the grounds that they allegedly allow the state to make such revisions to the NO_X limits ''outside the SIP-revision process,'' thereby precluding EPA from ensuring that such revisions would meet EPA's applicable guidance on provisions related to SSM. Thus, according to the commenter, the existing provisions combine an impermissible director's discretion provision with an impermissible SSM provision, and these director's discretion and variance provisions are contrary to the CAA.

Response: EPA also disagrees with the commenter's conclusion that if a state's existing SIP contains any arguably illegal director's discretion or director's variance provision in combination with an arguably illegal SSM provision, then EPA cannot approve the infrastructure SIP submission of that state. As discussed in more detail in section II of this final rulemaking, EPA does not agree that an action upon the infrastructure SIP required by section 110(a)(1) and (2) requires that EPA address any existing director's discretion provisions, or such provisions in combination with existing SSM provisions.

EPA shares the commenter's concerns that certain existing director's discretion provisions in combination with existing SSM provisions may be contrary to the CAA and existing EPA guidance and that such provisions can have an adverse impact on air quality control efforts in a given state. EPA plans to take action in the future to address such provisions, as appropriate, and in the meantime encourages any state having a deficient director's discretion or director's variance provision to take steps to correct it as soon as possible. EPA is not evaluating the merits of the commenter's claims with respect to the particular provisions identified in the comments in this action because EPA considers these to be beyond the scope of this action.

Comment: The commenter asserted that Delaware's New Source Performance Standards (NSPS) regulations are not SIP approved but nevertheless contain ''loopholes'' for emissions during periods of startup, shutdown, and/or malfunction that are less stringent than, or inconsistent with, federal law. The commenter provided details on specific regulatory provisions that the commenter characterized as inconsistent with federal law. The commenter acknowledged that these specific provisions are not SIP approved, but argued that the provisions affect the ability to enforce emissions limits in state court or administrative proceedings and therefore potentially undermine the CAA and EPA's ability to ensure implementation of the CAA.

Response: EPA disagrees with these comments. First, as the commenter agrees, provisions of state law that are not SIP approved are by definition not something that is relevant to EPA's action on the specific infrastructure SIP under consideration in this action. EPA's review of the infrastructure SIP is to evaluate the basic structural components of the SIP to assure that it meets basic requirements for implementation, maintenance, and enforcement of the NAAQS. Provisions of state law that are not within the SIP are outside the scope of this action, even if they related to an issue that was otherwise germane to this action.

Second, as explained in response to commenters other concerns with provisions that are within the SIP, EPA does not agree that an action upon an infrastructure SIP submission required by section 110(a)(1) and (2) requires that EPA address any existing SSM

provisions. The bases for EPA's view that such provisions should be addressed separately is explained in more detail in section II of this final rulemaking,

V. Final Action

EPA is approving the State of Delaware's submittals that provide the basic program elements specified in the CAA sections 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, necessary to implement, maintain, and enforce the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS. EPA made completeness findings for the 1997 8-hour ozone NAAQS on March 27, 2008 (73 FR 16205) and on October 22, 2008 (73 FR 62902) for the 1997 $PM_{2.5}$ NAAQS. These findings pertained only to whether the submissions were complete, pursuant to 110(k)(1)(A), and did not constitute EPA approval or disapproval of such submissions. The March 27, 2008 finding noted that Delaware failed to submit a complete SIP addressing the portions of (C) and (J) relating to the Part C permit program for the 1997 8-hour ozone NAAQS. Specifically, EPA found that Delaware failed to address sections 110(a)(2)(C) and (J) pertaining to changes to its Part C PSD permit program required by the November 29, 2005 (70 FR 71612, page 71699) final rule that made nitrogen oxides (NO_X) a precursor for ozone in the Part C regulations found at 40 CFR 51.166 and in 40 CFR 52.21. EPA has taken separate action on the portions of section 110(a)(2)(C) and (J) for the 1997 8-hour ozone NAAQS as they relate to Delaware's PSD permit program (76 FR 26679).

Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These elements are: (i) Submissions required by section 110(a)(2)(C) to the extent that subsection pertains to a permit program in Part D Title I of the CAA; and (ii) any submissions required by section 110(a)(2)(I), which pertain to the nonattainment planning requirements of Part D Title I of the CAA. This action does not cover these specific elements. This action also does not address the requirements of 110(a)(2)(D)(i) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS or for the 2006 $PM_{2.5}$ NAAQS. A portion of these requirements have been addressed by separate findings issued by EPA (See (70 FR 21147, April 25, 2005); (75 FR 32673, June 9, 2010), and (76 FR 2853, January 18, 2011)). A portion of these requirements are addressed through 110(a)(2) SIP submittals, which EPA will be addressing through separate action.

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to Delaware's section 110(a)(2) infrastructure requirements for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 22, 2011.

W.C. Early,

Acting, Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart I—Delaware

■ 2. In § 52.420, the table in paragraph (e) is amended by adding entries at the end of the table for Delaware's section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS, Section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS, and Section 110(a)(2) Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQS. The amendments read as follows:

§ 52.420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS.	Statewide	12/13/07 9/19/08 9/16/09	8/4/11 [Insert **Federal Register** page number where the document begins]	This action address the following CAA elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) or portions thereof.
Section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS.	Statewide	12/13/07 3/12/08 9/16/09 3/10/10	8/4/11 [Insert **Federal Register** page number where the document begins]	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(ii) (E), (F), (G), (H), (J), (K), (L), and (M) or portions thereof.
Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQS.	Statewide	9/16/09 3/10/10	8/4/11 [Insert **Federal Register** page number where the document begins]	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.

[FR Doc. 2011–19694 Filed 8–3–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0462; FRL–9437–6]

Revision to the California State Implementation Plan; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the South Coast Air Quality Management District portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from polymeric foam manufacturing operations. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA).

DATES: This rule is effective on October 3, 2011 without further notice, unless EPA receives adverse comments by September 6, 2011. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0462, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. E-mail: *steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@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 rule did the State submit?

We are approving South Coast Air Quality Management District (SCAQMD) Rule 1175, adopted on November 5, 2010, and submitted by the California Air Resources Board (CARB) on April 5, 2011. On May 6, 2011, EPA determined that the submittal for Rule 1175 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 this rule?

We approved an earlier version of Rule 1175 into the SIP on August 25, 1994 (see 59 FR 43751). The SCAQMD adopted revisions to the SIP-approved version on September 7, 2007, and CARB submitted them to us on March 7, 2008. We disapproved this version on May 10, 2010 (see 75 FR 25775).

C. What is the purpose of the submitted rule?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. Rule 1175 was designed to control VOC emissions from the manufacturing, processing, and storage of polymeric foam products. The rule essentially prohibits the use of chlorofluorocarbons, VOC, and methylene chloride in polymeric cellular foam product operations except for expandable polystyrene molding and extrudable polystyrene foam operations. Expandable polystyrene molding and extrudable polystyrene foam operations are required to demonstrate that emissions do not exceed 2.4 pounds of VOC per 100 pounds of raw materials processed, or to install an approved emission control system. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and (b)(2)), must not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA (see section 110(l) of the CAA), and must not modify, in a nonattainment area, any SIP-approved control requirement in effect before November 15, 1990 (see section 193 of the CAA). The SCAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 1175 must fulfill RACT as well as CAA section 110(l) requirements.

Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
3. ''Control of VOC Emissions from Polystyrene Foam Manufacturing'' (EPA–450/3–90–020, September 1990).

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and CAA section 110(l). The SIP revision would not interfere with the on-going process for ensuring that requirements for reasonable further progress and attainment of the National Ambient Air Quality Standards are met, and the submitted SIP revision is at least as stringent as the rule previously approved into the SIP.

The previous version of Rule 1175, amended on September 7, 2007, and submitted to EPA on March 7, 2008, was disapproved on May 10, 2010 (75 FR 25775). As discussed in more detail in EPA's TSD associated with that action, EPA disapproved the earlier version because it did not contain adequate provisions to ensure rule enforceability in the following areas:

(1) For sources choosing to comply with the new option for expanded polystyrene block molding operations, the rule needed to require demonstration through source testing that the 93% collection and reduction of emissions is being achieved.

(2) For sources choosing to comply with the new option for expanded polystyrene block molding operations, the rule needed to clarify and identify the operational techniques and parameters needed to achieve 93% control, and include those techniques and parameters in a federally enforceable permit.

(3) For sources with an emission control system designed to meet the 90% collection and 95% destruction requirements, the rule needed to clarify and identify the operational techniques and parameters needed for compliance and include those techniques and parameters in a federally enforceable permit.

The currently submitted version, amended on November 5, 2010, contains added language to require that techniques and parameters related to operation of emission control systems be incorporated in a federally enforceable permit. Source testing requirements were also added. These revisions address the previously identified deficiencies. Additional rule revisions address recommendations to improve the clarity of the rule. We find that the currently submitted version of Rule 1175 fulfills the relevant criteria summarized earlier. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by September 6, 2011, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 3, 2011. This will incorporate the rule into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address 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.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 21, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220, is amended by adding paragraph (c)(388)(i)(A)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(388) * * *

(i) * * *

(A) * * *

(*3*) Rule 1175, ''Control of Emissions from the Manufacture of Polymeric Cellular (Foam) Products,'' amended November 5, 2010.

* * * * *

[FR Doc. 2011–19390 Filed 8–3–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0429; FRL–9444–3]

Revision to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision was proposed in the **Federal Register** on June 8, 2011 and concerns volatile organic compound (VOC) emissions from brandy and wine aging operations. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on September 6, 2011.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0429 for this action. 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 in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports), and some may not be available in either location (*e.g.,* confidential business information (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: Christine Vineyard, EPA Region IX, (415) 947–947–41225, *vineyard.christine@epa.gov.*

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

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I. Proposed Action

On June 8, 2011 (76 FR 33181), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4695	Brandy Aging and Wine Aging Operations	09/17/09	05/17/10

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted that change our assessment that the submitted rule complies with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP.

IV. 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 (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 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.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 18, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(379)(i)(C)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(379) * * *

(i) * * *

(C) * * *

(*2*) Rule 4695, ''Brandy Aging and Wine Aging Operations'' adopted on September 17, 2010.

* * * * *

[FR Doc. 2011–19384 Filed 8–3–11; 8:45 am]

BILLING CODE 6560–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA–2011–0108]

RIN 2127–AK22

Make Inoperative Exemptions; Vehicle Modifications To Accommodate People With Disabilities, Head Restraints

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule updates and expands an existing exemption from certain requirements of our head restraints standard that is available in the context of vehicle modifications to accommodate people with disabilities. The rule facilitates the mobility of drivers and passengers with disabilities by updating the exemption to include the corresponding portions of a new, upgraded version of the standard, the right front passenger seating position, and an exemption for persons with limited ability to support their head.

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

Petitions for Reconsideration: Petitions for reconsideration of this final rule must be received by the agency by September 19, 2011.

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590. The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and follow the online instructions for accessing the docket. You may also visit DOT's Docket Management Facility, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001 for access to the docket.

FOR FURTHER INFORMATION CONTACT: For technical issues: Ms. Gayle Dalrymple, NHTSA Office of Crash Avoidance Standards, NVS–123, telephone (202–366–5559), fax (202–493–2739).

For legal issues: Mr. Jesse Chang, NHTSA Office of Chief Counsel, NCC–112, telephone (202–366–2992), fax (202–366–3820).

The mailing address for these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This final rule amends one of the ''make inoperative exemptions'' found in 49 CFR part 595. Specifically, this final rule amends Subpart C, ''Vehicle Modifications To Accommodate People With Disabilities,'' to update and expand a reference in an exemption relating to our head restraints standard, Federal Motor Vehicle Safety Standard (FMVSS) No. 202. The notice of proposed rulemaking (NPRM), on which this final rule is based, was published in the **Federal Register** (74 FR 67156) on December 18, 2009 (Docket No. NHTSA–2009–0065).

Regulatory Background

The National Traffic and Motor Vehicle Safety Act (49 U.S.C. Chapter 301) (''Safety Act'') and NHTSA's regulations require vehicle manufacturers to certify that their vehicles comply with all applicable Federal motor vehicle safety standards (*see* 49 U.S.C. 30112; 49 CFR part 567). A vehicle manufacturer, distributor, dealer, or repair business generally may not knowingly make inoperative any part of a device or element of design installed in or on a motor vehicle in compliance with an applicable FMVSS (*see* 49 U.S.C. 30122). NHTSA has the authority to issue regulations that exempt regulated entities from the ''make inoperative'' provision (49 U.S.C. 30122(c)). The agency has used that authority to promulgate 49 CFR part 595 subpart C, ''Vehicle Modifications to Accommodate People with Disabilities.''

49 CFR part 595 subpart C sets forth exemptions from the make inoperative provision to permit, under limited circumstances, vehicle modifications that take the vehicles out of compliance with certain FMVSSs when the vehicles are modified to be used by persons with disabilities after the first retail sale of the vehicle for purposes other than resale. The regulation was promulgated to facilitate the modification of motor vehicles so that persons with disabilities can drive or ride in them. The regulation involves information and disclosure requirements and limits the extent of modifications that may be made.

Under the regulation, a motor vehicle repair business that modifies a vehicle to enable a person with a disability to operate or ride as a passenger in the motor vehicle and that avails itself of the exemption provided by 49 CFR part 595 subpart C must register itself with NHTSA. The modifier is exempted from the make inoperative provision of the Safety Act, but only to the extent that the modifications affect the vehicle's compliance with the FMVSSs specified in 49 CFR 595.7(c) and only to the extent specified in § 595.7(c). Modifications that would take the vehicle out of compliance with any other FMVSS, or with an FMVSS listed in § 595.7(c) but in a manner not specified in that paragraph are not exempted by the regulation. The modifier must affix a permanent label to the vehicle identifying itself as the modifier and the vehicle as no longer complying with all FMVSS in effect at original manufacture, and must provide and retain a document listing the FMVSSs with which the vehicle no longer complies and indicating any reduction in the load carrying capacity of the vehicle of more than 100 kilograms (220 pounds).

Upgraded Head Restraint Standard and the Exemption in Part 595 Subpart C

Before today's final rule, 49 CFR part 595 subpart C allowed two exemptions from FMVSS No. 202. Under 49 CFR 595.7(c)(8), modifiers were exempted from the entirety of FMVSS No. 202 in any situation where the driver or the front right passenger is seated in a wheelchair and no seat is supplied with the vehicle. Under 49 CFR 595.7(c)(9), modifiers were only exempted from the driver seat (and not passenger seat) head restraint height and width requirements found in paragraphs S4.3(b)(1)–(2) in order to accommodate rearward visibility for drivers who cannot easily turn their head due to a disability.

However, in 2004, this agency published a final rule that made two changes to our head restraints standard which affect the make inoperative exemptions in § 595.7(c)(8)–(9). The 2004 final rule established an upgraded head restraints standard, designated FMVSS No. 202a, to eventually replace FMVSS No. 202, while allowing a several year period during which manufacturers could comply with either standard.[1] Additionally, the 2004 final

[1] 69 FR 74848. We note that the upgraded standard was subsequently amended. FMVSS No.

rule made certain changes to FMVSS No. 202 itself, which included redesignating paragraphs S4.3(b)(1)–(2) (the height and width requirements) as paragraphs S4.2(b)(1)–(2).

Thus, before today's final rule, the make inoperative exemption in § 595.7(c)(8)–(9) did not provide for an exemption to the head restraint requirements for vehicles manufactured and certified under FMVSS No. 202a. Further, § 595.7(c)(9) did not correctly refer to the re-designated height and width requirements of FMVSS No. 202.

Petition for Rulemaking

On January 2, 2007 our agency received a petition for rulemaking from Bruno Independent Living Aids, Inc. (Bruno) requesting that we amend Part 595 to account for FMVSS No. 202a, including adding an exemption for passengers' side head restraint systems. In submitting its petition, Bruno wished to facilitate use of its product, called Turning Automotive Seating (TAS), which provides access to motor vehicles to people with disabilities. Bruno's description of its TAS system in the petition is summarized below:

- The device consists of a rotating, motorized seat, which replaces the OEM seat in a motor vehicle.
- The TAS pivots from the forward-facing driving position to the side-facing entry position and extends outward and lowers to a suitable transfer height, providing the driver and/or passenger easy entry into the vehicle.
- The transfer into the seat takes place while outside the vehicle, and the occupant remains in the seat during the entry process, using OEM seat belts while traveling in the vehicle. Exiting the vehicle is accomplished by reversing the process.

Bruno also described another TAS option that has a mobility base. This system converts the automotive seat into a wheelchair, eliminating the need for transferring from the seat altogether. Bruno states that TAS systems provide mobility-impaired persons with safer and easier ways to enter and exit a vehicle.

In its petition, Bruno states that the TAS provides substantial safety benefits. As a basis for this claim, Bruno cites a NHTSA research report published in 1997.[2] In this note, the agency stated that between 1991 and 1995, 7,121 wheelchair users were killed or injured due to any of the following reasons: (1) Improper or no securement, (2) lift malfunction, (3) transferring to or from a motor vehicle, (4) falling on or off the ramp, or (5) a collision between the wheelchair and a motor vehicle.[3] According to Bruno's petition, the TAS will help prevent 74% of those injuries—which includes all injuries except those occurring when a wheelchair is struck by a motor vehicle. Bruno contends that this is possible because the TAS will provide wheelchair users an easy and safe way to enter and exit these vehicles.

Bruno indicated in its petition that the TAS currently complies with FMVSS No. 202. However, the clearance between the top of the head restraint and the door opening can restrict the number of viable vehicle applications. Bruno also stated that the increased head restraint height required by the new FMVSS No. 202a will significantly reduce the number of available vehicle applications.

To facilitate the installation of the TAS on vehicles, Bruno requested that the make inoperative exemptions of 49 CFR part 595 (for persons not riding in a wheelchair) be expanded and updated to cover both driver and passenger side head restraints. Further, Bruno requested that the make inoperative provisions that provide exemptions to portions of FMVSS No. 202 be extended to cover the equivalent portions of FMVSS No. 202a. Additionally, it requested that the exemptions in Part 595 be expanded to cover several aspects of FMVSS No. 202a that are not currently provided for in FMVSS No. 202. Specifically, Bruno requested more broadly that Part 595 be updated to include an exemption for 49 CFR 571.202a S4.2.1 through S4.2.7. These paragraphs encompass requirements on minimum height, width, backsets, gaps, energy absorption, height retention, backset retention, displacement, and strength. Finally, Bruno also noted the error where § 595.7(c)(9) mistakenly refers to S4.3 of FMVSS No. 202, instead of S4.2.

Notice of Proposed Rulemaking

On December 18, 2009, NHTSA published in the **Federal Register** (74 FR 67156) an NPRM to amend Part 595. The agency proposed the exemptions described in the following paragraphs in order to address two different issues: (1) Amending § 595.7(c)(8)–(9) to reflect the changes to FMVSS No. 202 resulting from the 2004 final rule, and (2) the requested expansion of the exemptions in order to accommodate accessibility devices such as Bruno's TAS system.

In regards to the first issue, we proposed to extend the exemption for the entirety of FMVSS No. 202, in situations where the driver or the front right passenger is seated in a wheelchair and no seat is supplied with the vehicle, to also cover the entirety of FMVSS No. 202a under 49 CFR 595.7(c)(8).[4] Additionally, we proposed to exempt driver head restraints from the height and width requirements in S4.3 (for vehicles manufactured before March 14, 2005[5]) and S4.2 (for vehicles manufactured after March 14, 2005) under 49 CFR Part 595.7(c)(9) in order to reflect the re-designation of S4.3 as S4.2 in FMVSS No. 202.[6] Finally, we proposed to extend the exemption for the height and width requirements in FMVSS No. 202 for the driver head restraint to cover the equivalent provisions of FMVSS No. 202a.

In making these proposals, our agency sought to preserve the original exemptions to FMVSS No. 202. The agency recognized in the NPRM that, after the 2004 final rule, modifiers may seek to apply the exemptions in § 595.7(c)(8)–(9) to vehicles certified under either FMVSS No. 202 or the upgraded FMVSS No. 202a (depending on the date of vehicle manufacture). Thus, the agency sought to extend the exemptions that applied to FMVSS No. 202 to the equivalent portions of FMVSS No. 202a and correct the reference to S4.3 (which had been re-designated as S4.2 by the 2004 final rule).

In regards to the second issue, we proposed to extend the exemption from the height requirements (but not the width requirements) of FMVSS No. 202a to cover the front passenger seat head restraint.[7] We recognized in the NPRM that this extension may create some additional degradation of whiplash protection beyond the current exemptions. However, the agency tentatively concluded that the benefits of safer ingress and egress for persons with mobility needs would outweigh the potential drawbacks. In spite of this tentative conclusion, the agency sought to propose the narrowest appropriate exemption in order to appropriately balance the mobility needs of people who must have vehicle modifications to

202a is titled *Head restraints; Mandatory applicability begins on September 1, 2009.* FMVSS No. 202 is titled *Head restraints; Applicable at the manufacturers option until September 1, 2009.*

[2] *Wheelchair Users Injuries and Deaths Associated with Motor Vehicle related Incidents,* September 1997, available at *http://www.nhtsa.dot.gov.*

[3] *Id.,* Table 2.

[4] 74 FR 67156.

[5] March 14, 2005 was the effective date of the 2004 final rule. We proposed to include the reference to S4.3 for vehicles manufactured before March 14, 2005 because those vehicles would have been certified to FMVSS No. 202 as written before it was amended by the 2004 final rule.

[6] 74 FR 67156.

[7] *Id.*

accommodate a disability with the safety benefits of FMVSSs No. 202 and 202a.

Since the exemption sought by the petitioner seemed for the purpose of ensuring that the head restraint on the TAS seat cleared the door frame to provide easy access, we tentatively concluded that the aforementioned exemption only to the height requirements of FMVSSs No. 202 and 202a would be appropriate. Specifically, we were not aware of any rationale that would support extending the exemptions to include the width requirement for the front passenger head restraint or any of the other additional exemptions requested by Bruno.[8] However, we requested comment in the NPRM in regards to whether the additional exemptions requested by Bruno would be relevant to facilitating the mobility needs of persons with disabilities.

Comment

The agency received one comment on the 2009 NPRM. This comment was submitted by Bruno. Bruno stated that a more expansive exemption is required in order to accommodate the functions of a type of TAS system called the Carony Transportation System (Carony). In its comment, Bruno described the Carony system as a TAS seat that has the ability to detach from the vehicle and convert into a wheelchair. Intended to function as a typical wheelchair outside of the vehicle, the seat portion of the wheelchair detaches from the wheelbase and can reattach to the TAS carriage and be repositioned into the vehicle. Bruno contends that this type of seating device can be used to facilitate the positioning needs of the person with a disability (such as high level quadriplegia, cerebral palsy, or hydrocephalus) through the inclusion of positioning belts, posture vests, body supports, lumbar supports, and specialized head positioning devices devised by therapists.

In subsequent conversations with a NHTSA staff member, Bruno further clarified that it is seeking the additional exemptions from FMVSS No. 202a in order to accommodate the needs of persons that have limited or no muscle tone in the neck and do not have the ability to support the head.[9] Bruno asserts that such needs generally arise for persons who use the Carony system and that their needs can require the complete replacement of the head restraint in order to provide head support.

The Final Rule

Based on consideration of the available information, including Bruno's petition and comment, this agency decided to issue this final rule adopting the exemptions as proposed by the NPRM and also further expanding the exemptions to enable modification or replacement of the head restraint of the front passenger seat of a vehicle in order to support or position the passenger's head or neck to accommodate a disability.

Specifically, this final rule amends § 595.7(c)(8)–(9) to: (1) Expand the exemption from all head restraint requirements in situations where a wheelchair is used in place of a vehicle seat, (2) correctly refer to the re-designated S4.2 in FMVSS No. 202, (3) extend the height and width exemptions from the driver head restraint requirements in FMVSS No. 202 to include FMVSS No. 202a, and (4) extend the height exemption for the driver head restraint to cover the passenger head restraint in FMVSS 202a. Further, this final rule also extends the exemption to cover S4.2.1 through S4.2.7 of FMVSS No. 202a (and the corresponding provisions of FMVSS No. 202) in order to accommodate the neck positioning needs of persons with disabilities.

The agency remains concerned about the potential for degradation in head and neck whiplash protection and the negative effect that an exemption may have on the safety benefits afforded to disabled persons who require modifications to their vehicles. However, we are unaware at this time of any other reasonable alternatives that can appropriately balance the mobility needs of people who must have vehicle modifications to accommodate a disability with the head restraint requirements of FMVSS No. 202 and FMVSS No. 202a.

Updating § 595.7(c)(8) To Include FMVSS No. 202a

Today's final rule adopts the proposal in the NPRM to update § 595.7(c)(8) to include an exemption for the entirety of FMVSS No. 202 and FMVSS No. 202a in situations where a person with a disability requires the use of a wheelchair in place of a vehicle seat in order to drive or ride in a motor vehicle. As stated in the NPRM, the original purpose of this exemption was to enable wheelchair users to make modifications to the motor vehicle so as to use the wheelchair in place of the vehicle seat. In this situation, FMVSS No. 202 would be made inoperative because the vehicle seat—along with the head restraint—has been completely removed. The agency believes that this issue continues with FMVSS No. 202a which requires more stringent requirements for head restraints. For these reasons, the agency expands the coverage of the exemption in § 595.7(c)(8) to include FMVSS No. 202a through today's final rule.

Updating and Extending the Height and Width Exemptions in § 595.7(c)(9)

Today's final rule also adopts the proposals in the NPRM to update and expand the exemptions from the height and width requirements for head restraints in FMVSSs No. 202 and 202a. As discussed in the NPRM, the original exemption in § 595.7(c)(9) was established in order to accommodate drivers with a limited range of motion turning their heads. The agency reasoned that this accommodation was necessary in order to facilitate the ability of these drivers to look backwards when conducting lane change or backing maneuvers. As there is a continuing need to accommodate drivers in this manner, we adopt the proposal in the NPRM to extend the height and width exemptions from FMVSS No. 202 to cover the equivalent provision for FMVSS No. 202a.

However, we decline to extend the exemption to cover the width requirements of FMVSS No. 202a for the front passenger seat as Bruno requested in its petition and comments to the NPRM. As the agency desires to grant the narrowest exemption possible to balance both the needs of persons with disabilities and the safety concerns, we decline to extend the width exemption to the front passenger because front passengers are not required to look backwards in the same manner as drivers. In the NPRM, this agency requested comment on whether or not there exists any other reason to expand the width exemption to the front passenger seat. Since this agency did not receive any comments that provided a rationale for extending the width requirement exemption to the front passenger seat, this final rule adopts the proposal from the NPRM which does not extend the width exemption from FMVSS No. 202a to cover the front passenger seat.

However, the advent of new products such as the TAS system by Bruno prompted this agency to tentatively conclude in the NPRM that an extension of the exemption from the height requirement of FMVSS No. 202a to cover the front passenger seat is necessary to accommodate persons who require a chair such as the TAS system

[8] The NPRM did not propose to include exemptions for paragraphs S4.2.1(a) and S4.2.3 through S4.2.7.

[9] *See* Docket No. NHTSA–2009–0065–0003.

in order to ride in a motor vehicle. Users of the TAS system and similar systems require an exemption to the height requirement in FMVSS No. 202a because a compliant head restraint may be too tall and can prevent the seat portion of the TAS system from clearing the A-pillar of a motor vehicle. Since users of these systems may be drivers or passengers in a motor vehicle, this exemption is required for the front passenger seat as well as the driver seat. As we stated in the NPRM, such seating systems allow persons with disabilities to enter the vehicle in a sitting position, without the need to perform the sometimes dangerous act of ascending or descending into the vehicle. Since this exemption may degrade the whiplash protection afforded to users of the TAS system and other similar systems, we adopt in today's final rule the proposal in the NPRM which extends only the exemption from the height requirements of FMVSS No. 202a to the front passenger seat.

Updating § 595.7(c)(9) To Correctly Refer to S4.2 in FMVSS No. 202

Today's final rule also adopts the proposal in the NPRM to update § 595.7(c)(9) to refer to S4.2 in FMVSS No. 202. As discussed in the NPRM, the agency found that § 595.7(c)(9) did not reflect the 2004 final rule's re-designation of the height and width requirements for the head restraints in FMVSS No. 202 from S4.3 to S4.2. As there is a continuing need to exempt driver seats from the height and width requirements of FMVSS No. 202 for the reasons discussed in previous paragraphs, today's final rule updates § 595.7(c)(9) to correctly refer to S4.2 instead of S4.3. However, for vehicles manufactured before the effective date of the 2004 final rule (March 14, 2005), § 595.7(c)(9) will continue to refer to S4.3.

Expanding the Exemption To Account for Persons Who Require Head Positioning Devices

In the NPRM, the agency contemplated denying Bruno's request for exemptions from S4.2.1 through S4.2.7 of FMVSS No. 202a beyond the aforementioned exemptions, but sought public comment on this issue. Today's final rule grants these exemptions (and their equivalent exemptions in FMVSS No. 202) for the limited circumstance in which the head restraint of the front passenger seat must be modified or completely replaced in order to position or support the head of a person with limited or no ability to support his or her head due to a disability.

After explaining that the agency was not aware of any rationale that would support Bruno's request for additional exemptions, the NPRM requested comment on whether any of the additional exemptions requested by Bruno would be relevant in facilitating mobility for persons with disabilities. In its comments, Bruno stated that it offers a type of TAS system seat called the Carony which functions as a ''typical wheelchair outside the vehicle'' and unlatches from the wheeled base in order to be transferred into the motor vehicle. Bruno further stated in its comments (and clarified through its subsequent conversations) that this system facilitates special positioning needs for their clients with high level quadriplegia, cerebral palsy, or hydrocephalus and can require specialized alterations or replacement head restraints as medically necessary.

Based on this information, we believe that the additional exemptions to S4.2.1 through S4.2.7 requested by Bruno are necessary in order to accommodate the mobility needs of these individuals because these modifications to the head restraint can involve replacing the entire head restraint unit. In addition, NHTSA anticipates that similar exemptions will be required for persons seeking to accommodate similar medical needs for vehicles certified under FMVSS No. 202. Thus, in addition to paragraphs S4.2.1 through S4.2.7 of FMVSS No. 202a, this final rule adds exemption from the entirety of paragraph S4.2 (or paragraph S4.3 for vehicles manufactured before March 14, 2005) of FMVSS No. 202 in situations in which the head restraint must be removed or modified to position or support a passenger's head or neck due to a disability. However, in order to ensure that this exemption does not cover situations beyond the mobility needs of these individuals, this final rule establishes these exemptions for the front passenger seat only and only for situations where the head restraint must be modified or replaced in order to support or position the passenger's head or neck due to a disability.

As this final rule relieves the regulatory burdens on certain entities, the agency believes that an effective date 60 days after publication in the **Federal Register** is appropriate.

Rulemaking Analyses and Notices

Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' It is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). NHTSA has determined that the effects are minor and that a regulatory evaluation is not needed to support the subject rulemaking. Today's final rule imposes no costs on the vehicle modification industry. If there is any effect, it will be a cost savings due to the exemptions.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. Many dealerships and repair businesses would be considered small entities, and some of these businesses modify vehicles to accommodate individuals with disabilities. I certify that this final rule does not have a significant economic impact on a substantial number of small entities. While many dealers and repair businesses are considered small entities, this exemption does not impose any new requirements, but instead provides additional flexibility. Therefore, the impacts on any small businesses affected by this rulemaking would not be substantial.

Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is

mandated beyond the rulemaking process. The agency has concluded that the final rule does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Today's final rule does not impose any additional requirements. Instead, it lessens burdens on the exempted entities.

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision:

> When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.

49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law address the same aspect of performance. However, this provision is not relevant to this final rule as this rule does not involve the establishing, amending or revoking of a Federal motor vehicle safety standard.

The express preemption provision described above is subject to a savings clause under which ''[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.'' 49 U.S.C. 30103(e) Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of NHTSA's rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer—notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to Executive Order 13132, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (e.g., the language and structure of the regulatory text) and objectives of today's rule and finds that this rule merely increases flexibility for certain exempted entities. As such, NHTSA does not intend that this rule preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today's rule. Establishment of a higher standard by means of State tort law would not conflict with the exemption announced here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action. Further, we are unaware of any State law or action that would prohibit the actions that this final rule would permit.

Civil Justice Reform

When promulgating a regulation, agencies are required under Executive Order 12988 to make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of today's final rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. No voluntary standards exist regarding this exemption for modification of vehicles to accommodate persons with disabilities.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This exemption will not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

National Environmental Policy Act

NHTSA has analyzed today's final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of today's final rule will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Today's final rule does not contain new reporting requirements or

requests for information beyond what is already required by 49 CFR Part 595 Subpart C.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please notify the agency in writing.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 595

Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, we amend 49 CFR part 595 to read as follows:

PART 595—MAKE INOPERATIVE EXEMPTIONS

■ 1. The authority citation for part 595 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Amend § 595.7 by revising paragraphs (c)(8) and (c)(9) to read as follows:

§ 595.7 Requirements for vehicle modifications to accommodate people with disabilities.

* * * * *

(c) * * *

(8) 49 CFR 571.202 and 571.202a, in any case in which:

(i) A motor vehicle is modified to be operated by a driver seated in a wheelchair and no other seat is supplied with the vehicle for the driver;

(ii) A motor vehicle is modified to transport a right front passenger seated in a wheelchair and no other right front passenger seat is supplied with the vehicle; or

(9)(i) For vehicles manufactured before March 14, 2005, S4.3(b)(1) and (2) of 49 CFR 571.202, in any case in which the driver's head restraint must be modified to accommodate a driver with a disability.

(ii) For vehicles manufactured on or after March 14, 2005 and certified to FMVSS No. 202, S4.2(b)(1) and (2) of 49 CFR 571.202, in any case in which the head restraint must be modified to accommodate a driver with a disability.

(iii) For vehicles manufactured on or after March 14, 2005 and certified to FMVSS No. 202a, S4.2.1(b) of 49 CFR 571.202a, in any case in which the head restraint must be modified to accommodate a driver or a front outboard passenger with a disability.

(iv) For vehicles manufactured on or after March 14, 2005 and certified to FMVSS No. 202a, S4.2.2 of 49 CFR 571.202a, in any case in which the head restraint must be modified to accommodate a driver with a disability.

(v) For vehicles manufactured before March 14, 2005 and certified to FMVSS No. 202, S4.3 of 49 CFR 571.202, in any case in which the head restraint of the front passenger seat of a vehicle must be modified or replaced by a device to support or position the passenger's head or neck due to a disability.

(vi) For vehicles manufactured on or after March 14, 2005 and certified to FMVSS No. 202, S4.2 of 49 CFR 571.202, in any case in which the head restraint of the front passenger seat of a vehicle must be modified or replaced by a device to support or position the passenger's head or neck due to a disability.

(vii) For vehicles manufactured on or after March 14, 2005 and certified to FMVSS No. 202a, S4.2.1, S4.2.2, S4.2.3, S4.2.4, S4.2.5, S4.2.6, and S4.2.7 of 49 CFR 571.202a, in any case in which the head restraint of the front passenger seat of a vehicle must be modified or replaced by a device to support or position the passenger's head or neck due to a disability.

* * * * *

Issued on: July 29, 2011.

David L. Strickland,

Administrator.

[FR Doc. 2011–19802 Filed 8–3–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–2]

RIN 0648–XA616

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod for American Fisheries Act Catcher/Processors Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by American Fisheries Act (AFA) trawl catcher/processors in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2011 Pacific cod total allowable catch (TAC) specified for AFA trawl catcher-processors in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 1, 2011, through 2400 hrs, A.l.t., December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2011 Pacific cod TAC allocated to AFA trawl catcher/processors in the BSAI is 4,682 metric tons (mt) as established by the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011).

In accordance with § 679.20(d)(1)(i) and (d)(1)(ii)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2011 Pacific cod TAC allocated to AFA trawl catcher/processors in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,440 mt, and is setting aside the remaining 242

mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by AFA trawl catcher/processors in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by AFA trawl catcher/processors in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 29, 2011.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 1, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–19797 Filed 8–1–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 150
Thursday, August 4, 2011

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

[NRC–2009–0079 and NRC–2011–0080]

RIN 3150–AI50

Domestic Licensing of Source Material—Amendments/Integrated Safety Analysis; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of public comment period and public meeting; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice appearing in the **Federal Register** on July 27, 2011 (76 FR 44865), that extended the public comment period and provided a date for a public meeting for the proposed rule, ''Domestic Licensing of Source Material—Amendments/Integrated Safety Analysis.'' This action is necessary to correct the date of the public meeting in the **DATES** section, and to correct the Docket ID information for accessing publicly available documents related to the proposed rule and draft guidance document in the **ADDRESSES** section.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–492–3667 or e-mail: *Cindy.Bladey@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 44865 of **Federal Register** document 2011–14060, published July 27, 2011 (76 FR 44865), in the third column, under the section titled **DATES**, second paragraph, ''August 7, 2011'' is corrected to read ''August 17, 2011.'' Also, on page 44866 of the same document, in the first column, the last bulleted item before the section titled **FOR FURTHER INFORMATION CONTACT** is removed and the following bulleted item is added in its place:

- *Federal Rulemaking Web site:* Public comments and supporting materials related to the proposed rule and proposed draft guidance document can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2009–0079 for the proposed rule and Docket ID NRC–2011–0080 for the proposed draft guidance document.

Dated at Rockville, Maryland, this 29th day of July 2011.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2011–19726 Filed 8–3–11; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. FDA–2011–N–0526]

Effective Date of Requirement for Premarket Approval for a Pacemaker Programmer

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the class III preamendments device pacemaker programmers. The agency is also summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring this device to meet the statute's approval requirements and the benefits to the public from the use of the devices. In addition, FDA is announcing the opportunity for interested persons to request that the agency change the classification of the aforementioned device based on new information. This action implements certain statutory requirements.

DATES: Submit either electronic or written comments by November 2, 2011. Submit requests for a change in classification by August 19, 2011. FDA intends that, if a final rule based on this proposed rule is issued, anyone who wishes to continue to market the device will need to submit a PMA within 90 days of the effective date of the final rule. Please see section XII of this document for the effective date of any final rule that may publish based on this proposal.

ADDRESSES: You may submit comments, identified by [Docket No. FDA–2011–N–0526], by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *Fax:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket Number and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the Comments heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the Search box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Elias Mallis, Food and Drug Administration, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, Rm. 1538, Silver Spring, MD 20993, 301–796–6216.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), the Medical Devices Technical Corrections Act (Pub. L. 108–214), and the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), establish a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices) are automatically classified by section 513(f) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until, the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and 21 CFR part 807.

A preamendments device that has been classified into class III may be marketed by means of premarket notification procedures (510(k) process) without submission of a PMA until FDA issues a final regulation under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) requiring premarket approval. Section 515(b)(1) of the FD&C Act (21 U.S.C. 360e(b)(1)) establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. A preamendments class III device may be commercially distributed without an approved PMA or a notice of completion of a PDP until 90 days after FDA issues a final rule requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the FD&C Act, whichever is later. Also, a preamendments device subject to the rulemaking procedure under section 515(b) of the FD&C Act is not required to have an approved investigational device exemption (IDE) (see 21 CFR part 812) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring the submission of a PMA for the device. At that time, an IDE is required only if a PMA has not been submitted or a PDP completed.

Section 515(b)(2)(A) of the FD&C Act provides that a proceeding to issue a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The regulation; (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device; (3) an opportunity for the submission of comments on the proposed rule and the proposed findings; and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the FD&C Act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice denying the request for change in reclassification or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the FD&C Act. Section 515(b)(3) of the FD&C Act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, issue a final rule to require premarket approval or publish a document terminating the proceeding together with the reasons for such termination. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the FD&C Act, unless the reason for termination is that the device is a banned device under section 516 of the FD&C Act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is finalized, section 501(f)(2)(B) of the FD&C Act (21 U.S.C. 351(f)(2)(B)) requires that a PMA or notice of completion of a PDP for any such device be filed within 90 days of the date of issuance of the final rule or 30 months after the final classification of the device under section 513 of the FD&C Act, whichever is later. If a PMA or notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease since the device would be deemed adulterated under section 501(f) of the FD&C Act.

The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or notice of completion of a PDP is not filed by the later of the two dates, and the device does not comply with IDE regulations, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the FD&C Act, and subject to seizure and condemnation under section 304 of the FD&C Act (21 U.S.C. 334) if its distribution continues. Shipment of devices in interstate commerce will be subject to injunction under section 302 of the FD&C Act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the FD&C Act (21 U.S.C. 333). In the past, FDA has requested that manufacturers take action to prevent the further use of devices for which no PMA or PDP has been filed and may determine that such a request is appropriate for the class III devices that are the subjects of this regulation.

The FD&C Act does not permit an extension of the 90-day period after issuance of a final rule within which an application or a notice is required to be filed. The House Report on the 1976 amendments states that:''[t]he thirty month grace period afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval (H. Rept. 94–853, 94th Cong., 2d sess. 42 (1976)).''

The SMDA added section 515(i) to the FD&C Act requiring FDA to review the

classification of preamendments class III devices for which no final rule requiring the submission of PMAs has been issued, and to determine whether or not each device should be reclassified into class I or class II or remain in class III. For devices remaining in class III, the SMDA directed FDA to develop a schedule for issuing regulations to require premarket approval. The SMDA does not, however, prevent FDA from proceeding immediately to rulemaking under section 515(b) of the FD&C Act on specific devices, in the interest of public health, independent of the procedures of section 515(i). Proceeding directly to rulemaking under section 515(b) of the FD&C Act is consistent with Congress' objective in enacting section 515(i), i.e., that preamendments class III devices for which PMAs have not been previously required either be reclassified to class I or class II or be subject to the requirements of premarket approval. Moreover, in this proposal, interested persons are being offered the opportunity to request reclassification of any of the devices.

II. Dates New Requirements Apply

In accordance with section 515(b) of the FD&C Act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for class III devices within 90 days after issuance of any final rule based on this proposal. An applicant whose device was legally in commercial distribution before May 28, 1976, or whose device has been found to be substantially equivalent to such a device, will be permitted to continue marketing such class III devices during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that under section 515(d)(1)(B)(i) of the FD&C Act, the agency may not enter into an agreement to extend the review period for a PMA beyond 180 days unless the agency finds that ''the continued availability of the device is necessary for the public health.''

FDA intends that under 21 CFR 812.2(d), the preamble to any final rule based on this proposal will state that, as of the date on which the filing of a PMA or a notice of completion of a PDP is required to be filed, the exemptions from the requirements of the IDE regulations for preamendments class III devices in 21 CFR 812.2(c)(1) and (c)(2) will cease to apply to any device that is: (1) Not legally on the market on or before that date, or (2) legally on the market on or before that date but for which a PMA or notice of completion of a PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or notice of completion of a PDP for a class III device is not filed with FDA within 90 days after the date of issuance of any final rule requiring premarket approval for the device, commercial distribution of the device must cease. The device may be distributed for investigational use only if the requirements of the IDE regulations are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued under 21 CFR 812.30. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period after the issuance of the final rule to avoid interrupting investigations.

III. Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the FD&C Act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that this device have an approved PMA or a declared completed PDP, and (2) the benefits to the public from the use of the device.

These findings are based on the reports and recommendations of the advisory committee (panel) for the classification of this device along with information submitted in response to the 515(i) Order (74 FR 16214, April 9, 2009), and any additional information that FDA has encountered. Additional information regarding the risks as well as classification associated with this device type can be found in the following proposed and final rules and notices published in the **Federal Register**: 44 FR 13382, March 9, 1979; 45 FR 7907–7971, February 5, 1980; and 52 FR 17736, May 11, 1987.

IV. Device Subject to This Proposal—Pacemaker Programmers (21 CFR 870.3700)

A. Identification

A pacemaker programmer is a device used to change noninvasively one or more of the electrical operating characteristics of a pacemaker.

B. Summary of Data

The Cardiovascular Device Classification Panel recommended that this device be classified as class III because the panel also recommended that pacemakers be classified into class III. The panel believed that premarket approval was necessary to assure the safety and effectiveness of pacemakers, which are life-supporting devices, and that the same level of control was necessary for both devices because pacemaker programmers must be designed to operate with a specific pacemaker as a system. The panel believed that general controls alone would not provide sufficient control over the performance characteristics of this device, that a performance standard would not provide reasonable assurance of the safety and effectiveness of the device, and, moreover, that there are insufficient data to establish a standard to provide such assurance. Consequently, the panel believed that premarket approval was necessary to assure the safety and effectiveness of the device. FDA continues to agree with the panel's recommendation.

C. Risks to Health

1. Cardiac arrhythmias or electrical shock: Excessive electrical leakage current can disturb the normal electrophysiology of the heart, leading to the onset of cardiac arrhythmias.
2. Improper pacemaker operation: Inadequate design of the device's programming function can cause the pacemaker to lose its sensing or pacing ability, or to pace at an improper rate.
3. Misdiagnosis: Inadequate design of the device's ability to sense pacemaker function can lead to the generation of inaccurate diagnostic data. If inaccurate diagnostic data are used in managing the patient, the physician may prescribe a course of treatment that places the patient at risk unnecessarily.
4. Inability to change pacing therapy: Inadequate matching of the programmer to the pacemaker could lead to a situation where the pacemaker could not be programmed, thereby preventing a needed change in pacing therapy and placing the patient at risk unnecessarily.

V. PMA Requirements

A PMA for this device must include the information required by section 515(c)(1) of the FD&C Act. Such a PMA should also include a detailed discussion of the risks identified previously, as well as a discussion of the effectiveness of the device for which premarket approval is sought. In addition, a PMA must include all data and information on: (1) Any risks known, or that should be reasonably known, to the applicant that have not been identified in this document; (2) the effectiveness of the device that is the subject of the application; and (3) full

reports of all preclinical and clinical information from investigations on the safety and effectiveness of the device for which premarket approval is sought.

A PMA must include valid scientific evidence to demonstrate reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 CFR 860.7(c)(2)). Valid scientific evidence is ''evidence from well-controlled investigations, partially controlled studies, studies and objective trials without matched controls, well-documented case histories conducted by qualified experts, and reports of significant human experience with a marketed device, from which it can fairly and responsibly be concluded by qualified experts that there is reasonable assurance of the safety and effectiveness of a device under its conditions of use. * * * Isolated case reports, random experience, reports lacking sufficient details to permit scientific evaluation, and unsubstantiated opinions are not regarded as valid scientific evidence to show safety or effectiveness.'' (21 CFR 860.7(c)(2))

VI. PDP Requirements

A PDP for this device may be submitted in lieu of a PMA, and must follow the procedures outlined in section 515(f) of the FD&C Act. A PDP must provide: (1) A description of the device, (2) preclinical trial information (if any), (3) clinical trial information (if any), (4) a description of the manufacturing and processing of the device, (5) the labeling of the device, and (6) all other relevant information about the device. In addition, the PDP must include progress reports and records of the trials conducted under the protocol on the safety and effectiveness of the device for which the completed PDP is sought.

VII. Opportunity To Request a Change in Classification

Before requiring the filing of a PMA or notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(i) through (b)(2)(A)(iv) of the FD&C Act and 21 CFR 860.132 to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to the classification. Any proceeding to reclassify the device will be under the authority of section 513(e) of the FD&C Act.

A request for a change in the classification of this device is to be in the form of a reclassification petition containing the information required by § 860.123, including new information relevant to the classification of the device.

The agency advises that to ensure timely filing of any such petition, any request should be submitted to the Division of Dockets Management (see **ADDRESSES**) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification of these devices is submitted, the agency will, within 60 days after receipt of the petition, and after consultation with the appropriate FDA resources, publish an order in the **Federal Register** that either denies the request or gives notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the FD&C Act and 21 CFR 860.130 of the regulations.

VIII. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. There has been only one 510(k) submission assigned to this product code within the past 15 years. Upon review of this record, the agency determined that this was done in error, which has been corrected. Accordingly, since it has been determined that all of the affected devices have fallen into disuse; FDA has concluded that there is little or no interest in marketing these devices in the future. Therefore, the agency proposes to certify that the proposed rule, if issued as a final rule, would not have a significant economic impact on a substantial number of small entities. We specifically request detailed comment regarding the appropriateness of our assumptions regarding the potential economic impact of this proposed rule.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

FDA proposes to certify that this proposed rule, if issued as a final rule, would not have a significant economic impact. We base this determination on an analysis of registration and listing and other data for the device. There have been no 510(k) submissions for pacemaker programmers since 1995 with the exception of one 510(k) submission cleared in 2009 for a Pacing System Analyzer cleared for use with a PMA approved programmer. This device was inappropriately reviewed as a 510(k) submission, because this device should have been regulated under PMA. Programmers currently marketed are capable of programming all implantable cardiac devices including pacemakers and defibrillators. Because these programmers interact with products covered under several class III product codes including adaptive rate pacemakers (LWP); implantable defibrillators (LWS); cardiac resynchronization pacemakers (CRT–P, NKE) and implantable defibrillators (CRT–D, NIK) they have been entirely reviewed within the PMA program for more than a decade.

This information is summarized in table 1 below as follows:

TABLE 1—SUMMARY OF ELECTRONIC REGISTRATION AND LISTING INFORMATION

Device name	Product code	510(k) or PMA?	Last listed	Last marketed	Replaced by approved technology?
Pacemaker Programmer	KRG	510(k)	2011	1990s	Yes

Based on our review of electronic product registration and listing and other data, FDA concludes that there is currently little or no interest in marketing the affected devices and that the proposed rule would not have a significant economic impact. We specifically request detailed comment regarding the appropriateness of our assumptions regarding the potential economic impact of this proposed rule.

X. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that would 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. Accordingly, the agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

XI. Paperwork Reduction Act of 1995

This proposed rule refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 812 have been approved under OMB Control No. 0910–0078; the collections of information in 21 CFR part 807 subpart E have been approved under OMB Control No. 0910–0120; the collections of information in 21 CFR 814 subpart B have been approved under OMB Control No. 0910–0231; and the collections of information under 21 CFR 801 have been approved under OMB Control No. 0910–0485.

XII. Proposed Effective Date

FDA is proposing that any final rule based on this proposal become effective on the date of its publication in the **Federal Register** or at a later date if stated in the final rule.

XIII. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 870 be amended as follows:

PART 870—CARDIOVASCULAR DEVICES

1. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 870.3700 is amended by revising paragraphs (a) and (c) to read as follows:

§ 870.3700 Pacemaker programmers.

(a) *Identification.* A pacemaker programmer is a device used to noninvasively change one or more of the electrical operating characteristics of a pacemaker.

(b) * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before November 2, 2011, for any pacemaker programmer that was in commercial distribution before May 28, 1976, or that has, on or before November 2, 2011, been found to be substantially equivalent to any pacemaker programmer that was in commercial distribution before May 28, 1976. Any other pacemaker programmer shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: July 29, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–19733 Filed 8–3–11; 8:45 am]

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DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Chapter III

Regulatory Review Schedule; Cancellation of Consultation Meetings

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: On November 18, 2010, the National Indian Gaming Commission (NIGC) issued a Notice of Inquiry and Notice of Consultation advising the public that the NIGC was conducting a comprehensive review of its regulations and requesting public comment on the process for conducting the regulatory review. On April 4, 2011, after holding eight consultations and reviewing all comments, NIGC published a Notice of Regulatory Review Schedule setting out a consultation schedule and process for review. The purpose of this document is to cancel four scheduled tribal consultations.

DATES: See **SUPPLEMENTARY INFORMATION** below for dates and locations of cancelled consultations.

FOR FURTHER INFORMATION CONTACT: Lael Echo-Hawk, National Indian Gaming Commission, 1441 L Street NW., Suite 9100 Washington, DC 20005. Telephone: 202–632–7003; e-mail: *reg.review@nigc.gov.*

SUPPLEMENTARY INFORMATION: On November 18, 2010, the National Indian Gaming Commission (NIGC) issued a Notice of Inquiry and Notice of Consultation advising the public that it was conducting a review of its regulations promulgated to implement 25 U.S.C. 2701–2721 of the Indian Gaming Regulatory Act (IGRA) and requesting public comment on the process for conducting the regulatory review. On April 4, 2011, after holding eight consultations and reviewing all

comments, NIGC published a Notice of Regulatory Review Schedule in the **Federal Register** setting out consultation schedules and review processes. (76 FR 18457, April 4, 2011).

The Commission's regulatory review process establishes a tribal consultation schedule with a description of the regulation groups to be covered at each consultation. This document advises the public that the following tribal consultations have been cancelled.

Consultation date	Event	Location	Regulation group(s)
August 25–26, 2011	NIGC Consultation—Southwest	Wild Horse Resort Casino, Scottsdale, AZ.	1, 2, 3, 4, 5
September 19–20, 2011	NIGC Regional Training	Sky Ute Casino Resort Ignacio, CO	3, 4, 5
September 27–28, 2011	NIGC Consultation—Northeast	Turning Stone Casino, NY	3, 5
November 7–12, 2011	USET Annual Meeting	Mississippi Choctaw, MS	3, 4, 5

For additional information on consultation locations and times, please refer to the Web site of the National Indian Gaming Commission, *http://www.nigc.gov.*

Dated: August 1, 2011, Washington, DC.

Tracie L. Stevens,

Chairwoman.

Steffani A. Cochran,

Vice-Chairwoman.

Daniel J. Little,

Associate Commissioner.

[FR Doc. 2011–19808 Filed 8–3–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0623; FRL–9448–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Preconstruction Permitting Requirements for Electric Generating Stations in Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Maryland Department of the Environment (MDE) on May 13, 2011 and July 15, 2011. This SIP revision revises and supplements the preconstruction permitting requirements for electric generating stations that are required to receive a Certificate of Public Convenience and Necessity (CPCN) from the Maryland Public Service Commission (PSC) before commencing construction. The SIP revision also requires electric generating stations to obtain a preconstruction permit from the MDE when a CPCN is not required under the PSC regulations and statutes. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 6, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0623 by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *E-mail: cox.kathleen@epa.gov.*
3. *Mail:* EPA–R03–OAR–2011–0623, Ms. Kathleen Cox, Associate Director, Office of Permits and Air Toxics, 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
4. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0623. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: David Talley at 215–814–2117, or by e-mail at talley.david@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. EPA is proposing approval of this SIP revision because it corrects the deficiencies in the Maryland SIP and eliminates inconsistencies between State statutory and regulatory requirements for preconstruction permitting for electric generating stations in Maryland. It will also ensure that the SIP is adequate to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable as required by Sections 110(a) and 161 of the CAA and 40 CFR

51.166, and will ensure that the SIP provides for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

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I. Background
II. Summary of SIP Revision
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I. Background

On May 13, 2011, MDE submitted a SIP revision request (#11–01) to EPA. The MDE is the State agency designated by the Governor of the State of Maryland as the official State agency responsible for implementing the CAA. The Maryland PSC is an agent of the State of Maryland and is an independent unit in the Executive Branch of the government of the State of Maryland. The PSC regulates public utilities including generating stations owned by electric companies doing business in Maryland and is empowered by the State of Maryland to issue Certificates of Public Convenience and Necessity (CPCN) for the construction and modification of electric generating stations.

Section 110(a)(2)(C) of the CAA requires the State's SIP to have a program for regulation of construction and modification of sources. This includes the Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) programs as required by Parts C and D of Title I of the CAA to assure that the NAAQS are protected. Electric generating stations in Maryland are required to obtain a CPCN from the PSC prior to construction or modification. We are proposing to approve the May 13, 2011 SIP revision that requires electric generating stations to obtain a CPCN prior to construction. This SIP revision also requires that all of the air quality provisions that would otherwise be incorporated into a permit to construct or an approval issued by MDE must be contained in a CPCN issued by the PSC.

II. Summary of SIP Revision

As provided in Environment Article 2, 2–402(3), Annotated Code of Maryland, electric generating stations that are not required to obtain a CPCN from the PSC for any reason remain subject to MDE's preconstruction permitting requirements. However, the current SIP-approved regulations at COMAR 26.11.02.09 and .10 exempt all electric generating stations constructed or modified by electric generating companies from MDE's permitting regulations. These regulations are inconsistent with the statutory provision in that they do not preserve MDE's permitting authority for electric generating stations that are not required to obtain a CPCN. We are proposing to approve the SIP revision submitted by MDE on May 13, 2011 to include updated provisions at COMAR 26.11.02.09 and .10.

For the first time, MDE is also submitting for the approval into its SIP, Public Utility Companies Article, 7–205, 7–207, 7–207.1 and 7–208, Annotated Code of Maryland as well as the PSC regulations at COMAR 20.79.01.01, .02, .06 and .07, COMAR 20.79.02.01, .02, and .03, and COMAR 20.79.03.01 and .02. The Public Utility Companies Article's provisions and the associated PSC regulations govern more than CAA requirements and air quality issues. Therefore, we are proposing to approve into the SIP only those regulatory and statutory provisions that govern the PSC process which are necessary to implement CAA requirements, and are taking no action on those portions of Maryland's May 13, 2001 submittal which are unrelated to requirements of the CAA The technical support document (TSD) included in the docket for this proposed rulemaking action specifies those provisions of the May 13, 2011 SIP revision request that are being proposed for approval into the SIP. The TSD also specifies those provisions upon which EPA is taking no action.

This SIP revision, when approved, will correct deficiencies within the current Maryland SIP and will allow Maryland's programs for the permitting of electric generating stations to meet the applicable requirements of the CAA and Federal regulations.

As previously stated, the May 13, 2011 SIP revision request includes (among other requirements) Title 20, Subtitle 79, Chapter 01, paragraph .07 Waivers and Modifications and Title 20, Subtitle 79, Chapter 02 paragraph .03 Proceedings on the Application, specifically subparagraph C. Phased Proceedings Requests. On July 15, 2011, Secretary Robert M. Summers of MDE submitted a letter to Shawn M. Garvin, Regional Administrator of EPA Region III to supplement the May 13, 2011 SIP revision request. The July 15, 2011 letter provides assurances that when the PSC implements these regulatory provisions, MDE, pursuant to its authority under the Public Utility Companies Article, Subsection 7–208, paragraph (f), will ensure that no waivers, modifications or phased applications are issued or accepted by the PSC that do not comply with all applicable requirements of the Federal Clean Air Act and Federal regulations. We are proposing to make this letter part of the Maryland SIP.

III. Proposed Action

EPA is proposing to approve the SIP revision request submitted by MDE on May 13, 2011 as supplemented on July 15, 2011, regarding the preconstruction permitting requirements for electric generating stations because it satisfies the applicable provisions of the CAA and associated Federal regulations. We are soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as

appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule for clarifying the statutes and regulations in the Maryland State Implementation Plan for the preconstruction permitting requirements for electric generating stations in Maryland 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.

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

Dated: July 22, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–19799 Filed 8–3–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2011–0499; FRL–9448–3]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for a Specific Source in the State of New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the State Implementation Plan (SIP) for ozone submitted by the State of New Jersey. This SIP revision consists of a source-specific reasonably available control technology (RACT) determination for controlling oxides of nitrogen from the stationary reciprocating, diesel fuel fired, internal combustion engines operated by the Naval Weapons Station Earle located in Colts Neck, New Jersey. This action proposes an approval of the source-specific RACT determination that was made by New Jersey in accordance with the provisions of its regulation to help meet the national ambient air quality standard for ozone. The intended effect of this proposed rule is to approve source-specific emissions limitations required by the Clean Air Act.

DATES: Comments must be received on or before September 6, 2011.

ADDRESSES: Submit your comments, identified by Docket Number EPA–R02–OAR–2011–0499, by one of the following methods:

- *http://*www.regulations.gov: Follow the on-line instructions for submitting comments.
- E-mail: *Werner.Raymond@epa.gov.*
- *Fax:* 212–637–3901.
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket No. EPA–R02–OAR- 2011–0499. 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 or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that 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: Raymond K. Forde, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3716 or *Forde.Raymond@epa.gov.*

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I. EPA's Proposed Action

A. What action is EPA proposing today?

EPA is proposing to approve New Jersey's revision to the ozone State Implementation Plan (SIP) submitted on May 14, 2009. This SIP revision relates to New Jersey's NO_X RACT determination for the Naval Weapons

Station Earle (NWSE) facility located in Colts Neck, New Jersey, Monmouth County. The facility contains two stationary reciprocating, diesel fuel fired, internal combustion engines—one existing and one new engine.

B. Why is EPA proposing this action?

EPA is proposing this action to:

- Give the public the opportunity to submit comments on EPA's proposed action, as discussed in the **DATES** and **ADDRESSES** sections.
- Fulfill New Jersey's and EPA's requirements under the Clean Air Act (Act).
- Make New Jersey's RACT determination federally enforceable.

C. What are the Clean Air Act requirements for NO_X RACT?

The Act requires certain states to develop RACT regulations for stationary sources of NO_X and to provide for the implementation of the required measures as soon as practicable. Under the Act, the definition of a major stationary source is based on the tons per year (tpy) of air pollution a source emits and the quality of the air in the area of a source. In ozone transport regions, attainment/unclassified areas as well as marginal and moderate ozone attainment areas, a major stationary source for NO_X is considered to be one which emits or has the potential to emit 100 tpy or more of NO_X and is subject to the requirements of a moderate nonattainment area. New Jersey is within the Northeast ozone transport region, established by section 184(a) of the Act, and has defined a major stationary source of NO_X as a source which has the potential to emit 25 tpy, the level set for severe nonattainment areas. For detailed information on the Act requirements for NO_X RACT, see the Technical Support Document (TSD) prepared in support of this proposed action. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section or it can be viewed at *http://www.regulations.gov.*

D. What is EPA's evaluation of New Jersey's SIP revision?

EPA has determined that New Jersey's proposed SIP revision for the NO_X RACT determination for NWSE's engines is consistent with New Jersey's NO_X RACT regulation and EPA's guidance. EPA's basis for evaluating New Jersey's proposed SIP revision is whether it meets the SIP requirements described in section 110 of the Act. EPA has determined that New Jersey's proposed SIP revision will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act.

After reviewing New Jersey's SIP revision submittal, EPA found it administratively and technically complete. EPA has determined that the NO_X emission limits identified in New Jersey's Conditions of Approval document represent RACT for NWSE's engines. The conditions contained in the Conditions of Approval document currently specify emissions limits, work practice standards, testing, monitoring, and recordkeeping/reporting requirements. These conditions are consistent with the NO_X RACT requirements specified in Subchapter 19 of Chapter 27, Title 7 of the New Jersey Administrative Code and conform to EPA NO_X RACT guidance. More specifically, EPA proposes to approve the current Conditions of Approval document which includes the following, to limit the:

1. NO_X emissions rate from each engine to 11.3 g/bhp-hr,
2. Total NO_X emissions rate while combusting 100% distillate oil to 4.67 tons per year for both engines combined,
3. Combined hours of operation for both engines to less than 675 hours per year,
4. Operation of each engine to 75% load or less, and
5. Annual fuel usage to 20,047.50 gallons per year combined for both engines.

In addition, the Conditions of Approval specify the NO_X emissions limits, combustion process adjustments mentioned above, emission testing, monitoring, recordkeeping and reporting requirements, which States and sources will need to provide for through the Title V permitting process.

II. New Jersey's SIP Revision

A. What are New Jersey's NO_X RACT requirements?

New Jersey's NO_X RACT requirements are contained in Subchapter 19 entitled ''Control of Oxides of Nitrogen'', of Chapter 27, Title 7 of the New Jersey Administrative Code. New Jersey has made numerous revisions to Subchapter 19 since the original SIP submission. The current SIP approved version of Subchapter 19 was approved by EPA on August 3, 2010 (75 FR 45483).

B. What are New Jersey's facility-specific NO_X RACT requirements?

Section 19.13 of New Jersey's regulation establishes a procedure for a case-by-case determination of what represents RACT for a major NO_X facility, item of equipment, or source operation. This procedure applies to facilities considered major for NO_X, which are in one of the following two situations: (1) If the NO_X facility contains any source operation or item of equipment of a category not listed in section 19.2(b) or (c) which has the potential to emit more than 10 tons of NO_X per year, or (2) if the owner or operator of a source operation or item of equipment of a category listed in section 19.2(b) or (c) seeks approval of an alternative maximum allowable emission rate. This proposal relates to a facility in the second situation listed above.

New Jersey's procedure requires either submission of a NO_X control plan, if specific emission limitations do not apply to the specific source, or submission of a request for an alternative maximum allowable emission rate if specific emission limitations do apply to the specific source. In either case, the owners/operators must include a technical and economic feasibility analysis of the possible alternative control measures. Also, in either case, Subchapter 19 requires that New Jersey establish emission limits which rely on a RACT determination specific to the facility. The resulting NO_X control plan or alternative maximum allowable emission rate must be submitted to EPA for approval as a SIP revision.

C. When was New Jersey's RACT determination proposed and adopted?

New Jersey's RACT determination was proposed on January 16, 2009, with the public comment period ending February 16, 2009. New Jersey adopted the RACT determination on May 12, 2009 and supplemented this information on May 21, 2009.

D. When was New Jersey's SIP revision submitted to EPA?

New Jersey's SIP revision was submitted to EPA on May 14, 2009 and supplementary information was provided on May 21, 2009. EPA determined that the submittal was administratively and technically complete on July 13, 2009.

III. Conclusion

EPA is proposing to approve the New Jersey SIP revision for an alternative RACT emission limit determination for the NWSE's engines which includes source-specific NOx emissions limits for the engines, combustion process adjustments, emission testing, monitoring, recordkeeping and reporting requirements. EPA will

consider all comments submitted prior to any final rulemaking action.

IV. 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 (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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: July 26, 2011.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2011–19798 Filed 8–3–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0462; FRL–9437–7]

Revisions to the California State Implementation Plan; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the South Coast Air Quality Management District portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from polymeric cellular foam product manufacturing operations. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA).

DATES: Any comments on this proposal must arrive by September 6, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0462, by one of the following methods:

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

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: South Coast Air Quality Management District Rule 1175, Control of Emissions from the Manufacturing of Polymeric Cellular (Foam) Products. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is

planned. For further information, please see the direct final action.

Dated: June 21, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–19393 Filed 8–3–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[USCG–2011–0328]

RIN 1625–AB70

2012 Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes adjustments to the rates for pilotage services on the Great Lakes, which were last amended in February 2011. The proposed adjustments would establish new base rates and are made in accordance with a required full ratemaking procedure. They result in an average decrease of approximately 4 percent from the rates established in February 2011. This rulemaking promotes the Coast Guard's strategic goal of maritime safety.

DATES: Comments and related material must be submitted on or before October 3, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0328 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Todd Haviland, Management & Program Analyst, Office of Great Lakes Pilotage, Commandant (CG–5522), Coast Guard; telephone 202–372–2037, e-mail *Todd.A.Haviland@uscg.mil,* or fax 202–372–1909. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0328), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–0328'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0328'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

D. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Abbreviations

AMOU American Maritime Officers Union.
CFR Code of Federal Regulations.
CPI Consumer Price Index.
FR **Federal Register**.
NAICS North American Industry Classification System.
NPRM Notice of proposed rulemaking.
OMB Office of Management and Budget.
ROI Return on Investment.
§ Section symbol.
U.S.C. United States Code.

III. Basis and Purpose

The basis of this rulemaking is the Great Lakes Pilotage Act of 1960 (''the Act'') (46 U.S.C. Chapter 93), which requires U.S. vessels operating ''on register''[1] and foreign vessels to use U.S. registered pilots while transiting the U.S. waters of the St. Lawrence Seaway and the Great Lakes system. 46 U.S.C. 9302(a)(1). The Act requires the Secretary of Homeland Security to ''prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.'' Rates must be established or reviewed and adjusted each year, not later than March 1. Base rates must be established by a full ratemaking at least once every 5 years, and in years when base rates are not established they must be reviewed and adjusted if necessary. 46 U.S.C. 9303(f). The Secretary's duties and authority under the Act have been delegated to the Coast Guard. Department of Homeland Security Delegation No. 0170.1, paragraph (92)(f). Coast Guard regulations implementing the Act appear in parts 401 through 404 of Title 46, Code of Federal Regulations (CFR). Procedures for use in establishing base rates appear in 46 CFR part 404, Appendix A, and procedures for annual review and adjustment of existing base rates appear in 46 CFR part 404, Appendix C.

The purpose of this rulemaking is to establish new base pilotage rates, using the 46 CFR part 404, Appendix A, methodology.

IV. Background

The vessels affected by this rulemaking are engaged in foreign trade upon the U.S. waters of the Great Lakes. U.S. and Canadian ''Lakers,''[2] which account for most commercial shipping on the Great Lakes, are not affected. 46 U.S.C. 9302.

The U.S. waters of the Great Lakes and the St. Lawrence Seaway are divided into three pilotage districts. Pilotage in each district is provided by an association certified by the Coast Guard Director of Great Lakes Pilotage to operate a pilotage pool. It is important to note that, while we set rates, we do not control the actual number of pilots an association maintains, so long as the association is able to provide safe, efficient, and reliable pilotage service. We also do not control the actual compensation that pilots receive. The actual compensation is determined by each of the three district associations, which use different compensation practices.

District One, consisting of Areas 1 and 2, includes all U.S. waters of the St. Lawrence River and Lake Ontario. District Two, consisting of Areas 4 and 5, includes all U.S. waters of Lake Erie, the Detroit River, Lake St. Clair, and the St. Clair River. District Three, consisting of Areas 6, 7, and 8, includes all U.S. waters of the St. Mary's River, Sault Ste. Marie Locks, and Lakes Michigan, Huron, and Superior. Area 3 is the Welland Canal, which is serviced exclusively by the Canadian Great Lakes Pilotage Authority and, accordingly, is not included in the U.S. rate structure. Areas 1, 5, and 7 have been designated by Presidential Proclamation, pursuant to the Act, to be waters in which pilots must at all times be fully engaged in the navigation of vessels in their charge. Areas 2, 4, 6, and 8 have not been so designated because they are open bodies of water. While working in those undesignated areas, pilots must only ''be on board and available to direct the navigation of the vessel at the discretion of and subject to the customary authority of the master.'' 46 U.S.C. 9302(a)(1)(B).

This rulemaking is a full ratemaking to establish new base pilotage rates, using the 46 CFR part 404, Appendix A, methodology. Among other things, the Appendix A methodology requires us to review detailed pilot association financial information, and we contract with independent accountants to assist in that review. The last full ratemaking established the current base rates in 2006 (final rule, 71 FR 16501, April 3, 2006). Following the 2006 full ratemaking, and for the first time since 1996 when the 46 CFR part 404 Appendix A and Appendix C methodologies were established, we began a series of five annual Appendix C rate reviews and adjustments, each of which produced overall rate increases. The most recent Appendix C annual review was concluded on February 4, 2011 (76 FR 6351) and adjusts pilotage rates effective August 1, 2011.

We intended to establish new base rates within 5 years of the 2006 full ratemaking, or by March 1, 2011. However, an initial independent accountant's report on pilot association financial information was incomplete and inadequate, and could not be used for ratemaking. The resulting need to contract with a new independent accountant pushed this Appendix A ratemaking back a year, as we previously informed the public in 2009 and 2010 annual review rulemaking documents. 74 FR 56153 at 56154 (October 30, 2009), 75 FR 51191 at 51192 (August 19, 2010). We have now completed our review of the second independent accountant's 2009 pilot financial report. The comments by the pilot associations on that report and the independent accountant's final findings are discussed in our document entitled ''Summary—Independent Accountant's Report on Pilot Association Expenses, with Pilot Association Comments and Accountant's Responses,'' which appears in the docket.

V. Discussion of Proposed Rule

A. Summary

We propose establishing new base pilotage rates in accordance with the methodology outlined in Appendix A to 46 CFR Part 404. The proposed new rates would be established by March 1, 2012 and effective August 1, 2012. They would average approximately 4 percent less, overall, than the February 2011 rate adjustments. Table 1 shows the proposed percent change for the new rates for each area. Rates for cancellation, delay, or interruption in rendering services (46 CFR 401.420) and basic rates and charges for carrying a U.S. pilot beyond the normal change point, or for boarding at other than the normal boarding point (46 CFR 401.428), would also decrease by 4 percent in all areas.

TABLE 1—SUMMARY OF RATE ADJUSTMENTS

If pilotage service is required in:	Then the percent decrease over the current rate is:
Area 1 (Designated waters)	−1.74
Area 2 (Undesignated waters)	−9.09
Area 4 (Undesignated waters)	−3.64
Area 5 (Designated waters)	−2.84

[1] ''On register'' means that the vessel's certificate of documentation has been endorsed with a registry endorsement, and therefore, may be employed in foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef. 46 U.S.C. 12105, 46 CFR 67.17.

[2] A ''Laker'' is a commercial cargo vessel especially designed for and generally limited to use on the Great Lakes.

TABLE 1—SUMMARY OF RATE ADJUSTMENTS—Continued

If pilotage service is required in:	Then the percent decrease over the current rate is:
Area 6 (Undesignated waters)	−3.73
Area 7 (Designated waters)	−3.08
Area 8 (Undesignated waters)	−5.08

B. Discussion of Methodology

Appendix A provides seven steps, with sub-steps, for calculating rate adjustments. The following discussion describes those steps and sub-steps and includes tables showing how we have applied them to the 2009 detailed pilot financial information.

Step 1: Projection of Operating Expenses. In this step, we project the amount of vessel traffic annually. Based upon that projection, we forecast the amount of fair and reasonable operating expenses that pilotage rates should recover.

Step 1.A: Submission of Financial Information. This sub-step requires each pilot association to provide us with detailed financial information in accordance with 46 CFR part 403. The associations complied with this requirement, supplying 2009 financial information in 2010.

Step 1.B: Determination of Recognizable Expenses. This sub-step requires us to determine which reported association expenses will be recognized for ratemaking purposes, using the guidelines shown in 46 CFR 404.5. We contracted with an independent accountant to review the reported expenses and submit findings recommending which reported expenses should be recognized. The accountant also reviewed which reported expenses should be adjusted prior to recognition, or if they should be denied for ratemaking purposes. The independent accountant made preliminary findings; they were sent to the pilot associations, and the pilot associations reviewed and commented on the preliminary findings. Then, the independent accountant made final findings. The Coast Guard Director of Great Lakes Pilotage reviewed and accepted those final findings, resulting in the determination of recognizable expenses. The preliminary findings, the associations' comments on those findings, and the final findings are all discussed in the ''Summary—Independent Accountant's Report on Pilot Association Expenses, with Pilot Association Comments and Accountant's Responses,'' which appears in the docket. Tables 2 through 4 show each association's recognized expenses.

TABLE 2—RECOGNIZED EXPENSES FOR DISTRICT ONE

Reported expenses for 2009	Area 1	Area 2	Total
	St. Lawrence River	Lake Ontario	
Pilot Costs:			
Pilot subsistence/travel	$164,782	$131,436	$296,218
License insurance	$28,428	$18,952	$47,380
Other	$980	$857	$1,837
Pilot Boat and Dispatch Expenses:			
Pilot boat expense	$101,612	$82,506	$184,118
Administrative Expenses:			
Legal	$10,450	$8,685	$19,135
Depreciation/auto leasing/other	$8,917	$7,283	$16,200
Dues and subscriptions	$13,717	$10,678	$24,395
Bad debt expense	$9,302	$1,004	$10,306
Utilities	$478	$346	$824
Accounting/professional fees	$2,182	$1,818	$4,000
Bookkeeping and Administration	$77,730	$66,121	$143,851
Other	$762	$582	$1,344
Total recognizable	$419,340	$330,268	$749,608
Adjustments:			
Other Pilot Costs:			
Pilotage Subsistence/Travel	($4,624)	($3,641)	($8,265)
Payroll taxes	$48,508	$38,204	$86,712
Other	($589)	($463)	($1,052)
Administrative Expenses:			
Legal	($270)	($212)	($482)
Dues and subscriptions	($13,647)	($10,748)	($24,395)
Bad debt expense	($5,765)	($4,540)	($10,305)
Other	($120)	($94)	($214)
Total adjustments	$23,495	$18,504	$41,999
Total Expenses	$442,835	$348,772	$791,607

TABLE 3—RECOGNIZED EXPENSES FOR DISTRICT TWO

Reported expenses for 2009	Area 4	Area 5	Total
	Lake Erie	Southeast Shoal to Port Huron, MI	
Pilot Costs:			

TABLE 3—RECOGNIZED EXPENSES FOR DISTRICT TWO—Continued

Reported expenses for 2009	Area 4	Area 5	Total
	Lake Erie	Southeast Shoal to Port Huron, MI	
Pilot subsistence/travel	$67,580	$101,371	$168,951
License insurance	$6,254	$9,380	$15,634
Payroll taxes	$19,453	$43,770	$63,223
Other	$12,697	$28,662	$41,359
Pilot Boat and Dispatch Expenses:			
Pilot boat expense	$28,026	$179,577	$207,603
Dispatch expense	$12,975	$0	$12,975
Payroll taxes	$0	$7,154	$7,154
Administrative Expenses:			
Legal	$30,052	$45,079	$75,131
Office Rent	$30,275	$45,413	$75,688
Insurance	$10,408	$15,611	$26,019
Employee benefits	$26,483	$39,725	$66,208
Payroll taxes	$3,821	$5,731	$9,552
Other taxes	$9,815	$14,723	$24,538
Depreciation/auto leasing/other	$27,383	$41,075	$68,458
Interest	$16,314	$24,471	$40,785
Dues and subscriptions	$4,450	$6,675	$11,125
Salaries	$12,164	$18,245	$30,409
Accounting/professional fees	$43,071	$64,607	$107,678
Bookkeeping and administration	$9,400	$14,100	$23,500
Other	$9,427	$14,140	$23,567
Total recognizable	$380,048	$719,509	$1,099,557
Adjustments:			
Other Pilot Costs:			
Pilotage Subsistence/Travel	($1,338)	($2,533)	($3,871)
Pilot Boat and Dispatch Expenses:			
Pilot boat expense	$2,907	$5,504	$8,411
Administrative Expenses:			
Legal	($4,915)	($9,305)	($14,220)
Employee benefits	$1,177	$2,228	$3,405
Other taxes	($238)	($450)	($688)
Depreciation/auto leasing/other	$2,398	$4,540	$6,938
Interest	($10,379)	($19,649)	($30,028)
Dues and subscriptions	($3,807)	($7,208)	($11,015)
Salaries	$417	$789	$1,206
Other	($833)	($1,577)	($2,410)
Total adjustments	($14,611)	($27,661)	($42,272)
Total Expenses	$365,437	$691,848	$1,057,285

TABLE 4—RECOGNIZED EXPENSES FOR DISTRICT THREE

Reported expenses for 2009	Area 6	Area 7	Area 8	Total
	Lakes Huron and Michigan	St. Mary's River	Lake Superior	
Pilot Costs:				
Pilot subsistence/travel	$144,081	$75,501	$95,005	$314,587
License insurance	$10,577	$5,543	$6,975	$23,095
Other	$1,025	$537	$675	$2,237
Pilot Boat and Dispatch Expenses:				
Pilot boat costs	$156,031	$81,763	$102,885	$340,679
Dispatch expense	$46,365	$24,296	$30,572	$101,233
Payroll taxes	$5,846	$3,064	$3,855	$12,765
Administrative Expenses:				
Legal	$16,462	$8,626	$10,855	$35,943
Office Rent	$4,534	$2,376	$2,990	$9,900
Insurance	$6,730	$3,527	$4,438	$14,695
Employee benefits	$50,668	$26,551	$33,410	$110,629
Payroll taxes	$4,774	$2,502	$3,148	$10,424
Other taxes	$11,599	$6,078	$7,648	$25,325
Depreciation/auto leasing	$17,396	$9,116	$11,471	$37,983
Interest	$2,417	$1,267	$1,594	$5,278
Dues and subscriptions	$15,594	$8,172	$10,283	$34,049

TABLE 4—RECOGNIZED EXPENSES FOR DISTRICT THREE—Continued

Reported expenses for 2009	Area 6	Area 7	Area 8	Total
	Lakes Huron and Michigan	St. Mary's River	Lake Superior	
Utilities	$15,182	$7,956	$10,011	$33,149
Salaries	$35,110	$18,398	$23,151	$76,659
Accounting/professional fees	$8,588	$4,500	$5,663	$18,751
Other	$6,852	$3,591	$4,518	$14,961
Total Recognizable	$559,831	$293,364	$369,147	$1,222,342
Adjustments:				
Other Pilot Costs:				
Pilotage Subsistence/Travel	($1,102)	($578)	($727)	($2,407)
Payroll taxes	$28,842	$15,114	$19,018	$62,973
Other	($196)	($103)	($129)	($428)
Pilot Boat and Dispatch Expenses:				
Dispatch costs	($3,367)	($1,764)	($2,220)	($7,352)
Administrative Expenses:				
Legal	($1,447)	($758)	($954)	($3,159)
Employee benefits	($1,380)	($723)	($910)	($3,013)
Depreciation/auto leasing/other	$599	$314	$395	$1,307
Dues and subscriptions	($15,594)	($8,172)	($10,283)	($34,049)
Other	($528)	($277)	($348)	($1,153)
Total Adjustments	$5,825	$3,053	$3,841	$12,719
Total Expenses	$565,656	$296,417	$372,988	$1,235,061

Step 1.C: Adjustment for Inflation or Deflation. In this sub-step we project rates of inflation or deflation for the succeeding navigation season. Because we used 2009 financial information, the ''succeeding navigation season'' for this ratemaking is 2010. We based our inflation adjustment of 2 percent on the 2010 change in the Consumer Price Index (CPI) for the North Central Region of the United States, which can be found at: *http://www.bls.gov/xg_shells/ro5xg01.htm.* This adjustment appears in Tables 5 through 7.

TABLE 5—INFLATION ADJUSTMENT, DISTRICT ONE

Reported expenses for 2009		Area 1		Area 2		Total
		St. Lawrence River		Lake Ontario		
Total Expenses		$442,835		$348,772		$791,607
2010 change in the Consumer Price Index (CPI) for the North Central Region of the United States	×	.02	×	.02	×	.02
Inflation Adjustment	=	$8,857	=	$6,975	=	$15,832

TABLE 6—INFLATION ADJUSTMENT, DISTRICT TWO

Reported expenses for 2009		Area 4		Area 5		Total
		Lake Erie		Southeast shoal to Port Huron, MI		
Total Expenses		$365,437		$691,848		$1,057,285
2010 change in the Consumer Price Index (CPI) for the North Central Region of the United States	×	.02	×	.02	×	.02
Inflation Adjustment	=	$7,309	=	$13,837	=	$21,146

TABLE 7—INFLATION ADJUSTMENT, DISTRICT THREE

Reported expenses for 2009		Area 6		Area 7		Area 8		Total
		Lakes Huron and Michigan		St. Mary's River		Lake Superior		
Total Expenses		$565,656		$296,417		$372,988		$1,235,061
2010 change in the Consumer Price Index (CPI) for the North Central Region of the United States	×	.02	×	.02	×	.02	×	.02

TABLE 7—INFLATION ADJUSTMENT, DISTRICT THREE—Continued

Reported expenses for 2009		Area 6 Lakes Huron and Michigan		Area 7 St. Mary's River		Area 8 Lake Superior		Total
Inflation Adjustment	=	$11,313	=	$5,928	=	$7,460	=	$24,701

Step 1.D: Projection of Operating Expenses. The final sub-step of Step 1 is to project the operating expenses for each pilotage area, on the basis of the preceding sub-steps and any other foreseeable circumstances that could affect the accuracy of the projection. Because we are not now aware of any such circumstances, the projected operating expenses are based exclusively on the calculations from sub-steps 1.A through 1.C. Tables 8 through 10 show these projections.

TABLE 8—PROJECTED OPERATING EXPENSES, DISTRICT ONE

Reported expenses for 2009		Area 1 St. Lawrence River		Area 2 Lake Ontario		Total
Total Expenses		$442,835		$348,772		$791,607
Inflation Adjustment 2%	+	$8,857	+	$6,975	+	$15,832
Total projected expenses for 2012 pilotage season	=	$451,691	=	$355,748	=	$807,439

TABLE 9—PROJECTED OPERATING EXPENSES, DISTRICT TWO

Reported Expenses for 2009		Area 4 Lake Erie		Area 5 Southeast Shoal to Port Huron, MI		Total
Total Expenses		$365,437		$691,848		$1,057,285
Inflation Adjustment 2%	+	$7,309	+	$13,837	+	$21,146
Total projected expenses for 2012 pilotage season	=	$372,746	=	$705,685	=	$1,078,431

TABLE 10—PROJECTED OPERATING EXPENSES, DISTRICT THREE

Reported Expenses for 2009		Area 6 Lakes Huron and Michigan		Area 7 St. Mary's River		Area 8 Lake Superior		Total
Total Expenses		$565,656		$296,417		$372,988		$1,235,061
Inflation Adjustment 2%	+	$11,313	+	$5,928	+	$7,460	+	$24,701
Total projected expenses for 2012 pilotage season	=	$576,969	=	$302,345	=	$380,448	=	$1,259,762

Step 2: Projection of Target Pilot Compensation. In Step 2, we project the annual amount of target pilot compensation that pilotage rates should provide in each area. These projections are based on our latest information on the conditions that will prevail in 2012.

Step 2.A: Determination of Target Rate of Compensation. We first explained the methodology we have consistently used for this step in the interim rule for our last Appendix A ratemaking (68 FR 69564 at 69571 col. 3; December 12, 2003), and most recently restated this explanation in our 2011 Appendix C final rule (76 FR 6351 at 6354 col. 3; February 4, 2011). Target pilot compensation for pilots in undesignated waters approximates the average annual compensation for first mates on U.S. Great Lakes vessels. Compensation is determined based on the most current union contracts and includes wages and benefits received by first mates. We calculate target pilot compensation for pilots on designated waters by multiplying the average first mates' wages by 150 percent and then adding the average first mates' benefits.

The most current union contracts available to us are American Maritime Officers Union (AMOU) contracts with three U.S. companies engaged in Great Lakes shipping. There are two separate AMOU contracts available—we refer to them as Agreements A and B and apportion the compensation provided by each agreement according to the percentage of tonnage represented by companies under each agreement. Agreement A applies to vessels operated by Key Lakes, Inc., and Agreement B applies to all vessels operated by American Steamship Co. and Mittal Steel USA, Inc.

Agreements A and B both expire on July 31, 2011 and AMOU does not expect to conclude an agreement on new contracts in time for us to incorporate them in this ratemaking. However, we can project based on past

contract increases and on the current contracts that any new contracts would provide for annual 3 percent wage increases. Under Agreement A, we project that the daily wage rate would increase from $278.73 to $287.09. Under Agreement B, the daily wage rate would increase from $343.59 to $353.90.

Because we are interested in annual compensation, we must convert these daily rates. Agreements A and B both use monthly multipliers to convert daily rates into monthly figures that represent actual working days and vacation, holiday, weekend, or bonus days. The monthly multiplier for Agreement A is 54.5 days and the monthly multiplier for Agreement B is 49.5 days. We multiply the monthly figures by 9, which represents the average length (in months) of the Great Lakes shipping season. Table 11 shows our calculations.

TABLE 11—PROJECTED WAGE COMPONENTS

Monthly component	Pilots on undesignated waters	Pilots on designated waters
Agreement A:		
$287.09 daily rate × 54.5 days	$15,646	$23,470
Monthly total × 9 months = total wages	140,818	211,226
Agreement B:		
$353.90 daily rate × 49.5 days	17,518	26,277
Monthly total × 9 months = total wages	157,662	236,494

Based on increases over the 5-year history of the current contracts, we project that both Agreements A and B will increase their health benefits contributions and leave 401K-plan and pension contributions unchanged. On average, health benefits contribution rates have increased 10 percent annually. Thus, we project that both Agreements A and B will increase this benefit from $97.64 to $107.40 per day. The multiplier that both agreements use to calculate monthly benefits from daily rates, is currently 45.5 days, and we project that will remain unchanged. We use a 9-month multiplier to calculate the annual value of these benefits. Table 12 shows our calculations.

TABLE 12—PROJECTED BENEFITS COMPONENTS

Monthly component	Pilots on undesignated waters	Pilots on designated waters
Agreement A:		
Employer contribution, 401K plan (Monthly wages × 5%)	$782.32	$1,173.48
Pension = $33.35 × 45.5 days	1,517.43	1,517.43
Health = $107.40 × 45.5 days	4,886.70	4,886.70
Monthly total benefits	7,186.45	7,577.61
Monthly total benefits × 9 months	64,678	68,198
Agreement B:		
Employer contribution, 401K plan (Monthly wages × 5%)	875.90	1,313.85
Pension = $43.55 × 45.5 days	1,981.53	1,981.53
Health = $107.40 × 45.5 days	4,886.70	4,886.70
Monthly total benefits	7,744.13	8,182.08
Monthly total benefits × 9 months	69,697	73,639

Table 13 combines our projected wage and benefit components of annual target pilot compensation.

TABLE 13—PROJECTED WAGE AND BENEFITS COMPONENTS, COMBINED

	Pilots on undesignated waters	Pilots on designated waters
Agreement A:		
Wages	$140,818	$211,226
Benefits	64,678	68,198
Total	205,496	279,425
Agreement B:		
Wages	157,662	236,494
Benefits	69,697	73,639
Total	227,360	310,132

Agreements A and B affect three companies. Of the tonnage operating under those three companies, approximately 30 percent operates under Agreement A and approximately 70 percent operates under Agreement B. Table 14 provides detail.

TABLE 14—SHIPPING TONNAGE APPORTIONED BY CONTRACT

Company	Agreement A	Agreement B
American Steamship Company		815,600
Mittal Steel USA, Inc		38,826
Key Lakes, Inc	361,385	
Total tonnage, each agreement	361,385	854,426
Percent tonnage, each agreement	361,395 ÷ 1,215,811 = 29.7238%	854,426 ÷ 1,215,811 = 70.2962%

We use the percentages from Table 14 to apportion the projected wage and benefit components from Table 13. This gives us a single tonnage-weighted set of figures. Table 15 shows our calculations.

TABLE 15—TONNAGE-WEIGHTED WAGE AND BENEFIT COMPONENTS

		Undesignated waters		Designated waters
Agreement A:				
Total wages and benefits		$205,496		$279,425
Percent tonnage	×	29.7238%	×	29.7238%
Total	=	$61,081	=	$83,056
Agreement B:				
Total wages and benefits		$227,360		$310,132
Percent tonnage	×	70.2762%	×	70.2762%
Total	=	$159,780	=	$217,949
Projected Target Rate of Compensation:				
Agreement A total weighted average wages and benefits		$61,081		$83,056
Agreement B total weighted average wages and benefits	+	$159,780	+	$217,949
Total	=	$220,861	=	$301,005

Step 2.B: Determination of Number of Pilots Needed. Subject to adjustment by the Coast Guard Director of Great Lakes Pilotage to ensure uninterrupted service or for other reasonable circumstances, we determine the number of pilots needed for ratemaking purposes in each area by dividing projected bridge hours for each area, by either 1,000 (designated waters) or 1,800 (undesignated waters). We round the mathematical results and express our determination as whole pilots.

''Bridge hours are the number of hours a pilot is aboard a vessel providing pilotage service,'' 46 CFR part 404, Appendix A, Step 2.B(1). For that reason and as we explained most recently in the 2011 ratemaking's final rule, we do not include, and never have included, pilot delay or detention in calculating bridge hours. See 76 FR 6351 at 6352 col. 3 (February 4, 2011). Projected bridge hours are based on the vessel traffic that pilots are expected to serve. We use historical data, input from the pilots and industry, periodicals and trade magazines, and information from conferences to project demand for pilotage services for the coming year.

In our 2011 final rule, we determined that 38 pilots would be needed for ratemaking purposes. We have determined that 38 remains the proper number to use for ratemaking purposes in 2012. This includes 5 pilots in Area 2, where rounding up alone would result in only 4 pilots. For the same reasons we explained at length in the final rule for the 2008 ratemaking, 74 FR 220 at 221–22 (January 5, 2009), we have determined that this adjustment is essential for ensuring uninterrupted pilotage service in Area 2. Table 16 shows the bridge hours we project will be needed for each area and our calculations to determine the number of whole pilots needed for ratemaking purposes.

TABLE 16—NUMBER OF PILOTS NEEDED

Pilotage area	Projected 2012 bridge hours		Divided by 1,000 (designated waters) or 1,800 (undesignated waters)		Calculated value of pilot demand	Pilots needed (total = 38)
AREA 1 (Designated Waters)	5,114	÷	1,000	=	5.114	6
AREA 2 (Undesignated Waters)	5,401	÷	1,800	=	3.001	5
AREA 4 (Undesignated Waters)	6,680	÷	1,800	=	3.711	4
AREA 5 (Designated Waters)	5,002	÷	1,000	=	5.002	6
AREA 6 (Undesignated Waters)	11,187	÷	1,800	=	6.215	7

TABLE 16—NUMBER OF PILOTS NEEDED—Continued

Pilotage area	Projected 2012 bridge hours		Divided by 1,000 (designated waters) or 1,800 (undesignated waters)		Calculated value of pilot demand	Pilots needed (total = 38)
AREA 7 (Designated Waters)	3,160	÷	1,000	=	3.160	4
AREA 8 (Undesignated Waters)	9,353	÷	1,800	=	5.196	6

Step 2.C: Projection of Target Pilot Compensation. In Table 17 we project total target pilot compensation separately for each area, by multiplying the number of pilots needed in each area, as shown in Table 16, by the target pilot compensation shown in Table 15.

TABLE 17—PROJECTION OF TARGET PILOT COMPENSATION BY AREA

Pilotage area	Pilots needed (total = 38)		Target rate of pilot compensation		Projected target pilot compensation
AREA 1 (Designated Waters)	6	×	$301,005	=	$1,806,030
AREA 2 (Undesignated Waters)	5	×	220,861	=	1,104,304
AREA 4 (Undesignated Waters)	4	×	220,861	=	883,443
AREA 5 (Designated Waters)	6	×	301,005	=	1,806,030
AREA 6 (Undesignated Waters)	7	×	220,861	=	1,546,026
AREA 7 (Designated Waters)	4	×	301,005	=	1,204,020
AREA 8 (Undesignated Waters)	6	×	220,861	=	1,325,165

Step 3 and 3.A: Projection of Revenue. In this step, we project the revenue that would be received in 2012 if demand for pilotage services matches the bridge hours we projected in Table 16, and 2011 pilotage rates were left unchanged. Table 18 shows this calculation.

TABLE 18—PROJECTION OF REVENUE BY AREA

Pilotage area	Projected 2012 bridge hours		2011 pilotage rates		Revenue projection for 2012
AREA 1 (Designated Waters)	5,114	×	$451.38	=	$2,308,357
AREA 2 (Undesignated Waters)	5,401	×	298.98	=	1,614,791
AREA 4 (Undesignated Waters)	6,680	×	196.19	=	1,310,549
AREA 5 (Designated Waters)	5,002	×	519.89	=	2,600,490
AREA 6 (Undesignated Waters)	11,187	×	199.12	=	2,227,555
AREA 7 (Designated Waters)	3,160	×	495.54	=	1,565,906
AREA 8 (Undesignated Waters)	9,353	×	193.72	=	1,811,863
Total					13,439,512

Step 4: Calculation of Investment Base. This step calculates each association's investment base, the recognized capital investment in the assets employed by the association required to support pilotage operations. This step uses a formula set out in 46 CFR part 404, Appendix B. The first part of the formula identifies each association's total sources of funds. Tables 19 through 21 follow the formula up to that point.

TABLE 19—TOTAL SOURCES OF FUNDS, DISTRICT ONE

		Area 1		Area 2
Recognized Assets:				
Total Current Assets		$233,316		$174,705
Total Current Liabilities	–	20,091	–	15,044
Current Notes Payable	+	0	+	0
Total Property and Equipment (NET)	+	0	+	0
Land	–	0	–	0
Total Other Assets	+	0	+	0
Total Recognized Assets	=	213,225	=	159,661
Non-Recognized Assets:				
Total Investments and Special Funds	+	0	+	0

TABLE 19—TOTAL SOURCES OF FUNDS, DISTRICT ONE—Continued

		Area 1		Area 2
Total Non-Recognized Assets	=	0	=	0
Total Assets:				
Total Recognized Assets		213,225		159,661
Total Non-Recognized Assets	+	0	+	0
Total Assets	=	213,225	=	159,661
Recognized Sources of Funds:				
Total Stockholder Equity		213,225		159,661
Long-Term Debt	+	0	+	0
Current Notes Payable	+	0	+	0
Advances from Affiliated Companies	+	0	+	0
Long-Term Obligations—Capital Leases	+	0	+	0
Total Recognized Sources	=	213,225	=	159,661
Non-Recognized Sources of Funds:				
Pension Liability		0		0
Other Non-Current Liabilities	+	0	+	0
Deferred Federal Income Taxes	+	0	+	0
Other Deferred Credits	+	0	+	0
Total Non-Recognized Sources	=	0	=	0
Total Sources of Funds:				
Total Recognized Sources		213,225		159,661
Total Non-Recognized Sources	+	0	+	0
Total Sources of Funds	=	213,225	=	159,661

TABLE 20—TOTAL SOURCES OF FUNDS, DISTRICT TWO

		Area 4		Area 5
Recognized Assets:				
Total Current Assets		$228,212		$515,150
Total Current Liabilities	–	214,412	–	484,000
Current Notes Payable	+	23,063	+	52,061
Total Property and Equipment (NET)	+	321,550	+	725,847
Land	–	269,122	–	607,500
Total Other Assets	+	0	+	0
Total Recognized Assets	=	89,290	=	201,559
Non-Recognized Assets:				
Total Investments and Special Funds	+	0	+	0
Total Non-Recognized Assets	=	0	=	0
Total Assets:				
Total Recognized Assets		89,290		201,559
Total Non-Recognized Assets	+	0	+	0
Total Assets	=	89,290	=	201,559
Recognized Sources of Funds:				
Total Stockholder Equity		53,061		119,778
Long-Term Debt	+	282,288	+	637,220
Current Notes Payable	+	23,063	+	52,061
Advances from Affiliated Companies	+	0	+	0
Long-Term Obligations—Capital Leases	+	0	+	0
Total Recognized Sources	=	358,413	=	809,058
Non-Recognized Sources of Funds:				
Pension Liability		0		0
Other Non-Current Liabilities	+	0	+	0
Deferred Federal Income Taxes	+	0	+	0
Other Deferred Credits	+	0	+	0
Total Non-Recognized Sources	=	0	=	0
Total Sources of Funds:				
Total Recognized Sources		358,413		809,058
Total Non-Recognized Sources	+	0	+	0
Total Sources of Funds	=	358,413	=	809,058

TABLE 21—TOTAL SOURCES OF FUNDS, DISTRICT THREE

		Area 6		Area 7		Area 8
Recognized Assets:						
Total Current Assets		$439,799		230,463		289,999
Total Current Liabilities	–	$61,507	–	32,231	–	40,557
Current Notes Payable	+	$13,525	+	7,087	+	8,918
Total Property and Equipment (NET)	+	$42,019	+	22,019	+	27,707
Land	–	$0	–	0	–	0
Total Other Assets	+	$343	+	180	+	227
Total Recognized Assets	=	$434,180	=	227,518	=	286,293
Non-Recognized Assets:						
Total Investments and Special Funds	+	0	+	0	+	0
Total Non-Recognized Assets	=	0	=	0	=	0
Total Assets:						
Total Recognized Assets		434,180		227,518		286,293
Total Non-Recognized Assets	+	0	+	0	+	0
Total Assets	=	434,180	=	227,518	=	286,293
Recognized Sources of Funds:						
Total Stockholder Equity		417,721		218,893		275,441
Long-Term Debt	+	2,934	+	1,537	+	1,935
Current Notes Payable	+	13,525	+	7,087	+	8,918
Advances from Affiliated Companies	+	0	+	0	+	0
Long-Term Obligations—Capital Leases	+	0	+	0	+	0
Total Recognized Sources	=	434,180	=	227,518	=	286,293
Non-Recognized Sources of Funds:						
Pension Liability		0		0		0
Other Non-Current Liabilities	+	0	+	0	+	0
Deferred Federal Income Taxes	+	0	+	0	+	0
Other Deferred Credits	+	0	+	0	+	0
Total Non-Recognized Sources	=	0	=	0	=	0
Total Sources of Funds:						
Total Recognized Sources		434,180		227,518		286,293
Total Non-Recognized Sources	+	0	+	0	+	0
Total Sources of Funds	=	434,180	=	227,518	=	286,293

Tables 19–21 relate to the second part of the formula for calculating the investment base. The second part establishes a ratio between recognized sources of funds and total sources of funds. Since no non-recognized sources of funds (sources we do not recognize as required to support pilotage operations) exist for any of the pilot associations for this year's rulemaking, the ratio between recognized sources of funds and total sources of funds is ''1:1'' (or a multiplier of ''1'') in all cases. Table 22 applies the multiplier of ''1,'' and shows that the investment base for each association equals its total recognized assets. Table 22 also expresses these results by area, because area results will be needed in subsequent steps.

TABLE 22—INVESTMENT BASE BY AREA AND DISTRICT

District	Area	Total recognized assets ($)	Recognized sources of funds ($)	Total sources of funds ($)	Multiplier (ratio of recognized to total sources)	Investment base ($) [1]
One	1	213,225	213,225	213,225	1	213,225
	2	159,661	159,661	159,661	1	159,661
Total						372,886
Two [2]	4	89,290	358,413	358,413	1	89,290
	5	201,559	809,058	809,058	1	201,559
Total						290,849
Three	6	434,180	434,180	434,180	1	434,180
	7	227,518	227,518	227,518	1	227,518
	8	286,293	286,293	286,293	1	286,293
Total						947,991

[1] **Note:** ''Investment base'' = ''Total recognized assets'' × ''Multiplier (ratio of recognized to total sources)''

[2] **Note:** The pilot associations that provide pilotage services in Districts One and Three operate as partnerships. The pilot association that provides pilotage service for District Two operates as a corporation. Per table 20, Total Recognized Assets do not equal Total Sources of Funds due to the level of long-term debt in District Two.

Step 5: Determination of Target Rate of Return. We determine a market-equivalent return on investment (ROI) that will be allowed for the recognized net capital invested in each association by its members. We do not recognize capital that is unnecessary or unreasonable for providing pilotage services. There are no non-recognized investments in this year's calculations. The allowed ROI is based on the preceding year's average annual rate of return for new issues of high-grade corporate securities.

For 2010, the year preceding this year, the allowed ROI was a little more than 4.94 percent, based on the average rate of return that year on Moody's AAA corporate bonds which can be found at: *http://research.stlouisfed.org/fred2/series/AAA/downloaddata?cid=119.*

Step 6: Adjustment Determination. The first sub-step in the adjustment determination requires an initial calculation, applying a formula described in Appendix A. The formula uses the results from Steps 1, 2, 3, and 4 to project the ROI that can be expected in each area, if no further adjustments are made. This calculation is shown in Tables 23 through 25.

TABLE 23—PROJECTED ROI, AREAS IN DISTRICT ONE

		Area 1		Area 2
Revenue (from step 3)	+	$2,308,357	+	$1,614,791
Operating Expenses (from step 1)	–	$451,691	–	$355,748
Pilot Compensation (from step 2)	–	$1,806,030	–	$1,104,304
Operating Profit/(Loss)	=	$50,636	=	$154,739
Interest Expense (from audits)	–	$0	–	$0
Earnings Before Tax	=	$50,636	=	$154,739
Federal Tax Allowance	–	$0	–	$0
Net Income	=	$50,636	=	$154,739
Return Element (Net Income + Interest)		$50,636		$154,739
Investment Base (from step 4)	÷	$213,225	÷	$159,661
Projected Return on Investment	=	0.24	=	0.97

TABLE 24—PROJECTED ROI, AREAS IN DISTRICT TWO

		Area 4		Area 5
Revenue (from step 3)	+	$1,310,549	+	$2,600,490
Operating Expenses (from step 1)	–	$372,746	–	$705,685
Pilot Compensation (from step 2)	–	$883,443	–	$1,806,030
Operating Profit/(Loss)	=	$54,360	=	$88,775
Interest Expense (from audits)	–	$3,302	–	$7,455
Earnings Before Tax	=	$51,058	=	$81,321
Federal Tax Allowance	–	$2,210	–	$4,990
Net Income	=	$48,847	=	$76,331
Return Element (Net Income + Interest)		$52,150		$83,786
Investment Base (from step 4)	÷	$89,290	÷	$201,559
Projected Return on Investment	=	0.58	=	0.42

TABLE 25—PROJECTED ROI, AREAS IN DISTRICT THREE

		Area 6		Area 7		Area 8
Revenue (from step 3)	+	$2,227,555	+	$1,565,906	+	$1,811,863
Operating Expenses (from step 1)	–	$576,969	–	$302,345	–	$380,448
Pilot Compensation (from step 2)	–	$1,546,026	–	$1,204,020	–	$1,325,165
Operating Profit/(Loss)	=	$104,560	=	$59,542	=	$106,250
Interest Expense (from audits)	–	$2,417	–	$1,267	–	$1,594
Earnings Before Tax	=	$102,143	=	$58,275	=	$104,656
Federal Tax Allowance	–	$0	–	$0	–	$0
Net Income	=	$102,143	=	$58,275	=	$104,656
Return Element (Net Income + Interest)		$104,560		$59,542		$106,250
Investment Base (from step 4)	÷	$434,180	÷	$227,518	÷	$286,293
Projected Return on Investment	=	0.24	=	0.26	=	0.37

The second sub-step required for Step 6 compares the results of Tables 23 through 25 with the target ROI (approximately 4.94 percent) we obtained in Step 5 to determine if an adjustment to the base pilotage rate is necessary. Table 26 shows this comparison for each area.

TABLE 26—COMPARISON OF PROJECTED ROI AND TARGET ROI, BY AREA[1]

	Area 1	Area 2	Area 4	Area 5	Area 6	Area 7	Area 8
	St. Lawrence River	Lake Ontario	Lake Erie	Southeast shoal to Port Huron, MI	Lakes Huron and Michigan	St. Mary's River	Lake Superior
Projected return on investment	0.237	0.969	0.584	0.416	0.241	0.262	0.371
Target return on investment	0.049	0.049	0.049	0.049	0.049	0.049	0.049
Difference in return on investment	0.188	0.920	0.535	0.366	0.191	0.212	0.322

[1] **Note:** Decimalization and rounding of the target ROI affects the display in this table but does not affect our calculations, which are based on the actual figure.

Because Table 26 shows a significant difference between the projected and target ROIs, an adjustment to the base pilotage rates is necessary. Step 6 now requires us to determine the pilotage revenues that are needed to make the target return on investment equal to the projected return on investment. This calculation is shown in Table 27. It adjusts the investment base we used in Step 4, multiplying it by the target ROI from Step 5, and applies the result to the operating expenses and target pilot compensation determined in Steps 1 and 2.

TABLE 27—REVENUE NEEDED TO RECOVER TARGET ROI, BY AREA

Pilotage area	Operating expenses (step 1)		Target pilot compensation (step 2)		Investment base (step 4) × 4.94% (target ROI step 5)		Federal tax allowance		Revenue needed
AREA 1 (Designated Waters)	$451,691	+	$1,806,030	+	$10,540	+		=	$2,268,262
AREA 2 (Undesignated Waters)	355,748	+	1,104,304	+	7,893	+		=	1,467,944
AREA 4 (Undesignated Waters)	372,746	+	883,443	+	4,414	+	$2,210	=	1,262,813
AREA 5 (Designated Waters)	705,685	+	1,806,030	+	9,964	+	4,990	=	2,526,668
AREA 6 (Undesignated Waters)	576,969	+	1,546,026	+	21,463	+		=	2,144,458
AREA 7 (Designated Waters)	302,345	+	1,204,020	+	11,247	+		=	1,517,612
AREA 8 (Undesignated Waters)	380,448	+	1,325,165	+	14,152	+		=	1,719,765
Total	3,145,632	+	9,675,016.97	+	79,673	+	7,200	=	12,907,522

The ''revenue needed'' column of Table 27 is less than the revenue we projected in Table 18. For purposes of transparency, we verify Table 27's calculations by rerunning the first part of Step 6, using the ''revenue needed'' from Table 27 instead of the Table 18 revenue projections we used in Tables 23 through 25. Tables 28 through 30 show that attaining the Table 27 ''revenue needed'' is sufficient to recover target ROI.

TABLE 28—BALANCING REVENUE NEEDED AND TARGET ROI, DISTRICT ONE

		Area 1		Area 2
Revenue Needed	+	$2,268,262	+	$1,467,944
Operating Expenses (from step 1)	–	$451,691	–	$355,748
Pilot Compensation (from step 2)	–	$1,806,030	–	$1,104,304
Operating Profit/(Loss)	=	$10,540	=	$7,893
Interest Expense (from audits)	–	$0	–	$0
Earnings Before Tax	=	$10,540	=	$7,893
Federal Tax Allowance	–	$0	–	$0
Net Income	=	$10,540	=	$7,893
Return Element (Net Income + Interest)		$10,540		$7,893
Investment Base (from step 4)	÷	$213,225	÷	$159,661
Return on Investment	=	0.0494	=	0.0494

TABLE 29—BALANCING REVENUE NEEDED AND TARGET ROI, DISTRICT TWO

		Area 4		Area 5
Revenue Needed	+	$1,262,813	+	$2,526,668
Operating Expenses (from step 1)	–	$372,746	–	$705,685
Pilot Compensation (from step 2)	–	$883,443	–	$1,806,030
Operating Profit/(Loss)	=	$6,624	=	$14,953
Interest Expense (from audits)	–	$3,302	–	$7,455

TABLE 29—BALANCING REVENUE NEEDED AND TARGET ROI, DISTRICT TWO—Continued

		Area 4		Area 5
Earnings Before Tax	=	$3,322	=	$7,499
Federal Tax Allowance	–	$2,210	–	$4,990
Net Income	=	$1,112	=	$2,509
Return Element (Net Income + Interest)		$4,414		$9,964
Investment Base (from step 4)	÷	$89,290	÷	$201,559
Return on Investment	=	0.0494	=	0.0494

TABLE 30—BALANCING REVENUE NEEDED AND TARGET ROI, DISTRICT THREE

		Area 6		Area 7		Area 8
Revenue Needed	+	$2,144,458	+	$1,517,612	+	$1,719,765
Operating Expenses (from step 1)	–	$576,969	–	$302,345	–	$380,448
Pilot Compensation (from step 2)	–	$1,546,026	–	$1,204,020	–	$1,325,165
Operating Profit/(Loss)	=	$21,463	=	$11,247	=	$14,152
Interest Expense (from audits)	–	$2,417	–	$1,267	–	$1,594
Earnings Before Tax	=	$19,046	=	$9,980	=	$12,558
Federal Tax Allowance	–	$0	–	$0	–	$0
Net Income	=	$19,046	=	$9,980	=	$12,558
Return Element (Net Income + Interest)		$21,463		$11,247		$14,152
Investment Base (from step 4)	÷	$434,180	÷	$227,518	÷	$286,293
Return on Investment	=	0.0494	=	0.0494	=	0.0494

Step 7: Adjustment of Pilotage Rates. Finally, and subject to negotiation with Canada or adjustment for other supportable circumstances, we calculate rate adjustments by dividing the Step 6 revenue needed (Table 27) by the Step 3 revenue projection (Table 18), to give us a rate multiplier for each area. Tables 31 through 33 show these calculations.

TABLE 31—RATE MULTIPLIER, AREAS IN DISTRICT ONE

Ratemaking projections		Area 1 St. Lawrence River		Area 2 Lake Ontario
Revenue Needed (from step 6)		$2,268,262		$1,467,944
Revenue (from step 3)	÷	$2,308,357	÷	$1,614,791
Rate Multiplier	=	0.983	=	0.909

TABLE 32—RATE MULTIPLIER, AREAS IN DISTRICT TWO

Ratemaking projections		Area 4 Lake Erie		Area 5 Southeast shoal to Port Huron, MI
Revenue Needed (from step 6)		$1,262,813		$2,526,668
Revenue (from step 3)	÷	$1,310,549	÷	$2,600,490
Rate Multiplier	=	0.964	=	0.972

TABLE 33—RATE MULTIPLIER, AREAS IN DISTRICT THREE

Ratemaking projections		Area 6 Lakes Huron and Michigan		Area 7 St. Mary's River		Area 8 Lake Superior
Revenue Needed (from step 6)		$2,144,458		$1,517,612		$1,719,765
Revenue (from step 3)	÷	$2,227,555	÷	$1,565,906	÷	$1,811,863
Rate Multiplier	=	0.963	=	0.969	=	0.949

We calculate a rate multiplier for adjusting the basic rates and charges described in 46 CFR 401.420 and 401.428 and applicable in all Areas. We divide total revenue needed (Step 6, Table 27) by total projected revenue (Step 3 & 3A, Table 18). Our proposed rate changes for 46 CFR 401.420 and 401.428 reflect the multiplication of the rates we established for those sections in our 2011 final rule, by the rate multiplier shown as the result of our calculation in Table 34.

TABLE 34—RATE MULTIPLIER FOR BASIC RATES AND CHARGES IN 46 CFR 401.420 AND 401.428

Ratemaking projections		
Total revenue needed (from step 6)		$12,907,522
Total revenue (from step 3)	÷	$13,439,512
Rate Multiplier	=	0.960

We multiply the existing rates we established in our 2011 final rule by the rate multipliers from Tables 31 through 33, to calculate the Area by Area rate changes we propose for 2012. Tables 35 through 37 show these calculations.

TABLE 35—PROPOSED ADJUSTMENT OF PILOTAGE RATES, AREAS IN DISTRICT ONE

	2011 Rate		Rate multiplier		Adjusted rate for 2012
Area 1—St. Lawrence River:					
Basic Pilotage	$18.36/km, 32.50/mi	×	0.983	=	$18.04/km, 31.94
Each lock transited	407	×	0.983	=	400
Harbor movage	1,333	×	0.983	=	1,310
Minimum basic rate, St. Lawrence River	889	×	0.983	=	874
Maximum rate, through trip	3,901	×	0.983	=	3,833
Area 2—Lake Ontario:					
6 hour period	893	×	0.909	=	812
Docking or undocking	852	×	0.909	=	775

TABLE 36—PROPOSED ADJUSTMENT OF PILOTAGE RATES, AREAS IN DISTRICT TWO

	2011 Rate		Rate multiplier		Adjusted rate for 2012
Area 4—Lake Erie:					
6 hour period	$791	×	0.964	=	$762
Docking or undocking	609	×	0.964	=	587
Any point on Niagara River below Black Rock Lock	1,554	×	0.964	=	1,497
Area 5—Southeast Shoal to Port Huron, MI between any point on or in:					
Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit River	3,102	×	0.972	=	3,014
Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit Pilot Boat	2,389	×	0.972	=	2,321
Port Huron Change Point & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	4,162	×	0.972	=	4,044
Port Huron Change Point & Toledo or any point on Lake Erie W. of Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	4,821	×	0.972	=	4,684
Port Huron Change Point & Detroit River	3,126	×	0.972	=	3,037
Port Huron Change Point & Detroit Pilot Boat	2,432	×	0.972	=	2,363
Port Huron Change Point & St. Clair River	1,729	×	0.972	=	1,680
St. Clair River	1,412	×	0.972	=	1,372
St. Clair River & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	4,162	×	0.972	=	4,044
St. Clair River & Detroit River/Detroit Pilot Boat	3,126	×	0.972	=	3,037
Detroit, Windsor, or Detroit River	1,412	×	0.972	=	1,372
Detroit, Windsor, or Detroit River & Southeast Shoal	2,389	×	0.972	=	2,321
Detroit, Windsor, or Detroit River & Toledo or any point on Lake Erie W. of Southeast Shoal	3,102	×	0.972	=	3,014
Detroit, Windsor, or Detroit River & St. Clair River	3,126	×	0.972	=	3,037
Detroit Pilot Boat & Southeast Shoal	1,729	×	0.972	=	1,680

TABLE 37—PROPOSED ADJUSTMENT OF PILOTAGE RATES, AREAS IN DISTRICT THREE

	2011 Rate		Rate iplier		Adjusted rate for 2012
Area 6—Lakes Huron and Michigan:					
6 hour period	$688	×	0.963	=	$662
Docking or undocking	653	×	0.963	=	629
Area 7—St. Mary's River between any point on or in:					
Gros Cap & De Tour	2,650	×	0.969	=	2,568
Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & De Tour	2,650	×	0.969	=	2,568
Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & Gros Cap	998	×	0.969	=	967
Any point in Sault St. Marie, Ont., except the Algoma Steel Corp. Wharf & De Tour	2,221	×	0.969	=	2,153

TABLE 37—PROPOSED ADJUSTMENT OF PILOTAGE RATES, AREAS IN DISTRICT THREE—Continued

	2011 Rate		Rate iplier		Adjusted rate for 2012
Any point in Sault St. Marie, Ont., except the Algoma Steel Corp. Wharf & Gros Cap	998	×	0.969	=	967
Sault Ste. Marie, MI & De Tour	2,221	×	0.969	=	2,153
Sault Ste. Marie, MI & Gros Cap	998	×	0.969	=	967
Harbor movage	998	×	0.969	=	967
Area 8—Lake Superior:					
6 hour period	608	×	0.949	=	577
	$578	x	0.949	=	$549

VI. Regulatory Analyses

We developed this proposed 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.

A. Executive Order 12866 and Executive Order 13563

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

A draft Regulatory Assessment follows.

The Coast Guard is required to review and adjust pilotage rates on the Great Lakes annually. See Parts III and IV of this preamble for detailed discussions of the Coast Guard's legal basis and purpose for this rulemaking and for background information on Great Lakes pilotage ratemaking. Based on our annual review for this proposed rulemaking, we are adjusting the pilotage rates for the 2012 shipping season to generate sufficient revenue to cover allowable expenses, target pilot compensation, and returns on investment. The rate adjustments in this proposed rule would, if codified, lead to a cost savings in all seven areas and all three districts with an estimated cost savings to shippers of approximately $1 million across all three districts.

The proposed rule would apply the 46 CFR part 404, Appendix A, full ratemaking methodology and decrease Great Lakes pilotage rates, on average, approximately 4 percent overall from the current rates set in the 2011 final rule. The Appendix A methodology is discussed and applied in detail in Part V of this preamble. Among other factors described in Part V, it reflects audited 2009 financial data from the pilotage associations (the most recent year available for auditing), projected association expenses, and regional inflation or deflation. The last full Appendix A ratemaking was concluded in 2006 and used financial data from the 2002 base accounting year. The last annual rate review, conducted under 46 CFR part 404, Appendix C, was completed early in 2011.

In general, we expect an increase in pilotage rates for a certain area to result in additional costs for shippers using pilotage services in that area, while a decrease would result in a cost reduction or savings for shippers in that area. The shippers affected by these rate adjustments are those owners and operators of domestic vessels operating on register (employed in foreign trade) and owners and operators of foreign vessels on a route within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. The Coast Guard's interpretation is that the statute applies only to commercial vessels and not to recreational vessels.

Owners and operators of other vessels that are not affected by this rule, such as recreational boats and vessels only operating within the Great Lakes system, may elect to purchase pilotage services. However, this election is voluntary and does not affect the Coast Guard's calculation of the rate and is not a part of our estimated national cost to shippers. Coast Guard sampling of pilot data suggests there are very few U.S. domestic vessels, without registry and operating only in the Great Lakes that voluntarily purchase pilotage services.

We used 2008–2010 vessel arrival data from the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) system to estimate the average annual number of vessels affected by the rate adjustment to be 204 vessels that journey into the Great Lakes system. These vessels entered the Great Lakes by transiting through or in part of at least one of the three pilotage Districts before leaving the Great Lakes system. These vessels often make more than one distinct stop, docking, loading, and unloading at facilities in Great Lakes ports. Of the total trips for the 204 vessels, there were approximately 319 annual U.S. port arrivals before the vessels left the Great Lakes system, based on 2008–2010 vessel data from MISLE.

The impact of the rate adjustment to shippers is estimated from the District pilotage revenues. These revenues represent the direct and indirect costs (''economic costs'') that shippers must pay for pilotage services. The Coast Guard sets rates so that revenues equal the estimated cost of pilotage.

We estimate the additional impact (costs or savings) of the rate adjustment in this proposed rule to be the difference between the total projected revenue needed to cover costs in 2012 based on the 2011 rate adjustment and the total projected revenue needed to cover costs in 2012 as set forth in this proposed rule. Table 38 details additional costs or savings by area and district.

TABLE 38—RATE ADJUSTMENT AND ADDITIONAL IMPACT OF THE PROPOSED RULE BY AREA AND DISTRICT

[$U.S.; Non-discounted]

	Projected revenue needed in 2011 *	Projected revenue needed in 2012 **	Additional costs or savings of this proposed rule
Area 1	$2,348,516	$2,268,262	($80,255)
Area 2	1,689,246	1,467,944	(221,302)
Total, District One	4,037,763	3,736,206	(301,557)
Area 4	1,436,140	1,262,813	(173,326)
Area 5	2,649,876	2,526,668	(123,208)
Total, District Two	4,086,016	3,789,481	(296,534)
Area 6	2,311,006	2,144,458	(166,548)
Area 7	1,614,974	1,517,612	(97,362)
Area 8	1,904,237	1,719,765	(184,472)
Total, District Three	5,830,218	5,381,835	(448,383)

* These 2011 estimates are detailed in Table 16 of the 2011 final rule (76 FR 6351).
** These 2012 estimates are detailed in Table 27 of this rulemaking.
Some values may not total due to rounding.
''Additional Revenue or Cost of this Rulemaking'' = ''Revenue needed in 2012'' minus; ''Revenue needed in 2011.''

After applying the rate change in this proposed rule, the resulting difference between the projected revenue in 2011 and the projected revenue in 2012 is the annual impact to shippers from this rule. This figure would be equivalent to the total additional payments or savings that shippers would incur for pilotage services from this proposed rule. As discussed earlier, we consider a reduction in payments to be a cost savings.

The impact of the rate adjustment in this proposed rule to shippers varies by area and district. The rate adjustments would lead to a cost savings in all seven areas and all three districts, with affected shippers operating in District One, District Two, and District Three experiencing savings of $302,000, $297,000, and $448,000, respectively (values rounded). To calculate an exact cost or savings per vessel is difficult because of the variation in vessel types, routes, port arrivals, commodity carriage, time of season, conditions during navigation, and preferences for the extent of pilotage services on designated and undesignated portions of the Great Lakes system. Some owners and operators would pay more and some would pay less depending on the distance and port arrivals of their vessels' trips. However, the additional savings reported above does capture the adjustment the shippers would experience as a result of the rate adjustment in this proposed rule. As Table 38 indicates, shippers operating in all areas would experience an annual savings due to this rulemaking. The overall impact of the proposed rule would be a cost savings to shippers of approximately $1 million across all three districts.

The effects of a rate adjustment on costs and savings vary by year and area. A decrease in projected expenses for individual areas or districts is common in past pilotage rate adjustments. Most recently, in the 2011 ratemaking, District Three experienced a decrease in projected expenses due to an adjustment in bridge hours from the 2010 final rule; that led to a savings for that district and yielded a net savings for the system.

This proposed rulemaking would allow the U.S. Coast Guard to meet the statutory requirements to review the rates for pilotage services on the Great Lakes—ensuring proper pilot compensation.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 people.

We expect entities affected by the proposed rule would be classified under the North American Industry Classification System (NAICS) code subsector 483—Water Transportation, which includes the following 6-digit NAICS codes for freight transportation: 483111—Deep Sea Freight Transportation, 483113—Coastal and Great Lakes Freight Transportation, and 483211—Inland Water Freight Transportation. According to the Small Business Administration's definition, a U.S. company with these NAICS codes and employing less than 500 employees is considered a small entity.

For the proposed rule, we reviewed recent company size and ownership data from 2008–2010 Coast Guard MISLE data and business revenue and size data provided by publicly available sources such as MANTA and Reference USA. We found that large, mostly foreign-owned, shipping conglomerates or their subsidiaries owned or operated all vessels engaged in foreign trade on the Great Lakes. We assume that new industry entrants would be comparable in ownership and size to these shippers.

There are three U.S. entities affected by the proposed rule that receive revenue from pilotage services. These are the three pilot associations that provide and manage pilotage services within the Great Lakes districts. Two of the associations operate as partnerships and one operates as a corporation. These associations are designated the same NAICS industry classification and small entity size standards described above, but they have far fewer than 500 employees—approximately 65 total employees combined. We expect no adverse impact to these entities from this proposed rule because all associations receive enough revenue to balance the projected expenses

associated with the projected number of bridge hours and pilots.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies, as well as how and to what degree this proposed rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Todd Haviland, Management & Program Analyst, Office of Great Lakes Pilotage, Commandant (CG–5522), Coast Guard; telephone 202–372–2037, e-mail *Todd.A.Haviland@uscg.mil,* or fax 202–372–1909. 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.

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).

D. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This rule does not change the burden in the collection currently approved by the Office of Management and Budget under OMB Control Number 1625–0086, Great Lakes Pilotage Methodology.

E. 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 proposed rule under that Order and have determined that it does not have implications for federalism because States are expressly prohibited by 46 U.S.C. 9306 from regulating pilotage on the Great Lakes.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

This proposed 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.

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this proposed 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.

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

M. Environment

We have analyzed this proposed 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) of the Instruction. Paragraph 34(a) pertains to minor regulatory changes that are editorial or

procedural in nature. This proposed rule adjusts rates in accordance with applicable statutory and regulatory mandates. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 401 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

2. In § 401.405, revise paragraphs (a) and (b) to read as follows:

§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.

* * * * *

(a) Area 1 (Designated Waters):

Service	St. Lawrence River
Basic Pilotage	$18.04 per kilometer or $31.94 per mile.[1]
Each Lock Transited	$400.[1]
Harbor Movage	$1,310 [1]

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $874, and the maximum basic rate for a through trip is $3,833.

(b) Area 2 (Undesignated Waters):

Service	Lake Ontario
Six-Hour Period	$812
Docking or Undocking	775

3. In § 401.407, revise paragraphs (a) and (b) to read as follows:

§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

* * * * *

(a) Area 4 (Undesignated Waters):

Service	Lake Erie (East of Southeast Shoal)	Buffalo
Six-Hour Period	$762	$762
Docking or Undocking	587	587
Any Point on the Niagara River Below the Black Rock Lock	N/A	1,497

(b) Area 5 (Designated Waters):

Any point on or in	Southeast shoal	Toledo or any point on Lake Erie west of southeast shoal	Detroit River	Detroit pilot boat	St. Clair River
Toledo or any port on Lake Erie west of Southeast Shoal	$2,321	$1,372	$3,014	$2,321	N/A
Port Huron Change Point	[1] 4,044	[1] 4,684	3,037	2,363	1,680
St. Clair River	[1] 4,044	N/A	3,037	3,037	1,372
Detroit or Windsor or the Detroit River	2,321	3,014	1,372	N/A	3,037
Detroit Pilot Boat	1,680	2,321	N/A	N/A	3,037

[1] When pilots are not changed at the Detroit Pilot Boat.

4. In § 401.410, revise paragraphs (a), (b), and (c) to read as follows:

§ 401.410 Basic rates and charges on Lakes Huron, Michigan, and Superior, and the St Mary's River.

* * * * *

(a) Area 6 (Undesignated Waters):

Service	Lakes Huron and Michigan
Six-Hour Period	$662
Docking or Undocking	629

(b) Area 7 (Designated Waters):

Area	De tour	Gros cap	Any harbor
Gros Cap	$2,568	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario	2,568	$967	N/A
Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf	2,153	967	N/A
Sault Ste. Marie, MI	2,153	967	N/A
Harbor Movage	N/A	N/A	$967

(c) Area 8 (Undesignated Waters):

Service	Lake Superior
Six-Hour Period	$577
Docking or Undocking	549

§ 401.420 [Amended]

5. Amend § 401.420 as follows:

a. In paragraph (a), remove the text ''$127'' and add, in its place, the text ''$122''; and remove the text ''$1,989'' and add, in its place, the text ''$1,910'';

b. In paragraph (b), remove the text ''$127'' and add, in its place, the text ''$122''; and remove the text ''$1,989'' and add, in its place, the text ''$1,910''; and

c. In paragraph (c)(1), remove the text ''$751'' and add, in its place, the text ''$721''; and in paragraph (c)(3), remove the text ''$127'' and add, in its place, the text ''$122'', and remove the text ''$1,989'' and add, in its place, the text ''$1,910''.

§ 401.428 [Amended]

6. In § 401.428, remove the text ''$766'' and add, in its place, the text ''$736''.

Dated: July 27, 2011.

Dana A. Goward,

Director Marine Transportation Systems Management, U.S. Coast Guard.

[FR Doc. 2011–19746 Filed 8–3–11; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 9

[PS Docket No. 07–114; GN Docket No. 11–117; WC Docket No. 05–196; FCC 11–107]

Wireless E911 Location Accuracy Requirements; E911 Requirements for IP-Enabled Service Providers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (the Commission) proposes measures to improve 911 availability and location determination for users of interconnected Voice over Internet Protocol (VoIP) services. First, the Commission considers whether to apply our 911 rules to ''outbound-only'' interconnected VoIP services, *i.e.,* services that support outbound calls to the public switched telephone network (PSTN) but not inbound voice calling from the PSTN. These services, which allow consumers to place IP-based outbound calls to any telephone number, have grown increasingly popular in recent years. The Commission asks whether such services are likely to generate consumer expectations that they will support 911 calling and consider whether to extend to outbound-only interconnected VoIP service providers the same 911 requirements that have applied to other interconnected VoIP service providers since 2005.

The Commission seeks comment on whether our proposal to amend the definition of interconnected VoIP service for 911 purposes has any impact on our interpretation of certain statutes that reference the Commission's existing definition of interconnected VoIP service.

DATES: Submit comments on or before October 3, 2011. Submit reply comments on or before November 2, 2011.

ADDRESSES: You may submit comments, identified by PS Docket No. 07–114; GN Docket No. 11–117; WC Docket No. 05–196, by any of the following methods:

- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Patrick Donovan, Attorney Advisor, (202) 418–2413.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Further Notice of Proposed Rulemaking* and *Notice of Proposed Rulemaking* in PS Docket No. 07–114, GN Docket No. 11–117, WC Docket No. 05–196, FCC 11–107, released on July 13, 2011. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, or online at *http://transition.fcc.gov/pshs/services/911-services/.*

I. Second Further Notice of Proposed Rulemaking

A. Applying E911 Rules to Outbound-Only Interconnected VoIP Service Providers

1. *Background.* In 2005, the Commission first asserted regulatory authority over interconnected VoIP service providers for 911 purposes. In the VoIP 911 Order, the Commission defined interconnected VoIP service as a service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the PSTN and to terminate calls to the PSTN. The Commission established requirements for these providers to provide 911 services to their customers. Since the Commission's adoption of these requirements, Congress has codified them and has also given the Commission the discretion to modify them ''from time to time.''

2. In the Location Accuracy NOI, the Commission noted that the Commission's VoIP 911 rules have thus far been limited to providers of interconnected VoIP services as defined above. The Commission also noted, however, that since these rules were adopted, there has been a significant increase in the availability and use of portable VoIP services and applications that do not meet one or more prongs of the interconnected VoIP service definition. In light of the increase in use of these services, the Commission sought comment on several alternatives for expanding the scope of the VoIP 911 rules, including whether 911/E911 obligations should apply to (1) VoIP services that enable users to place outbound calls that terminate on the PSTN but not to receive inbound calls from the PSTN, and (2) VoIP services that enable users to receive inbound calls from the PSTN but not to make outbound calls to the PSTN.

3. *Comments.* In response to the Location Accuracy NOI, a number of public safety entities argue that the Commission should impose 911 obligations on VoIP services that do not meet the current definition of interconnected VoIP service. NENA contends that consumers expect that they will be able to reach 911 from a VoIP telephone. NENA submits that it is ''reasonable for consumers to expect that services which allow outbound calling to the PSTN will properly route calls to 9-1-1.'' Further, Texas 9-1-1 Agencies contends that ''vendors of these services should be required to provide public education materials related to 9-1-1 limitations and work diligently with public safety and access network provider[s] * * * to minimize confusion and potential adverse consequences to their end users.''

4. Some commercial commenters also support the view that changing consumer expectations support extending 911 requirements beyond the scope of VoIP providers covered by the existing rules. AT&T highlights that ''the record suggests that consumers

expect that outbound, residential VoIP services that provide local calling capability will support E911.'' Sprint Nextel notes that ''[m]any * * * new services can be viewed as a form of mobile phone service and, as such, should be treated in a similar way for purposes of 911.'' TCS states that ''[s]ome VoIP services that otherwise fully comply with [the interconnected VoIP service] definition are configured so as to offer only ''one-way'' (*i.e.,* either in-bound or out-bound calling, but not both) voice services to the PSTN.'' TCS characterizes this as a ''loophole'' that encourages ''product definition arbitrage'' and urges ''either Congressional action * * * or clarification from the FCC that such services are included in § 9.3,'' of the Commission's rules. MobileTREC states that ''since a consumer's expectation is that all devices that have dial tone would have 911 service, then any device with dial tone should have a 911 solution, including nomadic or mobile VoIP services such as MagicJack, Skype, Vonage, and Google Voice.'' DASH believes that ''the primary criteria the Commission should apply in determining whether to impose 9-1-1 requirements on new products and services is the reasonable expectations of the subscriber.''

5. The VON Coalition, on the other hand, argues that ''there is a real risk to innovation if the Commission begins to blur the previously established clear lines and expectations created in the definition of interconnected VoIP * * * to trigger 911 obligations on these innovative applications, products and services.'' The VON Coalition also notes that ''certain IP-enabled services and devices, including non-interconnected VoIP services, may not be technically capable of providing E911, because of the difficulties in identifying the locations of users.'' In addition, the VON Coalition argues that ''to the extent E911 or next generation 911 obligations are extended, it should be considered only for those voice applications or offerings that are designed to provide the essential qualities of a telephone service which is the ability to call anyone and receive a call from anyone in the world.''

6. *Discussion.* When the Commission adopted VoIP 911 requirements in 2005, it recognized that the definition of interconnected VoIP service might ''need to expand as new VoIP services increasingly substitute for traditional phone service.'' Since 2005, there has been a dramatic increase in the number and popularity of VoIP services. For example, Skype reported to the Securities and Exchange Commission in 2010 that it had 20 million users in the United States. Skype also stated that it had over 8 million paying users worldwide for its SkypeIn and SkypeOut services and had domestic revenues of over $100 million in 2009. A number of companies, such as Skype and Google Voice offer a variety of ''one-way'' interconnected VoIP services that enable inbound calls from the PSTN or outbound calls to the PSTN, but not both.

7. There are now well over 4.2 million subscribers to one-way interconnected VoIP services, which was the number of two-way interconnected VoIP subscribers in 2005 when the FCC adopted the original interconnected VoIP 911 rules. Moreover, since 2005, a number of hardware products have been introduced that support outbound-only interconnected VoIP service and are indistinguishable from traditional landline or cordless phones in their ability to place outbound calls.

8. Outbound-only interconnected VoIP service providers have also been marketing their services to businesses, which generally require a higher grade of quality and reliability than residential-based voice services. For example, since late 2008, Skype has been marketing several versions of its service to small, medium, and large businesses that use Session Initiation Protocol-based PBX systems. In addition to offering low cost rates for outbound calls, the service allows customers to purchase online numbers to receive inbound calls.

9. *Outbound-Only Interconnected VoIP Service.* In light of increased consumer access to and use of outbound-only interconnected VoIP services, we seek comment on whether to extend our 911 obligations to outbound-only interconnected VoIP service providers to further the achievement of long-established regulatory goals to promote the safety of life and property. We invite comment regarding consumers' expectations for being able to contact emergency personnel when using outbound-only interconnected VoIP services. What is the likelihood that a consumer who needs to place an emergency call and is unfamiliar with an outbound-only interconnected VoIP phone would expect it to have the ability to transmit a 911 call? Are warnings at the point of sale regarding a consumer's inability to reach 911 using a particular outbound-only interconnected VoIP service effective? Is there a consumer expectation with respect to being able to contact emergency personnel when using an inbound-only interconnected VoIP service?

10. If we were to extend 911 obligations to outbound-only interconnected VoIP service providers, should we also revise our definition of interconnected VoIP service? As an initial matter, we seek comment on two potential technical modifications to the definition of interconnected VoIP service. First, we seek comment on whether we should modify the second prong of the existing definition, which requires a broadband voice connection from the user's location. Some interconnected VoIP service providers have asserted that VoIP services that are capable of functioning over a dial-up connection as well as a broadband connection fall outside this definition. Since these services provide virtually the same user experience, regardless of the fact that they are in dial-up mode, we seek comment on whether the second prong should specify an ''Internet connection,'' rather than a broadband connection, as the defining feature.

11. Second, we seek comment on whether we should modify the fourth prong of the existing definition to define connectivity in terms of the ability to connect calls to United States E.164 telephone numbers rather than the PSTN. Such a change could reflect the fact that interconnected VoIP service providers are not limited to using the circuit-switched PSTN to connect or receive telephone calls. Indeed, as networks evolve away from circuit-switched technology, VoIP users are increasingly likely to place and receive telephone calls in which the end-to-end transmission is entirely over IP-based networks. By referencing E.164 telephone numbers and eliminating reference to the PSTN, the definition of interconnected VoIP service might be technically more accurate and avoid potential technical obsolescence.

12. Thus, we seek comment on whether to extend 911 requirements to any service that (1) Enables real-time, two-way voice communications; (2) requires an Internet connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment; and (4) permits users to terminate calls to all or substantially all United States E.164 telephone numbers. Would such a new definition accurately reflect current and evolving consumer expectations and the needs of PSAPs and first responders? In the companion *Notice of Proposed Rulemaking,* we seek comment on whether a new definition, were we to adopt one, should be used for any regulatory purpose other than 911 and on issues related to the changing the definition for 911 purposes only.

13. We also seek comment on the cost and technical feasibility of extending the Commission's existing 911 requirements to outbound-only interconnected VoIP service providers. In this regard, we seek comment on the ability of an outbound-only interconnected VoIP service provider to support callback capability. Does the fact that outbound-only interconnected VoIP service providers have already implemented call-back mechanisms for non-emergency purposes mean that it would be feasible for an outbound-only interconnected VoIP service provider to support callback capability for emergency purposes as well? If the Commission were to extend existing 911 requirements to outbound-only interconnected VoIP service providers, what would be an appropriate timeframe for doing so?

14. Would the costs for outbound-only interconnected VoIP service providers to come into compliance with these requirements be no greater, and potentially be lower, than the costs that two-way interconnected VoIP service providers incurred when the Commission adopted its original VoIP 911 requirements in 2005? Has the development since 2005 of mechanisms to support VoIP 911 and the provision of registered location information led to efficiencies that could reduce the cost for outbound-only interconnected VoIP service providers to come into compliance? Conversely, do outbound-only interconnected VoIP services face any additional costs due to technical challenges in transmitting 911 calls, providing call-back information, or using customer-generated location information when compared to bidirectional services?

15. To establish the baseline from which to calculate benefits and costs of extending 911 service requirements to outbound-only interconnected VoIP service providers, we seek comment on the number of firms and subscribers that would be affected; the number of firms that currently provide 911 service for outbound-only interconnected VoIP calls; the number of households and businesses that use outbound-only interconnected VoIP services, including the number that use outbound-only interconnected VoIP services to the exclusion of two-way voice calling services; the projected growth in use of outbound-only interconnected VoIP services, including any growth in the use of such services to the exclusion of two-way voice calling services; and the number of outbound-only interconnected VoIP 911 calls placed annually to PSAPs.

16. We seek comment on the appropriate manner to calculate the benefits that would result from extending 911 service requirements to outbound-only interconnected VoIP services. These benefits may include decreased response times for emergencies; reductions in property damage, the severity of injuries and loss of life; and the increase in the probability of apprehending criminal suspects. We recognize that these benefits will be tempered when consumers have access to other telecommunications services that already provide 911 service and may increase when outbound-only interconnected VoIP service use grows in the future. Potential benefits may also include less tangible and quantifiable factors, such as an increased sense of security. We seek comment on how these intangibles should be accounted for in any analysis.

17. We seek comment on the costs and technical issues associated with providing 911 services. These costs may include hardware upgrades, software updates, customer service costs, the cost of sending additional 911 calls, decreased innovation and investment in services, market exit, liability concerns, as well as other potential costs not enumerated here. We seek comment on any changes to the proposed rules that could mitigate these cost factors while maintaining the goals of extending access to emergency services to users of outbound-only interconnected VoIP services. We seek comment on how any two-way or outbound-only interconnected VoIP service providers that currently offer 911 service provision these services and ask for a precise quantification of the initial and ongoing costs associated with establishing 911 calling, as well as the number of subscribers that have utilized this feature.

18. We seek further comment on any potential costs that public safety personnel may incur if the Commission were to impose 911 obligations upon outbound-only interconnected VoIP service providers. For instance, assuming that most PSAPs are already capable of receiving 911 calls from two-way VoIP providers, would they incur additional costs were they also to receive 911 calls from outbound-only interconnected VoIP providers? For example, could there be potential costs if emergency response personnel are sent to the wrong location or if PSAPs are forced to deal with an increase in the number of fraudulent 911 calls?

19. Finally, with the introduction of advanced consumer equipment and applications for use on desktop computers and mobile devices, we expect significant innovation to continue in the provision of voice services over IP networks. Thus, we also seek comment on whether there are voice services that are presently being offered that would fall outside the scope of the proposed new definition for outbound-only interconnected VoIP service for which consumers may have a reasonable expectation of being able to contact 911.

B. Automatic Location Requirements for Interconnected VoIP Services

20. *Background.* The Commission's rules currently do not require providers of portable interconnected VoIP service to automatically provide location information to PSAPs without the customer's active cooperation. In the Location Accuracy NPRM, the Commission tentatively concluded that ''to the extent that an interconnected VoIP service may be used in more than one location, providers must employ an automatic location technology that meets the same accuracy standards that apply to those CMRS services.'' The Location Accuracy NOI sought to refresh the record on this tentative conclusion.

21. Specifically, in the Location Accuracy NOI, the Commission sought comment on a range of questions related to automatic provision of location information for interconnected VoIP services. The Commission sought information on what advanced technologies, if any, permit portable interconnected VoIP service providers to provide ALI, whether portable interconnected VoIP service providers had implemented any practices or methods to provide ALI, and if not, what the Commission could do to facilitate the development of techniques for automatically identifying the geographic location of users of this service. Further, the Commission sought comment on whether interconnected VoIP service providers should incorporate the ability to automatically detect a user's Internet connectivity, identify a user's location, and prompt a user to confirm his/her location, prior to enabling calling features. The Commission also sought comment on whether CMRS operators that provide interconnected VoIP services can deliver location information to a PSAP in the same manner as for CMRS, specifically, delivering longitude and latitude coordinates to the PSAP in lieu of a street address.

22. *Comments.* Several commenters argue that the dramatic growth of interconnected VoIP services has created a market segment too large to

remain exempt from E911 location accuracy and that interconnected VoIP service providers as well as broadband providers should work together to address technical solutions for providing automatic location information for VoIP subscribers (including wireless VoIP callers), with the goal of recommending a standard. APCO maintains that ''[c]allers using IP devices expect and should receive the same E9–1–1 service as callers using other types of devices'' and that ''automatic location requirements should therefore be imposed on all devices that the public uses in the same * * * manner as interconnected telephones.'' NENA argues that ''[i]t is entirely reasonable for consumers to expect that services which allow outbound calling to the PSTN will properly route calls to 9–1–1, [and] that this is indeed the expectation held by the overwhelming majority of VoIP users.'' St. Louis County believes these services must provide location and routing information similar to that provided by wireline voice providers.

23. NENA has two primary concerns about the inability of interconnected VoIP service providers to provide ALI for 911 calls. First, although NENA lacks quantitative figures, it has received a ''wealth of anecdotal evidence that PSAPs frequently receive calls routed incorrectly due to a failure of nomadic VoIP systems to update user locations.'' Second, according to NENA, there is evidence that callers sometimes intentionally falsify location information, which is ''impossible to detect and can negatively impact * * * safety and security * * * by diverting resources away from legitimate emergency calls or directing attention away from [a crime] scene [and] when fraudulent calls are detected, it is technically * * * difficult to locate the perpetrator. St. Louis County states that ''while improvements to location accuracy have been [made], there remain inaccuracies and other limiting factors requiring additional time and effort at the point of call taking to adequately determine the location of the reporting party,'' a problem compounded by nomadic callers who ''seldom [are] aware of their geographic location and can offer only observed landmarks thus delaying initial response.''

24. A number of commenters argue that the existing Registered Location requirement, whereby VoIP subscribers register their physical location with their provider, has worked well and should continue to serve as the basis for routing 911 calls. Vonage states that it has worked with public safety to adapt Vonage's 911 service to the equipment or infrastructure on which PSAPs rely, resulting in the delivery of more information to the PSAP than is provided by CMRS carriers. Vonage also asserts that ''public safety has not requested ALI data from Vonage.''

25. While commenters differ on whether ALI requirements for interconnected VoIP service are needed, commenters generally agree that at this time there is no technological or cost-effective means to provide ALI for interconnected VoIP service providers. Commenters also state that there are no industry standards to support ALI for interconnected VoIP calls and that ''the static ALI database in use today is ill-suited to provide location information for any mobile or nomadic communications service.'' According to AT&T, the services encompassed within the Commission's definition of interconnected VoIP service ''operate over a myriad of portable devices and technologies that permit portability, including commercial mobile smartphones running VoIP applications, Wi-Fi enabled VoIP handsets, portable terminal adapters, USB dongles, PC-based softphones [and] VoIP users might access the Internet through traditional wired broadband connections, public or private wireless access points, or commercial mobile broadband networks [such that] each permutation of device and network access may have unique technical and logistical challenges, which makes it infeasible today to rely on a single standard or technology for determining and relaying accurate ALI to PSAPs.'' Likewise, Qwest states that ''[w]ireline networks, *e.g.,* the architecture defining VoIP 911, have no ability to read each other's end-user locations [and] no existing technology, let alone applicable industry-agreed standards, support the automatic delivery of user address information from a VoIP piece of equipment to a database capable of manipulating it and getting it delivered to a PSAP.'' Vonage argues that ''it is particularly critical that the Commission recognize the distinction between fixed, nomadic, and mobile interconnected VoIP service [because] ''[f]or fixed and nomadic services, moving to CMRS location requirements would degrade, rather than improve, the accuracy and reliability of emergency caller location information [and] [f]or VoIP mobile products, moving to CMRS location requirements will introduce duplication, inefficiency and confusion.''

26. Motorola states that ''[i]mplementation of this functionality * * * would require substantial standards development, investment, and infrastructure upgrades by both VoIP service providers and PSAPs.'' Vonage argues that ''existing and proposed automatic location identification technology is significantly less reliable than network end-point location information * * * especially * * * in dense urban environments'' and therefore ''the Commission should not prematurely impose technological requirements and risk likely decreases in public safety and IVS autolocation.''

27. A number of commenters recommend that the Commission encourage industry and public safety entities to work together to develop automatic location identification solutions for VoIP. NENA states that ''[i]n the future, some form of Automatic Location Determination should be mandatory for all portable or nomadic VoIP devices and applications'' and recommends that ''the Commission consult closely with industry to begin fashioning workable 9-1-1 and E9-1-1 rules for PSTN-terminating VoIP providers.''

28. According to AT&T, one possible technological solution that warrants further consideration would be ''to include integrated ALI capabilities in the design of terminal adapters or other user devices employed in the provision of portable VoIP services.'' AT&T states that ''these devices could include A–GPS, passive CMRS wireless receivers, or both, for use in trilateration and identification of the user's location.'' Nevertheless, AT&T cautions that GPS-based automatic location information poses technical limitations, as many interconnected VoIP subscribers use their service indoors or in urban environments, making GPS less effective if satellite transmissions are reflected off buildings and other obstructions or satellite connectivity is lost when VoIP users are deeper indoors. Dash argues that a key element in an ALI solution for interconnected VoIP service is a Location Information Server (LIS) hosted by the service and/or broadband provider and therefore capable of determining, storing, updating, validating and providing location information to first responders. Motorola supports the provision of a validated Master Street Address Guide (MSAG) ''where an interconnected VoIP service connects to a PSAP through an IP/wireline technology, but interconnected VoIP services that connect over wireless networks should not be held to the same location accuracy standard as CMRS networks at this time.''

29. Some commenters believe that the costs associated with the deployment of

VoIP automatic location capability would be very high. In addition, commenters point out that there is no mechanism for cost recovery. Qwest states that ''it is unclear whether cost recovery would come from the Federal government, or whether VoIP service providers would need to look to the states (and their funding mechanisms, such as 911 surcharges and state funds) for recovery of their significant costs * * * [a]nd it is even less clear where non-regulated entities would go for their cost recovery.'' AT&T argues that any solution will require ''substantial up-front investment well before any appreciable results would be seen'' and ''necessitate significant reengineering'' as well as replacement of existing devices with ''significant consumer outreach efforts and additional expense for subscribers and service providers.''

30. Discussion. We agreee with commenters that, given the increasing popularity and adoption of interconnected VoIP services, the provision of accurate location information to PSAPs is becoming essential information to facilitate prompt emergency response and protect life, health and property. Although some commenters point out that the current Registered Location requirement can provide the necessary detailed location of callers, the current regime remains dependent upon subscribers manually and accurately entering their location information and updating it in a timely manner. NENA indicates that a number of VoIP 911 calls have provided erroneous or fraudulent location information to PSAPs, leading to the waste of scarce emergency resources and squandering time that could have been spent responding to other emergencies. We note that proposals related to NG911 would allow the transmission of multiple location objects for a call and thus permit the PSAP to receive the benefit of both the additional information contained in a civic address provided by a user (*e.g.,* an apartment number or street address) and the automatically determined location information that is less subject to data entry errors, lack of timely updates, and possible misrepresentations.

31. In light of the increasing prevalence of VoIP calling, the evolution of consumer expectations, and the limitations of the Registered Location method, we believe it is imperative to continue working towards an automatic location solution for interconnected VoIP calls to 911. At the same time, given the lack of presently available solutions, we are not proposing to adopt specific ALI requirements for interconnected VoIP services at this time but instead seek comment on a potential framework for developing solutions that would enable us to consider implementing ALI for interconnected VoIP service at a later date.

32. We agree with commenters that the provision of ALI in the interconnected VoIP context is particularly challenging because of the increasing prevalence of ''over-the-top'' VoIP service, where the over-the-top VoIP service provider that offers interconnected VoIP service to consumers is a different entity from the broadband provider that provides the underlying Internet connectivity. In this scenario, there will frequently be circumstances where the over-the-top VoIP service provider has a direct connection to the consumer but does not have information about the user's location, while the broadband provider may be aware of the consumer's location based on the access point he or she is using but is not aware of when the consumer is placing an emergency call. In these situations, the most efficient and accurate ALI solution may require that both the broadband provider and the over-the-top VoIP service provider play a part.

33. Given the increasing use of interconnected VoIP services, we seek comment whether the Commission should adopt proposed general location accuracy governing principles that could be applied to interconnected VoIP service providers and over-the-top VoIP service providers but that would allow both types of providers the flexibility to develop technologically efficient and cost-effective solutions. The IETF GEOPRIV working group has defined a suite of protocols that allow broadband providers to provide location information to subscribers' devices through standard protocol interfaces. One governing principle might be that when an interconnected VoIP user accesses the Internet to place an emergency call, the underlying broadband provider must be capable of providing location information regarding the access point being used by the device or application, using industry-standard protocols on commercially reasonable and non-discriminatory terms. For example, a broadband provider might be able to satisfy its obligation by providing the access point location information to: (1) the end user, (2) the over-the-top VoIP service provider, and/or (3) the PSAP. Another general principle might be that when an interconnected VoIP user places an emergency call, the over-the-top VoIP service provider must either provide ALI directly (*e.g.,* using geo-location information generated by the device or application) or must support the provision of access point location information by the broadband provider as described above.

34. We seek comment on whether we should adopt these or any other governing principles. The Commission asks for comment on the appropriate timeframes for their implementation should the Commission decide to adopt them, considering the technological, cost, and operational aspects of the services and devices that the Commission proposes to subject to the new requirements. We also seek comment on the potential costs and benefits of this proposal. We seek comment on the most cost effective solution for providing reasonably accurate location information for interconnected VoIP services. These comments should address both currently available solutions and solutions under development. We seek detailed comment on the relative merits of any potential solutions, including the degree of location accuracy, the cost of implementing the location solution, the degree of coordination required to implement the solution, to which types of VoIP service providers the location systems would apply (*e.g.* interconnected VoIP, outbound-only interconnected VoIP, ''over-the-top'' VoIP, *etc.*) and any other limitations that may be relevant.

35. We seek comment on the potential benefits of extending location accuracy requirements to interconnected VoIP services. Are they similar to those described above for extending 911 requirements to outbound-only interconnected VoIP service, including decreased response time to emergencies; reductions in property damage, the severity of injuries, and loss of life; and an increase in the probability of apprehending criminal suspects? We recognize that the extent of any benefits will be in part a function of the degree to which current location methodologies provide incorrect or imprecise location information and thereby delay emergency personnel from arriving at the scene. To aid in the estimation of these benefits, we seek comment on the extent to which the receipt of imprecise or incorrect location information from interconnected VoIP service providers has resulted in problems for first responders. We seek precise quantification of the extent to which emergency personnel are deployed to incorrect locations and the difference in response times for calls initiated from interconnected VoIP service providers versus wireline and wireless service providers.

36. We invite comment on the costs associated with various VoIP location accuracy technologies and how these costs and solutions vary by type of VoIP service. These costs may include hardware upgrades, software updates, liability concerns, and any transaction costs. With respect to the last component, we understand that an interconnected VoIP service provider has a relationship with the user but does not have information about the user's location, while the network provider may be aware of the device or application's location based on the access point being used but is not aware of when an emergency call is being placed. We seek comment on how a solution to this problem can be found and how transaction costs between interconnected VoIP service providers and network providers can be reduced in order to provide the most cost effective and accurate location information. Finally, to the extent that there are any other costs and benefits that we should consider, we seek comment on the nature and quantification of their magnitude.

37. *Privacy Concerns.* We note that section 222 of the Communications Act requires carriers (including CMRS providers) to safeguard the privacy of customer proprietary network information (CPNI), including location information. Section 222 generally permits carriers to disclose CPNI ''with the approval of the customer.'' The statute provides heightened protection for location information: A customer shall not be considered to have given approval with regard to ''call location information concerning the user of a commercial mobile service * * * or the user of an IP-enabled voice [interconnected VoIP] service'' without ''express prior authorization,'' except that a carrier or interconnected VoIP service provider may provide such information ''to providers of emergency services, and providers of emergency support services, solely for purposes of delivering or assisting in the delivery of emergency services.'' How would section 222 apply to broadband providers if we were to amend our rules to require them to assist interconnected VoIP service providers in providing ALI? Could the Commission use authority ancillary to sections 222 and 615a–1 to require broadband providers to maintain the confidentiality of location information except as consistent with section 222? Could the Commission extend the exception to the prior authorization rule for providers of emergency services to broadband providers? Are there other sources of authority that would enable the Commission to address privacy concerns in this area?

38. *Liability Protection.* In the larger context of our effort to transition to NG911, we have asked whether some type of liability protection might be necessary or appropriate for those involved in the provision of emergency services. Today we revisit this question in the context of interconnected VoIP service providers and our proposal to extend ALI requirements to them and to broadband providers. Would a broadband provider be considered an ''other emergency communications provider'' subject to the liability protections of section 615a(a)? The Commission also seeks comment on the extent to which the Commission can address the liability of device manufacturers that include software capable of supporting ALI for interconnected VoIP service. Are there other sources of authority pursuant to which the Commission could address liability issues for service and equipment providers?

C. Location-Capable Broadband Voice Technologies

39. In the Location Accuracy NOI, we observed that ''many new forms of IP-based voice communications are being offered to consumers via a variety of wireless services, devices, and applications for use on a wide range of new devices.'' These IP-based communications are being carried over CMRS circuit-switched and data networks, as well as on Wi-Fi and other types of wireless connectivity and these communications may not be subject to our existing interconnected VoIP service or CMRS rules and therefore would not be included within the scope of our proposed revision to the interconnected VoIP service definition for 911 purposes. The record indicates that most smartphones, and many other new broadband-enabled mobile devices, now offer one or more location capabilities, such as A–GPS, network-based location determination, and Wi-Fi based positioning. Often, these capabilities work in combination to provide fairly accurate location determination. St. Louis County reports that ''with the advent of the 'smart phone', it has been observed that the location reported by the device is enormously more accurate than that currently provided by Phase II wireless technologies'' and such phones should use their ''inherent geo-based accuracy for reporting the location of the calling party.'' Some commenters argue that an industry advisory group would be able to provide an orderly and standards driven approach to leveraging commercial location-based service for use in providing location information for emergency calls.

40. The introduction of more sophisticated mobile devices has allowed service providers to offer their customers a wide range of commercial location-based services. Such services allow users to navigate by car or on foot, find nearby points of interest such as restaurants or gas stations, tag photos, share their location information with friends, track jogging mileage, obtain coupons from nearby merchants, receive reminders of errands, or play location-based games. The location-based capabilities inherent in the design of these devices and applications could perhaps be leveraged when consumers contact 911 using non-CMRS-based voice services. These location-based services could potentially permit service providers and applications developers to provide PSAPs with more accurate 911 location information. Exploiting commercially available location determination technologies already in devices may offer a more cost efficient method by which to provide critical life saving information to PSAPs. The Commission seeks comment on whether we should encourage mobile service providers to enable the use of commercial location-based services for emergency purposes. We also seek comment on developing operational benchmarks to assist consumers in evaluating the ability of carriers to provide precise location information for emergency purposes based on the location-based capabilities of devices. Should the Commission develop such benchmarks, and if so, what should they be? In addition, the CSRIC should be directed to explore and make recommendations on methodologies for leveraging commercial location-based services for 911 location determination. CSRIC should also suggest whether it is feasible or appropriate for the Commission to adopt operational benchmarks that will allow consumers to evaluate carriers' ability to provide accurate location information. We seek comment on whether the adoption of such benchmarks would be effective in enabling consumers to be better informed about the ability of wireless devices and technologies to provide a PSAP with accurate location information.

41. The Commission also seeks comment on the costs and benefits of the approaches described above. As in our discussion above regarding location accuracy in the interconnected VoIP service context, we seek to encourage the development of cost-effective solutions for location-capable

broadband voice technologies to support the provision of accurate location information to PSAPs and first responders. The Commission seeks comment on both currently available solutions and solutions under development, including the degree of location accuracy provided, the cost of implementing the solution, the degree of coordination required to implement the solution, the types of service, application, and network providers that would be affected, and any other limitations that may be relevant. The Commission also seeks comment on the potential benefits for the public and for public safety in terms of improved access to 911 services, reducing response time to emergencies, and enhancing the protection of life, safety, and property.

D. Improving Indoor Location Accuracy

1. Indoor Location Accuracy Testing

42. *Background.* In the Location Accuracy FNPRM, the Commission sought comment on whether it should extend location accuracy testing to indoor environments. Noting the growing number of wireless 911 calls, the Commission asked whether the Commission should update OET Bulletin 71 to include measurements in indoor environments.

43. *Comments.* Some commenters support the Commission's imposing an indoor testing requirement. Polaris ''strongly advocates that the Commission establish testing and reporting requirements for in-building location accuracy and yield. With better information regarding the scope and impact of the challenges associated with indoor E911 location information, the Commission will be able to properly assess the best way to improve indoor performance (and the appropriate metrics that need to be put in place).'' Polaris argues that ''the Commission should hold workshops and other events to get input from industry members and advisory groups regarding indoor testing. Based on this input, the Commission should also consider requiring indoor testing and establishing a testing schedule.''

44. NENA argues that the growing number of ''wireless-only households * * * may prompt a need for new indoor/outdoor testing to more accurately reflect consumer trends in the use of mobile devices.'' However, NENA states that it ''lacks sufficient quantitative information to recommend a particular fraction of testing that should be conducted indoors.'' Finally, TruePosition argues that the testing structure ''should encompass those environments from which most calls are made, including indoors. [Testing] must keep pace with consumer expectations and emergency response requirements.''

45. Carriers generally oppose expanding testing to indoor environments. T–Mobile argues that unlike outdoor data collection, ''which can be performed by drive testing, there is no feasible way to perform indoor testing on any large scale.'' However, if indoor testing is required, ''T–Mobile agrees with the ESIF recommendation that testing representative indoor environments would be far preferable to repetitive application of indoor testing at the local level.'' Sprint Nextel also opposes an indoor testing standard, stating that ''the proportion of calls placed to 911 from indoors varies from PSAP to PSAP, from town to town, from county to county and from state to state'' and that because of these variations, ''adopting a specified level of indoor testing is not reasonable without further data.'' Sprint Nextel further argues that ''technology for performing indoor testing is still in the process of being developed,'' and therefore, ''[i]t would be premature to impose specific indoor testing requirements on the carriers at this time.''

46. AT&T also argues against an indoor testing requirement because, ''[p]ractically speaking, AT&T already finds it difficult to conduct outdoor testing on private property,'' and it anticipates that ''gaining indoor building access for testing purposes will be even more difficult.'' AT&T contends that ''obtaining access to the number of indoor sites required to meet a 30% standard may be impossible.'' Finally, Qualcomm argues that ''[t]he FCC has no basis to use OET Bulletin No. 71 as the starting point for indoor compliance testing, and definitely should not make its 'guidelines' mandatory or define a level of indoor versus outdoor testing.'' Qualcomm states that ''the level of 911 wireless calls made indoors versus outdoors is not only presently unquantified, but it is effectively irrelevant to the Commission's ultimate goal of improving the location accuracy of calls made from inside of buildings.''

47. *Discussion.* Publicly available reports, such as a March 2011 study from J. D. Power and Associates, indicate that indoor wireless calls have increased dramatically in the past few years, to an average of 56 percent of all calls, up from 40 percent in 2003. Indoor locations pose particular challenges for first responders, as the location of an emergency may not be as obvious as emergencies that occur outdoors. For example, since indoor incidents are often not visible to the first responder without entering the building, a location accuracy of 100/300 meters or cell-tower only would only identify the city block in which a building is located, which in urban environments could potentially contain thousands of apartments. Thus, we consider indoor location accuracy to be a significant public safety concern that requires development of indoor technical solutions and testing methodologies to verify the effectiveness of such solutions.

48. While we recognize the importance of indoor testing, we believe that further work is needed in this area and seek comment on whether the Commission should require indoor location accuracy testing and, if so, using what standards. Can outdoor testing methodologies be used in indoor environments, or should the standards for outdoor and indoor location accuracy testing be different? Are traditional sampling and drive testing methods used for outdoor testing appropriate for indoor testing, or do we need new testing methodologies tailored to indoor environments? What indoor location accuracy testing methodologies are available today, and what are the costs and benefits associated with each? We also seek comment on the percentage of emergency calls that are placed indoors today and a quantification of how much an indoor location accuracy testing standard could improve the ability of emergency responders to locate someone in an emergency.

49. We also refer the indoor testing issue to the CSRIC for further development of technical recommendations. We direct that the CSRIC provide initial findings and recommendations to the Commission, taking into account the cost effectiveness of any recommendations, within nine months of the referral of this issue to the CSRIC.

2. Wi-Fi Positioning and Network Access Devices

50. *Wi-Fi Positioning.* In the Location Accuracy NOI, the Commission sought comment on the potential use of Wi-Fi connections to support location accuracy determination in indoor environments, including both residential environments and public hotspots, such as coffee shops, airports, or bookstores. In the last several years, many more homes, offices, shops, and public spaces have installed Wi-Fi access points, and a growing number of mobile devices (*e.g.,* smartphones, laptops, and tablet PCs) use Wi-Fi positioning capability as one means of determining the device user's location.

To locate a mobile device using Wi-Fi positioning, a technology vendor must first create a database of Wi-Fi access point information (a Wi-Fi Database). The caller's device must then measure information from visible Wi-Fi access points and send that information to a Wi-Fi Location Server that has access to the Wi-Fi Database. The device's location is then determined by the Wi-Fi Location Server. Since the radii for Wi-Fi access points are typically small, Wi-Fi positioning can produce reasonably accurate location information.

51. While some consumer location-based services rely on Wi-Fi positioning, Wi-Fi positioning is not currently used for emergency calls. According to the CSRIC 4C Report, Wi-Fi positioning is not being used to deliver emergency calls because: (1) Current deployments for Wi-Fi positioning are based on proprietary implementations; (2) support for transporting Wi-Fi measurements to the Wi-Fi Location Server are not available in the E911 control plane interface standards; (3) only a small fraction of mobile phones in the marketplace have Wi-Fi capability, although the penetration rate is growing rapidly with the increasing adoption of smartphones; and (4) use of Wi-Fi positioning reduces a portable device's battery life. Despite the fact that Wi-Fi positioning is not currently being used for emergency calls, the CSRIC Report states that the use of Wi-Fi positioning for emergency purposes warrants more detailed study.

52. T–Mobile has concerns about using Wi-Fi positioning for emergency calls and states that ''WiFi Proximity only works in urban and dense suburban areas, and only with phones that have Wi-Fi receive capability. WiFi Proximity methods also share common weaknesses with A–GPS in many indoor environments (where access points cannot readily be located and documented) and in heavily forested rural areas (where access point densities are low).'' T–Mobile also notes that ''current E911 control plane interface standards do not support the use of WiFi Proximity location estimates for E911 purposes, and developing and maintaining the required database to support this method is operationally intensive and costly.'' T–Mobile concludes by noting that ''the WiFi Proximity method has considerable shortcomings: limited areas of applicability, potentially low reliability, only a subset of handsets that can be located, no standards support for E911, limited accuracy, and high cost. For these reasons, though the approach has found some success as a medium accuracy location method for some commercial-location-based smartphone applications, at present no vendors have even proposed using this method for E911.''

53. *Network Access Devices.* Many fixed broadband Internet access devices, particularly those provided to the consumer by the broadband service provider, are permanently located at a civic (street) address, which is known to the network provider. Indeed, in some access network architectures, the device is designed to cease functioning when it has been moved to a different network attachment point. Thus, when a caller uses a wireless phone that is communicating with a Wi-Fi access point or femtocell, the wireless carrier may be able to use the civic address to better locate the caller. For example, in a high- rise building, access to the civic address of the network access device could alleviate the need for vertical location information, since the civic address would include information that is capable of locating the source of the call, such as a floor or apartment number.

54. *Discussion.* We would not expect Wi-Fi positioning to serve as a replacement for other location technologies such as A–GPS or triangulation-based techniques, but could it complement these technologies, particularly in indoor or urban canyon settings where alternative location technologies such as A–GPS may not work reliably? Given the potential public safety benefits of using Wi-Fi positioning to locate emergency callers, we seek comment on whether, and if so, how, the Commission could encourage the use of location information that has been derived using Wi-Fi positioning for 911 purposes. How might location information derived from Wi-Fi positioning be conveyed to the PSAP, VoIP service provider, or broadband Internet access provider in both E911 and NG911 settings? Can network devices now or will they in the future be capable of providing Internet connectivity (*e.g.,* home gateways, hot spots, and set-top boxes)? If so, will they be able to self-locate using Wi-Fi positioning? What are the potential costs of including this capability in devices and how much time would be needed to implement it? The Commission seeks comment on the merits of these proposals.

55. We also seek comment on whether fixed broadband Internet access service providers could provision their network access devices to be capable of providing location information (civic or geospatial) to network hosts that attach to these network access devices. Further, we seek comment on the methods and technologies that would most effectively enable the provision of location information to network access devices. Because we recognize that it may be highly inefficient and burdensome for manufacturers of consumer equipment and software applications to make individual arrangements with every broadband provider to provide location information using network access devices, we seek comment on whether network access devices could provide location information using one or more recognized industry standards.

56. As in prior sections, the Commission seeks comment on the costs and benefits of the potential indoor accuracy solutions described above, including both currently available solutions and solutions under development. We recognize that the efficacy of any particular indoor solution may vary depending on the nature of the indoor environment, the broadband networks available within the environment, and the particular device, service, or application being used by the consumer to place an emergency call. We seek comment on the relative costs and benefits of each such solution and the costs and benefits of developing multiple solutions that can provide more accurate location information when combined.

E. Legal Authority

57. We seek comment on our analysis that we have legal authority to adopt the proposals described herein. First, we believe that modifying the definition of interconnected VoIP service as proposed flows from the Commission's authority to regulate interconnected VoIP 911 service, which was ratified by the NET 911 Improvement Act. The NET 911 Improvement Act defines ''IP-enabled voice service'' as having ''the meaning given the term 'interconnected VoIP service' by § 9.3 of the Federal Communications Commission's regulations.'' The legislative history of the NET 911 Improvement Act indicates that Congress did not intend to lock in the then-existing definition of interconnected VoIP service as a permanent definition for NET 911 Improvement Act purposes.

58. We also believe that we have authority to modify the 911 obligations of interconnected VoIP service providers. The NET 911 Improvement Act requires interconnected VoIP service providers to provide 911 service ''in accordance with the requirements of the Federal Communications Commission, as in effect on July 23, 2008 and as such requirements may be

modified by the Commission from time to time.'' Thus, our authority to modify the manner in which interconnected VoIP service providers provide E911 service falls under Congress's explicit delegation to us to modify the requirements applying to interconnected VoIP service ''from time to time.''

59. To the extent the regulation of network operators or others is reasonably ancillary to the effective performance of the Commission's statutory responsibilities to oversee the activities of interconnected VoIP service providers, and such regulation lies within our subject matter jurisdiction, as specified in Title I of the Communications Act, the Commission has authority, under section 4(i) of the Communications Act and judicial precedent regarding the Commission's ancillary jurisdiction to adopt requirements applicable to these other entities. Broadband, Internet access, and other network service providers fall within our general jurisdictional grant as providers of ''interstate and foreign communication by wire or radio.'' In addition, many VoIP 911 calls are carried over such networks. Accordingly, if a network used by the interconnected VoIP service provider does not accommodate the provider's efforts to comply with the 911 obligations that we establish for such provider pursuant to our express statutory obligations under the NET 911 Improvement Act, the element required for exercising ancillary jurisdiction over such networks—*i.e.,* that the regulation is reasonably ancillary to the effective performance of our statutory duties—appears to be met, since the requirements we would impose on the network would be designed to enable the provider's compliance with the 911 obligations that we had promulgated under our express statutory mandate. To the extent the record that develops supports a conclusion that the regulation of other entities will enable interconnected VoIP service providers to fulfill their statutory duties as described herein, then we conclude that the Commission may exercise its ancillary authority to promulgate such regulations. We seek comment on this analysis.

60. We also ask commenters to address other potentially relevant sources of authority. For example, as to wireless broadband providers, does the Commission have authority, pursuant to Title III provisions, to impose license conditions in the public interest and adopt the proposals discussed herein to support the provision of 911/E911 services by interconnected VoIP service providers? How would the statutory goals of sections 1302(a) and (b) be furthered by the rules we propose?

II. Notice of Proposed Rulemaking on Amending the Definition of Interconnected VOIP Service in Section 9.3 of the Commission's Rules

61. In the *Second Further Notice* above, we seek comment on whether to include outbound-only interconnected VoIP service within the definition of interconnected VoIP service solely for purposes of our 911 rules and not for any other purpose. We note that since enactment of the NET 911 Improvement Act, Congress has passed two other statutes that refer to the definition of interconnected VoIP service in § 9.3 of the Commission's rules. In October 2010, the Twenty-First Century Communications and Video Accessibility Act (CVAA) become law. It requires, among other things, that the Commission promulgate regulations to ''ensure the accessibility, usability, and compatibility of advanced communications services and the equipment used for advanced communications services by individuals with disabilities'' and to do what is necessary to ''achieve reliable, interoperable communication that ensures access by individuals with disabilities to an Internet protocol-enabled emergency network, where achievable and technically feasible.'' The CVAA defines ''advanced communications services'' to include interconnected VoIP service as defined in § 9.3 of the Commission's rules ''as such section may be amended from time to time,'' as well as ''non-interconnected VoIP'' service, which is service other than interconnected VoIP service ''that * * * enabled real-time voice communications that originate from or terminate to the user's location using Internet protocol or any success protocol; and * * * requires Internet protocol compatible customer premises equipment.'' In December 2010, the Truth in Caller ID Act became law. It amends section 227 of the Communications Act to prohibit any person from engaging in caller ID spoofing in connection with ''any telecommunications service or IP-enabled voice service.'' That Act defines ''IP-enabled voice service'' to have ''the meaning given that term by § 9.3 of the Commission's regulations (47 CFR 9.3), as those regulations may be amended by the Commission from time to time.''

62. We seek comment on whether, if we decide to amend the definition of interconnected VoIP service in § 9.3 of the Commission's rules, we should amend it for 911 purposes only. Would an amendment for 911 purposes only necessarily require the Commission to use the same definition when implementing the CVAA or the Truth in Caller ID Act? Would there be any necessary effect on the Commission's other rules that cross-reference § 9.3 of the Commission's rules?

III. Procedural Matters

A. Ex Parte Presentations

63. The proceedings initiated by this *Second Further Notice of Proposed Rulemaking* and this *Notice of Proposed Rulemaking* shall be treated as a ''permit-but-disclose'' proceedings in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the ex parte presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

B. Comment Filing Procedures

64. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments in response to this *Second Further Notice of Proposed Rulemaking* and *Notice of Proposed Rulemaking* on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). 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/*.

• *Paper Filers:* Parties that choose to file by paper must file an original and one copy 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 and boxes must be disposed of before entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

C. Accessible Formats

65. 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).

D. Regulatory Flexibility Analyses

66. As required by the Regulatory Flexibility Act of 1980, see 5 U.S.C. 604, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. Written public comments are requested in the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this *Second Further Notice of Proposed Rulemaking* and *Notice of Proposed Rulemaking* as set forth on the first page of this document, and have a separate and distinct heading designating them as responses to the IRFA.

E. Paperwork Reduction Act Analysis

68. The *Second Further Notice of Proposed Rulemaking* and *Notice of Proposed Rulemaking* contain proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–19718 Filed 8–3–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2011–0041; MO–92210–0–0008]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List Six Sand Dune Beetles as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list six sand dune beetles as endangered or threatened and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition does not present substantial scientific or commercial information indicating that listing two of the six species [Hardy's aegialian scarab (*Aegialia hardyi*) and Sand Mountain serican scarab (*Serica psammobunus*)] may be warranted. However, we find that the petition presents substantial scientific or commercial information indicating that listing may be warranted for four of the six species [Crescent Dunes aegialian scarab (*A. crescenta*), Crescent Dunes serican scarab (*S. ammomenisco*), large aegialian scarab (*A. magnifica*), and Giuliani's dune scarab (*Pseudocotalpa giuliani*)]. Therefore, with the publication of this notice, we are initiating a review of the status of these species to determine if listing these four species is warranted. To ensure that the status reviews are comprehensive, we are requesting scientific and commercial data and other information regarding these four species. Based on the status reviews, we will issue 12-month findings on these four species, which will address whether the petitioned actions are warranted, as provided in the Act.

DATES: To allow us adequate time to conduct the status reviews, we request that we receive information on or before October 3, 2011. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date.

ADDRESSES: You may submit information by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* In the box that reads ''Enter Keyword or ID,'' enter the Docket number for this finding, which is [FWS–R8–ES–2011–0041]. Check the box that reads ''Open for Comment/Submission,'' and then click the Search button. You should then see an icon that reads ''Submit a Comment.'' Please ensure that you have found the correct rulemaking before submitting your comment.

• *U.S. mail or hand-delivery:* Public Comments Processing, Attn: [FWS–R8–ES–2011–0041]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

After October 3, 2011, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION**

CONTACT section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

FOR FURTHER INFORMATION CONTACT: Jill Ralston, Acting State Supervisor, by U.S. mail at Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1340 Financial Blvd, Suite 234, Reno, NV 89502, by telephone at 775–861–6300, or by facsimile at 775–861–6301. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status reviews to be complete and based on the best available scientific and commercial information, we request information on the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. For each of these species, we seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing, delisting, or downlisting determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

If, after the status reviews, we determine that listing any of the four sand dune beetle species is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, within the geographical range currently occupied by each of the four sand dune beetle species, we request data and information on:

(1) What may constitute ''physical or biological features essential to the conservation of the species;''

(2) Where these features are currently found; and

(3) Whether any of these features may require special management considerations or protection.

In addition, we request data and information on ''specific areas outside the geographical area occupied by the species'' that are ''essential to the conservation of the species.'' Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species are proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning these status reviews by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov,* or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On February 2, 2010, we received a petition dated January 29, 2010, from WildEarth Guardians (hereinafter referred to as the petitioner), requesting that we list six species of sand dune beetles in Nevada as endangered or threatened with critical habitat under the Act. The petition clearly identified itself as a petition and included the appropriate identification information for the petitioner, as required in 50 CFR 424.14(a).

In a March 12, 2010, letter to the petitioner, we acknowledged receipt of the petition, and responded that we reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not necessary. We also stated that we anticipated making an initial finding in Fiscal Year 2010. This finding addresses the petition.

Previous Federal Actions

The Crescent Dunes aegialian scarab (*Aegialia crescenta*), Hardy's aegialian scarab (*A. hardyi*), large aegialian scarab (*A. magnifica*), Crescent Dunes serican scarab (*Serica ammomenisco*), Sand Mountain serican scarab (*S.*

psammobunus), and Giuliani's dune scarab (*Pseudocotalpa giuliani*) were all previously designated by the Service as category 2 candidate species, then defined as taxa for which the Service had on hand information indicating that proposing to list as endangered or threatened was possibly appropriate, but for which persuasive data on biological vulnerability and threats were not available to support proposed rules (59 FR 58982; November 15, 1994). In the February 28, 1996, Candidate Notice of Review (CNOR) (61 FR 7595), we adopted a single category of candidate species defined as follows: ''Those species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list but issuance of the proposed rule is precluded.'' In previous CNORs, species matching this definition were known as category 1 candidates for listing. Thus, the Service no longer considered category 2 species as candidates and did not include them in the 1996 list or any subsequent CNORs. The decision to stop considering category 2 species as candidates was designed to reduce confusion about the status of these species and to clarify that we no longer regarded these species as candidates for listing.

The Service proposed to list Giuliani's dune scarab as endangered or threatened in 1978 (43 FR 35636; August 10, 1978), citing the effect of off-road vehicle (ORV) use. The Service stated that ORV use compacts dead organic matter accumulated on dune slopes and prevents its buildup, thereby destroying the larval habitat of the beetle. The proposal to list also found that there was a lack of State or Federal laws protecting the species. Included in the proposed rule was a proposal to designate critical habitat at Big Dune, Nye County, Nevada, at the time the only known location for the species. The Service withdrew the proposal to list Giuliani's dune scarab after a temporary 2-year period mandated by Congress for proposed rules to be finalized had expired (45 FR 65137; October 1, 1980).

Species Information

The six species of sand dune beetles included in the petition and evaluated in this finding are endemic, terrestrial invertebrates of Great Basin and Mojave Desert sand dunes of Nevada (Table 1). All of the petitioned species are from the phylum Arthropoda, class Insecta, order Coleoptera, and family Scarabaeidae. Three of the species are in the genus *Aegialia,* two are in the genus *Serica,* and one is in the genus *Pseudocotalpa* (Table 1). There are three distinct sand dune beetle and dune system groupings (Sand Mountain/Blowsand Mountains; Crescent Dunes; and Big Dune/Lava Dune) (Table 1; WildEarth Guardians 2010, p. 5). Both in the petition and in our files, there is little to no information on population sizes or population trends for any of these sand dune beetle species.

The petition provided information regarding the six species' ranking according to NatureServe (WildEarth Guardians 2010, pp. 3–4). The petitioned sand dune beetles are all ranked as critically impaired at the global, national, or State level (WildEarth Guardians 2010, pp. 3–4). While the petition states that the ''definition of 'critically impaired' is at least equivalent to definitions of 'endangered' or 'threatened' under the ESA [Endangered Species Act],'' this is not an appropriate comparison. According to its own Web site, NatureServe's assessment of any species ''does not constitute a recommendation by NatureServe for listing'' under the Act (*http://www.natureserve.org/explorer/ranking.htm*). In addition, NatureServe's assessment procedures include ''different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide'' (*http://www.natureserve.org/explorer/ranking.htm*).

TABLE 1—NAMES AND LOCATIONS OF SIX SAND DUNE BEETLE SPECIES INCLUDED IN THIS FINDING

Common name	Scientific name	Sand dune system(s)	Nevada county
Species for Which Substantial Information Indicating Listing May Be Warranted Was Not Presented in the Petition or in Service Files:			
Hardy's aegialian scarab	*Aegialia hardyi*	Sand Mountain	Churchill.
Sand Mountain serican scarab	*Serica psammobunus*	Blowsand Mountains	
Species for Which Substantial Information Indicating Listing May Be Warranted Was Presented in the Petition or in Service Files:			
Crescent Dunes aegialian scarab	*Aegialia crescenta*	Crescent Dunes	Nye.
Crescent Dunes serican scarab	*Serica ammomenisco*		
Large aegialian scarab	*Aegialia magnifica*	Big Dune	Nye.
Giuliani's dune scarab	*Pseudocotalpa giuliani*	Lava Dune	

Hardy's aegialian scarab and the Sand Mountain serican scarab occur only at Sand Mountain and the nearby Blowsand Mountains dune systems, Churchill County, Nevada (Gordon and Cartwright 1977, p. 47; Bechtel *et al.* 1983, p. 476; Hardy and Andrews 1987, p. 174; The Nature Conservancy (TNC) (2004, pp. 23, 26). These two dune systems are located approximately 30 miles (mi) (48.3 kilometer (km)) east-southeast of Fallon, Churchill County, Nevada. Sand Mountain is a star dune (roughly star-shaped) and ranges from 3,895 to 4,650 feet (ft) (1,187.2 to 1,417.3 meters (m)) in elevation. It occupies approximately 12 square miles (sq. mi) (32 sq. km) on mostly Bureau of Land Management (BLM) lands, though a portion of the dune may also occur on State and private lands (Bechtel *et al.* 1983, p. 477; Nevada Natural Heritage Program 2006, p. 43). Blowsand Mountains is a complex of star and linear dunes occurring partially on Fallon Naval Air Station (NAS) lands and BLM lands about 15.6 mi (25 km) southwest of Sand Mountain (Bechtel *et al.* 1983, p. 477; Nachlinger *et al.* 2001, pp. A12–1, A12–11). Blowsand Mountains rise to an elevation of 4,593 ft (1,400 m) and occupy 3.6 sq. mi (9.2 sq km) (Bechtel *et al.* 1983, p. 477).

During a 1981 arthropod survey, Hardy's aegialian scarab was found to be common in sand around the perennial shrub vegetation at the base of Sand Mountain, but less common in similar habitat at Blowsand Mountains, which the surveyor suspected was due to the limited area to which he had access (Rust 1981, pp. 13, 29). An undescribed species of *Serica,* subsequently named *S. psammobunus* (Sand Mountain serican scarab) (Hardy and Andrews

1987, p. 174), was found to be very common on both dune systems (Rust 1981, p. 14).

The Crescent Dunes aegialian scarab and Crescent Dunes serican scarab are known to occur only at Crescent Dunes northwest of Tonopah, Nye County, Nevada (Gordon and Cartwright 1977, p. 45; Hardy and Andrews 1987, p. 173). The Crescent Dunes are a small complex of crescent-shaped dunes (WildEarth Guardians 2010, p. 8). The highest dune rises to 5,000 ft (1,524 m) in elevation (WildEarth Guardians 2010, p. 8). These dunes occur on BLM lands and are managed by the agency's Battle Mountain District, Tonopah Resource Area (BLM 1997, p. 21).

The petition provided no information, and we have no information in our files, on the population sizes or population trends of the Crescent Dunes aegialian scarab or the Crescent Dunes serican scarab.

The large aegialian scarab and Giuliani's dune scarab occur only at Big Dune and Lava Dune in the Amargosa Desert, Nye County, Nevada (Gordon and Cartwright 1977, p. 43; Rust 1985, p. 105). These dunes are located about 4 mi (6.4 km) apart (WildEarth Guardians 2010, p. 15). Big Dune is a complex star dune that reaches 2,731 ft (832.4 m) in elevation and extends across approximately 1.5 sq mi (3.9 sq km). Lava Dune is sand that is trapped at the base of a cinder cone, has an elevation of 2,800 ft (853.4 m), and covers about 1.0 sq mi (2.6 sq km) (WildEarth Guardians 2010, p. 15). Both dunes are managed by the BLM (WildEarth Guardians 2010, p. 15).

The petition provided no information on the population sizes or trends of the large aegialian scarab or the Giuliani's dune scarab. We have anecdotal information that these two beetle species occurred in ''huge'' numbers at Big Dune as recently as 2007 (Murphy 2007, p. 1). We have no information in our files on the population trends of either species.

There is limited life history information for the six petitioned sand dune beetle species available in the petition, references cited in the petition, and in our files. Many genera of Scarabaeidae in North American deserts, including species of the genera *Aegialia* and *Serica,* are found in sand dunes (Gordon and Cartwright 1977, p. 42; Hardy and Andrews 1987, p. 178). Sand dunes supply the necessary requirements of an easily penetrable substrate that provides ready access to higher levels of moisture and protection from temperature extremes; sand is easily penetrable by both larvae and adults, and wet sand levels are generally no more than 1.6 to 3.3 ft (0.5 to 1.0 m) beneath the surface (Hardy and Andrews 1987, p. 175). Plant roots on more stable dunes provide food for some Scarabaeidae, while detritus collected and buried in pockets by the wind provides food for detritivores (beetles and other animals that feed on decomposing organic matter) (Hardy and Andrews 1987, p. 175). Many genera of Scarabaeidae using dune areas seem to be unable to survive elsewhere in desert areas, including some species of *Aegialia* and *Serica* (Hardy and Andrews 1987, p. 175).

The six beetles vary in their dispersal abilities. The three aegialian scarabs (Crescent Dunes, Hardy's, and large) are all flightless, a characteristic that may have facilitated population isolation and resulting speciation (formation of a new species) (Rust and Hanks 1982, p. 319; Porter and Rust 1996, p. 717; Porter and Rust 1997, p. 306). Giuliani's dune scarab is capable of flight (Hardy 1976, p. 301). We have no information on the dispersal abilities of the two serican scarabs (Crescent Dunes and Sand Mountain) in our files, nor was any provided in the petition.

Hardy's aegialian scarab is a flightless detritivore that is active in winter at Sand Mountain and Blowsand Mountains; both adults and larvae are active in months having a mean monthly temperature near or below 50 °F (10 °C) (Rust 1981, pp. 13, 27; Rust and Hanks 1982, p. 324). The Sand Mountain serican scarab is active in early summer on both dune systems (Rust 1981, p. 14; Hardy and Andrews 1987, p. 174).

Giuliani's dune scarab is restricted to the vegetated sandy areas around the base of the major dune at Big Dune (43 FR 35639; August 10, 1978). *Larrea tridentata* (creosote bush) and *Petalonyx thurberi* (sandpaper plant), common shrubs found here, accumulate plant debris at their bases. This accumulated plant debris is an important food source and is the larval habitat of the beetle. Adults of Giuliani's dune scarab emerge in late spring and fly nightly, hovering over dune shrubs, and mate on the sand surface; the adults do not feed and larvae are found beneath dune shrubs (Rust 1985, p. 109).

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information shall contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of threatened or endangered under the Act.

In making this 90-day finding, we evaluated whether information regarding threats to the six sand dune beetle species, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

Summary of Common Threats

The petition identified a few threats as common to many of the six petitioned sand dune beetles. The petition identified the following as threats to all six sand dune beetle species: Loss, degradation, and fragmentation of habitat due to ORV recreation and potential construction of solar facility projects; inadequate existing regulatory mechanisms due to the lack of Federal or State regulatory protection; and increased vulnerability

to extinction due to isolated populations and limited habitat (WildEarth Guardians 2010, pp. 6–8, 11, 18, 19). These are described as general threats in the petition, but there is little or no information in the petition that associates the threats with existing or probable impacts on the individual sand dune beetle species.

For two species, Hardy's aegialian scarab and Sand Mountain serican scarab, both of which are endemic to Sand Mountain and Blowsand Mountains in Churchill County, we have information in our files on ORV use and existing regulatory mechanisms. Due to the three distinct geographic groupings of the six petitioned species, where appropriate, threats are assessed below by dune system: Sand Mountain and Blowsand Mountains, Crescent Dunes, and Big Dune and Lava Dune.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Information Provided in the Petition

In general, the petition identifies ORV use as the most serious threat to the six sand dune beetles (WildEarth Guardians 2010, p. 6). The petition notes that ORV recreation has increased substantially over the past few decades, that it accounted for over 400,000 visitor days on lands administered by the BLM in 2000 alone, and that the conditions of sand dune habitats in Nevada are influenced mostly by ORV use (Wildlife Action Plan Team (WAPT) 2006, p. 238).

The petition states that the six beetles depend on vegetation around the bases of the sand dunes for adult or larval forage, mating sites, and protective cover (Hardy 1976, pp. 301–302; Rust 1985, pp. 108–109; Hardy and Andrews 1986, p. 136; Hardy and Andrews 1987, pp. 175–176, 178). The petition cites several scientific studies that have documented the severe negative impacts that ORVs can have on insects in the Order Coleoptera (Van Dam and Van Dam 2008, p. 411). Heavy use by ORVs can destroy dune vegetation (Luckenbach and Bury 1983, p. 280; WAPT 2006, pp. 238–239), eliminating and fragmenting beetle habitat and reactivate sand dune movement (Wiggs *et al.* 1995, as cited by Van Dam and Van Dam 2008, p. 411). In addition, ORV use may disrupt beetle mating activity (Luckenbach and Bury 1983, p. 277), may potentially kill individual beetles (Van Dam and Van Dam 2008, p. 416), and may facilitate the spread of invasive plant species (WAPT 2006, p. 238). Sand dune systems are dynamic, and the establishment of invasive plant species can stabilize dunes, preventing sand movement and altering habitat functions. Invasive plant species may also displace preferred vegetation used by beetles. Research also suggests that areas unprotected from ORV use contain much smaller populations of Coleopterans than in protected areas (Van Dam and Van Dam 2008, p. 415).

The petition also noted that a solar energy facility has been proposed on BLM lands near Crescent Dunes (WildEarth Guardians 2010, p. 11). The BLM is also currently reviewing a proposal to develop solar energy on public land near the Big Dune Area of Critical Environmental Concern (ACEC) (WildEarth Guardians 2010, p. 18). The petition claims that, if the two solar facilities are approved, the increased activity from their construction and maintenance may disturb beetles and their habitat (WildEarth Guardians 2010, p. 18). As noted above, these threats are discussed below by dune system.

Evaluation of Information Provided in the Petition and in Our Files

Sand Mountain and Blowsand Mountains

Hardy's aegialian scarab and the Sand Mountain serican scarab occur only at Sand Mountain and the nearby Blowsand Mountains, Churchill County. The petition provided information on possible threats to these species from ORV recreation at Sand Mountain and Blowsand Mountains. In addition, we have information in our files regarding potential impacts from the use of Blowsand Mountains as a military bombing range. We discuss these potential threats below.

ORV Recreation

The petition indicates that Sand Mountain is a 4,795-ac (1,941-ha) designated Special Recreation Management Area (SRMA) managed by the Stillwater Field Office of the BLM (WildEarth Guardians 2010, p. 14). The petition states that ORV use can be intense at times and that BLM has ''closed'' some areas to ORV use (BLM 2001, pp. REC–3, REC–4; WildEarth Guardians 2010, p. 14). The petition also states from an anonymous source that ''some'' users ignore restrictions and ride into areas that were closed in 2001 (WildEarth Guardians 2010, p. 14). The petition does not provide additional information pertaining to the number of or frequency with which these users violate restrictions and ride into closed areas.

Information in our files indicates that recreational ORV use is currently restricted to a designated trail system that prohibits ORV use of vegetated areas (72 FR 24253; May 2, 2007). Most arthropods found during a survey at Sand Mountain occurred in association with perennial shrub vegetation at the base of the dune and, except while traveling, no species were found to inhabit open sand (Rust 1981, p. 2). On December 12, 2006, BLM implemented an emergency restriction on motorized use on 3,985 ac (1,612 ha) of land to prevent adverse effects to the habitat of the Sand Mountain blue butterfly (*Euphilotes pallescens arenamontana*) (72 FR 12187; March 15, 2007). These restrictions reduce the route system within and outside of the SRMA from an estimated 200 mi (320 km) to 21.5 mi (34.4 km) (72 FR 24253; May 2, 2007). This returns the length of the route system to about the length of the system in 1980. The emergency restriction will remain in effect until the Resource Management Plan has been updated or until the Field Office Manager determines it is no longer needed (72 FR 12187; March 15, 2007). The Service has found that implementation of this closure in 2006 effectively reduces the threat posed by ORVs to the Sand Mountain blue butterfly's habitat and ensures that further habitat destruction is prevented and will ensure natural shrub regeneration over the long-term (72 FR 24253; May 2, 2007). The reduction of this ORV threat also applies to Hardy's aegialian scarab and Sand Mountain serican scarab habitat at Sand Mountain. Thus, the extent and magnitude of potential impacts to Hardy's aegialian scarab and the Sand Mountain serican scarab from ORV use have decreased since the petition's 2001 citation and are likely to remain so. In addition, the petition's statement of closed areas as referenced in BLM (2001) is incorrect. The BLM document (BLM 2001, p. REC–4) cites a **Federal Register** Notice published on September 15, 1988 (53 FR 35917). This **Federal Register** Notice does not indicate closed areas to ORV use at Sand Mountain Recreation Area but indicates their use is limited in vegetated areas. We do not have information in our files on potential violations of the 2006 ORV restrictions. Therefore, we believe the petition's information regarding ORV threats to these species' habitat at Sand Mountain is outdated and inaccurate. We discuss the adequacy of BLM's regulation of this trail system in protecting the habitat of the dune beetles at Sand Mountain under *Factor D* below.

As indicated above, Blowsand Mountains occur partially on Fallon

NAS lands and partially on BLM lands (Nachlinger *et al.* 2001, pp. A12–1, A12–11). The petition does not provide specific information related to ORV use at Blowsand Mountains.

According to information in our files, the Blowsand Mountains occur within the Fallon Range Training Complex Military Operation Area, a 26-million-acre (ac) (10.5-million hectare (ha)) area used by the Naval Strike and Air Warfare Center (TNC 2004, p. 11). Because a portion of the Blowsand Mountains dune system is used for inert and live air-to-ground ordnance drops by the military, much of the area is not open to public access and therefore is not used for ORV recreation (TNC 2004, p. 12). According to TNC (2004, p. 48), ''The only activities that take place on this dune system are those related to the military training mission of NAS Fallon.'' Therefore, the petition's assertions regarding ORV use at Blowsand Mountains impacting Hardy's aegialian scarab and the Sand Mountain serican scarab are not supported.

Bombing Range

Our files indicate, as noted above, that much of the Blowsand Mountains dune system is within an active practice bombing range. A conservation assessment of the Blowsand Mountains dune system has been completed by a team comprised of individuals from the BLM, Fallon NAS, TNC, Fallon Paiute Shoshone Tribe, and Walker River Paiute Tribe (TNC 2004). Threats identified to the Blowsand Mountains dune system by the assessment team were related to ordnance drops, detonation of unexploded ordnance, and invasive weed transport during the removal of ordnance (TNC 2004, p. viii). As part of the conservation assessment, the stressors at the Blowsand Mountains dune system (habitat for Hardy's aegialian scarab and the Sand Mountain serican scarab) were evaluated. Only direct mortality to dune biota from ordnance drops was rated as a high-severity threat, but because it was of small geographic scope, the overall stress ranking was determined to be low (TNC 2004, p. 48). The assessment team also evaluated the viability of the Blowsand Mountains dune system based on its size outside of the heavy-effect bombing area, its condition based on invasive species, and its connection to a current source of sand. The assessment team determined it to have an overall viability score of ''good'' based on size and condition of the system and its landscape context (TNC 2004, p. 32). Because the stress ranking from the conservation assessment was considered low for ordnance drops and the overall viability of Blowsand Mountains was determined to be good, potential impacts to populations of Hardy's aegialian scarab and the Sand Mountain serican scarab from bombing practice at Blowsand Mountains are considered low.

Based on the information available in the petition and our files, we have determined that there is not substantial information to indicate that listing Hardy's aegialian scarab or the Sand Mountain serican scarab located at Sand Mountain and Blowsand Mountains may be warranted due to the present or threatened destruction, modification, or curtailment of their habitat or range.

Crescent Dunes

The Crescent Dunes aegialian scarab and Crescent Dunes serican scarab occur only at Crescent Dunes, Nye County (Gordon and Cartwright 1977, p. 44; Hardy and Andrews 1987, p. 173). The petition provided information on possible threats from ORV use at Crescent Dunes. In addition, the petition provided information related to potential impacts from a solar facility proposed near the dunes. We discuss these potential threats below.

ORV Recreation

According to the petition, Crescent Dunes is a designated SRMA on 3,000 ac (1,214 ha) of public lands administered by the Tonopah Field Office of the BLM (BLM 1997, p. 21). The SRMA is open to ORV use year-round (WildEarth Guardians 2010, p. 11). Though no part of the dunes is reserved for the protection of sensitive species, ORVs are required to stay on roads, trails, and unvegetated dunes (WildEarth Guardians 2010, p. 11). The petition does not provide any specific information regarding impacts to the Crescent Dunes aegialian scarab and Crescent Dunes serican scarab from ORV use. However, the petition provided information regarding an opinion from The Nature Conservancy that recreation appeared to be a high priority at Crescent Dunes with no regard given to protection of the unique animals of the dune system and no analysis of the impacts of ORVs to these species or their habitat (BLM 1994, p. 5–116). We are unaware of any management plans or emergency restrictions being placed on motorized use at Crescent Dunes to protect the Crescent Dunes aegialian scarab and the Crescent Dunes serican scarab or their habitat. The adequacy of BLM's regulations regarding this trail system in protecting the habitat of the dune beetles at Crescent Dunes is discussed under *Factor D* below.

We have no additional information in our files related to this potential threat.

Solar Energy Development

According to the petition, Tonopah Solar Energy, LLC submitted a right-of-way application and a plan of development to the BLM's Tonopah Field Office for the construction and operation of a solar power generation facility (Crescent Dunes Solar Energy Project), associated transmission facilities to the Anaconda Substation located 6 mi (9.7 km) north of the project area, and access roads (74 FR 61364; November 24, 2009). This facility would have a generating capacity of up to 160 megawatts (MW) of electricity based on concentrating solar power technology. The proposed plant, including the heliostat array, power block, and associated facilities, would use approximately 1,600 ac (648 ha) of BLM-managed lands northwest of Tonopah, Nevada. This project is considered a ''fast-track'' project. According to the BLM Nevada State Office Web site, fast-track projects are those where the companies involved have demonstrated to BLM that they have made sufficient progress to formally start the environmental review and public participation process. Projects that were cleared for approval by the Department of the Interior by December 2010 are eligible for economic stimulus funding under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5). All renewable energy projects proposed for BLM-managed lands receive full environmental reviews required by the National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*) (BLM 2010a, p. 1). The scoping period for this project closed on December 24, 2009 (74 FR 61364; November 24, 2009). The petition claims that increased activity from construction and maintenance of the proposed solar array, which would be located adjacent to the sand dunes, may disturb beetles and their habitat.

We have no additional information in our files on this potential threat other than that a draft environmental impact statement is currently being prepared (BLM 2010b, p. 8).

Based on the information available in the petition and our files, we have determined that there is substantial information to indicate that listing the Crescent Dunes aegialian scarab and Crescent Dunes serican scarab located at Crescent Dunes may be warranted due to the present or threatened destruction, modification, or curtailment of their habitat or range.

Big Dune and Lava Dune

The large aegialian scarab and Giuliani's dune scarab occur only at Big Dune and Lava Dune, Nye County (Gordon and Cartwright 1977, p. 43; BLM 1998a, p. 3–41), which are managed by the Southern Nevada District Office of the BLM. The petition provided information on possible threats from ORV use at Big Dune and Lava Dune. In addition, the petition provided information related to potential impacts from a solar facility proposed near the dunes. We discuss these potential threats below.

ORV Recreation

According to information provided by the petition, there is an 11,600-ac (4,694-ha) Big Dune SRMA, which includes a 1,920-ac (777-ha) ACEC at Big Dune (BLM 1998b, pp. 7, 23; WildEarth Guardians 2010, p. 18). The objective of the SRMA is to provide for moderate, casual ORV use; camping; and other casual recreation opportunities. The ACEC was established in 1998 to protect beetle habitat, but only 200 ac (81 ha) of the 1,920 ac (777 ha) ACEC were set aside specifically as beetle habitat (BLM 1998b, p. 23). This is considered inadequate by the petitioner when compared to the Service's previous proposal to list Giuliani's dune scarab and designate critical habitat over the entire dune in 1978 (43 FR 35636; August 10, 1978) (WildEarth Guardians 2010, p. 18). In addition, ORV use is allowed on the designated route system within the 200 ac (81 ha) specified as beetle habitat (BLM 1998b, p. 23). Within the entire 1,920-ac (777-ha) ACEC, speed-based, competitive ORV events are prohibited (BLM 1998b, p. 23). Because nonvegetated portions of the Big Dune SRMA outside of designated beetle habitat are managed as open to ORV use, the petition indicates that heavy ORV use occurs over large areas of the rest of Big Dune and the immediate surrounding area (BLM 1998b, p. 24; WildEarth Guardians 2010, p. 18). Lava Dune has no special management designation. The petition does not provide any specific information regarding impacts to the large aegialian scarab and Giuliani's dune scarab from ORV use at Lava Dune. The adequacy of BLM's regulations regarding ORV use at Big Dune and Lava Dune is discussed under *Factor D.*

We have no additional information in our files related to this potential threat.

Solar Energy Development

According to the petition, Pacific Solar Investments, Inc., submitted a right-of-way application and plan of development to the BLM's Southern Nevada District Office for the construction, operation, maintenance, and termination of a solar power generation facility (Amargosa North Solar Project), transmission substation, and switchyard facilities (74 FR 66146; December 14, 2009). This facility would have a generating capacity of about 150 MW of electricity based on concentrating solar power technology and would be located on about 7,500 ac (3,035 ha) of BLM-managed lands in the Amargosa Valley, Nye County. A portion of Big Dune lies within the proposed project area. All renewable energy projects proposed for BLM-managed lands receive full environmental reviews required by the National Environmental Policy Act. The scoping period for this project closed on February 12, 2010 (74 FR 66146; December 14, 2009).

According to information in our files, the reconnaissance-level biological survey completed for the plan of development states that ''due to the proximity of the endemic beetles ACEC, it will be important to address the potential affect [sic] of any adjacent development to the continued habitat function and viability of this ACEC'' (CH2MHILL 2008, p. 3–1). We have no additional information in our files on this potential threat to the large aegialian scarab and Giuliani's dune scarab at Big Dune.

Based on the information available in the petition and our files, we have determined that there is substantial information to indicate that listing the large aegialian scarab and Giuliani's dune scarab at Big Dune and Lava Dune may be warranted due to the present or threatened destruction, modification, or curtailment of their habitat or range.

Summary of Factor A

We find that the petition and information in our files provide substantial information that ORV recreation is a potential threat to the Crescent Dunes aegialian scarab and Crescent Dunes serican scarab that occur at Crescent Dunes and to the large aegialian scarab and Giuliani's dune scarab that occur at Big Dune and Lava Dune. We also find that the petition provides substantial information that solar energy development may be a threat to the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab at Crescent Dunes and Big Dune.

While ORV use occurs at Sand Mountain, we find that the comprehensive, mandatory route restrictions put in place in 2006 (72 FR 12187; March 15, 2007; 72 FR 24253; May 2, 2007) to protect the shrub habitat used by the Sand Mountain blue butterfly also protects the two dune beetles (Hardy's aegialian scarab and Sand Mountain serican scarab) as they also depend upon this shrub habitat (see also *Factor D* discussion). We do not have information indicating that violations of the 2006 ORV restrictions occur, or occur frequently enough to impact the shrub habitat at Sand Mountain. Off Road Vehicle recreation does not occur throughout much of the Blowsand Mountains' dune system because much of this area is not open to public access due to its location within the Fallon Range Training Complex Military Operation Area, an active practice bombing range. The bombing operations at the Blowsand Mountains are of limited geographic scope, and therefore have been ranked as a low stress by an interagency assessment team. For these reasons, we do not find that the petition provides substantial information indicating that the Hardy's aegialian scarab or Sand Mountain serican scarab may be warranted for listing under *Factor A,* the present or threatened destruction, modification, or curtailment of their habitat or range.

Therefore, based on our evaluation of the information available in the petition and our files, we find that the petition does not present substantial information to indicate that listing Hardy's aegialian scarab and the Sand Mountain serican scarab may be warranted, but the information available in the petition and in our files does present substantial information to indicate that listing may be warranted for the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, the large aegialian scarab, and Giuliani's dune scarab due to the present or threatened destruction, modification, or curtailment of their habitat or range.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petition notes that collection of individuals for scientific purposes has occurred over the years, but does not provide information about whether this constitutes a threat to any of the six sand dune beetle species (WildEarth Guardians 2010, p. 7).

Evaluation of Information Provided in the Petition and in Our Files

The petition does not provide information that overutilization for commercial, recreational, scientific, or educational purposes has negatively impacted any of the six petitioned beetle species. We have no information in our files to indicate that overutilization for commercial, recreational, scientific, or educational purposes is a threat to any of the six species.

Therefore, based on our evaluation of the information provided in the petition, we do not consider the petition or information in our files to provide substantial scientific or commercial information indicating that listing of any of the six petitioned beetles may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes.

Factor C. Disease or Predation

Information Provided in the Petition

According to information provided by the petition, nighthawks (*Chordeiles minor*) were observed preying on Andrew's dune scarab (*Pseudocotalpa andrewsi*) at Algodones Dunes in southern California (Hardy and Andrews 1986, p. 137), a dune system similar to those used by the petitioned beetles (WildEarth Guardians 2010, p. 7). Foxes (*Vulpes macrotis*) and coyotes (*Canis latrans*) may also prey on sand dune beetles (Hardy and Andrews 1986, p. 137). Rust (1985, p. 109) stated that no predation of Guiliani's dune scarab was observed at Big Dune or Lava Dune although many potential predators were observed.

The petition states that disease is not known to be a threat to any of the six petitioned beetles (WildEarth Guardians 2010, p. 7).

Evaluation of Information Provided in the Petition and in Our Files

The petition does not provide specific information that predation or disease has negatively impacted the six petitioned sand dune beetles. While predation of the sand dune beetles would be a common occurrence, it is unknown whether predation may be occurring at such a level that it is negatively affecting these species. We do not have information in our files to indicate that predation or disease is a potential threat to any of these species.

Therefore, based on our evaluation of the information in the petition and in our files, we have determined that the petition does not provide substantial information to indicate that listing any of the six sand dune beetles may be warranted due to disease or predation.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petitioned dune beetles occur on Federal lands managed either by the BLM or the Department of Defense. The populations on BLM lands all occur within or adjacent to areas managed primarily for ORV use and designated as SRMAs. The petition states that none of the six petitioned sand dune beetle species has legal protection (WildEarth Guardians 2010, pp. 7–18). All six petitioned species are listed as BLM sensitive species (BLM 2007, pp. J–3, J–35). According to information in our files, BLM sensitive species are defined as ''species that require special management or considerations to avoid potential future listing'' (BLM 2008, Glossary p. 5). The stated objective for sensitive species is to initiate proactive conservation measures that reduce or eliminate threats to minimize the likelihood of and need for listing (BLM 2008, Section 6840.02). Conservation, as it applies to BLM sensitive species, is defined as ''the use of programs, plans, and management practices to reduce or eliminate threats affecting the status of the species, or improve the condition of the species' habitat on BLM-administered lands'' (BLM 2008, Glossary p. 2).

The petition also notes that although some of the petitioned beetles may occur at ''preliminary focal areas'' identified in the Nevada Wildlife Action Plan, this plan does not prescribe conservation measures for sensitive invertebrates in Nevada (WAPT 2006). Moreover, the petition points out that Nevada Revised Statute 501.110 provides only for the protection of invertebrates classified as either mollusks or crustaceans, and not other invertebrates. Under current statute, therefore, beetles cannot be provided State protection (WildEarth Guardians 2010, p. 7).

The petition provides some information on the Federal management of the three SRMAs at which the dune beetles occur (WildEarth Guardians 2010, pp. 11, 14–15, 18–19). Each of the SRMAs includes habitat for only two of the six petitioned species and none of these species occur at more than one SRMA, although some of the six petitioned beetles also occur at other nearby dune systems. In addition, each of the three SRMAs has specific management restrictions. For these reasons, existing regulatory mechanisms are more easily assessed for the pairs of species that are unique to each SRMA. Occurrences outside of the SRMAs are discussed within this framework.

Evaluation of Information Provided in the Petition and in Our Files

Sand Mountain and Blowsand Mountains

Hardy's aegialian scarab and the Sand Mountain serican scarab are known only from Sand Mountain and nearby Blowsand Mountains. Sand Mountain is a designated SRMA managed by the BLM Stillwater Field Office that extends over 4,795 ac (1,941 ha). The petition states that the BLM has closed some areas to ORV use (BLM 2001, pp. REC–3 and REC–4; WildEarth Guardians 2010, p. 14). The petition also cites a 2009 anonymous source who stated that some ORV users have ignored these 2001 restrictions and ride in closed areas (WildEarth Guardians 2010, p. 14).

We have information in our files that the ORV restrictions mentioned in the 2001 Carson City Field Office Resource Management Plan (CCRMP) (BLM 2001) cited by the petition have been superseded by more comprehensive ORV restrictions implemented in 2006 to prevent adverse effects to the habitat of the Sand Mountain blue butterfly (72 FR 12187; March 15, 2007). The Service has previously found that implementation of this closure, which includes a designated ORV route system throughout the vegetated portions of the SRMA, effectively reduces the threat posed by ORVs to the Sand Mountain blue butterfly's habitat and ensures that further habitat destruction is prevented and will ensure, over the long-term, natural shrub regeneration (72 FR 24253; May 2, 2007). The reduction of this ORV threat to the butterfly's habitat also applies to this shared habitat with Hardy's aegialian scarab and the Sand Mountain serican scarab since these two beetles occupy similar habitat as the Sand Mountain blue butterfly.

The Blowsand Mountains dune system is under the jurisdiction of the Department of Defense and is within a practice bombing range used by the Fallon NAS. The petition provides no information on the management of the Blowsand Mountains. As previously noted under *Factor A,* information in our files states that because of its use for military bombing training operations, much of the area is not open to public access and therefore is not used for ORV recreation (TNC 2004, p. 12). An interagency assessment team concluded that while direct mortality to dune biota from bomb drops can be severe, it was of small geographic scope within the Blowsand Mountains and, therefore, its

overall stress ranking was considered low (TNC 2004, p. 48).

Therefore, based on the information provided in the petition and available in our files, we have determined that the petition does not present substantial information to indicate that listing the Hardy's aegialian scarab or the Sand Mountain serican scarab may be warranted due to the inadequacies of existing regulatory mechanisms.

Crescent Dunes

The Crescent Dunes aegialian scarab and Crescent Dunes serican scarab are known only from the Crescent Dunes, where a total of 3,000 ac (1,214 ha) has been designated as the Crescent Sand Dunes SRMA in the Tonopah Resource Management Plan (TRMP) (BLM 1997, p. 21). The petition provides no information, nor do we have any information in our files, regarding whether either of these species occurs outside of the designated SRMA boundary. The Record of Decision (ROD) for the TRMP states that vehicle use within the SRMA will be limited to existing roads and trails, although ORV use on unvegetated areas may be allowed provided that such vehicle use is compatible with the area's values (BLM 1997, p. 21). The Crescent Dunes SRMA is closed to competitive recreational events to protect sensitive resource values (BLM 1997, p. 20). Fluid mineral leasing is allowed, subject to a no-surface-occupancy stipulation (BLM 1997, p. 21). The TRMP does not specifically address management of renewable resources such as solar energy (BLM 1997). No specific mention is made of either beetle species in the TRMP, although it states that Nevada BLM Sensitive Species will be managed to maintain or increase current population levels (BLM 1997, p. 9). We are not aware of any specific conservation actions or plans for either the Crescent Dunes aegialian scarab or the Crescent Dunes serican scarab.

The petition noted that during the public participation process for the proposed TRMP, the BLM received a letter from the Nevada Outdoor Recreation Association, Inc. urging them to designate the Crescent Dunes as an ACEC to protect endemic species, including the Crescent Dunes aegialian scarab (BLM 1994, pp. 5–12). The BLM responded that a 14,000-ac (5,666 ha) area at Crescent Dunes was examined for ACEC potential and determined not to meet the importance criterion as defined in BLM policy (BLM 1994, pp. 5–125); no further explanation was provided. In the ROD for the TRMP, the BLM stated that as a result of several points of protest concerning ACECs that were found to be valid, decisions to designate ACECs were withheld and that an ACEC Plan Amendment would be prepared over the next 2 years to address these points of protest (BLM 1997, p. 3); we have no information in our files regarding whether this plan amendment was ever prepared. Another commenter, The Nature Conservancy, expressed the opinion that recreation appeared to be high priority at Crescent Dunes with no regard given to protection of the unique animals of the dune system and no analysis of the impacts of ORVs to these species or their habitat (BLM 1994, pp. 5–116). The BLM responded that impacts to sensitive species would be addressed in the SRMA plan (BLM 1994, pp. 5–159). According to the petition, no management plan has been prepared for the SRMA (WildEarth Guardians 2010, p. 11). We are unaware of any other restrictions being placed on motorized use at Crescent Dunes to protect the Crescent Dunes aegialian scarab and the Crescent Dunes serican scarab or their habitat as was done at Sand Mountain to protect the Sand Mountain blue butterfly and its habitat.

Therefore, based on the information provided in the petition and available in our files, we have determined that the petition does present substantial information to indicate that listing the Crescent Dunes aegialian scarab and the Crescent Dunes serican scarab may be warranted due to the inadequacies of existing regulatory mechanisms.

Big Dune and Lava Dune

The large aegialian scarab and Giuliani's dune scarab are known only from Big Dune and Lava Dune. According to the petition, in the Las Vegas Resource Management Plan (LVRMP), the BLM designated an 11,600-ac (4,694-ha) SRMA, which includes a 1,920-ac (777-ha) ACEC at Big Dune (BLM 1998b, pp. 7, 23). The objective of the SRMA is to provide for moderate, casual ORV use; camping; and other casual recreation opportunities. The ACEC was established to protect beetle habitat. The management direction is to prohibit ORV use within 200 ac (81 ha) of dune beetle habitat within the ACEC, except on the designated route through it, to ensure continued survival of the native beetle population. Speed-based competitive ORV events within the ACEC are also prohibited (BLM 1998b, p. 23). Other commercial activities and permitted events are allowed on a case-by-case basis. The management direction stipulates that long-term recreation management within the dunes be based on the minimum habitat requirements of the beetles (BLM 1998b, p. 23). Lands within the ACEC are designated as a rights-of-way exclusion area and are closed to locatable mineral, salable mineral, and solid leasable mineral entry; fluid mineral leasing is allowed, subject to a no-surface-occupancy stipulation (BLM 1998b, p. 7). The LVRMP does not specifically address management of renewable resources such as solar energy (BLM 1998b). There is no livestock grazing within the ACEC. A BLM brochure states that a 5-ac (2-ha) area within the ACEC on the east side of the dunes has been set aside specifically for the protection of beetle habitat (BLM 2010c, p. 1). We have no information in our files that explains the discrepancy between the 200 ac (81 ha) protected area identified in the LVRMP and the 5 ac (2 ha) area described in the brochure.

In our files, we have correspondence that indicates that a study of the distribution of the beetles and their ecological requirements was initiated at Big Dune in 2007 (Murphy 2007, p. 1). This correspondence includes a statement that the researchers were successful in locating both endemic scarab beetles in ''huge'' numbers although ORV activities were having impacts (Murphy 2007, p. 1). This survey information, however, is anecdotal, and we lack sufficient details or a written report to evaluate this claim. We have no information on the status of the beetles at the nearby Lava Dune, which has no special management designations.

Therefore, based on the information provided in the petition and available in our files, we have determined that the petition does present substantial information to indicate that listing the large aegialian scarab and Giuliani's dune scarab may be warranted due to the inadequacies of existing regulatory mechanisms.

Summary of Factor D

We find that the petition provides substantial information that there may be inadequate existing regulatory mechanisms related to ORV use and solar facility siting and, therefore, a potential threat to the Crescent Dunes aegialian scarab and the Crescent Dunes serican scarab that occur at Crescent Dunes, and to the large aegialian scarab and Giuliani's dune scarab that occur at Big Dune and Lava Dune.

While ORV use also occurs at Sand Mountain (see also *Factor A* discussion), we believe that the mandatory route restrictions in place since 2006 protect the shrub habitat on which the two dune beetles that occur there depend. We do not have information indicating

that violations of the 2006 restrictions occur, or occur frequently enough to impact the dune beetles' shrub habitat. Off Road Vehicle recreation does not occur throughout much of the Blowsand Mountains' dune system because much of it is not open to public access. The bombing operations at the Blowsand Mountains are of limited geographic scope and, therefore, direct mortality to dune biota was given a low stress ranking by an interagency assessment team. Solar facilities are not being proposed at or near Sand Mountain or Blowsand Mountains. For these reasons, we do not consider the petition to provide substantial information that listing Hardy's aegialian scarab or the Sand Mountain serican scarab, endemic to Sand Mountain and the Blowsand Mountains, may be warranted due to the inadequacies of existing regulatory mechanisms.

Therefore, based on our evaluation of the information available in the petition and our files, we have determined that the petition does not present substantial information to indicate that listing Hardy's aegialian scarab and the Sand Mountain serican scarab may be warranted, but the information available in the petition and our files does present substantial information to indicate that listing may be warranted for the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab, due to the inadequacies of existing regulatory mechanisms.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petition

The petition states that the six petitioned sand dune beetles have limited distribution and apparently small populations, increasing the likelihood of extinction (WildEarth Guadians 2010, p. 8). In support of this claim, the petition cites Service status assessments for a ground-dwelling snail [Sisi (*Ostodes strigatus*)], and for Langford's tree snail (*Partula langfordii*), in which the Service found that the small number of individuals or the small number of extant populations made these species more vulnerable to extinction (Service 2009a, pp. 4–5; 2009b, pp. 5–6). These assessments differ substantially, however, from our current considerations for the six petitioned sand dune beetles. The total population of Sisi was estimated at fewer than 50 individuals in the early 1990s (Service 2009a, p. 3). In the case of Langford's tree snail, there is a record of historical declines in population estimates from hundreds of individuals documented in 1970 to only a few individuals by the early 1990s; no live snails have been located in recent surveys (Service 2009a, p. 4). The petition notes that, in the case of Langford's tree snail, the Service relied on citations not specific to this species that state that small populations are particularly vulnerable to reduced reproductive vigor caused by inbreeding depression, and may suffer a loss of genetic variability over time due to random genetic drift (WildEarth Guardians 2010, p. 8). The petition also states that many species in the Great Basin and Mojave Deserts, especially species adapted to specialized habitats such as sand dunes, have evolved and continue to persist in isolation with limited distribution (Brussard *et al.* 1998, pp. 514–520).

Evaluation of Information Provided in the Petition and in Our Files

The petition provided no population estimates or trends for any of the six petitioned species, nor do we have definitive population estimates or trends for any of these beetles in our files. We do have anecdotal information in our files that indicates that ''huge'' populations of two scarab beetles (large aegialian scarab and Giuliani's dune scarab) were present as recently as 2007 at Big Dune (Murphy 2007, p. 1).

In a genetics study of five species of *Aegialia,* researchers found that three flightless species, which included Hardy's aegialian scarab and the large aegialian scarab, had low genetic distance measures but relatively high estimates of gene flow (Porter and Rust 1996, p. 719). They suggested that flightless *Aegialia* populations within Great Basin dune systems may be extremely large and have levels of gene flow high enough to maintain high genetic similarity, and therefore low genetic distances (Porter and Rust 1996, p. 719).

Neither the petition, nor the information in our files, provides information that directly indicates that limited distribution, in and of itself, is a substantial threat to the petitioned dune beetle species. The petition does not provide information on chance events or other threats to the six species and connect such threats to small population numbers or restricted range or the potential for such threats to occur in occupied habitats in the future.

Limited distribution and small population numbers or sizes are considered in determining whether the petition provides substantial information regarding natural or anthropogenic threat, or a combination of threats, that may be affecting a particular species. However, in the absence of information identifying chance events or other threats and the potential for such chance events to occur in occupied habitats, and connecting them to a restricted geographic range of a species, we do not consider chance events, restricted geographic range, or rarity by themselves to be threats to a species.

Therefore, based on our evaluation of the information provided in the petition and our files, we have determined that the petition does not present substantial information to indicate that listing any of the six sand dune beetle species may be warranted due to other natural or manmade factors affecting these species' continued existence.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we find that the petition does not present substantial scientific or commercial information indicating that listing Hardy's aegialian scarab and the Sand Mountain serican scarab throughout their entire range may be warranted. On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information that listing the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab throughout their entire range may be warranted.

The petition presents substantial information indicating that listing the Crescent Dunes aegialian scarab may be warranted due to *Factors A* and *D.* The petition does not present substantial information indicating that listing the Crescent Dunes aegialian scarab may be warranted due to *Factors B, C,* or *E.*

The petition presents substantial information indicating that listing the Crescent Dunes serican scarab may be warranted due to *Factors A* and *D.* The petition does not present substantial information indicating that listing the Crescent Dunes serican scarab may be warranted due to *Factors B, C,* or *E.*

The petition presents substantial information indicating that listing the large aegialian scarab may be warranted due to *Factors A* and *D.* The petition does not present substantial information indicating that listing the large aegialian scarab may be warranted due to *Factors B, C,* or *E.*

The petition presents substantial information indicating that listing Giuliani's dune scarab may be warranted due to *Factors A* and *D.* The petition does not present substantial information indicating that listing

Giuliani's dune scarab may be warranted due to *Factors B, C,* or *E.*

Because we have found that the petition presents substantial information that listing four of the six species may be warranted, we are initiating status reviews (12-month findings) to determine whether listing these four species under the Act is warranted.

The ''substantial information'' standard for a 90-day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In 12-month findings, we determine whether a petitioned action is warranted after we have completed thorough status reviews of the species, which are conducted following substantial 90-day findings. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that a 12-month finding will result in a warranted finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this document are the staff members of the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (U.S.C. 1531 *et seq.*).

Dated: July 21, 2011.

Gregory E. Siekaniec,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–19743 Filed 8–3–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2011–0045; MO 92210–0–0008–B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding and 12-Month Determination on a Petition To Revise Critical Habitat for the Leatherback Sea Turtle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and notice of 12-month determination.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our 90-day finding and 12-month determination on how to proceed in response to a petition to revise critical habitat for the leatherback sea turtle (*Dermochelys coriacea*) pursuant to the Endangered Species Act of 1973, as amended (Act). The petition asks the Service and the National Marine Fisheries Service (NMFS) (Services) to revise the existing critical habitat designation for the leatherback sea turtle by adding the coastline and offshore waters of the Northeast Ecological Corridor of Puerto Rico to the critical habitat designation. Our 90-day finding is that the petition, in conjunction with the information readily available in our files, presents substantial scientific information indicating that the requested revision may be warranted. Our 12-month determination is that we intend to proceed with processing the petition by assessing critical habitat during the future planned status review for the leatherback sea turtle.

DATES: The finding announced in this document was made on August 4, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R4–ES–2011–0045. Information and supporting documentation that we received and used in preparing this finding is available for public inspection by appointment, during normal business hours at the North Florida Ecological Services Office, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256 and at the U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, Road 301, Km. 5.1, Boquerón, Puerto Rico 00622. Please submit any new information, materials, comments, or questions concerning this finding to the above mailing address or the contact as listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dave Hankla, Field Supervisor, North Florida Ecological Services Office, U.S. Fish and Wildlife Service, Attn: Leatherback CH Review; by mail at 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256; by telephone (904–731–3336); by facsimile (904–731–3045); or by e-mail at *northflorida@fws.gov.* If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(D) of the Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to revise critical habitat for a species presents substantial scientific information indicating that the revision may be warranted. In determining whether substantial information exists, we take into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in our files. Our listing regulations at 50 CFR 424.14(c)(2) further require that, in making a finding on a petition to revise critical habitat, we consider whether the petition contains information indicating that areas petitioned to be added to critical habitat contain the physical and biological features essential to, and that may require special management to provide for, the conservation of the species; or information indicating that areas currently designated as critical habitat do not contain resources essential to, or do not require special management to provide for, the conservation of the species involved.

To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. If we find that a petition presents substantial information indicating that the revision may be warranted, we are required to determine how we intend to proceed with the requested revision within 12 months after receiving the petition and promptly publish notice of such intention in the **Federal Register**.

Critical habitat is defined under section 3(5)(A) of the Act as:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) Essential to the conservation of the species and

(II) Which may require special management considerations or protection; and

(ii) 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.

Our implementing regulations at 50 CFR 424.12 describe our criteria for designating critical habitat. We are to consider physical and biological features essential to the conservation of the species. Those features include, but are not limited to: (1) Space for individual and population growth, and 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 of offspring; and (5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distribution of a species. Essential physical and biological features may include, but are not limited to, nesting grounds, feeding sites, water quality, geological formations, tides, and specific soil types. Our implementing regulations at 50 CFR 424.02 define ''special management considerations or protection'' as any methods or procedures useful in protecting physical and biological features of the environment for the conservation of the species.

Section 4(b)(2) of the Act requires us to designate and make revisions to critical habitat for listed species on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any particular 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 that the failure to designate such area as critical habitat, will result in the extinction of the species concerned.

Previous Federal Actions

In 1970, the leatherback sea turtle was listed as endangered (35 FR 8491; June 2, 1970) in accordance with the Endangered Species Conservation Act of 1969 (Pub. L. 91–135; 83 Stat. 275), a precursor to the Act. The Service designated critical habitat for the leatherback sea turtle on March 23, 1978 (43 FR 12050), in the U.S. Virgin Islands to include: ''A strip of land 0.2 miles wide (from mean high tide inland) at Sandy Point Beach on the western end of the island of St. Croix beginning at the southwest cape to the south and running 1.2 miles northwest and then northeast along the western and northern shoreline, and from the southwest cape 0.7 miles east along the southern shoreline.'' This critical habitat designation appears in our regulations at 50 CFR 17.95(c). NMFS designated critical habitat for the leatherback sea turtle on March 23, 1979 (44 FR 17710), in the U.S. Virgin Islands to include: ''The waters adjacent to Sandy Point, St. Croix, U.S. Virgin Islands, up to and inclusive of the waters from the hundred fathom curve shoreward to the level of mean high tide with boundaries at 17°42′12″ North and 64°50′00″ West.'' This critical habitat designation appears in the NMFS regulations at 50 CFR 226.207. In 1984, the Sandy Point National Wildlife Refuge was established; the refuge completely encompasses the stretch of beach that was designated as critical habitat in 1978.

On October 2, 2007, NMFS received a petition from the Center for Biological Diversity, Oceana, and Turtle Island Restoration Network to revise the leatherback sea turtle critical habitat designation. The petitioners sought to revise the critical habitat designation to include the area NMFS was already managing under the authority of the Magnuson-Stevens Fishery Conservation and Management Act to reduce leatherback sea turtle interactions in the California-Oregon drift gillnet fishery targeting swordfish and thresher shark. This area encompasses roughly 200,000 square miles (321,870 square kilometers (km)) of the Exclusive Economic Zone from 45 degrees North latitude about 100 miles (160 km) south of the Washington-Oregon border southward to Point Sur and along a diagonal line due west of Point Conception, CA, and west to 129 degrees West longitude.

On December 28, 2007, NMFS published a 90-day finding that the petition presented substantial scientific information indicating that the petitioned action may be warranted and initiated a review of the critical habitat of the species to determine whether the petitioned action was warranted (72 FR 73745). On January 5, 2010, NMFS proposed regulations to designate specific areas within the Pacific Ocean as critical habitat (75 FR 319). The areas proposed for designation encompass approximately 70,600 square miles (182,854 square km) of marine habitat. Specific areas proposed for designation include two adjacent areas covering 46,100 square miles (119,400 square km) stretching along the California coast from Point Arena to Point Vincente and an area covering 24,500 square miles (63,455 square km) stretching from Cape Flattery, WA, to the Umpqua River (Winchester Bay), OR, east of a line approximating the 6,562-ft (2,000-meter) depth contour. A final determination has not yet been published by NMFS.

Petition History

On February 22, 2010, the Service and NMFS received a petition dated February 22, 2010, from Craig Segall of the Sierra Club, requesting that we revise critical habitat for the leatherback sea turtle (*Dermochelys coriacea*) to include nesting beaches and offshore marine habitats in Puerto Rico pursuant to the Act and the Administrative Procedure Act (APA). Section 553 of the APA states that, ''Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule'' (5 U.S.C. 553(e)).

The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). The petition asserted that the beaches of the Northeast Ecological Corridor (NEC) of Puerto Rico (which would fall under the jurisdiction of the Service) are ''centrally important to the U.S. Caribbean leatherback population, and should be designated as critical habitat.'' The petition also maintained that the near-shore coastal waters off those beaches (which would fall under the jurisdiction of NMFS) ''provide room for turtles to mate and to access the beaches, and for hatchlings and adults to leave the beaches.'' It likewise asserted that the coastal zone within the NEC is particularly vulnerable to developmental pressure and to the growing impacts of climate change, and so warrants protection as critical habitat.

The petition also requested that the agencies revise the recovery plan for the leatherback sea turtle at the earliest possible time, and that the agencies issue no Atlantic leatherback-related incidental take permits (save for permits supporting pure conservation research), issue no Atlantic leatherback-related habitat conservation plan, issue no Atlantic leatherback-related biological opinion, and take no other final agency action that could affect the Atlantic population of the leatherback sea turtle

or its habitat, until the petition to revise critical habitat was ruled on and without taking climate change fully into account. However, none of these additional requests are petitionable under the Act and, therefore, they are not addressed in this 90-day finding and 12-month determination.

Under the Act, the Service and NMFS each have respective areas of jurisdiction over sea turtles, as clarified by the 1977 Memorandum of Understanding Defining the Roles of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service in Joint Administration of the Endangered Species Act of 1973 as to Marine Turtles. The Service has jurisdiction over sea turtles and their associated habitats when they are on land, while NMFS has jurisdiction over sea turtles and their associated habitats in the marine environment. Thus, if Federal agencies are involved in activities that may affect sea turtles involved in nesting behavior, or may affect their nests or their nesting habitats, those Federal agencies are required to consult with the Service under section 7 of the Act to ensure that their activities are not likely to jeopardize the continued existence of the sea turtles. If a Federal action may affect sea turtles while they are in the marine environment, the Federal agency involved must engage in a section 7 consultation with NMFS, to ensure that the action is not likely to jeopardize the continued existence of the sea turtles. Similarly, if critical habitat has been designated, and Federal actions may affect such habitat, a section 7 consultation under the Act would be required to ensure that the Federal action is not likely to destroy or adversely modify the critical habitat. If the critical habitat has been designated on land, the consultation would be with the Service; if the critical habitat has been designated in the marine environment, the consultation would be with NMFS.

On April 1, 2010, the Service sent a letter to the petitioner acknowledging receipt of the petition. On April 28, 2010, the Service received an e-mail from the Sierra Club transmitting a letter from 36 nonprofit organizations and conservation interests outlining the importance of the NEC of Puerto Rico and recommending that it be designated as critical habitat for the endangered leatherback sea turtle. On June 2, 2010, the Sierra Club sent a Notice of Intent To Sue over the alleged failure of the Service and NMFS to make a 90-day finding.

On July 16, 2010, NMFS published in the **Federal Register** its 90-day finding on the portion of the petition that falls under its jurisdiction and determined that the petition did not present substantial scientific information indicating that the petitioned action may be warranted (75 FR 41436). On November 2, 2010, the Sierra Club submitted to NMFS a second petition that included additional data supporting the requested action. In response to the second petition, NMFS made a 90-day finding that the petition presented substantial information indicating that the petitioned revision of designated critical habitat for leatherback sea turtles may be warranted (May 5, 2011; 76 FR 25660).

On February 23, 2011, the Sierra Club sent a Notice of Intent To Sue over the alleged failure of the Service and NMFS to make both the 90-day and 12-month findings. On March 18, 2011, we sent a letter to the Sierra Club acknowledging receipt of the February 23, 2011, Notice of Intent To Sue. On May 27, 2011, the Sierra Club filed a complaint over the alleged failure of the Service to respond to the petition dated February 22, 2010, to revise critical habitat. This finding addresses the portion of the petition under the Service's jurisdiction.

This 90-day finding and 12-month determination is responsive only to aspects of the petition that fall under the Service's jurisdiction, the terrestrial portion of the area as identified in the petition as ''The coastline of the Northeast Ecological Corridor of Puerto Rico, running from Luquillo, Puerto Rico, to Fajardo, Puerto Rico, including the beaches known as San Miguel, Paulinas, and Convento, and extending at least .025 mile (132 feet) inland from the mean high tide line.''

Species Information

Worldwide Distribution

Leatherback sea turtles have the widest distribution of sea turtles, nesting on beaches in the tropics and subtropics and foraging into higher-latitude subpolar waters. In the Pacific, they extend from the waters of British Columbia (McAlpine *et al.* 2004, entire) and the Gulf of Alaska (Hodge and Wing 2000, entire) to the waters of Chile and South Island (New Zealand), and nesting occurs in both the eastern and western Pacific (Márquez M. 1990, pp. 54–55; Gill 1997, entire; Brito M. 1998, entire). They also occur throughout the Indian Ocean (Hamann *et al.* 2006, entire). In the Atlantic, they are found as far north as the waters of the North Sea, Barents Sea, Newfoundland, and Labrador (Threlfall 1978, p. 287; Goff and Lien 1988, entire; Márquez M. 1990, pp. 54–55; James *et al.* 2005, entire) and as far south as Argentina and the Cape of Good Hope, South Africa (Márquez M. 1990, pp. 54–55; Hughes *et al.* 1998, entire; Luschi *et al.* 2003, entire; Luschi *et al.* 2006, pp. 53–54), and nesting occurs in both the eastern and western Atlantic. Although leatherback sea turtles occur in Mediterranean waters, no nesting is known to take place in this region (Casale *et al.* 2003, pp. 136–138).

Historical descriptions of leatherback sea turtles are rarely found in the accounts of early sailors, and the size of their population before the mid-20th century is speculative (NMFS and Service 2007, p. 26). Even for large nesting assemblages like French Guiana and Suriname, nesting records prior to the 1950s are lacking (Rivalan *et al.* 2006, p. 2). By the 1960s, several nesting sites were being discovered in the western Atlantic, in Pacific Mexico, and in Malaysia. Soon after, other populations in Pacific Costa Rica and Mexico were identified. Today, nesting beaches are known in all major ocean basins with catastrophic declines observed in the eastern Pacific (Spotila *et al.* 2000, entire) and Malaysia (Chan and Liew 1996, pp. 196–197).

In the eastern Pacific, important nesting beaches occur in Mexico and Costa Rica, with scattered nesting along the Central American coast (Márquez M. 1990, pp. 54–55). Nesting is very rare in the Gulf of California, Mexico (Seminoff and Dutton 2007, p. 139). In the western Pacific, the main nesting beaches occur in the Solomon Islands, Papua, Indonesia, and Papua New Guinea (Limpus 2002, p. 44; Dutton *et al.* 2007, pp. 49–50). Minor nesting occurs in Vanuatu (Petro *et al.* 2007, entire), Fiji (Rupeni *et al.* 2002, p. 122), and southeastern Australia (Dobbs 2002, p. 81; Hamann *et al.* 2006, p. 20); and it is very rare in the North Pacific (Eckert 1993, p. 73). In the Indian Ocean, major nesting beaches occur in South Africa, Sri Lanka, and Andaman and Nicobar islands, with smaller populations in Mozambique, Java, and Malaysia (Hamann *et al.* 2006, p. 8).

In the eastern Atlantic, a globally significant nesting population is concentrated in Gabon, Africa, with widely dispersed but fairly regular nesting between Mauritania in the north and Angola in the south (Fretey *et al.* 2007, entire). Important nesting areas in the western Atlantic Ocean occur in Florida (USA); St. Croix, VI; Puerto Rico; Costa Rica; Panamá; Colombia; Trinidad and Tobago; Guyana; Suriname; French Guiana; and southern Brazil (Márquez M. 1990, pp. 54–55; Spotila *et al.* 1996, pp. 212–213; Bräutigam and Eckert 2006, p. 8). Other minor nesting beaches are scattered throughout the Caribbean, Brazil, and

Venezuela (Mast 2005–2006, pp. 18–19; Hernández *et al.* 2007, p. 81).

For additional information on the biology, status, and habitat needs of the leatherback sea turtle, refer to the Leatherback Sea Turtle (*Dermochelys coriacea*) 5-Year Review (NMFS and Service 2007, entire); the Recovery Plan for Leatherback Turtles (*Dermochelys coriacea*) in the U.S. Caribbean, Atlantic, and Gulf of Mexico (NMFS and Service 1992, entire); and the Recovery Plan for U.S. Pacific Populations of the Leatherback Turtle (*Dermochelys coriacea*) (NMFS and Service 1998, entire), available on the Internet at *http://www.regulations.gov*.

Evaluation of Information for the 90-Day Finding

In making this finding, we relied on information provided by the petitioners, sources cited by the petitioners, and information readily available in the Service's files. We evaluated the information in accordance with 50 CFR 24.14(c). Our process for making this 90-day finding under section 4(b)(3)(D) of the Act and 50 CFR 424.14(c) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial scientific information'' threshold. In making a finding, we consider whether the petition provides the following in accordance with 50 CFR 424.14(c)(2):

(i) Information indicating that areas petitioned to be added to critical habitat contain physical or biological features essential to, and that may require special management to provide for, the conservation of the species involved; or

(ii) Information indicating that areas currently designated as critical habitat do not contain resources essential to, or do not require special management to provide for, the conservation of the species involved.

The Service's evaluation of this information is presented below. We have organized the petition's claims into four categories relative to 50 CFR 424.14(c)(2)(i) as described above:.

(1) Petition claims the leatherback sea turtle nesting sites in Puerto Rico represent the second most significant nesting activity in the United States, and that the beaches of the Northeast Ecological Corridor are the most important leatherback sea turtle nesting sites on the main island of Puerto Rico.

The petition claims ''[t]he United States contains at least three significant leatherback nesting areas: Sandy Point on St. Croix in the U.S. Virgin Islands, which hosted 1,008 nests in 2001, Brava and Resaca Beaches on Puerto Rico's island of Culebra, and the beaches around Fajardo and Luquillo in the Northeast Ecological Corridor of Puerto Rico. The Puerto Rican beaches cumulatively hosted a minimum of 469–882 nests each year between 2000 and 2005.'' The petition cites a Puerto Rico Department of Natural and Environmental Resources (PRDNER) management plan that describes the Corridor's beaches as '' 'one of the most important leatherback nesting areas in Puerto Rico and in the jurisdiction of the United States,' noting that from 1993 to 2007, 3,188 nests have been recorded, for an average of 213 nests annually.'' The petition asserts that revision of leatherback sea turtle critical habitat to include the beaches of the NEC of Puerto Rico is necessary to protect leatherback sea turtles. The petition states that the NEC, including its coastal waters, is ''a centrally important space for 'individual and population growth,' because it is also a site for 'breeding, reproduction, [and] rearing of offspring.' '' It asserts that ''[a]s two decades of data demonstrate, it is a 'nesting ground' or 'reproduction [site]' which includes the sandy beaches and open access to the ocean that constitute the 'soil type' and 'physical constituent elements' that leatherbacks need to survive.''

The Service assessed information provided by the petitioner and available in our files. The Service agrees with the petitioner that Sandy Point in the U.S. Virgin Islands, Brava and Resaca Beaches on Puerto Rico's Island of Culebra and the Northeast Ecological Corridor on the main island of Puerto Rico are important nesting areas for leatherback sea turtles in the United States. However, important leatherback sea turtle nesting habitat also occurs in Florida, as well as elsewhere in Puerto Rico on the Island of Vieques and in the Maunabo area on the main island. A summary of key leatherback nesting beaches in the United States is provided below.

In Florida, the majority of leatherback sea turtle nesting occurs along the Southeast Atlantic coastline in Brevard through Broward Counties. These counties encompass approximately 206 miles (332 km) of sandy coastline fronting the Atlantic Ocean (Clark 1993, p. 17). Within these counties, approximately 89 miles (143 km) have been identified as conservation lands (NMFS and Service 2008, pp. V–36–V–39). Conservation lands are defined as public ownership (Federal, State, or local government) and privately owned lands (*e.g.,* nonprofit conservation foundations) that are generally managed in a way to benefit sea turtle conservation (NMFS and Service 2008, p. V–33). Therefore, beaches identified as conservation lands in Brevard through Broward Counties represent approximately 43 percent of all oceanfront beaches in these counties.

The Florida Statewide Nesting Beach Survey (SNBS) program documented an increase in leatherback sea turtle nesting numbers from 98 nests in 1989 to between 453 and 1,747 nests per season in the 2000s, with the highest number of nests recorded in 2009 (Florida Fish and Wildlife Conservation Commission SNBS data). Although the SNBS program provides information on distribution and total abundance of sea turtle nesting statewide, it cannot be used to assess trends because of variable survey effort. Therefore, leatherback nesting trends are best assessed using standardized nest counts made at Index Nesting Beach Survey (INBS) sites surveyed with constant effort over time (1989–2010). Under the INBS program, approximately 30 percent of Florida's SNBS beach length is surveyed. The INBS nest counts represent approximately 34 percent of known leatherback nesting in Florida. An analysis of the INBS data has shown an exponential increase in leatherback sea turtle nesting in Florida since 1989. From 1989 through 2010, the annual number of leatherback sea turtle nests at the core set of index beaches ranged from 27 to 615 (Florida Fish and Wildlife Conservation Commission INBS data). Using the numbers of nests recorded from 1979 through 2009, Stewart *et al.* (in press) estimated a population growth of approximately 10.2 percent per year.

In the U.S. Virgin Islands, leatherback sea turtle nesting has been reported on the islands of St. Croix, St. Thomas, and St. John. However, the most significant leatherback sea turtle nesting activity occurs on Sandy Point, St. Croix (NMFS and Service 1992, p. 2). Leatherback sea turtle nesting on Sandy Point was first brought to the attention of biologists in the mid-1970s (Boulon *et al.* 1996, p. 141), and flipper tagging of nesting turtles began in 1977 (Dutton *et al.* 2005, p. 186). Since 1982, the Sandy Point beach has been consistently monitored each nesting season. In 1984, the Sandy Point National Wildlife Refuge was established and encompassed the Sandy Point beach. Between 1982 and 2010, the number of nests recorded on Sandy Point ranged from a low of 82 in 1986 to a high of 1,008 in 2001 (Garner and Garner 2010, pp. 18–20). Dutton *et al.* (2005, p. 189) estimated a population growth of approximately 13 percent per year from 1994 through 2001 for this nesting population. Using the number of observed females at Sandy Point from 1986 to 2004, the Turtle Expert Working

Group (2007, pp. 48–49) estimated a population growth of approximately 10 percent per year.

In Puerto Rico, the main nesting areas are at Fajardo (NEC) and Maunabo on the main island, and on the islands of Culebra and Vieques. Between 1993 and 2010, the number of nests recorded in the NEC in the Fajardo area ranged from a low of 51 in 1995 to a high of 456 in 2009 (C. Diez, PRDNER, unpublished data). In the Maunabo area, the number of nests recorded between 2001 and 2010 ranged from a low of 53 in 2002 to a high of 260 in 2009 (C. Diez, PRDNER, unpublished data). On the island of Culebra, the number of nests recorded between 1993 and 2010 ranged from a low of 41 in 1996 to a high of 395 in 1997 (C. Diez, PRDNER, unpublished data). Approximately two-thirds of Vieques Island was occupied by the U.S. Navy beginning in the early 1940s and was used by the U.S. Department of Defense for military practices until 2002, when most of the U.S. Navy lands on Vieques Island were transferred to the Department of the Interior to form part of the Service's National Wildlife Refuge System.

Monitoring of sea turtle nesting beaches on Vieques Island has been challenging due to access restrictions imposed during military operations and the presence of unexploded ordnance throughout most of the areas formerly used for military training by the U.S. Navy. On beaches managed by the Commonwealth of Puerto Rico on the island of Vieques, PRDNER recorded annually 14–61 leatherback nests between 1991 and 2000; 145 nests in 2002; 24 in 2003; and 37 in 2005 (C. Diez, PRDNER, unpublished data). The number of leatherback sea turtle nests recorded on Vieques Island beaches managed by the Service were as follows:

- 32 in 2001;
- 163 in 2002;
- 13 in 2003;
- 28 in 2004;
- 88 in 2005;
- 92 in 2006;
- 93 in 2007;
- 52 in 2008;
- 155 in 2009; and
- 132 in 2010.

Nesting data for 2006 and 2010 include nests found on beaches off Service lands (8 and 6 nests, respectively). Since several beaches on Vieques' eastern portion are not regularly monitored for sea turtle nesting activity due to logistical difficulties and presence of unexploded ordnance, the average yearly number of sea turtle nests on Vieques Island is likely to be greater. Using the numbers of nests recorded in Puerto Rico between 1984 and 2005, the Turtle Expert Working Group (2007, p. 47) estimated a population growth of approximately 10 percent per year.

Fajardo (NEC) and Maunabo are the primary leatherback sea turtle nesting areas on the main island of Puerto Rico. The NEC of Puerto Rico, running from Luquillo to Fajardo, PR, includes approximately 3,200 ''cuerdas'' (3,108 acres or 1,259 hectares) within the properties referred to as San Miguel I and II, Las Paulinas, El Convento Norte, and Seven Seas. Three of these properties (Las Paulinas, El Convento Norte, and Seven Seas) are owned by the Puerto Rico Industrial Development Company (PRIDCO) and the National Parks Company (NPC), while the remaining properties are privately owned.

Beaches within the NEC comprise approximately 5.43 miles (8.74 km) of sandy beaches that support leatherback nesting. Maunabo is located on the southeastern coast and has approximately 3.93 miles (6.32 km) of sandy beaches suitable for leatherback sea turtle nesting. Although beaches in Maunabo are public domain, uplands adjacent to these beaches are privately owned with the potential for future development. On the island of Culebra, the majority of leatherback sea turtle nesting occurs on Brava and Resaca beaches. Brava Beach is approximately 0.78 mile (1.25 km) in length, while Resaca Beach is 0.62 mile (1.00 km) in length. All of the land surrounding Resaca Beach and part of the land surrounding Brava Beach is owned by the Service as part of the Culebra National Wildlife Refuge. Therefore, Resaca Beach is relatively protected from development.

Although at present there is no development on the private land near Brava Beach, there is the potential for future development. On the island of Vieques, leatherback sea turtles nest on both the southern and northern beaches on the eastern portion of the island within the Vieques National Wildlife Refuge. The refuge encompasses approximately 18.09 miles (29.11 km) of sandy beaches that may support leatherback sea turtle nesting. These beaches are protected from development.

Although other important leatherback sea turtle nesting beaches occur in the United States besides those identified in the petition, the Service believes the information submitted by the petitioner about the importance of the NEC to leatherback sea turtle nesting in the United States is substantial for this claim.

(2) Petition claims that leatherback sea turtles in the Atlantic Ocean have declined and could experience a similar decline as those in the Pacific Ocean if their habitat is not protected.

The petition cites a number of studies about the population decline of leatherback sea turtles in the Pacific Ocean, and concludes that leatherback sea turtles in the Atlantic Ocean could experience a similar decline if their habitat is not protected. The petition also states that conditions in the Atlantic and Caribbean are relatively more stable than those in the Pacific, but that some declines in nesting have been documented or are believed likely to have occurred based on estimates on nesting declines for other sea turtle species. However, the petition did not cite or provide information about the status of leatherback sea turtle populations in the Atlantic Ocean.

In 2007, the Turtle Expert Working Group published *An Assessment of the Leatherback Turtle Population in the Atlantic Ocean* and estimated a population size of 34,000–94,000 adult leatherback sea turtles in the North Atlantic (Turtle Expert Working Group 2007, p. 59). An increasing or stable population trend was seen in all regions of the Atlantic except West Africa for which no long-term data were available (Turtle Expert Working Group 2007, pp. 48–51). The nesting trend for the North Caribbean population, which includes Puerto Rico, was characterized as increasing. Furthermore, a near record number of leatherback nests (1,330 nests) was laid on Florida index beaches in 2010. Leatherback nest counts have been increasing exponentially in Florida (*http://myfwc.com/research/wildlife/sea-turtles/nesting/beach-survey-totals-1989-2010/*).

The petition does not provide information to support the claim that leatherback sea turtle populations have substantially declined in the Atlantic since the 1978 critical habitat designation in St. Croix, VI. Thus, the Service does not believe the petition or information in our files presents substantial information to support this claim. The Service also does not believe the petition or information available in our files presents substantial information to support the claim that the leatherback sea turtles in the Atlantic Ocean are likely to experience declines similar to those in the Pacific if critical habitat is not revised to include the beaches of the NEC. Therefore, the Service finds that the petition does not present substantial information for this claim.

(3) Petition claims that the evidence supporting designation of the Northeast

Ecological Corridor as critical habitat is stronger than the evidence used by the Service to designate critical habitat for Sandy Point, St. Croix, VI.

The petition cites the 1978 critical habitat designation of the nesting beaches of Sandy Point, St. Croix, as a rationale for likewise designating the beaches of the NEC of Puerto Rico as critical habitat. The petition indicates that the current level of leatherback sea turtle nesting within the NEC is greater than the level of nesting that was observed at Sandy Point in 1977, which was used as justification for its designation as critical habitat.

At the time of the 1978 critical habitat designation, Sandy Point in the U.S. Virgin Islands was the only known beach under U.S. jurisdiction used extensively for nesting by leatherback sea turtles. Its designation as critical habitat was ''taken to insure the integrity of the only major nesting beach used by leatherbacks in the United States or its territories'' (43 FR 43688; September 26, 1978). Since that time, as described in the *Species Information* section above, additional beaches have been identified in the United States as important for leatherback sea turtle nesting, including beaches in Puerto Rico and Florida. Therefore, the rationale used for the Sandy Point critical habitat designation is not applicable for the NEC. Therefore, the Service finds that the petition does not present substantial information for this claim.

(4) Petition claims that threats on the nesting beach are substantial and that global climate change is exacerbating the situation.

The petition claims threats to leatherback sea turtle nesting beaches, exacerbated by global climate change, further justify the need for designation of the NEC as critical habitat. The Service agrees there are substantial threats affecting leatherback sea turtle nesting habitat in the U.S. Atlantic. Leatherback nesting habitat is affected by development, including the construction of buildings, beach armoring, renourishment, and sand mining (Crain *et al.* 1995, entire; Lutcavage *et al.* 1997, pp. 388–391; Witherington 1999, pp. 180–181). These factors may directly, through loss of beach habitat, or indirectly, through changing thermal profiles and increasing erosion, serve to decrease the amount of nesting area available to nesting females, and may evoke a change in the natural behaviors of adults and hatchlings (Ackerman 1997, pp. 102–103; Mosier 1998, pp. 42–47; Witherington *et al.* 2003, pp. 7–10). In addition, coastal development is usually accompanied by artificial lighting. The presence of lights on or adjacent to nesting beaches alters the behavior of nesting adults and is often fatal to emerging hatchlings as they are attracted to light sources and drawn away from the water (McFarlane 1963, p. 153; Philibosian 1976, p. 824; Ehrhart and Witherington 1987, pp. 66–67; Witherington and Bjorndal 1991, pp. 146–147; Witherington 1992, pp. 36–38; Villanueva-Mayor *et al.* 2003, entire).

In 1990, a major part of the NEC was included as part of the coastal barrier system under the Coastal Barrier Resources Act (CBRA), as requested by the Puerto Rico Planning Board (PRPB). The CBRA encourages the conservation of hurricane-prone, biologically rich coastal barriers by restricting Federal expenditures that encourage development, such as federally subsidized flood insurance (16 U.S.C. 3501–3510). In 1996, the PRPB rezoned the lands within the NEC as a tourist-residential development zone, allowing for recreational and tourism development of the area. Although the NEC had been designated as a Natural Reserve by the former Puerto Rico Governor in 2007, the new administration repealed the designation in October 2009. Thus, lands within the NEC continue under private and Commonwealth (PRIDCO, NPC) ownership, and are subject to potential future development. The NEC remains a unit within the CBRA system.

Between 2007 and 2008, the Service awarded more than $4,000,000 for the acquisition of over 400 acres in the San Miguel area, and continues to support acquisition in the area to ensure long-term conservation of these lands, particularly for leatherback sea turtle nesting. However, development pressures exist, and there are no lighting codes or regulations in Puerto Rico. Therefore, development could threaten leatherback nesting within the NEC.

As indicated in the petition, another factor that may affect leatherback sea turtle nesting habitat is climate change. Impacts from climate change, especially due to global warming, are likely to become more apparent in future years (Intergovernmental Panel on Climate Change 2007, pp. 12–17). The global mean temperature has risen 0.76 degrees Celsius over the last 150 years, and the linear trend over the last 50 years is nearly twice that for the last 100 years (Intergovernmental Panel on Climate Change 2007, p. 5). One of the most certain consequences of climate change is sea level rise (Titus and Narayanan 1995, pp. 123–132), which will result in increased erosion rates along nesting beaches.

On some undeveloped beaches, shoreline migration will have limited effects on the suitability of nesting habitat. Bruun (1962, pp. 123–126) hypothesized that during sea level rise, a typical beach profile will maintain its configuration but will be translated landward and upward. However, along developed coastlines, and especially in areas where erosion control structures have been constructed to limit shoreline movement, rising sea levels are likely to cause severe effects on nesting females and their eggs (Hawkes *et al.* 2009, p. 139; Poloczanska *et al.* 2009, pp. 164, 174). Erosion control structures can result in the permanent loss of dry nesting beach or deter nesting females from reaching suitable nesting sites (National Research Council 1990, p. 77). Nesting females may deposit eggs seaward of the erosion control structures potentially subjecting them to repeated tidal inundation.

For additional information on threats affecting leatherback sea turtle nesting beaches, refer to the Leatherback Sea Turtle (*Dermochelys coriacea*) 5-Year Review (NMFS and Service 2007, pp. 32–34); the Recovery Plan for Leatherback Turtles (*Dermochelys coriacea*) in the U.S. Caribbean, Atlantic, and Gulf of Mexico (NMFS and Service 1992, pp. 9–14); and the Recovery Plan for U.S. Pacific Populations of the Leatherback Turtle (*Dermochelys coriacea*) (NMFS and Service 1998, pp. 21–23), available on the Internet at *http://www.regulations.gov.*

The Service agrees with the petition that threats to leatherback sea turtle nesting habitat are substantial. We find the information submitted by the petitioner related to this claim to be substantial information for this claim.

90-Day Finding

Based on the above information and information readily available in our files, and pursuant to criteria specified in 50 CFR 424.14(b), we find the petition presents substantial scientific information indicating that revision of the critical habitat designation for the leatherback sea turtle may be warranted.

12-Month Determination

Pursuant to the provisions of the Act regarding revision of critical habitat and petitions for revision, we find that revisions to critical habitat for the leatherback sea turtle under the Act should be made. As described in the *How the Service Intends to Proceed* section below, we intend to fully assess critical habitat during the future planned status review for the leatherback sea turtle.

The Service intends that any revisions to critical habitat for the leatherback sea turtle be as accurate as possible. To ensure that the status review is comprehensive, the Service will request scientific and commercial data and other information regarding the leatherback sea turtle from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding when we initiate the review.

Until the Service is able to revise the critical habitat designation for the leatherback sea turtle, the currently designated critical habitat, as well as areas that support leatherback sea turtles but are outside of the current critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act. Federal agency actions are subject to the regulatory protections afforded by section 7(a)(2), which requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat.

How the Service Intends To Proceed

One of the recommendations contained in the 5-year reviews for listed sea turtle species, completed in 2007, was that the Service and NMFS conduct an analysis and review for each listed sea turtle (except the Kemp's ridley sea turtle) to determine the application of the distinct population segment policy. After completing the reviews, the Service and NMFS made a decision to conduct the recommended sea turtle status reviews in the following order: (1) Loggerhead sea turtle, (2) Green sea turtle, (3) Olive ridley sea turtle, (4) Leatherback sea turtle, and (5) Hawksbill sea turtle.

The loggerhead status review was selected to be conducted first because the species is listed as threatened worldwide, and there were substantial concerns about the status of some nesting populations. The green and olive ridley turtles were selected to be the second and third status reviews conducted because they have multiple vertebrate populations listed under the Act, some listed as threatened and some as endangered, and an assessment is needed to determine if these populations qualify as individual distinct population segments (DPSs) or are part of larger DPSs. The leatherback and hawksbill sea turtles were selected as the last two status reviews to be conducted because both species are listed as endangered worldwide and receive the fullest protection under the Act; therefore, the need for status reviews for these two species was deemed not to be as urgent as for the other species.

Once a status review is completed for each species, a rulemaking process would be conducted, if appropriate, to revise the species' status, list a DPS of the species, or designate or revise critical habitat if prudent and determinable. The status review for the loggerhead sea turtle has been completed (Conant *et al.,* 2009) and rulemaking is in progress (75 FR 12598; March 16, 2010); status reviews for the other species have not been initiated because they have been precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. It is our intention to assess leatherback sea turtle critical habitat as part of the future planned status review for the leatherback sea turtle.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the North Florida Ecological Services Office, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the U.S. Fish and Wildlife Service, North Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**) and the Caribbean Ecological Services Field Office (P.O. Box 491, Boquerón, PR 00622; telephone 787–851–7297).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 26, 2011.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–19676 Filed 8–3–11; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 76, No. 150

Thursday, August 4, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Stanislaus National Forest, CA; Notice of Intent To Prepare an Environmental Impact Statement for BEH Rangeland Allotments

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Stanislaus National Forest proposes to reauthorize livestock grazing on the Bell Meadow (B), Eagle Meadow (E) and Herring Creek (H) allotments on the Summit Ranger District. The area affected by this proposal includes approximately 57,250 acres in the Sierra Nevada, located in Tuolumne County, California. The purpose of this proposal is to ensure compliance with all applicable Public Laws and standards and guidelines described in the Forest Plan.

DATES: Comments on the proposed action should be submitted within 45 days of the date of publication of this Notice of Intent. Completion of the draft environmental impact statement is expected in January 2012 and the final environmental impact statement is expected in August 2012.

ADDRESSES: Send written comments to: Stanislaus National Forest, *Attn:* BEH Range; 19777 Greenley Road; Sonora, CA 95370. Electronic comments, in acceptable plain text (.txt), portable document format (.pdf), rich text (.rtf), or Word (.doc) formats, may be submitted to *comments-pacificsouthwest-stanislaus@fs.fed.us* with Subject: BEH Range.

FOR FURTHER INFORMATION CONTACT: Crispin Holland, Stanislaus National Forest, 19777 Greenley Road; Sonora, CA 95370; phone: (209) 532–3671 ext. 274; *e-mail: cholland@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

General Background

Domestic livestock grazing occurred in the area encompassed by these allotments since the 1850s. The livestock industry in this area peaked around the turn of the century, during the same time period as the creation of the Forest Reserves (later to become the National Forests). Regulation of livestock grazing began with the establishment of the Stanislaus National Forest and more seriously with the passage of the Taylor Grazing Act of 1934. The requirement that ranchers obtain grazing permits to graze National Forest land was intended to prevent long-term resource damage. Permitted livestock numbers on these allotments and across the National Forests in California are at least 50% below that allowed in the 1950s. Over time, allotment boundaries changed and portions of the National Forest are no longer grazed by commercial livestock.

Several Congressional Acts passed in the 1960s and 1970s, mainly the National Environmental Policy Act of 1969 (NEPA), required the Forest Service to conduct thorough analysis in planning and decision making for activities that affect the environment. The Rescissions Act of 1995 (Pub. L. 104–19, Sec 504(a)) requires the Forest Service to establish a schedule for completion of NEPA analysis on grazing allotments in order to update Allotment Management Plans (AMPs) and continue to authorize livestock grazing. The Code of Federal Regulations (36 CFR 222), the Forest Service Manual (FSM 2200) and the Forest Service Handbook (FSH 2209) contain direction and policy for Range Management (livestock use on National Forest lands).

The Bell Meadow, Eagle Meadow and Herring Creek AMPs were last updated in 1989, 1990 and 1980, respectively. The Forest Plan, as amended, now includes emphasis on specific resources and that along with changes to resources on the ground results in a need to update the AMPs and issue revised Term Grazing Permits.

Purpose and Need for Action

The purpose of this initiative is to reauthorize livestock grazing in the project area and to ensure compliance with the following regulations and agency policy:

- Public Law 104–19 Section 504 of the 1995 Rescissions Act, as amended, require each National Forest to establish and adhere to a schedule for completing NEPA analysis and updating Allotment Management Plans for all rangeland allotments on National Forest System lands.
- Congressional intent allows grazing on suitable lands where it is consistent with other multiple use goals and objectives as authorized through several Congressional Acts (Organic Administration Act of 1897, Multiple Use Sustained Yield Act of 1960, Wilderness Act of 1964, Forest and Rangeland Renewable Resources Planning Act of 1974, Federal Land Policy and Management Act of 1976, National Forest Management Act of 1976, and the Public Rangelands Improvement Act of 1978);
- Code of Federal Regulations (CFR) directs the Forest Service to meet multiple-use objectives, including managing for livestock grazing on forage-producing National Forest System lands (36 CFR 222.2 (c));
- It is Forest Service policy to make forage available to qualified livestock operators from lands suitable for grazing consistent with land management plans (Forest Service Manual (FSM) 2203.1); and,
- It is Forest Service policy to continue contributions to the economic and social well being of people by providing opportunities for economic diversity and by promoting stability for communities that depend on range resources for their livelihood (FSM 2202.1)

This action is needed because:

- There is public demand from qualified livestock operators for continued livestock grazing on these allotments. Livestock grazing on Forest Service land is an important source of meat and fiber production, encourages the retention of private lands (ranches) as open space, contributes to the economic stability of rural populations, and provides Forest visitors with opportunities to experience a traditional and culturally important use of public lands.
- Recent assessments indicate that specific locations within the project area may not be meeting or moving toward desired conditions in a manner that is timely and consistent with Forest Plan objectives, standards and guidelines. Gaps between existing resource conditions and desired conditions

indicate a need to change grazing management by updating AMPs.

• There is a need to design and implement an adaptive management system that will continue to move resource conditions toward desired conditions in a manner that is timely and consistent with Forest Plan goals and objectives.

Proposed Action

In response to the purpose and need, the Forest Service proposes to continue to authorize livestock grazing in the Bell Meadow, Eagle Meadow, and Herring Creek allotments, making forage available to qualified livestock operators in a manner that is sustainable and consistent with management direction. The Proposed Action would adjust livestock management, update Allotment Management Plans and implement an adaptive management strategy that would provide for healthy ecosystems in a manner that is consistent with the Forest Plan. The Proposed Action would move existing conditions toward desired conditions while continuing to allow livestock grazing on these allotments with the following management actions.

(1) Authorize continued grazing on the Bell Meadow, Eagle Meadow, and Herring Creek allotments in a manner that provides for healthy ecosystems and is consistent with Forest Plan direction.

Modify allotment boundaries, create subunits, and update Allotment Management Plans to incorporate resource conservation measures and adaptive management options.

Implement design criteria in order to better achieve desired conditions through systematic monitoring and adjustment of grazing activities, while allowing for flexibility in management decisions.

For more details about the proposed action, including a scoping package and maps, visit the project Web site at: *http://fs.usda.gov/goto/stanislaus/projects*.

Responsible Official

Susan Skalski, Forest Supervisor, Stanislaus National Forest, Supervisor's Office, 19777 Greenley Road, Sonora, CA 95370.

Nature of Decision To Be Made

The project area includes all land encompassed in the Bell Meadow, Eagle Meadow, and Herring Creek allotments, and areas proposed as additions to these allotments. The responsible official will decide whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action to reauthorize grazing in the Bell Meadow, Eagle Meadow, and Herring Creek allotments.

Scoping Process

Public participation is important at numerous points during the analysis. The Forest Service seeks information, comments, and assistance from the federal, state, and local agencies and individuals and organizations that may be interested in or affected by the proposed action.

Comments on the proposed action should be submitted within 45 days of the date of publication of this Notice of Intent. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by approximately January 2012. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. At that time, copies of the draft EIS will be distributed to all interested and affected agencies, organizations, and members of the public for their review and comment. It is very important that those interested in the management of the Stanislaus National Forest participate at that time.

The final EIS is scheduled to be completed in August 2012. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision. Substantive comments are defined as ''comments within the scope of the proposed action, specific to the proposed action, and have a direct relationship to the proposed action, and include supporting reasons for the responsible official to consider'' (36 CFR 215.2). Only those who submit comments during the comment period on the draft EIS are eligible to appeal the subsequent decision under the 36 CFR part 215 regulations.

Comment Requested

This notice of intent initiates the scoping proces which guides the development of the environmental impact statement. A draft EIS will be prepared for comment. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

Early Notice of Importance of Public Participation in Subsequent Environmental Review:

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: July 29, 2011.

Susan Skalski,

Forest Supervisor.

[FR Doc. 2011–19758 Filed 8–3–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Big Horn County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Big Horn County Resource Advisory Committee will meet in Greybull, Wyoming. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to hold the fifth meeting and to vote on project proposals.

DATES: The meeting will be held on September 8, 2011 and will begin at 3 p.m.

ADDRESSES: The meeting will be held at the Big Horn County Weed and Pest Building, 4782 Highway 310, Greybull, Wyoming. Written comments about this meeting should be sent to Laurie Walters-Clark, Bighorn National Forest, 2013 Eastside 2nd Street, Sheridan, Wyoming 82801. Comments may also be sent via e-mail to *comments-bighorn@fs.fed.us,* with the words Big Horn County RAC in the subject line. Facsimilies may be sent to 307–674–2668.

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 Bighorn National Forest, 2013 Eastside 2nd Street, Sheridan, Wyoming 82801. Visitors are encouraged to call ahead to 307–674–2600 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Laurie Walters-Clark, RAC Coordinator, USDA, Bighorn National Forest, 2013 Eastside 2nd Street, Sheridan, Wyoming 82801; (307) 674–2627.

Individuals who use telecommunication devices for the hearing impaired may call 1–307–674–2604 between 8 a.m. and 5 p.m., Mountain time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Introductions, (2) Project reviews, (3) Public Comment; and (4) Project voting for recommendation. 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: July 29, 2011.

William T. Bass,

Forest Supervisor.

[FR Doc. 2011–19835 Filed 8–3–11; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of briefing/meeting.

DATE AND TIME: Friday, August 12, 2011; 9:30 a.m. EDT.

PLACE: 624 Ninth Street, NW., Room 540, Washington, DC 20425.

Briefing Agenda

This briefing is open to the public.

Topic: The Civil Rights Implications of Eminent Domain Abuse.

I. Introductory Remarks by Chairman.

II. Speakers' Presentations.

III. Questions by Commissioners and Staff Director.

IV. Adjourn Briefing.

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda.

II. Approval of the July 15, 2011 Meeting Minutes.

III. Program Planning:

• Approval of the 2011 Enforcement Report.

• Approval of Age Discrimination Briefing Report.

IV. Management and Operations:

• Staff Director's report.

V. State Advisory Committee Issues:

• Re-chartering the Georgia SAC.

• Re-chartering the Oklahoma SAC.

VI. Adjourn.

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven (7) business days before the scheduled date of the meeting.

Dated: August 2, 2011.

Kimberly A. Tolhurst,

Senior Attorney-Advisor.

[FR Doc. 2011–19950 Filed 8–2–11; 4:15 pm]

BILLING CODE 6335–01–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: Defining Target Levels for Ecosystem Targets: A Socio-Ecological Approach.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (request for a new, one-time information collection).

Number of Respondents: 1,000.

Average Hours per Response: 15 minutes.

Burden Hours: 250.

Needs and Uses: This notice is for the request of a new information collection. The creation of the Puget Sound Partnership (PSP) allowed for a group of private and public entities, local citizens, tribes and businesses to begin to collectively work toward restoring the ecological health of the Puget Sound. With the PSP's inception, the Puget Sound ecosystem has become a national example of ecosystem-based management (EBM) implementation. The Partnership Action Agenda indentified 80 near-term actions that are required for ecosystem recovery. These actions, however, will require specific performance measures.

Ecosystems can contain numerous species, and a mean level of species placement within a predator/prey chain or food web can serve as an ecological indicator. Similarly, measures of relative biodiversity may provide indications of ecological health and therefore function as ecological indicators. Such indicators can facilitate EBMt, when target levels for indicators exist. Because targets are an expression of the desired state of the ecosystem, establishing targets must include both ecological understanding and societal values. This project will develop a unique approach for identifying scientifically rigorous ecosystem targets that explicitly considers social perspectives. For this reason, the Northwest Fisheries Science Center seeks to conduct social norm analyses which involve a survey of Puget Sound community stakeholders. Stakeholders will be asked, via telephone survey, a series of general questions regarding their views on the Puget Sound environment and the desirability of a range of potential ecosystem conditions for the Puget Sound.

A random digit dial phone survey will be conducted. The survey will be voluntary, and contacted individuals may decline to participate. Respondents will be asked to respond to statements regarding their perceptions of the health of the Puget Sound. Demographic and employment information will be collected so that responses can be

organized based on a stakeholder typology. This survey is essential because data on social norms, values and beliefs in the Puget Sound region are sparse; yet, they are critical to the development of sound ecosystem health targets.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

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: July 29, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–19750 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Docket Number 110726425–1426–01

RIN 0625–XA13

Opportunity for U.S. Businessmen and Women To Train in the Russian Federation

AGENCY: International Trade Administration (ITA), U.S. Department of Commerce (DOC).

ACTION: Notice of training opportunity.

Authority: 22 U.S.C. 2395(b).

SUMMARY: In November 2010, U.S. Secretary of Commerce Gary Locke and Russian Minister of Economic Development Elvira Nabiullina signed a Memorandum of Understanding (MOU) outlining plans for the two countries to cooperate on a management training exchange program that will enable private sector managers from each country to gain practical experience working in the other country. Under the U.S.-Russia Management Training Exchange Program, early-career U.S. managers will travel to Russia for two weeks to learn about business issues in Russia. The Program is arranged by ITA's Special American Business Internship Training Program (SABIT) which has been assisting U.S. companies active in or entering emerging markets. The program in Russia will be implemented through the Federal Resource Center, an agency of the Ministry of Economic Development of the Russian Federation. The training program is scheduled to take place in the Sverdlovsk region.

DATES: The program will take place in late September 2011. The application is due by Friday, August 12, 2011.

ADDRESSES: Interested U.S. applicants should contact the U.S. Department of Commerce's SABIT Program for an application or download an application from SABIT's Web site at *www.trade.gov/sabit.*

FOR FURTHER INFORMATION CONTACT: Tracy M. Rollins, Director, SABIT Program, U.S. Department of Commerce, (202) 482–0073. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Since FY 1992, SABIT has provided management training in the United States to over 5,000 business executives from various regions of the world. To date, over 4,000 U.S. companies have hosted executives through the SABIT Program in sectors including agribusiness; defense conversion; product standards and quality control; energy; financial services; telecommunications; transportation; housing; environmental equipment and services; medical equipment and supplies; pharmaceuticals; and health care management.

Trainees for this program in Russia will be selected by the SABIT Program based on their fit with Russian host organizations, ability to utilize the knowledge gained during the program to further U.S.-Russian business development, and overall quality of the application submitted. Participants will be selected by SABIT program staff. Participants must be United States citizens and employed at the time of the program. The SABIT program will pay for the trainees' round-trip international and domestic airfare to the internship site in the Russian Federation, housing while the trainees are in the Russian Federation, and provide per diem and emergency medical insurance. Trainees will be responsible for Russian visa costs. Trainees will not need to speak Russian.

The application (OMB Number 0625–0225) is free-of-charge and voluntary. This collection of information contains Paperwork Reduction Act (PRA) requirements approved by the Office of Management and Budget (OMB). Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB Control Number. Public reporting burden for this collection of information is estimated to be 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Persons wishing to comment on the burden estimate or any aspect of this collection of information, or offer suggestions for reducing this burden, should send their COMMENTS to the ITA Reports Clearance Officer, International Trade Administration, U.S., 1401 Constitution Avenue, NW., Washington, DC 20230.

Statutory Authority: This program is funded under Section 632(a) of the Foreign Assistance Act of 1961, as amended (the ''FAA''), and the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Pub. L. 111–117) to carry out the provisions of the FAA and the FREEDOM Support Act, as amended.

Dated July 29, 2011.

Tracy M. Rollins,

Director, SABIT Program, U.S. Department of Commerce.

[FR Doc. 2011–19783 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1776]

Approval for Manufacturing Authority, Foreign-Trade Zone 153; Abbott Cardiovascular Systems, Inc., (Cardiovascular Devices), Riverside County, CA

Pursuant to its Authority Under the Foreign-Trade Zones Act of June 18, 1934, as Amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) Adopts the Following Order:

Whereas, the City of San Diego, grantee of Foreign-Trade Zone 153, has requested manufacturing authority on behalf of Abbott Cardiovascular Systems, Inc., within Sites 11–13 of FTZ 153, located in Riverside County, California, (FTZ Docket 6–2011, January 18, 2011);

Whereas, notice inviting public comment has been given in the **Federal Register** (76 FR 4283, 1/25/2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application for manufacturing authority under zone procedures at sites within FTZ 153, on behalf of Abbott Cardiovascular Systems, Inc., as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 26th day of July 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–19814 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1769]

Grant of Authority for Subzone Status Halliburton Energy Services, Inc. (Barite Milling); Larose, LA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Port of South Louisiana, grantee of Foreign-Trade Zone 124, has made application to the Board for authority to establish a special-purpose subzone at the barite milling facility of Halliburton Energy Services, Inc., located in Larose, Louisiana (FTZ Docket 7–2011, filed 01/18/2011);

Whereas, notice inviting public comment has been given in the **Federal Register** (76 FR 4284, 01/25/2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the manufacturing and distribution of ground barite at the facility of Halliburton Energy Services, Inc., located in Larose, Louisiana (Subzone 124O), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 26th day of July 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–19709 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1774]

Reorganization of Foreign-Trade Zone 47 Under Alternative Site Framework; Boone County, KY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09; 75 FR 71069–71070, 11/22/10) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Greater Cincinnati Foreign Trade Zone, Inc., grantee of FTZ 47, submitted an application to the Board (FTZ Docket 21–2011, filed 3/15/2011) for authority to reorganize under the ASF with a service area of Boone, Kenton and Campbell Counties, Kentucky, adjacent to the Cincinnati Customs and Border Protection port of entry, and FTZ 47's existing Site 2 would be categorized as a magnet site and existing Site 1 would be reduced by 15 acres and categorized as a usage-driven site;

Whereas, notice inviting public comment was given in the **Federal Register** (76 FR 14901, 3/18/2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to reorganize FTZ 47 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and to a five-year ASF sunset provision for magnet sites that would terminate authority for Site 2 if not activated by July 31, 2016, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Site 1 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by July 31, 2014.

Signed at Washington, DC, this 26th day of July 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–19706 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Jianwei Ding, 51 Bukit Batok Crescent, #0828 Unity Centre, Singapore 658077, and Registration #: 29603–050, FCI La Tuna, Federal Correction Institution, P.O. Box 3000, Anthony, TX 88021, Respondent; Order Relating to Jianwei Ding

The Bureau of Industry and Security, U.S. Department of Commerce (''BIS''), has notified Jianwei Ding (''Ding''), in his individual capacity, of its intention to initiate an administrative proceeding against him pursuant to Section 766.3 of the Export Administration Regulations

(the ''Regulations''),[1] and Section 13(c) of the Export Administration Act of 1979, as amended (the ''Act''),[2] through the issuance of a proposed charging letter to Ding that alleges that he committed one violation of the Regulations. Specifically, the allegations are:

Charge 1 15 CFR 764.2(d)—Conspiracy to Export Items From the United States to China Without the Required Licenses

Beginning at least in or around February 2007, and continuing through at least in or around April 2008, Ding conspired or acted in concert with others, known and unknown, to violate the Regulations or to bring about an act that constitutes a violation of the Regulations. The purpose of the conspiracy was to export items subject to the Regulations from the United States to the People's Republic of China (''China''), without the required U.S. Government authorization. Specifically, Ding and others conspired to export Toray M40JB–6000–50B carbon fiber (''Toray M40'') and Toray M60JB–6000–50B carbon fiber (''Toray M60'') from the United States to China without a license. The Toray M40 was subject to the Regulations, classified under Export Control Classification Number (''ECCN'') 1C010.b, controlled for export to China for nuclear proliferation and national security reasons, and valued at approximately $91,800. The Toray M60 was an item subject to the Regulations, classified under ECCN 1C210.a, controlled for export to China for nuclear proliferation reasons, and valued at approximately $223,600. These exports required a license pursuant to Sections 742.3 and 742.4 of the Regulations.

In furtherance of the conspiracy, Ding, as the manager of Jowa Globaltech Pte. Ltd., a.k.a. FirmSpace Pte. Ltd. (''FirmSpace''), and Far Eastron Co. Pte. Ltd., Singapore-based companies that acquired items for customers including the China Academy of Space Technology (''CAST''), participated in a scheme whereby he directed activities in Singapore and the United States to obtain the Toray materials for CAST, maintained a relationship with CAST, and provided the money required to purchase Toray material for export to CAST.

In furtherance of the conspiracy, Ding, knowing that his Singapore companies were arranging for the purchase of Toray materials from what Ding believed to be a U.S. supplier of Toray materials, instructed co-conspirator Ping Cheng, a U.S. individual, to inspect the merchandise and determine its authenticity. On or about April 17, 2007, Ding sent an email to Cheng requesting that Cheng fly to Minnesota from New York to inspect a lot of 104 kilograms of Toray M60 material. On or about June 29, 2007, Ding directed Cheng to travel to Minnesota to inspect a lot of 211 kilograms of Toray M40 material. Upon receiving reports and pictures of the items from Cheng, Ding then instructed FirmSpace to issue purchase orders to the apparent U.S. supplier and authorized wire transfers for payment for the Toray M60 and Toray M40 materials in FirmSpace's name, thereby obscuring CAST's role in the transaction.

Ding took these actions despite repeated warnings that an export license was required for the Toray material. Specifically, on or about March 28, 2007, and again on or about April 5, 2007, Ding received two e-mails from an individual he believed to be a U.S. supplier of the Toray materials that informed him of licensing requirements for the Toray M60 material. Again, on or about May 7, 2007, Ding received an e-mail from an individual he believed to be a U.S. supplier of the Toray materials that informed him of licensing requirements for the Toray M40 material. Nevertheless, Ding instructed his co-conspirators to go forward with this transaction and to export the Toray materials, which were destined for CAST.

Following the completion of these purchases, the materials were moved to New York for storage in anticipation of export. Thereafter on or about October 12, 2007, Ding requested that Cheng make a test export of one box of the Toray M40 materials from the United States, and Ding provided to Cheng the name of a specific individual at a specific company that would facilitate the export. When the efforts of Cheng to reach the specific individual provided by Ding were unsuccessful, on or about November 17, 2007, Cheng asked Ding to provide additional instructions and informed Ding that he ''had to make up the story [when] I call for [a] rate quote.'' On or about November 22, 2007, Ding advised Cheng to try again and to ''only say 'a customer do[es] have one box goods ship to Taiwan' she will know.''

Finally, in furtherance of the conspiracy, on or about April 7, 2008, Ding sent Cheng an e-mail directing the export from the United States of the 104 kilograms of Toray M60 material to Jowa Globaltech Pte. Ltd., a.k.a. FirmSpace, in Singapore and of the 211 kilograms of Toray M40 material to New Bluesky Technology Co. Ltd. in Hong Kong. These exports were destined for CAST in China. In so doing, Ding committed one violation of Section 764.2(d) of the Regulations.

Whereas, Bis and Ding have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

Whereas, I have approved of the terms of such Settlement Agreement; *It is therefore ordered:*

First, Ding shall be assessed a civil penalty in the amount of $100,000, which shall be paid to the U.S. Department of Commerce in two installments of $50,000. The first installment of $50,000 shall be paid within 30 days from the date of this Order, and the second installment of $50,000 shall be paid within six months from the date of this Order.

Second, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and if any payment is not made in full by the due date set forth herein, Ding will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

Third, for a period of twenty-five (25) years from the date of this Order, Jianwei Ding, 51 Bukit Batok Crescent, #0828 Unity Centre, Singapore 658077; Registration #: 29603–050, FCI La Tuna, Federal Correction Institution, P.O. Box 3000, Anthony, TX 88021, and when acting for or on behalf of Ding, his representatives, agents, assigns or employees (hereinafter collectively referred to as ''Denied Person'') may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by

[1] The violation alleged to have been committed occurred in 2007 and 2008. The Regulations governing the violation at issue are found in the 2007 through 2008 versions of the Code of Federal Regulations (15 CFR parts 730–774 (2007, 2008)). The 2011 Regulations set forth the procedures that apply to this matter.

[2] 50 U.S.C. app. 2401–2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001 (3 CFR, part 2001 Comp. 783 (2002)) which has been extended by successive Presidential Notices, the most recent being that of August 12, 2010 (75 FR 50,681 (Aug. 16, 2010)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*). The Act and the Regulations are available on the Government Printing Office Web site at: *http://www.access.gpo.gov/bis/.*

the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fifth, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

Sixth, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

Seventh, that this Order shall be served on Ding and published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Issued this 27th day of July 2011.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2011–19830 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the Peoples' Republic of China: Notice of Extension of Time Limits for the Preliminary Results of the Second Antidumping Duty Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 4, 2011.

FOR FURTHER INFORMATION CONTACT: Alexis Polovina, Office 9, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3927.

Background

On August 2, 2010, the Department published a notice of opportunity to request an administrative review on the antidumping order on certain steel nails from the People's Republic of China (''PRC'') for the period of review (''POR'') August 1, 2009, through July 31, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 45094 (August 2, 2010). Based upon requests for review from various parties, on September 29, 2010, the Department initiated the first antidumping duty administrative review on certain steel nails from the PRC, covering 222 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 60076 (September 29, 2010) (''*Initiation Notice*''). On April 28, 2011, the Department published a notice of a partial rescission and an extension of the time period for issuing the preliminary results by 90 days, to August 1, 2011. *See Certain Steel Nails From the Peoples' Republic of China: Notice of Extension of Time Limits and Partial Rescission of the Second Antidumping Duty Administrative Review,* 76 FR 23788 (April 28, 2011). On July 11, 2011, in accordance with 19 CFR 351.214(j), we aligned the concurrent new shipper review of Shanghai Colour Nail Co., Ltd. with the second administrative review.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of these reviews within the current time limits. The Department requires additional time to analyze recently submitted supplemental questionnaire responses, which contained a significant amount of new sales and factors of production data. The additional time is needed to consider these data and their incorporation into the margin calculations for the individually-reviewed respondents, as well as to consider all of the issues raised by parties during the course of these proceedings. Therefore, the Department is hereby fully extending the time limits for completion of the preliminary results by 30 days. The preliminary results will now be due no later than August 31, 2011. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published in accordance with section 777(i)(1) of the Act.

Dated: July 28, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–19704 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–937]

Citric Acid and Certain Citrate Salts From the People's Republic of China: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 4, 2011.

FOR FURTHER INFORMATION CONTACT: Krisha Hill or Maisha Cryor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–4037 or (202) 482–5831, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2010, the Department of Commerce (''the Department'') published the initiation of the administrative review of the antidumping duty order on citric acid and certain citrate salts (''citric acid'') from the People's Republic of China (''PRC''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review,* 75 FR 37759 (June 30, 2010). On June 10, 2011, the Department published the preliminary results of the first administrative review of the antidumping duty order of citric acid from the PRC. *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Preliminary Results of the First Administrative Review of the Antidumping Duty Order; and Partial Rescission of Administrative Review,* 76 FR 34048 (June 10, 2011). This review covers the periods November 20, 2008, through May 19, 2009, and May 29, 2009, through April 30, 2010. The final results of this review are currently due no later than October 8, 2011.

Extension of Time Limit for Final Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall make a final determination in an administrative review of an antidumping duty order within 120 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 120-day period to 180 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the final results of the administrative review of citric acid from the PRC within this time limit. Specifically, additional time is needed to examine respondents' production process, factors of production, and financial statements. Furthermore, the Department requires additional time to prepare for on-site verifications of respondent companies. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is fully extending the time period for completion of the final results of this review, which is currently due on October 8, 2011, by 60 days. Therefore, the final results are now due no later than December 7, 2011.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: July 22, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–19703 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–864]

Pure Magnesium in Granular Form From the People's Republic of China: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: August 4, 2011.

SUMMARY: On December 28, 2010, the U.S. Department of Commerce (''the Department'') published a notice of initiation of an administrative review of the antidumping duty order on pure magnesium in granular form from the People's Republic of China (''PRC'').[1] The review covers one manufacturer/exporter of subject merchandise from the PRC: China Minmetals Non-Ferrous Metals Co., Ltd. (''CMN''). The period of review (''POR'') is November 1, 2009, through October 31, 2010. Following the receipt of a certification of no shipments from CMN and supporting evidence, we notified all interested parties of the Department's intent to rescind this review and provided an opportunity to comment on the rescission.[2] We received no comments. Therefore, we are rescinding this administrative review.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–4243.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2010, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on pure magnesium in granular form from the PRC for the period November 1, 2009, through October 31, 2010.[3] On November 30, 2010, the Department received a timely request from U.S. Magnesium LLC (''U.S. Magnesium''), a domestic producer and Petitioner in the underlying investigation of this case, in accordance with 19 CFR 351.213(b), for an administrative review of the antidumping duty order with respect to CMN. On December 28, 2010, in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act''), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review with respect to CMN.[4] On February 15, 2011, CMN submitted a letter to the Department certifying that it did not export pure magnesium in granular form for consumption in the United States during the POR.[5]

On March 30, 2011, the Department placed on the record information obtained in response to the Department's ''No Shipments Inquiry'' to U.S. Customs and Border Protection (''CBP'') concerning imports into the United States of subject merchandise during the POR.[6] These data indicate that CMN made no entries of subject merchandise during the POR.

On June 15, 2011, the Department notified interested parties of its intent to rescind this administrative review and gave parties until June 22, 2010, to provide comments.[7] We did not receive any comments.

Scope of the Order

There is an existing antidumping duty order on pure magnesium from the People's Republic of China (PRC). *See*

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[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Revocation in Part,* 75 FR 81565 (December 28, 2010) (''*Initiation*'').

[2] *See* Memorandum to the File, ''Intent to Rescind the 2009–2010 Antidumping Duty Administrative Review of Pure Magnesium in Granular Form from the People's Republic of China—A–570–864,'' dated June 15, 2011 (''Intent to Rescind Memorandum'').

[3] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 67079 (November 1, 2010).

[4] *See Initiation,* 75 FR at 81569.

[5] *See* letter from CMN, ''Pure Magnesium in Granular Form from the People's Republic of China—No Sales Certification,'' date February 15, 2011.

[6] *See* Memorandum to the File, ''Pure Magnesium in Granular Form from the People's Republic of China; Transmittal of U.S. Customs and Border Protection Information to the File,'' dated March 30, 2011, at Attachment I.

[7] *See* Memorandum to the File, ''Pure Magnesium in Granular Form from the People's Republic of China: Intent to Rescind the 2009–2010 Antidumping Duty Administrative Review of Pure Magnesium in Granular Form from the People's Republic of China—A–570–864,'' dated June 15, 2011.

Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation, 60 FR 25691 (May 12, 1995). The scope of this order excludes pure magnesium that is already covered by the existing order on pure magnesium in ingot form, and currently classifiable under item numbers 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

The scope of this order includes imports of pure magnesium products, regardless of chemistry, including, without limitation, raspings, granules, turnings, chips, powder, and briquettes, except as noted above.

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as ''ultra pure'' magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent primary magnesium, by weight (generally referred to as ''pure'' magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy'' [8] (generally referred to as ''off specification pure'' magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight. Excluded from this order are mixtures containing 90 percent or less pure magnesium by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures. The non-magnesium granular materials of which the Department is aware used to make such excluded reagents are: lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, aluminum, alumina (Al2O3), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomitic lime, and colemanite. A party importing a magnesium-based reagent which includes one or more materials not on this list is required to seek a scope clarification from the Department before such a mixture may be imported free of antidumping duties.

The merchandise subject to this order is currently classifiable under item 8104.30.00 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Rescission of the Administrative Review

Based upon the certifications and the evidence on the record, the Department finds CMN's claim of no shipments of subject merchandise to the United States during the POR to be substantiated. Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if it concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. Because there were no entries, exports, or sales of the subject merchandise by CMN, the Department is rescinding this review in accordance with 19 CFR 351.213(d)(3). The Department intends to issue assessment instructions to CBP fifteen days after the publication of this notice. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2).

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: July 27, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–19702 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–DS–P

[8] The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before August 24, 2011. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 11–043. *Applicant:* Mississippi State University, 3137 Highway 468 West, Pearl, MS 39208. *Instrument:* Transmission electron microscope. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used in conducting research and diagnostic work in microbiology and pathology, to study biological materials in order to identify bacterial or viral pathogens with clinical significance in veterinary medicine. *Justification for Duty-Free Entry:* No instruments of the same general category or comparable instruments that could otherwise be used for the intended purpose are being manufactured in the United States. *Application accepted by Commissioner of Customs:* July 7, 2011.

Docket Number: 11–044. *Applicant:* University of Chicago, Argonne National Laboratory, 9700 South Cass Avenue, Lemont, IL 60439. *Instrument:* Magneto-optical Kerr microscope system. *Manufacturer:* Evico Magnetics GmgH, Germany. *Intended Use:* The instrument will be used for real-time imaging of magnetic domains, as well as provide Kerr effect magnetic hysteresis loops, thereby providing important information on the reversal behavior in ferromagnetic films. *Justification for Duty-Free Entry:* No instruments of the same general category or comparable instruments that meet the technical requirements for the intended purpose are being manufactured in the United States. *Application accepted by Commissioner of Customs:* July 14, 2011.

Dated: July 27, 2011.

Supriya Kumar,

Acting Director, Subsidies Enforcement Office, Office of Policy, Import Administration.

[FR Doc. 2011–19705 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 88–13A16]

Export Trade Certificate of Review

ACTION: Notice of issuance of an Export Trade Certificate of Review to Wood

Machinery Manufacturers of America (''WMMA'') (Application #88–13A16).

SUMMARY: The U.S. Department of Commerce issued an amended Export Trade Certificate of Review to Wood Machinery Manufacturers of America on July 18, 2011. The Certificate has been amended twelve times. The previous amendment was issued to WMMA on August 16, 2010, and a notice of its issuance was published in the **Federal Register** on August 20, 2010 (75 FR 51439). The original Export Trade Certificate of Review No. 88–00016 was issued on February 3, 1989, and published in the **Federal Register** on February 9, 1989 (54 FR 6312).

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or e-mail at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2010). The U.S. Department of Commerce, International Trade Administration, Office of Competition and Economic Analysis (''OCEA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the issuance in the **Federal Register**. Under Section 305(a) of the Export Trading Company Act (15 U.S.C. 4012(b)(1)) and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

WMMA's Export Trade Certificate of Review has been amended to:

1. Add the following new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): TigerStop LLC, Vancouver, WA; and

2. Delete the following Member from WMMA's Certificate: Saw Trax Mfg., Kennesaw, GA.

The effective date of the amended certificate is April 19, 2011, the date on which WMMA's application to amend was deemed submitted. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: July 26, 2011.

Joseph E. Flynn,

Office Director, Office of Competition and Economic Analysis.

[FR Doc. 2011–19573 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review: Correction

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 4, 2011

Correction

On July 21, 2011, the Department of Commerce (''Department'') issued a notice of initiation of five-year reviews (''Sunset Reviews'') of certain antidumping and countervailing duty orders (''*Initiation Notice*'') for publication in the **Federal Register**. *See Initiation of Five-Year (''Sunset'') Review* (signed July 21, 2011, expected publication in the **Federal Register** on August 1, 2011). The Department inadvertently included two revoked antidumping duty orders, Ball Bearings and Parts Thereof from Japan (A–588–804) (third review) and Ball Bearings and Parts Thereof from the United Kingdom (A–412–801) (third review), in the list of antidumping duty proceedings for which the Department is initiating Sunset Reviews in August 2011. *See Ball Bearings and Parts Thereof From Japan and the United Kingdom: Revocation of Antidumping Duty Orders,* 76 FR 41761 (July 15, 2011). The Department is not initiating Sunset Reviews of the antidumping duty orders on Ball Bearings and Parts Thereof from Japan or Ball Bearings and Parts Thereof from the United Kingdom because those antidumping duty orders have been revoked.

The *Initiation Notice* is hereby corrected to exclude any reference to the initiation of Sunset Reviews of the proceedings concerning Ball Bearings and Parts Thereof from Japan (A–588–804) (third review) and Ball Bearings and Parts Thereof from United Kingdom (A–412–801) (third review).

Dated: July 29, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–19819 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Partial Rescission of the Seventh Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam''). *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam,* 68 FR 47909 (August 12, 2003). On September 22, 2010, the Department initiated the August 1, 2009, through July 31, 2010, antidumping duty administrative review on certain frozen fish fillets from Vietnam. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation,* 75 FR 60076, (September 29, 2010). Based upon requests for review from various parties, the Department initiated this review with respect to 26 companies.[1] On December 27, 2010,

[1] (1) An Giang Fisheries Import and Export Joint Stock Company (aka Agifish or AnGiang Fisheries Import and Export) (''Agifish''); (2) Anvifish Co., Ltd.; (3) Anvifish Joint Stock Company (aka Anvifish JSC); (4) Asia Commerce Fisheries Joint Stock Company (aka Acomfish JSC) (''Acomfish''); (5) Bien Dong Seafood Co., Ltd. (''Bien Dong Seafood''); (6) Binh An Seafood Joint Stock Co. (''Binh An''); (7) Cadovimex II Seafood Import-Export and Processing Joint Stock Company (aka Cadovimex II) (''Cadovimex II''); (8) Cantho Import-Export Seafood Joint Stock Company (''CASEAMEX''); (9) CUU Long Fish Joint Stock Company (aka CL-Fish) (''CL Fish''); (10) East Sea Seafoods Limited Liability Company (formerly known as East Sea Seafoods Joint Venture Co., Ltd.); (11) East Sea Seafoods Joint Venture Co., Ltd.; (12) East Sea Seafoods LLC; (13) Hiep Thanh Seafood Joint Stock Co. (''Hiep Thanh''); (14) International Development & Investment Corporation (also known as IDI) (''IDI''); (15) Nam Viet Company Limited (aka NAVICO) (''Nam Viet''); (16) Nam Viet Corporation; (17) NTSF Seafoods Joint Stock Company (aka NTSF); (18) QVD Food Company, Ltd.(''QVD''); (19) QVD Dong Thap Food Co., Ltd. (''QVD DT''); (20) Saigon-Mekong Fishery Co., Ltd. (aka SAMEFICO) (''SAMEFICO''); (21) Southern Fishery Industries Company, Ltd. (aka South Vina)

Continued

Agifish withdrew its request for an administrative review. On December 28, 2010, SAMEFICO withdrew its request for an administrative review. On December 28, 2010, Petitioners [2] partially withdrew their August 31, 2010, request for an administrative review for four companies. These companies include: (1) Agifish; (2) Nam Viet; (3) Nam Viet Corporation; and (4) SAMEFICO. On March 11, 2011, Cadovimex II withdrew its request for an administrative review. On March 14, 2011, Petitioners withdrew their review request for Cadovimex II. The preliminary results of this administrative review are currently due no later than August 31, 2011.[3]

DATES: *Effective Date:* August 4, 2011.

FOR FURTHER INFORMATION CONTACT: Alexis Polovina and Javier Barrientos, Office 9, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3927 and (202) 482–2243, respectively.

Partial Rescission of Review

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. Parties withdrew their review requests with respect to four exporters of subject merchandise within the 90-day deadline, in accordance with 19 CFR 351.213(d)(1).

Therefore, in accordance with section 351.213(d)(1) of the Department's regulations, we are partially rescinding this review with respect to the following companies: (1) Agifish; (2) Nam Viet; (3) Nam Viet Corporation; and 4) SAMEFICO. The Department is also rescinding this review with respect to Cadovimex II. Although Cadovimex II's and Petitioner's March 11, 2011, and March 14, 2011, withdrawal requests were submitted after the December 28, 2010, 90-day deadline, we will extend the deadline. In this instance, the Department has not expended significant resources analyzing Cadovimex II's data, and therefore, find it reasonable to extend the deadline. *See* 19 CFR 351.213(d)(1).

Assessment Rates

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For those companies for which this review has been rescinded and which have a separate rate from a prior segment of this proceeding, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). Accordingly, the Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice for Agifish, SAMEFICO, and Cadovimex II.

The Department cannot order liquidation for companies which, although they are no longer under review as a separate entity, may still be under review as part of the Vietnam-wide entity. Therefore, the Department cannot, at this time, order liquidation of entries for the following companies: Nam Viet and Nam Viet Corporation. The Department intends to issue liquidation instructions for the Vietnam-wide entities 15 days after publication of the final results of this review.

Notification to Importers

This notice serves as a final reminder to importers for whom this review is being rescinded, as of the publication date of this notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders (''APO'')

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 29, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–19815 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–DS–P

(''South Vina''); (22) Thien Ma Seafood Co., Ltd. (''THIMACO''); (23) Thuan Hung Co., Ltd. (aka THUFICO) (''Thuan Hung''); (24) Vinh Hoan Corporation (''Vinh Hoan''); (25) Vinh Hoan Company, Ltd.; and (26) Vinh Quang Fisheries Corporation (''Vinh Quang'').

[2] Catfish Farmers of America and individual U.S. catfish processors, America's Catch, Consolidated Catfish Companies, LLC dba Country Select Catfish, Delta Pride Catfish, Inc., Harvest Select Catfish, Inc., Heartland Catfish Company, Pride of the Pond, and Simmons Farm Raised Catfish, Inc.

[3] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limit for Preliminary Results of the Seventh Antidumping Duty Administrative Review,* 76 FR 206263 (April 13, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–975, A–201–840]

Galvanized Steel Wire From the People's Republic of China and Mexico: Postponement of Preliminary Determinations of Antidumping Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 4, 2011.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik (the People's Republic of China), Office 9, or Patrick Edwards (Mexico), Office 7, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, *telephone:* (202) 482–6905 or (202) 482–8029, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 2011, the Department of Commerce (the Department) published in the **Federal Register** the initiation of the antidumping duty investigations of galvanized steel wire from the People's Republic of China (PRC) and Mexico. The period of investigation (POI) for the PRC investigation is July 1, 2010, through December 31, 2010, and the POI for the Mexico investigation is January 1, 2010, through December 31, 2010. *See Galvanized Steel Wire From the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations,* 76 FR 23548 (April 27, 2011). The current deadline for the preliminary determinations of these investigations is September 7, 2011.

Postponement of Preliminary Determinations

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete its preliminary determinations for these investigations no later than 140 days after the date of issuance of the initiation (*i.e.,* September 7, 2011).

On July 13, 2011, the petitioners, Davis Wire Corporation, Johnstown Wire Technologies, Inc., Mid-South Wire Company, Inc., National Standard, LLC, and Oklahoma Steel & Wire Company, Inc. (collectively, the petitioners) made a timely request pursuant to 19 CFR 351.205(e) for a postponement of the preliminary determinations with respect to the PRC and Mexico. The petitioners requested postponement of the preliminary determinations of the antidumping duty investigations with respect to both the PRC and Mexico so that they have adequate time to analyze and comment upon the responses of the various companies which have been selected as respondents. *See* Letters from the Petitioners to the Department, titled ''Request for Extension of Time for Preliminary Determination,'' dated July 13, 2011.

For the reasons stated by the petitioners and because there are no compelling reasons to deny the request, the Department is postponing the deadline for the preliminary determinations with respect to the PRC and Mexico pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) by 50 days to October 27, 2011. In accordance with section 735(a)(1) of the Act, the deadline for the final determinations of these antidumping duty investigations will continue to be 75 days after the date of these preliminary determinations, unless extended.

This notice is issued and published in accordance with section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: July 29, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–19822 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–928]

Uncovered Innerspring Units From the People's Republic of China: Preliminary Intent To Rescind New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 19, 2009, the Department of Commerce (the ''Department'') published in the **Federal Register** the antidumping duty order on uncovered innerspring units (''innersprings'') from the People's Republic of China (''PRC'').[1] The Department is conducting a new shipper review (''NSR'') of the *Order,* covering the period of review (''POR'') of February 1, 2010–July 31, 2010. As discussed below, we preliminarily determine that Foshan Nanhai Jiujiang Quan Li Spring Hardware Factory's (''Quan Li'') sale under review is not *bona fide*. As such, we are preliminarily rescinding the NSR for Quan Li.

EFFECTIVE DATES: August 4, 2011.

FOR FURTHER INFORMATION CONTACT: Paul 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) 482–0413.

SUPPLEMENTARY INFORMATION:

Background

On August 20, 2010, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the ''Act''), and section 351.214(c) of the Department's regulations, the Department received a NSR request from Quan Li and Foshan Yongnuo Import & Export Co., Ltd. (''Yongnuo''). Quan Li certified that it was the producer of the subject merchandise upon which the request was based. Yongnuo certified that it was the exporter of the subject merchandise upon which the request was based. On October 6, 2010, the Department issued its original antidumping duty questionnaire. On October 7, 2010, the Department published a notice of initiation of the NSR of the *Order* for Quan Li and Yongnuo.[2] Between November 5, 2010, and April 29, 2011, Quan Li and Yongnuo submitted responses to the original and supplemental sections A, C, D and Importer antidumping duty questionnaires.

On January 18, 2011, the Department sent interested parties a letter requesting comments on surrogate country selection and information pertaining to valuing factors of production. On April 25, 2011, we received surrogate country comments and surrogate value data from Quan Li and Yongnuo, as well as from Petitioner.[3]

On March 28, 2011, the Department extended the deadline for the preliminary results of this review to June 1, 2011.[4] On June 13, 2011, the Department extended the deadline for the preliminary results of this review to July 15, 2011.[5] On July 20, 2011, the Department extended the deadline for the preliminary results of this review to July 26, 2011.[6]

Scope of the Order

The merchandise subject to the order is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.,* twin, twin long, full, full long, queen, California king and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in the scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring.

Pocketed and non-pocketed innerspring units are included in this definition. Non-pocketed innersprings are typically joined together with helical wire and border rods. Non-pocketed

[1] *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (February 19, 2009) (''*Order*'').

[2] *See Uncovered Innerspring Units from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review,* 75 FR 62107 (October 7, 2010).

[3] The petitioner is Leggett and Platt, Incorporated, hereafter referred to as ''Petitioner.''

[4] *See Uncovered Innerspring Units from the People's Republic of China: Extension of Preliminary Results of Antidumping Duty New Shipper Review,* 76 FR 17107 (March 28, 2011).

[5] *See Uncovered Innerspring Units from the People's Republic of China: Extension of Preliminary Results of Antidumping Duty New Shipper Review,* 76 FR 34207 (June 13, 2011).

[6] *See Uncovered Innerspring Units from the People's Republic of China: Extension of Preliminary Results of Antidumping Duty New Shipper Review,* 76 FR 43263 (July 20, 2011).

innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a ''pocket'' or ''sock'' of a nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010, 9404.29.9005 and 9404.29.9011 and have also been classified under subheadings 9404.10.0000, 7326.20.0070, 7320.20.5010, or 7320.90.5010 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the order is dispositive.

Bona Fides Analysis

Consistent with Department practice, we examined the *bona fides* of Quan Li's sale.[7] In evaluating whether a sale in an NSR is commercially reasonable or typical of normal business practices, and therefore *bona fide,* the Department considers, *inter alia,* such factors as (a) The timing of the sale, (b) the price and quantity, (c) the expenses arising from the transaction, (d) whether the goods were resold at a profit, and (e) whether the transaction was made on an arm's length basis.[8] Accordingly, the Department considers a number of factors in its *bona fides* analysis, ''all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.'' [9] In *TTPC,* the court also affirmed the Department's decision that any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,[10] and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.[11] Finally, in *New Donghua,* the CIT affirmed the Department's practice of evaluating the circumstances surrounding an NSR sale, so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the producer's usual commercial practice would dictate.[12] Where the Department finds that a sale is not *bona fide,* the Department will exclude the sale from its export price calculations.[13]

Based on the totality of circumstances, we preliminarily find that the sale made by Quan Li during the POR was not a *bona fide* commercial transaction and should be excluded from the Department's calculations. Quan Li's POR quantity was atypical and its price was high. In addition, we sought information from the importer in order to evaluate the commercial reasonableness of the sale and to consider whether this sale is predictive of future commercial activity. The importer provided conflicting information, it has not substantiated its claims that the subject merchandise was resold for profit; and it has also said that it has no other purchases of subject merchandise. Because much of the factual information used in our analysis of the *bona fides* of the transaction involves business proprietary information, a full discussion of the basis for our preliminary finding that the sale is not *bona fide* is set forth in the Quan *Li Bona Fides* Memo.[14] Because we have found Quan Li's sole sale to be not *bona fide,* we cannot rely on this sale to calculate a dumping margin and, therefore, there is no sale on which we can base this review and we are preliminarily rescinding Quan Li's NSR.[15]

Preliminary Rescission of NSR

For the foregoing reasons, the Department preliminarily finds that Quan Li's sale is not bona fide and that this sale does not provide a reasonable, or reliable, basis for calculating a dumping margin. Because this non-*bona fide* sale was the only sale of subject merchandise during the POR, the Department is preliminarily rescinding the NSR of Quan Li.

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. If we proceed to a final rescission of Quan Li's NSR, Quan Li's entry will be assessed at the rate entered.[16] If we do not proceed to a final rescission of Quan Li's NSR, pursuant to section 351.212(b)(1) of the Department's regulations, we will calculate importer-specific (or customer) *ad valorem* duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.* In either case, the Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

Effective upon publication of the final rescission of this NSR, or the final result of this NSR, we will instruct CBP to discontinue the option of posting a bond or security *in lieu* of a cash deposit for entries of subject merchandise by Quan Li, pursuant to section 751(a)(2)(B)(iii) of the Act and section 351.214(e) of the Department's regulations. If we proceed to a final rescission of this NSR, the cash deposit rate will continue to be the PRC-wide rate for Quan Li because the Department will not have determined an individual margin of dumping for Quan Li. If we issue final results for this NSR, we will instruct CBP to collect cash deposits, effective upon the publication of the final results, at the rates established therein.

Disclosure

The Department intends to disclose to parties of this proceeding the calculation performed in reaching the preliminary results within five days of the date of publication of this notice in accordance with section 351.224(b) of the Department's regulations.

Public Comment and FOP Data

In accordance with section 351.301(c)(3)(ii) of the Department's regulations, for the final results, interested parties may submit publicly available information to value factors of production (''FOP'') within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the

[7] See, *e.g., Honey from the People's Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews,* 71 FR 58579 (October 4, 2006) and accompanying Issues and Decision Memorandum at Comment 1b.

[8] *See Tianjin Tiancheng Pharmaceutical Co., Ltd.* v. *United States,* 366 F. Supp. 2d 1246, 1249–1250 (CIT 2005) (''TTPC'').

[9] *See Hebei New Donghua Amino Acid Co., Ltd.* v. *United States,* 374 F. Supp. 2d 1333, 1342 (CIT 2005) ('' New Donghua'') (citing *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review,* 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum: New Shipper Review of Clipper Manufacturing Ltd.).

[10] *See* TTPC, 366 F. Supp. 2d at 1250.

[11] *Id.* at 1263.

[12] *New Donghua,* 374 F. Supp. 2d at 1344.

[13] *See* TTPC, 366 F. Supp. 2d at 1249.

[14] *See* Memorandum to James C. Doyle, Director, Office 9, through Scot T. Fullerton, Program Manager, Office 9, from Paul Walker, Case Analyst, Office 9, First New Shipper Review of Uncovered Innerspring Units from the People's Republic of China: *Bona Fide* Analysis of Foshan Nanhai Jiujiang Quan Li Spring Hardware Factory's New Shipper Sale (''Quan Li *Bona Fide* Memo'').

[15] *See* Quan Li Bona Fide Memo, TTPC and *New Donghua.*

[16] *See* section 351.212(c) of the Department's regulations.

publicly available information to value each FOP. Additionally, in accordance with section 351.301(c)(1) of the Department's regulations, for the final results of this NSR, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party within ten days of the applicable deadline for submission of such factual information. However, the Department notes that section 351.301(c)(1) of the Department's regulations permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record.[17]

In accordance with section 351.309(c)(1)(ii) of the Department's regulations, interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of the preliminary results of this NSR. In accordance with section 351.309(d) of the Department's regulations, rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the deadline for submitting the case briefs. The Department requests that interested parties provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

Any interested party may request a hearing within 30 days of publication of these preliminary results.[18] Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we intend to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Department intends to issue the final results of this NSR, which will include the results of its analysis raised in any such comments, within 90 days of publication of these preliminary results, pursuant to section 751(a)(2)(B)(iv) of the Act and section 351.214(i) of the Department's regulations.

[17] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

[18] *See* section 351.310(c) of the Department's regulations.

Notification to Importers

This notice serves as a preliminary reminder to importers of its responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and sections 351.214(h) and 351.221(b)(4) of the Department's regulations.

Dated: July 26, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–19712 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; High Seas Fishing Permit Application Information

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 3, 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 Mi Ae Kim, (301) 427–8365 or *Mi.Ae.Kim@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

United States (U.S.) vessels that fish on the high seas (waters beyond the U.S. exclusive economic zone) are required to possess a permit issued under the High Seas Fishing Compliance Act (HSFCA). Applicants for this permit must submit information to identify their vessels, owners and operators of the vessels, and intended fishing areas. The application information is used to process permits and to maintain a register of vessels authorized to fish on the high seas.

The HSFCA also requires vessels be marked for identification and enforcement purposes. Vessels must be marked in three locations (port and starboard sides of the deckhouse or hull, and on a weather deck) with their official number or radio call sign.

Operators of vessels licensed under the HFSCA are required to report their catch and fishing effort when fishing on the high seas. The requirement is for fishery management purposes and to provide data to international organizations. Vessels already maintaining logbooks under other specific regulations are not required to maintain an additional logbook. These requirements apply to all vessels fishing on the high seas.

II. Method of Collection

Owners or operators of high seas fishing vessels must submit paper permit application forms and paper logbook pages to National Marine Fisheries Service (NMFS). No information is submitted for the vessel marking requirement. The markings are only displayed on the vessel.

III. Data

OMB Control Number: 0648–0304.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 120.

Estimated Time per Response: 30 minutes per application form; logbook reports, 6 minutes per day for days fish are caught, 1 minute per day for days when fish are not caught; 45 minutes (15 minutes for each of 3 locations) for vessel markings.

Estimated Total Annual Burden Hours: 948.

Estimated Total Annual Cost to Public: $19,795.

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: July 29, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–19757 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Cooperative Game Fish Tagging Report

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 3, 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 Eric Orbesen, (305) 361–4253 or *Eric.Orbesen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Cooperative Game Fish Tagging Program was initiated in 1971 as part of a comprehensive research program resulting from passage of Public Law 86–359, Study of Migratory Game Fish, and other legislative acts under which the National Marine Fisheries Service (NMFS) operates. The Cooperative Tagging Center attempts to determine the migration patterns of, and other biological information for, billfish, tunas, and swordfish. The fish tagging report is provided to the angler with the tags, and he/she fills out the card with the information when a fish is tagged and mails it to NMFS. Information on each species is used by NMFS to determine migratory patterns, distance traveled, stock boundaries, age, and growth. These data are necessary input for developing management criteria by regional fishery management councils, states, and NMFS.

II. Method of Collection

Information is submitted by mail.

III. Data

OMB Control Number: 0648–0247.

Form Number: NOAA form 88–162.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 12,000.

Estimated Time per Response: 2 minutes.

Estimated Total Annual Burden Hours: 400 hours.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 29, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–19721 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; California Signage Plan: Evaluation of Interpretive Signs

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 3, 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 Seaberry Nachbar, 831–626–1023, *seaberry.nachbar@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a regular submission (new collection). The California Signage Plan is an organized and systematic way to develop and install graphic signs along the California coastline and inland that interpret the natural and cultural resources of a particular location and its connection to the sanctuaries located within California. To date, a strategic approach to evaluating interpretive signs produced by the Office of National Marine Sanctuaries has not been developed; therefore, NOAA does not know if the messages trying to be conveyed to their audiences are effective. NOAA is proposing to conduct an online and onsite survey of approximately 400 visitors to the locations where signs are currently

installed. The questions outlined in the survey examine the public's use of the signs, understanding of the signs' content, understanding and awareness of protected areas/zones and how those messages are portrayed in regulatory signs, demographics of the target audience, interest in alternate sources of interpretive content, perception of the National Marine Sanctuaries identity, and awareness of the national marine sanctuary system.

II. Method of Collection

Half of the respondents will use paper forms completed onsite. Half of the respondents will be asked to complete the survey online.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (new collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 400.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 53 hours.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

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: July 29, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–19720 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA614

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program; Public Meeting

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

ACTION: Notice of peer review meeting.

SUMMARY: NMFS has requested the Center for Independent Experts (CIE) to conduct a peer review of the agency's economic data collection program for the Bering Sea/Aleutian Islands crab fisheries managed under the BSAI Crab Rationalization program. The CIE, operated by Northern Taiga Ventures, Inc., provides independent peer reviews of NMFS's fisheries stock assessments and other science products. The BSAI Crab Economic Data Report (EDR) program administered by NMFS began collecting cost, earnings and employment data in 2005, concurrently with the transition of BSAI crab fisheries to the rationalized management regime. The program was developed under the direction of the North Pacific Fishery Management Council (Council). The CIE review will examine the scientific methods and practices employed by NMFS in the design and administration of the EDR program and dissemination of results, assess whether the data and information produced represent the best available science, and provide recommendations for methodological improvements to achieve best scientific practices in economic data collection and analysis of BSAI crab fisheries. The public is invited to attend and observe the presentations and discussions between the CIE panel and the NMFS scientists and contractors who have administered the data collection.

DATES: The public portion of the meeting will be held August 23–24, 2011, 9 a.m. to 4:30 p.m. Pacific standard time.

ADDRESSES: The meeting will be held in the Observer Training Room, Building 4 of the National Marine Fisheries Service, Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Brian Garber-Yonts, 206–526–7143 or *brian.garber-yonts@noaa.gov.*

SUPPLEMENTARY INFORMATION: For further information about this meeting and the CIE Review of the BSAI crab EDR program, please visit the Alaska Fisheries Science Center Web site at *http://www.afsc.noaa.gov/.* For further information on the Crab Rationalization Program, please visit the NMFS Alaska Region Web site at *http://www.alaskafisheries.noaa.gov.*

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for special accommodations should be directed to Brian Garber-Yonts (see **FOR FURTHER INFORMATION CONTACT**) at least 5 working days before the workshop date.

Dated: August 1, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–19811 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW30

Takes of Marine Mammals Incidental to Specified Activities; Pile-Driving and Renovation Operations on the Trinidad Pier by the Cher-Ae Heights Indian Community of the Trinidad Rancheria in Trinidad, CA

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

ACTION: Notice; Issuance of an Incidental Take Authorization (ITA).

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulation, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Cher-Ae Heights Indian Community of the Trinidad Rancheria (Trinidad Rancheria) to take small numbers of marine mammals, by Level B harassment, incidental to pile-driving and renovation operations for the Trinidad Pier Reconstruction Project in Trinidad, California.

DATES: Effective August 1, 2011 through January 31, 2012.

ADDRESSES: A copy of the IHA is available by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 or by telephoning the contacts listed here.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. The following associated documents are also available at the same internet address: ''Biological Assessment, Trinidad Pier Replacement, Cher-Ae Heights Indian Community of the Trinidad Rancheria, May 2009'' and ''Environmental Assessment for Issuance of an Incidental Harassment Authorization for Cher-Ae Heights Indian Community of the Trinidad Rancheria's Trinidad Reconstruction Project in Trinidad, California.'' Documents cited in this notice, may be viewed by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1361(a)(5)(D)) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of marine mammals for a period of not more than one year by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for the incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS's review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (I) Has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

16 U.S.C. 1362(18).

Summary of Request

On November 3, 2009, NMFS received a letter from the Trinidad Rancheria, requesting an IHA. After addressing comments from NMFS, a revised IHA application was submitted on July 23, 2010. On May 18, 2011, NMFS published a notice in the **Federal Register** (76 FR 28733) disclosing the effects on marine mammals, making preliminary determinations and including a proposed IHA. The notice initiated a 30 day public comment period.

The requested IHA would authorize the take, by Level B (behavioral) harassment only, of small numbers of Pacific harbor seals (*Phoca vitulina richardsi*), California sea lions (*Zalophus californianus*), and Eastern Pacific gray whales (*Eschrichtius robustus*) incidental to pile-driving and renovation operations on the Trinidad Pier. The Trinidad Pier has served the Trinidad Community for decades and continues to be one of the marine economic generators for the area. This project will not only address the structural deficiencies of the aged pier, but will completely remove the presence of creosote and other wood preservatives from Trinidad Bay and eliminate non-point source run-off with the construction of the new pier. The pile-driving and renovation operations will take place during August, 2011 to January, 2012, in Trinidad, California. Additional information on the Trinidad Pier Reconstruction Project is contained in the application and Biological Assessment (BA), which is available upon request (see **ADDRESSES**).

Description of the Specified Activities

The Trinidad Pier, located on Trinidad Bay, is an antiquated structure that requires reconstruction in order to maintain public safety and to redress certain environmental deficiencies in the existing structure. The 165 m (540 ft) long pier is located on tidelands granted by the State of California to the City of Trinidad and leased by the Trinidad Rancheria. The project area consists of the pier (0.31 acres) and a nearby staging area (0.53 acres). The existing pier was constructed in 1946 to serve commercial fishing and recreational uses. Since that time, the creosote-treated wood piles which support the pier, as well as the wood decking, have deteriorated and are proposed to be replaced by cast-in-steel-shell (CISS) concrete piles and pre-cast concrete decking, respectively. This will improve the safety of the pier. Existing utilities that will require replacement include electrical water, sewer, and phone. Additional dock amenities that will be replaced including lighting, railing, four hoists, three sheds, a saltwater intake pipe used by Humboldt State University's (HSU) Telonicher Marine Laboratory, and a water quality sonde utilized by the Center for Integrative Coastal Observation, Research, and Education. The construction schedule is from August 1, 2011, to May 1, 2012, however the pile-driving and removal activities potentially resulting in incidental take of marine mammals will occur from August 1, 2011, through January 31, 2012.

Background

The Trinidad Pier is the northernmost oceanfront pier in California and has been used for commercial and recreational purposes over the last 50 years. Trinidad harbor and pier serve a fleet of commercial winter crab fishermen and year-round water angling for salmon, and nearshore/finfish species. Trinidad Pier was first built by Bob Hallmark in 1946. Since that time only minor maintenance activities have occurred on the pier. Today, Trinidad's economy is based on fishing and tourism and the pier supports these activities. The pier also provides educational opportunities by accommodating HSU's Telonicher Marine Lab's saltwater intake pipe, and the California Center of Integrated Technology's (CICORE) water quality sonde.

Currently, the Trinidad Rancheria plays an important role in the economic development of the Trinidad area through three main business enterprises,

one of which is the Seascape Restaurant and the pier. The Cher-Ae Heights Indian Community of the Trinidad Rancheria is a federally-recognized tribe composed of descendants of the Yurok, Weott, and Tolowa peoples. In 1906, the Trinidad Rancheria was established by a U.S. congressional enactment, and a congressional action authorized the purchase of small tracts of land for landless homeless California Indians. In 1908, through this Federal authority, 60 acres of land was purchased on Trinidad Bay to establish the Trinidad Rancheria. In 1917, the Secretary of the Interior formally approved the Trinidad Rancheria as a Federally Recognized Tribe.

The community began developing in the 1950's. In January, 2000, the Trinidad Rancheria purchased the Trinidad Pier, harbor facilities, and the Seascape Restaurant. The Trinidad Rancheria leases a total area of 14 acres in Trinidad Bay from the City of Trinidad. The Trinidad Rancheria currently operates the pier, and upland improvements including a boat launch ramp and the Seascape Restaurant. Funds for permitting and designs of the pier were granted to the Trinidad Rancheria by the California State Coastal Conservancy.

The purpose of the Trinidad Pier Reconstruction Project is to correct the structural deficiencies of the pier and improve pier utilities and safety for the benefit of the public, and indirectly improve the water quality conditions and provide additional habitat for the biological community in the area of special biological significance (ASBS). Currently, it is difficult to ensure the continued safety of the pier due to excessive deterioration of the creosote-treated Douglas fir piles and the pressure treated decking.

Pier Construction Overview

Summary plans for the pier and staging area are presented in Appendix A of the IHA application. Pier improvements will replace at a one-to-one ratio, approximately 1,254 m^2 (13,500 ft^2) of the pre-cast concrete decking. In addition, the project includes installation of 115 concrete piles (and removal of 205 piles) including batter and moorage piles (45.7 cm or 18 inches [in] in diameter), four hoists, standard lights, guardrail, and dock utility pipes including water, power, and telephone. A new stormwater collection system will also be incorporated into the reconstructed pier design. The new CISS concrete piles will be separated at 1.5 m (5 ft) intervals along 7.6 m (25 ft) long concrete bents. A total of 22 bents separated 7.6 m (25 ft) apart shall be used. The decking of the new pier will be constructed of pre-cast 6.1 m (20 ft) long concrete sections. The new pier will be 164.6 m (540 ft) long and 7.3 to 7.9 m (24 to 26 ft) wide, corresponding to the existing footprint.

A pile bent will be installed at the existing elevation of the lower deck to provide access to the existing floating dock. The existing stairs to the lower deck will be replaced with a ramp that is ADA compliant. The decking of the pier will be constructed at an elevation of 6.4 m (21 ft) above Mean Lower Low Water (MLLW). The top of the decking will be concrete poured to create a slope for drainage and to incorporate a pattern and a color into the concrete surface in order to provide an aesthetically pleasing appearance. An open guardrail, 1.1 m (3.5 ft) in height shall be constructed of tubular galvanized steel rail bars (approximately 1.9 cm [¾ in] diameter) uniform in shape throughout the length of the pier. Lighting will be installed in the decking (and railing in the landing area) along the length of the pier and will be focused and directed to minimize lighting of any surfaces other than the pier deck.

Currently there are four hoists on the pier. Three of the hoists are used to load and unload crab pots from the pier and the fourth hoist located at the end of the pier is suited to load and unload skiffs. The hoists are approximately 30 years old and may have had the Yale motors replaced since the time they were installed. The hoists shall be re-installed at points corresponding to their current location and their current duties. All design specifications shall conform to the Uniform Building Code.

Pier Demolition Methods

Removal of the existing pier and construction of the new pier shall occur simultaneously. Construction shall begin from the north (shore) end of the pier. All pier utilities and structures shall first be removed. Utilities to be removed include water, electrical, power and phone lines, temporary bathroom, ladders, and pier railing. Structures to be removed include four hoists, two wood sheds, HSU's 20 horse-power (hp) (14.9 kiloWatt [kW]) pump and saltwater intake pipes, CICORE's water quality sonde, and a concrete bench. Then the existing pressure treated decking, joists, and bent beams shall be removed and transported by truck to the upland staging area for temporary storage.

All existing piles located in the section of pier being worked on (active construction area) will then be removed by vibratory extraction, unless some are broken in the process. Vibratory extraction is a common method for removing both steel and timber piling. The vibratory hammer is a large mechanical device mostly constructed of steel that is suspended from a crane by a cable. The vibratory hammer is deployed from the derrick and positioned on the top of the pile. The pile will be unseated from the sediment by engaging the hammer and slowly lifting up on the hammer with the aid of the crane. Once unseated, the crane will continue to raise the hammer and pull the pile from the sediment. When the bottom of the pile reaches the mudline, the vibratory hammer will be disengaged. A choker cable connected to the crane will be attached to the pile, and the pile will be lifted from the water and placed upland. This process will be repeated for the remaining piling. Extracted piling will be stored upland, at the staging area, until the piles are transferred for upland disposal. Each such extraction will require approximately 40 minutes (min) of vibratory hammer operation, with up to five piles extracted per day (a total of 3.3 hours per day). Operation of the vibratory hammer is the primary activity within the pier demolition group of activities that is likely to affect marine mammals by potentially exposing them to both in-air (*i.e.,* airborne or sub-aerial) and underwater noise.

Douglas fir pilings are prone to breaking at the mudline. In some cases, removal with a vibratory hammer is not possible because the pile will break apart due to the vibration. Broken or damaged piling can be removed by wrapping the individual pile with a cable and pulling it directly from the sediment with a crane. If the pile breaks between the waterline and the mudline it will be removed by water jetting. Water jetting would potentially be performed by divers working around the base of the piles and is not expected to have the potential to result in incidental take of marine mammals.

A floating oil containment boom surrounding the work area will be deployed during creosote-treated timber pile removal. The boom will also collect any floating debris. Oil-absorbent materials will be deployed if a visible sheen is observed. The boom will remain in place until all oily material and floating debris has been collected. Used oil-absorbent materials will be disposed of at an approved upland disposal site. The contractor shall also follow Best Management Practices (BMPs): NS–14—Material Over Water, NS–15—Demolition Adjacent to Water, and WM–4—Spill Prevention and Control listed in the California

Stormwater Quality Association (CASQA) Handbook.

The existing Douglas-fir piles are creosote treated. The depth of creosote penetration into the piles varies from 0.6 to 5.1 cm (0.25 to 2 in). Creosote is composed of a mixture of chemicals that are potentially toxic to fish, other marine organisms, and humans. Polycyclic aromatic hydrocarbons (PAH), phenols and cresols are the major chemicals in creosote that can cause harmful health effects to marine biota. The replacement of the creosote treated piles with CISS concrete piles is expected to eliminate potential contamination of the water column by PAH, phenols and cresols from the existing treated wood piles.

All removed piles shall be temporarily stored at the upland staging areas until all demolition activities are complete (approximately 6 months). Following the cessation of demolition activities, the creosote treated piles will be transported by the Contractor to Anderson Landfill in Shasta County. This landfill is approved to accept construction demolition, wood wastes, and non-hazardous/non-designated sediment.

The pressure treated 2x4 in Douglas-fir decking will also be stored at the staging area until demolition is complete. The partially pressure treated decking and railing may be reused and will be kept by the Trinidad Rancheria for potential future use.

Pile Installation

Design—Two 45.7 cm (18 in) diameter battered piles, which are designed to resist lateral load, will be located on each side of the pier at 12:1 slopes. Three vertical piles, which are designed to support 50 tons of vertical loads, will be located between the battered piles separated 1.5 m (5 ft) apart.

Overview—New piles will be installed initially from shore and then, as construction proceeds, from the reconstructed dock. Following removal of each existing pile, steel casings will be vibrated (using a vibratory hammer) to a depth of approximately 0.8 m (2.5 ft) above the top elevation of the proposed pile (7.6 to 10.7 m [25 to 35 ft] below the mudline). The steel shell of 1.9 cm (¾ in) thickness shall extend from above the water surface to below the upper layer of sediment, which consists of sand, into the harder sediment, which consists mostly of weathered shale and sandstone. The steel shell will be coated with polymer to protect the casings from corrosion. The steel shell will be coated with polymer to protect the casings from corrosion. The steel shell shall be used to auger the holes and will then be cleaned and concrete poured using a tremie to seal the area below the shell. The shell will then be dewatered and a steel rebar cage installed prior to pouring concrete to fill the shell. These steps are described in further detail below.

Pile Excavation—Following installation of the steel casing, each hole will be augered to the required pile depth of 7.6 to 10.7 m (25 to 35 ft) below the mudline. An auger drill shall be used to excavate the sediment and rock from the steel shell. Geotechnical studies (Taber, 2007) indicate that the material encountered in the test borings can be excavated using typical heavy duty foundation drilling equipment. Driving the new piles and augering the holes are the primary activities within the pile installation group of activities most likely to result in incidental harassment of marine mammals by potentially exposing them to underwater and in-air noise.

Steel casing member of 1.9 cm (¾ in) thickness shall be used to form the CISS concrete foundation columns in underwater locations. In this technique, inner and outer casings are partially imbedded in the ground submerged in the water and in concentric relationship with one another. The annulus formed between the inner and outer casings is filled with water and cuttings, while the inner casing is drilled to the required depth, and the sediment is removed from the core of inner steel casing. Following removal of the core, the outer casing is left in place as the new pile shell.

The sediment and cuttings excavated shall be temporarily stockpiled in 50 gallon drums (or another authorized sealed waterproof container) at the staging area until all excavations are complete and then transferred for upland disposal at the Anderson Landfill or another approved upland sediment disposal site.

The existing piles extend to approximately 6.1 m (20 ft) below the mudline. Each one of the existing 0.3 m (1 ft) diameter pile has displaced 0.4 m^3 (15.7 ft^3) of sediment. There are approximately 205 wood piles to be removed. The total amount of sediment displaced by the existing piles is approximately 91.7 m^3 (3,238.4 ft^3). Each of the proposed CISS piles requires the displacement of approximately 1.5 m^3 (53 ft^3) of sediment. There are 115 CISS piles to install. A total of approximately 172 m^3 (6,074 ft^3) of sediment would have to be removed in order to auger 115 holes to a depth of 9.1 m (30 ft) below the mudline. It is estimated that 7.6 to 76.5 m^3 (268.4 to 2,701.5 ft^3) would have to be removed during pile installation. Many new holes will be augered in the location of existing piles where they overlap. As a result, less sediment will be required to be removed than would be required for the construction of a new pier, however, the exact location and penetration of the old piles is not recorded and will be determined during reconstruction activities. Therefore, a range of quantity of material to be removed is specified. Existing holes created by old wood piles removed and that do not overlap with the location of holes augered for the new piles will collapse and naturally fill with adjacent sediment.

Most of the sediment excavated is expected to be in the form of cuttings if the hole is augered and/or drilled at a location of exiting piles. Sediment removed from the inner core during augering shall be mostly dry due to the compression created in the core during augering. Approximately fifty 50-gallon drums will be used to store the cuttings and sediment prior to disposal upland. The contractor shall implement BMPs WM–3—Stockpile Management, WM–4—Spill Prevention and Control, and WM–10—Liquid Waste Management listed in the CASQA Handbook (see the handbook for details at: *http://www.cabmphandbooks.com/Development.asp*).

Concrete Seal Installation—A tremie (*i.e.,* a steel pipe) will be used to seal the bottom 0.9 m (3 ft) of the hole below the bottom of the steel shell and above the ground. Before the tremie seal is poured, the inside walls of the pile will be cleaned by brushing or using a similar method of removing any adhering soil or debris in order to improve the effectiveness of the seal. A ''cleaning bucket'' or similar apparatus will be used to clean the bottom of the excavation of loose or disrupted material.

The tremie is a steel pipe long enough to pass through the water to the required depth of placement. The pipe is initially plugged until placed at the bottom of the holes in order to exclude water and to retain the concrete, which will be poured. The plug is then forced out and concrete flows out of the pipe to its place in the form without passing through the water column. Concrete is supplied at the top of the pipe at a rate sufficient to keep the pipe continually filled. The flow of concrete in the pipe is controlled by adjusting the depth of embedment of the lower end of the pipe in the deposited concrete. The upper end may have a funnel shape or a hopper, which facilitates feeding concrete to the tremie. Each concrete

seal is expected to cure within 24 to 48 hours.

Dewatering Methodology—After the tremie seal has been poured, the water will be pumped out of the steel shells, which will act as a cofferdam. Pumping within the excavation at the various footings may be required to maintain a dewatered work area.

The contractor shall test the pH of the water in each casing one day following pouring of the tremie seal to insure that the pH of the water did not change from the ambient pH. The water shall then be pumped into 50-gallon drums and transported to the staging area for discharge through percolation to eliminate solids. Should the pH of the water change from ambient pH, then the contractor shall haul the water to the Eureka Wastewater Treatment Plant for treatment prior to discharge. The contractor is expected to dewater a volume of approximately 450 gallons (1,720 L) each day during pile installation. For the installation of 115 piles, approximately 49,500 gallons (197,800 L) will be dewatered and discharged at the appropriate location at the staging area. Percolation rates will be verified prior to discharge of the ocean water at the designated location at the staging area, but are not expected to be prohibitive due to the sandy texture of the soil. The Contractor shall implement BMP WM–10 Liquid Waste Management as listed in the CASQA Handbook. Liquid waste management procedures and practices are used to prevent discharge of pollutants to the storm drain system or to watercourses as a result of the creation, collection, and disposal of non-hazardous liquid wastes. WM–10 provides procedures for containing liquid waste, capturing liquid waste, disposing liquid waste, and inspection and maintenance.

Completion—Following dewatering of the steel shells, steel rebar cages shall be inserted into each shell. Ready-mix concrete placed into the drilled piers shall be conveyed in a manner to prevent separation or loss of materials. The cement-mixer truck containing the concrete shall be located on land adjacent to the north end of the pier. The concrete shall be pumped to the borings through a pipe (at least 0.9 cm [¾ in] thick) that will span the length of the pier. When pouring concrete into the hole, in no case shall the concrete be allowed to freefall more than 1.5 m (5 ft). Poured concrete will be dry within at least 24 hours and completely cured within 30 days.

A concrete washout station shall be located in the staging area at the designated location. The contractor shall implement BMP, WM–8—Concrete Waste Management, as listed in the CASQA Handbook to prevent discharge of liquid or solid waste.

Pier Deck Construction

Following the installation of the concrete piles, pre-cast concrete bent caps measuring 7.6m (25 ft)-long shall be installed on top of each row of pilings. The concrete bents act to distribute the load between the piles and support the pier.

Pre-cast 6.1m (20 ft)-long concrete sections shall be used for the decking. An additional layer of concrete shall be poured following installation of the precast sections. The layer of concrete will allow the decking of the pier to be sloped to the west for drainage purposes and to create an aesthetically pleasing decking. The surface of the decking will be colored and contain an earth tone pattern to match the surrounding environment.

Utilities

Utilities located on the pier will require location during construction and replacement following construction of the pier footings and decking. Utilities include:

Power: A 2 in PG&E power line that is currently attached to the west side of the pier and PG&E electrical boxes located along the west side of the pier.

Sewer: Currently there are no sewer pipes on the pier. Visitors to the pier are served by a temporary restroom located on the south side of the pier. No direct sewer discharge is allowed in the ASBS.

New utilities installed include water, phone, and electrical. New pier utilities will be constructed along the east and west side of the pier and will be enclosed within concrete utility trenches. Water pipes shall be routed along both sides of the pier to several locations along the pier. Phone lines shall be routed along the west side of the pier. All electrical switches will be located in one central box towards the west end of the pier by the loading and unloading landings location.

Lighting installed along the pier shall be designed to improve visibility and safety. The lighting will be embedded in the decking and railing of the pier to minimize light pollution from the pier. Lighting shall be designed to minimize light pollution by preventing the light from going beyond the horizontal plane at which the fixture is directed. Currently, there are lighting poles on the pier. The proposed lighting on the pier will be embedded on the west and east side of the decking separated approximately 7.6 m (25 ft) throughout the length of the pier. The lighting fixtures will have cages for protection matching the color of the railing. In addition, on the south side of the pier, lighting will be installed in the railing to provide lighting for the working area on the deck of the pier.

Fish cleaning does not occur at the pier. This activity was formerly pursued by recreational users and was discontinued in 2006 due to water quality concerns.

Drainage

There is currently no runoff collection system on the pier. Runoff drains from the existing pier directly into the ASBS. A storm water outfall for the City of Trinidad is located near the base of the pier.

The pier decking shall be sloped to the west in order to direct runoff from the pier to the stormwater collection pipe. The runoff shall be routed along the west side of the pier and conveyed by gravity to a new upland manhole and storm chamber containing treatment media. All stormwater will be infiltrated within the storm chamber; there will be no discharge from the system. See Appendix C, drawings C–5 to C–8 of the IHA application, for details of the conveyance and treatment system. The pier-deck construction, utility replacement, and drainage improvements are anticipated to result in discountable effects to marine mammals.

BMPs

Pier Demolition Methods:

- Waters shall be protected from incidental discharge of debris by providing a protective cover directly under the pier and above the water to capture any incidental loss of demolition or construction debris.
- A floating oil containment boom surrounding the work area will be used during the creosote-treated timber pile removal. The boom will also collect any floating debris. Oil-absorbent materials will be employed if a visible sheen is observed. The boom will remain in place until all oily material and floating debris has been collected and sheens have dissipated. Used oil-absorbent materials will be disposed of at an approved upland disposal site.
- All removed piles shall be temporarily stored at the upland staging areas until all demolition activities are complete (approximately 6 months).
- Following the cessation of demolition activities, the creosote treated piles will be transported by the Contractor to an upland landfill approved to accept such materials.
- The pressure treated 2 x 4 in Douglas fir decking will also be stored in the staging area until demolition is

complete. The partially pressure treated decking and railing may be reused and will be kept by the Trinidad Rancheria for further use.

• The contractor shall also follow BMPs: NS–14—Material Over Water, NS–15—Demolition adjacent to Water, and WM–4—Spill Prevention and Control listed in the CASQA Handbook.

Pile Installation:

• The sediment and cuttings excavated shall be temporarily stockpiled in 50 gallon (189 L) drums (or another authorized sealed waterproof container) at the staging area until all excavations are complete and then transferred for upland disposal at the Anderson Landfill or another approved upland sediment disposal site.

• The contractor shall implement BMPs WM–3—Stockpile Management, WM–4—Spill Prevention and Control, and WM–10—Liquid Waste Management listed in the CASQA Handbook.

• The contractor shall test the pH of the water in each casing one day following pouring of the tremie seal to insure that the pH of the water did not change by more than 0.2 units from the ambient pH. The water shall then be pumped into 50-gallon drums and transported to the staging areas for discharge through percolation to eliminate solids. Should the pH of the water change from ambient pH, then the contractor shall haul the water to the Eureka Wastewater Treatment Plant for treatment prior to discharge.

• The contractor shall implement BMP WM–10 Liquid Waste Management as listed in the CASQA Handbook. Liquid waste management procedures and practices are used to prevent discharge of pollutants to the storm drain system or to watercourses as a result of the creation, collection, and disposal of non-hazardous liquid wastes. WM–10 provides procedures for containing liquid waste, capturing liquid waste, disposing liquid waste, and inspection and maintenance.

• A concrete washout station shall be located in the staging area at the designated location. The contractor shall implement BMP, WM–8—Concrete Waste Management, as listed in the CASQA Handbook to prevent discharge of liquid or solid waste.

Pier Construction:

• No concrete washing or water from concrete will be allowed to flow into the ASBS and no concrete will be poured within flowing water.

• Waters shall be protected from incidental discharge of debris by providing a protective cover directly under the pier and above the water to capture any incidental loss of demolition or construction debris.

Utilities:

• Lighting will be embedded in the decking and railing of the pier to minimize light pollution from the pier. Lighting shall be designed to minimize light pollution by preventing the light from going beyond the horizontal plain at which the fixture is directed so the light is directed upwards.

Drainage:

• The pier decking shall be sloped to the west in order to direct runoff from the pier to the stormwater collection pipe. The runoff shall be routed along the west side of the pier and conveyed by gravity to a new upland manhole and storm chamber containing treatment media. Drainage from the storm chamber shall not be conveyed to Trinidad Bay, but will entirely be infiltrated within the storm chamber. See Appendix A, drawings C–5 to C–8, for details.

Construction Timing and Sequencing:

• Noise-generating construction activities, including augering, pile removal, pile placement, and concrete pumping, will only be allowed from 7 a.m. to 7 p.m. These hours shall be further restricted as necessary in order for Protected Species Observers (PSOs) to perform required observations.

Project Benefits:

The existing pier has pole lighting that illuminates the water surface; the proposed pier has lighting designed to avoid such illumination. The existing pier has dark wood and over 200 piles. The proposed pier, with 205 piles to be removed and 115 piles to be installed and a white concrete construction, will result in less shading of nearshore habitat. The project may have benefits to environmental resources other than marine mammals. This notice describes in detail BMPs that will be implemented for the project. The BMPs are focused almost exclusively on protecting water quality, and while they may have ancillary benefits to some marine resources such as Essential Fish Habitat (EFH), they are not intended to serve as monitoring and mitigation measures for adverse effects to marine mammals. The only exception might be the ability to further modify noise timing restrictions to allow PSOs to perform their duties.

Additional details regarding the pile-driving and renovation operations for the Trinidad Pier Reconstruction Project can be found in the Trinidad Rancheria's IHA application and BA, as well as the U.S. Army Corps of Engineers (ACOE) and NMFS EA. The IHA application, BA, and ACOE and NMFS EA can also be found online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

Dates, Duration, and Specific Geographic Area

The Trinidad Pier Reconstruction Project is located in the city of Trinidad, California, Humboldt County, at Township 8N, Range 1W, Section 26 (41.05597° North, 124.14741° West) (see Figure 2–1 of the BA). The construction schedule is from August 1, 2011 to May 1, 2012, with noise and activity effects requiring an IHA, occurring from August 1, 2011 through January 31, 2012.

Trinidad Bay is a commercial port located between Humboldt Bay and Crescent City. The bay contains numerous vessel moorings which include permanent commercial vessel anchors as well as 100 moorings that are placed for recreational vessel owners (Donahue, 2007). The uplands have residential, commercial and recreational land use classifications. The Trinidad Pier parcel was owned by the State of California, but was granted to the City of Trinidad which leases the tidelands to the Cher-Ae Heights Indian Community of the Trinidad Rancheria. The parcels to be used for the staging area are owned by Trinidad Rancheria, the City of Trinidad, and the U.S. Coast Guard.

Trinidad Bay is a shallow, open bay about 0.8 km (0.5 mi) deep (in the southwest-northeast direction) and 1.6 km (1 mi) wide (in the northwest-southeast direction). Figure 1 of the IHA application shows the whole bay. Generally the bay shelves at a moderate slope to about 9.1 m (30 ft) depth and then flattens out, with most of the outer bay between 9.1 to 15.2 m (30 to 50 ft) deep. Substrates in the bay include rock, cobble, gravel and sand. The floor of the bay is irregular with some areas of submerged rock. The project area comprises the 0.31 acre pier over marine habitats and a staging area (the gravel parking lot located west of the pier) covering 0.53 acres of upland area.

Construction Timing and Sequencing

The project is expected to be completed within nine months (approximately six months of loud noise-producing activities). Reconstruction of the pier is planned to commence on August 1, 2011 and terminate on May 1, 2012. Excluding weekends and holidays, a total of 217 working days will be available for work during this period. During the winter months (November to March) severe weather conditions are expected to occur periodically at the project site. The contractor may have to halt the

work during pile installation due to strong winds, large swells, and/or heavy precipitation. Construction during the remainder of the year should not be impeded by large swells, but may be halted due to strong winds or precipitation; however, Trinidad Harbor is a sheltered area and does not often experience severe weather that would preclude the work. The contractor will work five days per week from 7 a.m. to 7 p.m. Should severe weather conditions cause delays in the construction schedule, the contractor will work up to seven days per week as needed to ensure completion by May 1, 2012.

Removal of all existing piles and decking and construction of the new pier will occur simultaneously. The existing decking and piles will be removed and new piles installed from the reconstructed pier. Pile bents will be separated 7.6 m (25 ft) apart. Following the installation of two successive pile bents, a new precast concrete deck section shall be installed. The contractor shall continue in this manner from the north end (shore) to south end (water terminus) of the existing pier.

The contractor is expected to spend approximately six months (August through January) on pile removal and installation and the remaining three months (February through April) on deck and utilities reconstruction. It is estimated that each boring can be lined with a pile and excavated within 6 to 8 hours. Pouring of the concrete seals is expected to take approximately two hours for each pile. The contractor is expected to remove an existing pile and install one new steel shell and pour a concrete seal each day, with a total of six to eight hours required for the process (*i.e.,* 115 piles to be placed [one per day] during 115 days of work or 23 weeks of 5 days each). The final pour of the concrete piles is expected to take approximately two hours to fill the steel shells and is expected to cure within one week.

It is expected that reconstruction of one row of piles and bents will take one week. Pile and bents will be installed over a discontinuous period of approximately 23 weeks. A new pre-cast concrete section of decking will be installed following the installation of two successive rows of piles and associated bents. The last 3 months will be used for pouring of the top layer of the decking and utilities construction.

Action Area

The action area is defined as all areas directly or indirectly affected by the proposed action. Direct effects of the action are potentially detectable in all lands and aquatic areas within the project area, including the staging area. The project would also directly affect 7.9 m (26 ft) of the Trinidad Bay shoreline.

In-air (*i.e.,* sub-aerial) and underwater sound effects would be the most laterally extensive effects of the action and thus demarcate the limits of the action area. Assuming that underwater sound attenuates at a rate of -4.5 dB re 1 μPa (rms) for each doubling of distance, underwater sound from pile-driving (detailed in Section 6 of the BA) would elevate noise above 120 dB (rms) up to 800 m (2,625 ft) (the Port of Anchorage measured 168 dB re 1 μPa [rms] at a distance of 20 m from a pile, application of the practical spreading model with 4.5 dB attenuation for doubling of distance yields 120 dB [rms] at 800 m) seaward in all areas on a line-of-sight to the pier (Illingworth & Rodkin, 2008). The rationale for use of 120 dB (rms) as a metric is detailed in Section 6.6.1 of the BA, but also has a practical value because 120 dB (rms) is the lowest threshold currently used to detect underwater sound effects to any of the animals discussed in this analysis. Actual ambient underwater sound levels are probably quite variable in response to sound sources such as wave action and fishing vessel traffic. The assumptions regarding in-air and underwater noise in the IHA application, BA, and in this notice are generally regarded as extremely conservative.

In-air (or sub-aerial) sound would be generated by equipment used during construction; the loudest source of such sound would be vibratory pile-driving, which generates a sound intensity of approximately 104 dB at 15.2 m (50 ft) (FHWA, 2006). Assuming an ambient background noise level of 59 dB, typical of residential neighborhoods, and a sound attenuation rate of 7.5 dB (rms) for each doubling of distance, the action area for aerial sound would extend 975.4 m (3,200 ft) in an unobstructed landward direction from the dock. The action area would extend farther in a seaward direction, because aerial sound attenuates with distance more slowly over water and also because ambient noise levels are potentially quieter in that direction. Assuming an attenuation rate of 6 dB (rms) for each doubling of distance and an ambient marine noise background of 50 dB, the action area for above-water effects would extend 7.7 km (4.8 mi) seaward from the pier.

The seaward attenuation rate assumes no environmental damping or attenuation and thus is produced by a simple inversion square law. The landward attenuation rate assumes a low level of environmental damping due to non-forest vegetation, structures, topography, *etc.* and corresponds to the rate recommended by WSDOT (2006) for terrestrial in-air in non-forest environments. The 59 dB and 50 dB estimates are based on EPA (1971), a standard source of data on typical background sound levels (in dBA) for various environments. These typical levels were revised upwards by approximately 3 dB because the dBA curve down-weights sound intensity at the lower frequencies typical of vibratory pile-driving noise, which is the principal source of noise considered in demarcation of an action area for the action. Thus the 59 dB and 50 dB values represent unweighted estimates of background sound levels.

The IHA application and BA provide a detailed explanation of the Trinidad Pier Reconstruction Project location as well as project implementation.

NMFS outlined the project in a previous notice for the proposed IHA (76 FR 28733, May 18, 2011). The activities to be conducted have not changed between the proposed IHA notice and this final notice announcing the issuance of the IHA. For a more detailed description of the authorized action, including reconstruction operations and acoustic source specifications, the reader should refer to the proposed IHA notice (76 FR 28733, May 18, 2011), the IHA application and associated documents referenced above this section.

Comments and Responses

A notice of proposed IHA was published in the **Federal Register** on May 18, 2011 (76 FR 28733). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) only. The Commission's comments are online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Following are the Commission's comments and NMFS's responses:

Comment 1: The Commission recommends that the NMFS defer issuance of the IHA until it has required the applicant to develop a more realistic estimate of the number of harbor seal takes that:

(1) Accounts for all harbor seal haul-out sites in the area;

(2) Corrects seal abundance estimates to account for seals in the water during the counts;

(3) Incorporates a more realistic assessment of the portion of seals that will enter the water in the Level B harassment zone during the proposed construction operations;

(4) Includes a reasoned basis for estimating takes that occur from in-air construction sound; and

(5) Is based on a realistic estimate of the time required to remove 205 wood piles.

Response: (1) NMFS and Trinidad Rancheria believe that the action described does account for all harbor seal haul-out sites in the action area. The Commission indicates that they believe that harbor seals hauling out within 50 km (31.1 mi) of the site are likely to be present in the action area. Goley *et al.* (2007) state, in literature review, that the seals are year-round residents; that they are non-migratory, dispersing from a centralized location to forage; and that they exhibit high site fidelity, utilizing one to two haul-out sites within their range and rarely traveling more than 25 to 50 km (15.5 to 31.1 mi) from these haul-outs. If it is not shown that these seals use any other haul-outs, then there is no other logical conclusion that that these seals must be Trinidad Bay residents. The Commission's proposition that seals from elsewhere would enter Trinidad Bay, which already has a large resident seal population, to forage, is interesting but not corroborated by any data. Moreover, even if true, it is not apparent that it affects the analyses in this document, since there is no basis for inference about the frequency or duration of such activity.

Also, the assessment is based upon a personal communication with Dawn Goley and Trinidad Rancheria representatives, specifically, a telephone conversation on March 23, 2009, when she observed that the Humboldt Bay seals show high site fidelity for sandy beach haul-outs, whereas the Trinidad Bay and Patrick's Point seals have corresponding fidelity for rocky haul-outs. Data supporting this inference was not discussed.

Dawn Goley has stated that it is unknown whether there is interchange between the Patrick's Point and Trinidad Bay seals. Data that would allow a conclusive determination on this point, such as genetic or radio/acoustic tracking studies, have not been gathered. However, Goley *et al.* (2007) do state (page 10) that ''harbor seals exhibit high site fidelity, utilizing one to two haul-out sites within their range (Sullivan 1980, Pitcher *et al.,* 1981; Stewart *et al.,* 1994), rarely traveling more than 25 to 50 km from these haul-outs (Brown and Mate, 1983; Suryan and Harvey, 1998). Movements between and the use of alternate haul-out sites has been attributed to the use of alternative foraging areas near their new haul-out site (Thompson *et al.,* 1996b; Lowry *et al.,* 2001) and the seasonal use of certain haul-out sites for pupping and molting (Herder, 1986; Thompson *et al.,* 1989). Based on the fact that the Palmer's Point and Trinidad Bay haul-outs are close to each other (9 km or 5.6 mi) compared to the foraging areas used by harbor seals, and that the Patrick's Point area is home to approximately 1,000 harbor seals (Dawn Goley, pers. comm., March 23, 2009), a far larger grouping than the one found at Trinidad Bay, and given that observations of harbor seals at Trinidad Bay go through strong seasonal fluctuations, it is not appropriate to dismiss a hypothesis that there is interchange between the two areas. If the seals do seasonally vacate Trinidad Bay for alternative foraging grounds, then Patrick's Point is their most likely alternative haul-out.

It does not follow that the Patrick's Point seals vacate that area to forage in Trinidad Bay, as shown by the fact that seal numbers in Trinidad Bay decline during the winter; if the area were increasingly used by Patrick's Point seals during the winter months, then counts of seals at Trinidad Bay would increase. They likely do not. Goley *et al.* (2007) state that harbor seals ''are typically less abundant during the winter months as seals tend to spend more time foraging at sea during this time.'' In this context ''at sea'' and ''offshore'' are interpreted as equivalent and neither term is numerical. The seals are not in Trinidad Bay and are therefore offshore.

(2) The Commission cites a correction factor of 1.54 for harbor seals at sea, and contends that this requires a 50% increase in the estimate of incident take. NMFS and the Trinidad Rancheria addressed the use of this correction factor in the notice of proposed IHA in response to previous Commission comments.

Note that the notice of proposed IHA does not state that harbor seals spend 10% of their time in the water, but states that they spend 10% of their time within the radius of effect. The radius of effect is only a small fraction of Trinidad Bay, and only a fraction of the rocks that comprise the Indian Beach haul-out of Goley *et al.* (2007) are within that radius of effect.

Lowry *et al.* (2008) present a discussion of correction factors. They used a correction factor of 1.65, indicating that about 40% of seals were hauled-out. They also note that their study was performed at a time when the largest possible fraction of seals would likely be hauled-out—during the molt, and at local low tides. The proposed work, however, would be performed after the molt had concluded. The correction factor suggested by the Commission of 1.54 is not significantly different from that determined by Lowry *et al.* (2008) and may also be used; this correction factor is therefore used in the estimate of potential harbor seal take presented below in this document.

(3) The Commission states that Trinidad Rancheria's action will incidentally take marine mammals many kilometers out to sea, where the underwater sound generated by the renovation operations would only slightly exceed ambient (background) noise levels and would be far less audible than other episodic anthropogenic sound sources such as the passage of deep-draft vessels. NMFS and the Trinidad Rancheria regard the potential for take of animals outside of Trinidad Bay as unlikely due to sound attenuation, other background sound sources (*e.g.,* waves, wind, rain, *etc.*), and resident harbor seal habituation to the existing marine acoustic environment.

Analysis regarding the effects of underwater sound was presented in the revised IHA application dated July 23, 2010, and presents figures indicating the area of potential effect for Level B harassment (see Table 4 ''Noise generating activities'' and ''Potential for Biological Effects'' section below [Table 4 of the IHA application]). Based on this analysis and the foregoing discussion of seal use of Trinidad Bay, it is anticipated that behavioral effects could result to all seals that were in the water within Trinidad Bay during the portion of the day when in-water noise was being generated by pile-removal, augering, or pile-driving. As noted earlier, the average number of seals observed at the Trinidad Bay haul-out during the time when in-water noise would be produced is 36.5 seals, which with a correction factor of 1.54 indicates a Trinidad seal population at that time of 56.2 or approximately 57 individuals, with these seals spending approximately 35% (1 − [36.5/56.2]) of their time in the water.

As noted above, Goley *et al.* (2007) state that harbor seals ''are typically less abundant during the winter months as seals tend to spend more time foraging at sea during this time,'' therefore, only a fraction of the seals would actually be present in Trinidad Bay at the time of noise produced by the Trinidad Pier Renovation Project. No direct measurements are available that would allow estimation of that fraction, although it is known that harbor seal abundance in Trinidad Bay declines from a summer peak of 67 harbor seals in July to a winter minimum of 25 in November (Goley *et al.,* 2007). As

further noted above, harbor seals exhibit high site fidelity, utilizing one to two haul-out sites within their range (Sullivan, 1980; Pitcher *et al.,* 1981; Stewart *et al.,* 1994), rarely traveling more than 25 to 50 km from these haul-outs (Brown and Mate, 1983; Suryan and Harvey, 1998). If it is assumed that winter foraging Trinidad Bay harbor seals travel up to 25 km from their haul-out, then their foraging area covers approximately 982 km^2 (379.2 mi^2) (a half-circle with a 25 km radius), whereas the area of Trinidad Bay is approximately 5 km^2 (1.9 mi^2). This would suggest that fewer than 1% of the seals in the water at any given time would be found in Trinidad Bay. This is likely an underestimate, as seals bound to and from the haul-out would necessarily have to spend some time in passage through the waters of Trinidad Bay. However, it does suggest that no more than a very few seals are likely to be in the waters of Trinidad Bay at any time when underwater noise is being produced from renovation activities. It is conservatively estimated that one seal may be exposed during the course of any individual pile-removal, augering, or pile-driving event. During the total of 164 days when underwater noise would be produced from any one of these three activities, there would be 435 noise-producing events, or an average of 435/164 = 2.65 events per day, resulting in potential exposure of 435 harbor seals over the duration of the planned activities.

(4) The estimation of incidental takes that would occur as a result of in-air sound has been analyzed in detail in the IHA application and correspondence with the Trinidad Rancheria. Based on in-air noise measurements taken during vibratory pile-driving as reported by Laughlin (2010), in-air noise production during pile driving at the Trinidad Pier will likely be between 87.5 and 96.5 dB re 20 μPa (unweighted). For purposes of the analysis presented below, it is assumed that in-air noise from vibratory pile-driving would produce 96 dB (rms) (unweighted). This noise would be produced during both pile-removal and pile-placement activities. The augering equipment produces slightly less noise at a level of 92 dB (rms) (unweighted). Assuming an attenuation rate of 6 dB per doubling of distance, this indicates that sound from in-air pile-removal or pile-placement would attenuate to the Level B threshold for harbor seals (90 dB) at a distance of 30.5 m (100 ft). Sound from augering would attenuate to the Level B harassment threshold at a distance of approximately 18.3 m (60 ft). There are no haul-outs located this close to the pier, but there are anecdotal reports of harbor seals surfacing near boats alongside the pier, and it is thus possible that occasional exposure could occur. Such an event is unlikely because anecdotal reports of harbor seals at the pier are associated with seals seeking food from recreational and commercial fishing boats, which would no longer use the pier during reconstruction activities; thus the pier would no longer function as a foraging resource (during construction, fishing boats could unload at the boat ramp, which is located several hundred feet from the pier and is blocked from the construction area by an intervening headland). It is conservatively estimated that seal exposure to in-air sound in excess of the Level B harassment threshold could occur during up to 20% of the in-air noise producing events, or a total of 87 events during the period of construction. Based on this information, NMFS has determined that 174 harbor seals may be taken by Level B harassment from exposure to in-air sounds produced during the renovation operations. This number would be verified by the monitoring data.

(5) The Trinidad Rancheria states (via the construction contractor) that 58 construction days would be adequate to remove 205 wood piles, a removal rate of approximately 3.5 piles per day, as stated in correspondence and the Trinidad Rancheria's IHA application. There is no reason to believe that this is not feasible.

Comment 2: The Commission recommends that the NMFS defer issuance of the IHA until it has reviewed estimates of numbers of takes for California sea lions and gray whales during the proposed activities.

Response: NMFS and Trinidad Rancheria revised and addressed the Commission's concerns regarding estimates of numbers of takes for harbor seals, California sea lions, and gray whales incidental to the specified activities during review by the Commission prior to the notice of proposed IHA being published in the **Federal Register**. NMFS and Trinidad Rancheria believe that the take estimation analysis in the IHA is accurate and likely overestimates the potential for take in some cases as necessary to account for uncertainty. Accordingly, further review of the take estimation is unnecessary.

Comment 3: The Commission recommends that the NMFS defer issuance of the IHA until it has re-estimated the distances to various in-water and in-air Level A and B harassment thresholds for all three types of proposed sound-producing activities and then re-evaluated the proposed mitigation and monitoring measures to ensure that the appropriate areas are adequately monitored.

Response: NMFS and Trinidad Rancheria revised and addressed the Commission's concerns regarding estimates of distances to various in-water and in-air Level A and Level B harassment thresholds for all three types of sound-producing activities planned as part of the Trinidad Pier Reconstruction Project during draft review by the Commission prior to the notice of proposed IHA being published in the **Federal Register**. NMFS and Trinidad Rancheria revised the analysis for the potential of incidental take in accordance with the Commission's recommendations for a harbor seal correction factor, which is discussed in Comment 2. The changes are numerically minor, and NMFS and Trinidad Rancheria do not find evidence that significant changes are necessary to the planned monitoring and reporting plan.

Comment 4: The Commission recommends that the NMFS defer issuance of the IHA until it has required the applicant to verify the associated Level A and B harassment zones through calibrated in-situ sound measurements and to adjust those zones as appropriate.

Response: Trinidad Rancheria's current monitoring study incorporates this recommendation with regard to underwater sound. The expected threshold for Level A harassment and associated exclusion zones (EZs) for pinnipeds (*i.e.,* 190 dB) are 0.9 m (3 ft), 0 m (0 ft), and 0 m (0 ft) for pile-driving, augering, and pile-removal, respectively. The expected threshold for Level A harassment and associated EZs for cetaceans (*i.e.,* 180 dB) are 4.9 m (16 ft), 0.3 m (1 ft), and 21.6 m (71 ft) for pile-driving, augering, and pile-removal, respectively. NMFS has not determined Level A harassment thresholds for marine mammals for in-air noise; however, Southall *et al.* (2007) recommends 149 dB re 20 μPa (peak) (flat) as the potential threshold for injury from in-air noise for all pinnipeds. Operation of a vibratory pile-driver would produce in-air sound intensity of 96 dBA at 50 ft. This is the in-air sound level for both pile-removal and pile-installation. Operation of the auger would produce in-air sound of 92 dBA at 15.2 m (50 ft). Using the attenuation rate of 6 dB for each doubling of distance, the loudest noise from reconstruction operations (*i.e.,* pile-driving) would be 136 dBA at a distance of 0.3 m (10 inches), so it is not physically possible for a pinniped to be

exposed to a level of sound that could be potentially injurious, especially since a shut-down would occur if any pinniped approaches or enters the in-water EZ for Level A harassment. Also, the applicant has agreed to perform in-air monitoring to verify the Level B harassment zone for in-air sound and is required by NMFS in the IHA.

Comment 5: The Commission recommends that the NMFS defer issuance of the IHA until it has required that shut-down procedures be established for both species of pinnipeds.

Response: Trinidad Rancheria will implement shut-down procedures for underwater noise to avoid the potential for Level A harassment (injury) for all species of marine mammals during the Trinidad Pier Reconstruction Project. NMFS has included a requirement to this effect in the IHA. Because in-air sound levels would not reach the injury threshold noted by Southall *et al.* (2007), there would be no need to have a requirement for shut-down when pinnipeds are hauled-out.

Comment 6: The Commission recommends that the NMFS defer issuance of the IHA until it has provided further analysis and justification regarding the efficacy of visual monitoring for the proposed activities and the manner in which the number of takes can be determined accurately.

Response: NMFS believes that the planned visual monitoring program will be sufficient to detect, with reasonable certainty, the majority of marine mammals within or entering identified EZs. This monitoring, along with the required mitigation measures, will result in the least practicable impact on the affected species or stocks and will result in a negligible impact on the affected species or stocks of marine mammals. Also, NMFS expects some animals to avoid areas around the reconstruction operations ensonified at the level of the EZ.

The effectiveness of the monitoring and mitigation measures is science-based and is based on the requirement that monitoring and mitigation measures be ''practicable.'' NMFS believes that the framework for visual monitoring will be effective at spotting the species for which take is requested within the immediate action area where Level A harassment has the most potential to occur.

Comment 7: The Commission recommends that the NMFS defer issuance of the IHA until it has required the applicant to use 30 min as the appropriate clearance time for gray whales before ramp-up activities may commence and to use hydrophones for acoustic detection of gray whales.

Response: While passive acoustic monitoring is continuously evolving, the technology for underwater detection of marine mammals using hydrophones is largely experimental and is prohibitively expensive in the context of the capital investment and funding mechanisms available for this project. The Trinidad Rancheria is however able to commit to a 30 minute clearance time for gray whales, and NMFS has made this a requirement in the IHA.

Comment 8: The Commission recommends that the NMFS defer issuance of the IHA until it has addressed the deficiencies identified by the Commission and publish a new proposed IHA in the **Federal Register** with the corrected information and provide for an additional 30 day comment period.

Response: NMFS and the Trinidad Rancheria have addressed all issues identified and recommended by the Commission. NMFS believes that publishing a new proposed IHA in the **Federal Register** with the corrected information and providing an additional 30 day public comment period is unnecessary, as it would delay scheduled pile-driving and renovation operations associated with the Trinidad Pier Reconstruction Project. It is essential for the Trinidad Rancheria that construction on the pier begins this August, as failure to meet this deadline would result in loss of the Federal grants supporting this essential tribe infrastructure project and would further endanger public safety and welfare by requiring continuing use of the existing aged pier structure for an indefinite period of time.

Description of Marine Mammals and Habitat Affected in the Activity Area

One cetacean species and two species of pinnipeds are known to or could occur in the Trinidad Bay action area and off the Pacific coastline (see Table 1 below). Eastern Pacific gray whales, California sea lions, and Pacific harbor seals are likely to be found within the activity area. Steller sea lions and transient killer whales could potentially be found in small numbers within the activity area, but authorization for ''take'' by incidental harassment is not requested for Steller sea lions and transient killer whales due to their rarity and the feasibility of avoiding impacts to these species by pausing work in the event that they are detected, as detailed in the Marine Mammal Monitoring Plan. NMFS, based on the best available science, agrees that transient killer whales and Steller sea lions are not likely to be present in the action area during implementation of the specified activities and are thus unlikely to be exposed to the effects of the specified activities. NMFS does not expect incidental take of these marine mammal species and therefore has not authorized take of these two species in the IHA. The potential presence of Steller sea lions is detailed in Section 5.6 of the Trinidad Rancheria's BA. The potential presence of gray whales, killer whales, harbor seals, and California sea lions is detailed in Appendix C of the IHA application (see **ADDRESSES**).

A variety of other marine mammals have on occasion been reported from the coastal waters of northern California. These include bottlenose dolphins, harbor porpoises, northern elephant seals, northern fur seals, and sea otters. However, none of these species have been reported to occur in the action area, and in particular none were mentioned by the regional NMFS specialist in the identification of species to be addressed in the IHA application. The sea otter is managed under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS) and is not considered further in this analysis. The USFWS has informed the ACOE that a section 7 consultation under the ESA is not necessary for any of their jurisdictional species, including sea otters. Table 1 presents information on the cetacean and pinnipeds species, their habitat, and conservation status in the general region of the project area. The notice of proposed IHA (76 FR 28733, May 18, 2011) contained a complete description on the status, abundance, distribution, and seasonal distribution of Pacific harbor seals, California sea lions, Eastern Pacific gray whales, Steller sea lions, and killer whales. That information has not changed and is therefore not repeated here.

TABLE 1—THE HABITAT AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE GENERAL REGION OF THE ACTION AREA IN THE PACIFIC OCEAN OFF THE U.S. WEST COAST

Species	Habitat	ESA [1]	MMPA [2]
Mysticetes:			
Gray whale (*Eschrichtius robustus*).	Coastal and shelf	DL—Eastern Pacific stock (or population)	NC—Eastern Pacific stock (or population).
		EN—Western Pacific stock (or population)	D—Western Pacific stock (or population).
Odontocetes:			
Killer whale (*Orcinus orca*)	Widely distributed	NL	D—Southern Resident and AT1 Transient populations.
Bottlenose dolphin (*Tursiops truncatus*).	Offshore, inshore, coastal, estuaries.	NL	NC
Harbor porpoise (*Phocoena phocoena*).	Coastal and inland waters.	NL	NC
Pinnipeds:			
Pacific harbor seal (*Phoca vitulina richardsi*).	Coastal	NL	NC
Northern elephant seal (*Mirounga angustirostris*).	Coastal, pelagic when migrating.	NL	NC
California sea lion (*Zalophus californianus*).	Coastal, shelf	NL	NC
Steller sea lion (*Eumetopias jubatus*).	Coastal, shelf	T	D
Northen fur seal (*Callorhinus ursinus*).	Pelagic, offshore	NL	D—Pribilof Island/Eastern Pacific population.

[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, NL = Not listed, DL = Delisted.
[2] U.S. Marine Mammal Protection Act: D = Depleted, NC = Not classified.

Further information on the biology and local distribution of these marine mammal species and others in the region can be found in the Trinidad Rancheria's application and BA, which is available upon request (see **ADDRESSES**), and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: *http://www.nmfs.noaa.gov/pr/species/*.

Potential Effects of Activities on Marine Mammals

The Trinidad Rancheria requests authorization for Level B harassment of three species of marine mammals (*i.e.,* Pacific harbor seals, Eastern Pacific gray whales, and California sea lions) incidental to the use of heavy equipment and its propagation of underwater and in-air noise from various acoustic mechanisms associated with the Trinidad Pier Reconstruction Project and the specified activities discussed above. Marine mammals potentially occurring in Trinidad Harbor include Pacific harbor seals, Eastern Pacific gray whales, California sea lions, Steller sea lions, and killer whales (transient). Killer whale and Steller sea lion observations in the specific geographic area, as noted, are very rare (less than one per year) and thus not likely to be affected by the proposed action. But the gray whale and California sea lion are observed occasionally, and harbor seals are seldom absent from the harbor, and thus considered likely to be exposed to sound associated with the Trinidad Pier Reconstruction Project.

Current NMFS practice, regarding exposure of marine mammals to high-level underwater sounds is that cetaceans and pinnipeds exposed to impulsive sounds of at or above 180 and 190 dB (rms) or above, respectively, have the potential to be injured (*i.e.,* Level A harassment). NMFS considers the potential for behavioral (Level B) harassment to occur when marine mammals are exposed to sounds below injury thresholds but at or above the 160 dB (rms) threshold for impulse sounds (*e.g.,* impact pile-driving) and the 120 dB (rms) threshold for continuous noise (*e.g.,* vibratory pile-driving). No impact pile-driving is planned for the activity in Trinidad Bay. Current NMFS practice, regarding exposure of marine mammals to high-level in-air sounds, as a threshold for potential Level B harassment, is at or above 90 dB re 20 μPa for harbor seals and at or above 100 dB re 20 μPa for all other pinniped species (Lawson *et al.,* 2002; Southall *et al.,* 2007). NMFS has not established a threshold for Level A harassment for marine mammals exposed to in-air noise; however, Southall *et al.* (2007) recommends 149 dB re 20 μPa (peak) (flat) as the potential threshold for injury from in-air noise for all pinnipeds.

The acoustic mechanisms involved entail in-air and underwater non-impulsive noise caused by the activities of vibratory pile removal, auger operation, and vibratory pile placement. Anticipated peak underwater noise levels may exceed the 120 dB (rms) threshold for Level B harassment for continuous noise sources, but are not anticipated to exceed the 180 and 190 dB (rms) Level A harassment thresholds for cetaceans and pinnipeds, respectively. Expected in-air noise levels are anticipated to result in elevated sound intensities within 152.4 m (500 ft) of the construction activities involving vibratory pile-driving and augering and do not exceed the injury threshold put forth by Southall *et al.* 2007 for in-air sound exposure. No other mechanisms are expected to affect marine mammal use of the area. The debris containment boom, for instance, would not affect any haul-out and would not entail noise, and activity in the water is not materially different from normal vessel operations at the pier, to which the animals are already habituated.

The notice of the proposed IHA (76 FR 28733, May 18, 2011) also included a discussion of the potential effects of underwater and in-air noise on marine mammals. NMFS refers the reader to Trinidad Rancheria's application, and the BA for additional information on the behavioral reactions (or lack thereof) by all types of marine mammals to the pier renovation operations.

Underwater Noise

Background—When a pile is vibrated, the vibration propagates through the pile and radiates sound into the water

and the substrate as well as the air. Sound pressure pulse as a function of time is referred to as the waveform. The peak pressure is the highest absolute value of the measured waveform, and can be negative or positive pressure peak (see Table 1 of the IHA application for definitions of terms used in this analysis). The rms level is determined by analyzing the waveform and computing the average of the squared pressures over the time that comprise that portion of the waveform containing 90 percent of the sound energy (Richardson *et al.,* 1995; Illingworth and Rodkin, 2008). This rms term is described as rms 90 percent in this document. In this analysis, underwater peak pressures and rms sound pressure levels are expressed in decibels (dB) re 1 μPa. The total sound energy in an impulse accumulates over the duration of that impulse.

Baseline Underwater Noise Level—Currently, no data are available describing baseline levels of underwater sound in Trinidad Bay. Sound dissipates more rapidly in shallow waters and over soft bottoms (*i.e.,* sand). Much of Trinidad Bay is characterized by its shallow depth (30 to 50 ft), flat bottom, and floor substrate of rock, cobble, gravel, sand, and irregularly submerged rock in some areas, thereby making it a poor acoustic environment. Currents, tides, waves, winds, commercial and recreational vessels, and in-air noise may further increase background sound levels near the action area. Relevant index information can be derived from underwater sound baselines in other areas. The quietest waters in the oceans of the world are at Sea State Zero, 90 dB (rms) at 100 Hz (National Research Council, 2003; Guedel, 1992). Underwater sound levels in Elliott Bay near Seattle, Washington, representative of an area receiving moderately heavy vessel traffic, are about 130 dB (rms) (WSDOT, 2006). In Lake Pend Oreille, Idaho, an area which, like Trinidad Bay, receives moderate to heavy traffic from smaller vessels, underwater sound levels of 140 dB (rms) are reached on summer weekends, dropping to 120 dB (rms) during quiet mid-week periods (Cummings, 1987). Since Trinidad Bay receives daily, year-round use by a variety of recreational and fishing vessels, a background underwater sound estimate of 120 dB (rms) is a conservative estimate for daytime underwater noise levels, and was used to calculate the action area for the activity. The rationale for using the background estimate of 120 dB (rms) is based upon comparison with inland or protected marine waters (Puget Sound in Washington, and Lake Coeur d'Alene in Idaho) that are not subject to the severity of wave and storm activity that can occur in the Trinidad Bay area. It is likely that intermittent directional sound sources of higher intensity constitute a part of the normal acoustic background, to which seals in the area are habituated. Assuming that such intermittent background sound sources may be twice as loud as the regionally averaged rms background sound level of 120 dB, then seals are unlikely to show a behavioral response to any sounds quieter than 126 dB (rms). A sound that is as loud as or below ambient/background levels is likely not discernable to marine mammals and therefore is not likely to have the potential to harass a marine mammal.

Noise Thresholds—There has been extensive effort directed towards the establishment of underwater sound thresholds for marine life. Various criteria for marine mammals have been established through precedent. Current NMFS practice regarding exposure of marine mammals to high-level sounds is that cetaceans and pinnipeds exposed to impulsive sounds of 180 and 190 dB (rms) or above, respectively, have the potential to be injured (*i.e.,* Level A harassment). NMFS considers the potential for Level B harassment (behavioral) to occur when marine mammals are exposed to sounds below injury thresholds, but at or above 160 dB (rms) for impulse sounds at/or above 120 dB (rms) for continuous noise (*e.g.,* vibratory pile-driving). As noted above, current NMFS practice, regarding exposure of marine mammals to high-level in-air sounds, as a potential threshold for Level B harassment, is at or above 90 dB re 20 μPa for harbor seals and at or above 100 dB re 20 μPa for all other pinniped species. Since, as noted above, background sound levels in Trinidad Bay are anticipated to frequently exceed the 120 dB (rms) threshold, this analysis evaluates potential effects relative to a background level of 126 dB (rms).

Anticipated Extent of Underwater Project Noise

Pile-Driving—There are several sources of measurement data for piles that have been driven with a vibratory hammer. Illingworth and Rodkin (2008) collected data at several different projects with pile sizes ranging from 33 to 183 cm (13 to 72 in). The most representative data from these measurements would be from the Ten Mile River Bridge Replacement Project and the Port of Anchorage Marine Terminal Redevelopment Project. At Ten Mile, 96 cm (30 in) CISS piles were measured in cofferdams filled with water in the Ten Mile River at 33 ft (m) and 330 ft (m) from the piles. The sound level in the water channel ranged from less than 150 to 166 dB (rms). Levels generally increase gradually with increasing pile size. These sound levels are therefore considered a conservative (credible worst case) estimate of the expected levels given that the size of the piles proposed for this project are smaller in diameter (45.7 cm or 18 in) than the piles measured at Ten Mile.

Illingworth and Rodkin (2008) gathered data at the Port of Anchorage (POA) during the vibratory driving of steel H piles. These data, and data gathered by others, were used as the basis for the Environmental Assessment that was prepared by NMFS for the issuance of an IHA at the POA. These data were summarized in the POA IHA. The POA IHA concluded that average sound levels of vibratory pile-driving sounds would be approximately 162 dB re 1 μPa at a distance of 20 m (65.6 ft). Furthermore, for vibratory pile-driving, the 120 dB level would be exceeded out to about 800.1 m (2,625 ft) from the vibratory hammer.

A selection of additional projects using vibratory hammers was made from the ''Compendium of Pile-Driving Sound Data'' (Illingworth and Rodkin, 2007). This includes all projects in the compendium that used a vibratory hammer to drive steel pipe piles or H-piles. Data from these projects, and the two projects named above are summarized in Table 2 of the IHA application and this document.

TABLE 2—SOUND LEVEL DATA

Project	Distance (m and ft)	Pile type	Water depth	dB re 1 μPa (rms)
10 Mile	10 m (33 ft)	76.2 cm (30 in) steel pipe	Not stated	166.
10 Mile	100.6 m (330 ft)	76.2 cm (30 in) steel pipe	Not stated	Less than 150.
Port of Anchorage	20.1 m (66 ft)	H-pile	Not stated	162.

TABLE 2—SOUND LEVEL DATA—Continued

Project	Distance (m and ft)	Pile type	Water depth	dB re 1 μPa (rms)
San Rafael Canal	10 m (33 ft)	25.4 cm (10 in) H-pile	2.1 m (7 ft)	147.
San Rafael Canal	20.1 m (66 ft)	25.4 cm (10 in) H-pile	2.1 m (7 ft)	137.
Mad River Slough	10 m (33 ft)	33 cm (13 in) steel pipe	4.9 m (16 ft)	154 to 156.
Richmond Inner Harbor	10 m (33 ft)	1.8 m (6 ft) steel pipe	Not stated	167 to 180.
Richmond Inner Harbor	29.9 m (98 ft)	1.8 m (6 ft) steel pipe	Not stated	160.
Stockton Wastewater Crossing.	10 m (33 ft)	0.9 m (3 ft) steel pipe	Not stated	168 to 175.
Stockton Wastewater Crossing.	20.1 (66 ft)	0.9 m (3 ft) steel pipe	Not stated	166.
San Rafael Sea Wall	10 m (33 ft)	25.4 cm (10 in) H-pile	2.1 m (7 ft)	147.
San Rafael Sea Wall	20.1 m (66 ft)	25.4 cm (10 in) H-pile	2.1 m (7 ft)	137.

Source: Illingworth and Rodkin (2007, 2008).

Based on these data, the results for 76.2 cm to 0.9 m (30 in to 3 ft) steel pipe driven in water would appear to constitute a conservative representation of the potential effects of driving 45.7 cm (18 in) steel pipe at the Trinidad Pier. Those indicate an rms level of 166 to 175 dB at 10 m (33 ft) from the pile. Calculations in this analysis assume the high end of this range. For this analysis, close to the pile, it is assumed that there would be a 4.5 dB (rms) decrease for every doubling of the distance (practical spreading loss model). Isopleth distances based on this inference are presented in Table 3 of Trinidad Rancheria's IHA application and this document. Figure 1 of the IHA application shows both the area of effect and the relative exposure risk based on the presence of shielding features (headlands and sea stacks). Under no circumstances would the Level A harassment (injury) threshold for cetaceans or pinnipeds be exceeded, but the specified activities would likely exceed the Level B harassment threshold, which also corresponds to background sound level in the area, throughout Trinidad Harbor. Shielding by headlands flanking the harbor would, however, prevent acoustic impacts to waters outside the harbor that are not on a line-of-sight to the sound source. This effect is shown in Figure 1 of the IHA application.

Noise Levels from Augering—An auger is a device used for moving material or liquid by means of a rotating helical shaft into the earth. An attempt was made to measure the noise from augering out the 76.2 cm (30 in) piles at the Ten Mile Bridge Replacement Project. The levels were below the peak director of the equipment, 160 dB peak, and so measurements were stopped. Augering is expected to generate noise levels at or below the lower end of this range (Illingworth and Rodkin, 2008). Using the uniform ''practical spreading model'' transmission loss rate of 4.5 dB (rms) per doubling of distance, background sound levels would exceed the Level B harassment threshold at distances of less than 2.4 km (1.5 mi) (see Table 4 and Table 3 of the IHA application).

TABLE 3—PREDICTED DISTANCES TO UNDERWATER AND IN-AIR ACOUSTIC THRESHOLD LEVELS FOR THE TRINIDAD PIER RECONSTRUCTION PROJECT

Construction activity	Distance from activity to isopleths					
	190 dB (rms)	180 dB (rms)	160 dB (rms)	126 dB (rms)	90 dB in-air for harbor seals	100 dB in-air for all other pinnipeds
45.7 cm (18 in) Pile Vibratory Installation.	0.9 m (3 ft)	4.9 m (16 ft)	101.5 m (333 ft)	23.3 km (14.5 mi).	26.5 m (87 ft)	10.5 m (34.5 ft).
Augering	0 m (0 ft)	0.3 m (1 ft)	10.1 m (33 ft)	2.4 km (1.5 mi)	18.3 m (60 ft)	7.3 m (24 ft).
Wood Pile Removal	0 m (0 ft)	0.9 m (3 ft)	21.6 m (71 ft)	5 km (3.1 mi)	26.5 m (87 ft)	10.5 m (34.5 ft).

Noise Levels from Removal of Wood Piles—Removal of the existing wood piles would be accomplished with the use of a vibratory hammer. Typically the noise levels for installing and removing a pile are approximately the same when a vibratory hammer is used. The noise generated by installing wood piles is generally lower than steel shell piles. Illingworth and Rodkin (2007, 2008) have had only one opportunity to measure the installation of woodpiles, and this was with a 1,360.8 kg (3,000 lb) impact hammer. The levels measured at a distance of 10 m (32.8 ft) were as follows: 172 to 182 dB peak, 163 to 168 dB (rms). For a comparable CISS pile, using a 1,360.8 kg (3,000 lb) drop hammer, the levels measured were 188 to 192 dB peak, 172 to 177 dB (rms). The noise generated during the installation of the wood pile was approximately 10 dB lower than the CISS piles. Following this logic, the sound produced when removing the wood piles would be about 10 dB lower than when installing the CISS piles.

Levels of 180 dB (rms) and 190 dB (rms) are expected to occur in the water at very small distances as a result of pile removal (see Table 3 in this document). Peak sound pressures would not be expected to exceed 190 dB in water. The average sound level of vibratory woodpile removal would be approximately 152 dB (rms) at a distance of 20.1 m (66 ft). Using the uniform practical spreading loss model transmission loss rate of 4.5 dB (rms) per doubling of distance, the Level B harassment threshold distance would be

5 km (3.1 miles) (see Table 3 in the IHA application).

Potential for Biological Effects—Based on the foregoing analysis, the action could result in underwater acoustic effects to marine mammals. The injury thresholds for pinnipeds and cetaceans would not be attained, but the acoustic background level in the area, 126 dB (rms) would be attained during use of the vibratory pile driver (for wood piling removal and for CISS pile placement), and during augering of the CISS pile placements. Effects distances for these activities are shown in Table 3 of the IHA application, and range up to 23.3 km (14.5 mi). The duration of exposure varies between activities.

TABLE 4—NOISE GENERATING ACTIVITIES

Construction activity	Number of piles	Time per pile	Duration of activity	Number of days when activity occurs	126 dB (rms) isopleth distance
45.7 cm (18 in) pile vibratory installation	115	0:15	28:45	58	23.3 km (14.5 mi).
Augering	115	1:00	115:00	58	2.4 km (1.5 mi).
Wood pile removal	205	0:40	136:40	58	5 km (3.1 mi).

Pile installation would occur for approximately 30 min (up to two piles would be driven each day at up to 15 min drive time per pile) on each of 58 days (see Table 4 in the IHA application and this document), resulting in sound levels exceeding the behavioral effect threshold within 23.3 km (14.5 mi) of the activity.

Pile removal is a quieter activity performed for a longer time: Approximately 136:40 hours distributed evenly over 58 days, or about 2.5 hours on each day when the activity occurs. Sound levels would exceed the behavioral effect threshold within 5 km (3.1 mi) of the activity.

Augering, the least-noisy activity, is estimated to require 1 hour for each of 115 piles with activity occurring on each of 58 days evenly distributed during a 180-day period, or about 2 hours on each day when the activity occurs. Sound levels would exceed the behavioral effect threshold within 2.4 km (1.5 mi) of the activity.

These activities could be performed on the same day, but are expected to normally occur on consecutive days, with a cycle of pile removal-pile installation-augering-grouting occurring as each of 25 successive bents is placed.

As shown in Figures 1 and 2 of the IHA application, Trinidad Bay is protected from waves coming from the north and west, but open to coastline on the south. The coast extending to the south, and the rocky headland to the west of the pier, would shield waters from the acoustic effects described above except within the bay itself. These topographic considerations result in a situation such that underwater noise-generating activities would produce elevated underwater sound within most of the bay itself, but would have a minor effect on underwater sound levels outside the bay.

Seals outside of Trinidad Harbor and more than 1.6 to 3.2 km (1 to 2 mi) offshore are likely already exposed to and habituated to loud machinery noise in the form of deep-draft vessel traffic along the coast; such vessels may produce noise levels on the order of 170 to 180 dB (rms) at 10 m and thus have areas of effect comparable to the 23.3 km (14.5 mi) radius of effect calculated for vibratory pile-driving noise. In this context, the 23.3 km (14.5 mi) radius of effect is likely unrealistic, just as it is likely unrealistic to think that these seals alter their behavior in response to the passage of a large vessel 23.3 km (14.5 mi) away. Behavioral considerations suggest that the seals would be able to determine that a noise source does not constitute a threat if it is more than a couple of miles away, and the sound levels involved are not high enough to result in injury (Level A harassment). Nonetheless, these data suggest that pile-driving may affect seal behavior throughout Trinidad harbor, *i.e.,* within approximately 1.6 km (1 mi) of the activity. The nature of that effect is unpredictable, but logical responses on the part of the seals include tolerance (noise levels would not be loud enough to induce temporary threshold shift in harbor seals), or avoidance by using haul-outs or by foraging outside the harbor.

With regard to noises other than pile-driving (*i.e.,* pile removal, augering, and construction noise), estimation of biological effects depends on the characteristics of the noise and the behavior of the seals. The noise is qualitatively similar to that produced by the engines of fishing vessels or the operations of winches, noises to which the seals are habituated and which they in fact regard as an acoustic indicator signaling good foraging opportunities near the pier. There are no data about the magnitude of this acoustic indicator, but the noise produced by the fishing vessel engines entering or leaving the harbor is likely not less than 150 dB (rms) at 10 m, though it will be quieter as vessels ''throttle back'' near the pier. This level (150 dB [rms]) is the same as the estimated noise level from augering, and 15 dB less than the estimated noise level from pile removal. In this context, behavioral responses due to augering are not likely, except that initially seals might approach the work area in anticipation of foraging opportunities. Such behavior would likely cease once the seals learned the difference between the sound auger and that of a fishing vessel. Behavioral responses in the form of avoidance due to pile removal might occur within a distance of about 50 m (164 ft) from the activity, but the area so affected constitutes a small fraction of Trinidad Harbor and has no haul-outs; thus very few seals would be expected to be affected.

In-Air Noise—The principal source of in-air noise would be the vibratory pile driver used to extract old wood piles and to place the new CISS piles. Laughlin (2010) has recently reported unweighted sound measurements from vibratory pile drivers used to place steel piles at two projects involving dock renovation for the Washington State Ferries. In both projects, noise levels were measured in terms of the 5 min average continuous sound level (Leq). Frequency-domain spectra for the maximum sound level (Lmax) were also measured. The Leq measurements in this case were equivalent to the unweighted rms sound level, measured over a 5 min period.

At the Wahkiakum County Ferry Terminal, one measurement station was used to take measurements of the vibratory placement (APE hammer) of one 45.7 cm (18 in) steel in-water pile, the same size that would be placed during the Trinidad Pier renovation. At the Keystone Ferry Dock renovation, four measurement stations were used to take measurements of the vibratory

placement (APE hammer) of one 76.2 cm (30 in) steel in-water pile. At both sites, piles were placed in alluvial sediments, whereas the Trinidad Pier piles would be placed in pre-bored holes in sandstone. Results from the Wahkiakum and Keystone piles (Laughlin, 2010) are shown in Table 5 of the IHA application.

Based on these data (Laughlin, 2010), in-air noise production during pile-driving at the Trinidad Pier will likely be between 87.5 and 96.5 dB re 20 μPa unweighted at 50 ft. For the purpose of the analysis presented below, it is assumed that in-air noise from vibratory pile-driving would produce 96 dB (rms) unweighted. This noise would be produced during both pile removal and pile placement activities. The augering equipment produces slightly less noise, 92 dB (rms) unweighted (WSDOT, 2006). All other power equipment that would be used as part of the action (*e.g.,* trucks, pumps, compressors) produces at least 10 dB less noise and thus has much less potential to affect wildlife in the area.

In contrast, background noise levels near the Trinidad Pier are already elevated due to normal pier activities. Marine mammals at Trinidad Bay haul-outs are presumably habituated to the daily coming and going of fishing and recreational vessels, and to existing activities at the pier such as operation of the hoists and the loading and unloading of commercial crab boats. These activities may occur at any time of the day and may produce noise levels up to approximately 82 to 86 dB (unweighted) at 15.2 m (50 ft) for periods of up to several hours at a time. Accordingly 82 dB (unweighted) is chosen as the background level for noise near the pier.

Effects on Pacific Harbor Seals—In-air sound attenuates at the rate of approximately 5 dB/km for a frequency of 1 kHz, air temperature of 10° C (50° F), and relative humidity of 80 percent (Kaye and Laby, 2010). These conditions approximate winter weather in Trinidad. Under these conditions, the noise of the vibratory pile-driver would attenuate to approximately 82 dB at approximately 2.8 km (1.7 mi) from the pier. Attenuation, which is proportional to frequency, would be reduced at lower frequencies, and would be much greater at higher frequencies. Attenuation would also be greater at locations where headlands or sea stacks interfere with sound transmission, as shown in Figure 1 of the IHA application. Accordingly, the sounds produced by pile extraction, augering, and pile replacement would exceed background levels within almost all of Trinidad Harbor.

Driving of CISS piles would occur for a total of approximately 0.5 hours per day on each of 58 days within a 180 day period (August 1 through January 31, 2010) (see Table 4 of the IHA application). Pile-driving would occur during daylight hours, at which time harbor seals would be periodically coming to or leaving from haul-outs, and possibly foraging within the radius of effect around the pile-driving activity. Harbor seals haul-out on rocks and at small beaches at many locations that are widely dispersed within Trinidad Bay; the closest such haul-out is 70 m (229.7 ft) from the pier, while the most distant is over 1 km (0.6 mi) away near the south end of Trinidad Bay.

Behavioral effects could result to all seals that were in the water within the area of effect during the portion of the day when piles were being driven (typically two piles per day). For instance, if seals spent 10 percent of the day in the water within the radius of effect, and assuming that the number of seals present that day was approximately 37 (as discussed above in the context of data presented by Goley *et al.* [2007]), then about 3.66 seals would be affected by each of two pile drives. Because the drives occurred during different parts of the day, different seals would likely be affected, resulting in a total impact on that day to seven or eight seals.

The 10 percent estimate given above for the time seals spend within the radius of effect is a representative figure for the purposes of illustration. There are no data available on relative seal use of the haul-outs in Trinidad Bay, versus their use of waters in Trinidad Bay, versus their use of waters or haul-outs elsewhere. The radius of effect is only a small fraction of Trinidad Bay, and only a fraction of the rocks that comprise the Indian Beach haul-out described in Goley *et al.* (2007) are within that radius of effect. However, it is known that during winter months (when the construction is scheduled to occur), seal use of the haul-outs in Trinidad Bay likely declines because the seals spend a larger fraction of their time at sea, foraging in offshore waters (Goley, 2007). Figure 1 of the IHA application shows that topographic shielding by headlands blocks a large area of offshore habitat from potential underwater construction noise effects.

Impacts attributable to pile removal would be similar to those of pile-driving, but pile removal would occur for a total of approximately 2.5 hours per day on each of 58 days (see Table 4 of the IHA application). Subject to the same assumptions as described above, but this time with the activity being performed on an average of 3.5 piles per day, about 3.66 seals would be affected by each of 3.5 pile removal events for a total daily impact to 13 seals.

Impacts attributable to augering would also be similar, but augering would occur for a total of approximately 2 hours per day on each of 58 days. Subject to the same assumptions as described above, but this time with the activity being performed on an average of two piles per day, about seven or eight seals would be affected by each of two augering events for a total daily impact to seven or eight seals. These numbers would vary if more or fewer seals were present in the area of effect, and if seals spent more or less of their time in the water rather than on the haul-out.

Although harbor seals could also be affected by in-air noise and activity associated with construction at the pier, seals at Trinidad Bay haul-outs are presumably habituated to human activity to some extent due to the daily coming and going of fishing and recreational vessels, and to existing activities at the pier such as operation of the hoists and the loading and unloading of commercial crab boats. These activities may occur at any time of the day and may produce noise levels up to approximately 82 dB at 15.2 m (50 ft) for periods of up to several hours at a time. The operation of loud equipment, including the vibratory pile-driving rig and the auger, are above and outside of the range of normal activity at the pier and have the potential to could cause seals to leave a haul-out in Trinidad Bay. This would constitute Level B harassment (behavioral). To date, such behavior by harbor seals has not been documented in Trinidad Bay in response to current levels of in-air noise and activity in the harbor, but does have the potential to occur. On the contrary, seals have been documented often approaching the pier during normal fishing boat activities in anticipation of feeding opportunities associated with the unloading of fish and shellfish. This circumstance suggests seal habituation to existing noise levels encountered near the pier.

Based on these examples it appears likely that few harbor seals at haul-outs would show a behavioral response to noise at the pier, particularly in view of their existing habituation to noise activities at the pier. The great majority of haul-out locations in Trinidad Bay are at least 304.8 m (1,000 ft) from the pier, but one minor haul-out is 70.1 m (230 ft) from the pier (Goley, pers. comm.). In view of the relatively large area that would be affected by elevated in-air noise, it appears probable that

some seals could show a behavioral response, despite their habituation to current levels of human-generated noise; incidental take by this mechanism may amount to an average of one seal harassed per day, when the activities of pile removal, augering, or pile placement are occurring (in addition to the seals harassed by underwater noise).

Harbor seal presence in the activity area is perennial, with daily presence of an average of approximately 37 seals at a nearby haul-out during the months when the activity would occur. The fraction of these seals that would be in the activity area is difficult to estimate. Traditionally the seals have regarded the pier as a prime foraging area due to the recreational fishing activity and the unloading of fishing boats that occur there. During the construction period, however, these activities would cease, and it is plausible that the seals would modify their foraging behavior accordingly. Based on the analysis in the IHA application and here in this notice, seals would be affected once per day on each of 116 days when pile-driving or augering occurred, 13 seals would be affected per day on each of 58 days when pile removal occurred, and one seal would be affected by in-air sound on each of 164 days when pile removal, installation, or augering occurred. The potentially affected seals include adults of both sexes. Goley *et al.* (2007) states that the seals are year-round residents; that they are non-migratory, dispersing from a centralized location to forage; and that they exhibit high site fidelity, utilizing one to two haul-out sites within their range and rarely traveling more than 25 to 50 km (15.5 to 31.1mi) from these haul-outs. The winter population of seals in Trinidad Bay seems to consist mostly of resident seals (Goley *et al.,* 2007), so it is likely that most seals in the population would be affected more than once over the course of the construction period. It is therefore possible that some measure of adaptation or habituation would occur on the part of the seals, whereby they would tolerate elevated noise levels and/or utilize haul-outs relatively distant from construction activities. There are a large but inventoried number of haul-outs within Trinidad Bay, so such a strategy is possible, but it is difficult to predict whether the seals would show such a response.

Project scheduling avoids sensitive life history phases of harbor seals. Project activities producing underwater noise would commence in August. This is after the end of the annual molt, which normally occurs in June and July. Project activities producing underwater noise are scheduled to terminate at the end of January, which is a full month before female seals begin to seek sites suitable for pupping.

Effects on California Sea Lions—California sea lions, although abundant in northern California waters, have seldom been recorded in Trinidad Bay (*i.e,* there is little published information or data with which to determine how they use Trinidad Bay). The low abundance in the area may be due to the presence of a large and active harbor seal population there, which likely competes with the sea lions for foraging resources. Any sea lions that did visit the action area during construction activities would be subject to the same type of impacts described above for harbor seals. Observed use of the area by California sea lions amounts to less than one percent of the number of harbor seals (Goley, pers. comm.); assuming a one percent utilization rate, total impacts to California sea lions amount to one percent of the effects of harbor seals, described above.

There is a possibility of behavioral effects related to project acoustic impacts, in the event of California sea lion presence in the activity area. Based on an interview with Dr. Dawn Goley (pers. comm.), California sea lions have been seen in the activity area, albeit infrequently, and there are no quantitative estimates of the frequency of their occurrence. Assuming that they are present with one percent of the frequency of harbor seals, it is possible California sea lions might be subject to behavioral harassment up to one percent of the levels described for harbor seals. The potentially affected sea lions include adults of both sexes.

Effects on Eastern Pacific Gray Whales—Goley *et al.* (2007) list the sighting rates for gray whales during eight years of monthly observations at Trinidad Bay. Sighting rates varied from 0 to 1.38 whales per hour of observation time. The average detection rate during the period when pile removal and placement would occur, in the months from August through January, was 0.21 whales per hour of observation time. In contrast, the average detection rate in the months of February through July was 0.48 whales per hour. The majority of these detections were within 2 km (1.2 mi) of the shoreline (Goley *et al.,* 2007). These data suggest that the effect rate for gray whales would be approximately 0.21 whales per hour. Since vibratory pile-driving of CISS piles would occur for a total of approximately 28.75 hours (115 piles at 15 min drive time apiece; see Table 4 of the IHA application), vibratory pile-driving activities would be expected to affect $0.21 \times 28.75 = 6.04$ or approximately six gray whales.

Acoustic effects would be expected to result from pile removal, which is a quieter activity performed for a longer time. Approximately 205 piles will be removed, with 40 min of vibratory pile driver noise for each pile, resulting in a total exposure of 136.67 hours (see Table 4 of the IHA application). Thus this activity would be expected to affect $6.04 \times 136.7/28.75 = 28.7$ or approximately 29 gray whales.

Acoustic effects would also be expected to result from pile augering, which is an even quieter activity. There will be 115 holes augered, with one hour of noise for each hole, resulting in a total exposure of 115 hours (see Table 4 of the IHA application). Thus this activity would be expected to affect $6.04 \times 115/28.75 = 24.2$ or approximately 24 gray whales. No mechanism other than underwater sound generation is expected to affect gray whales in the action area.

The most likely number of gray whales that would be taken is 59. Based on the low detection rate of 0.21 whales per hour (Goley *et al.,* 2007), most of these take events would likely be independent, whales and would likely occur with adults of both sexes.

The potential effects to marine mammals described in this section of the document do not take into consideration the required monitoring and mitigation measures described later in this document (see the ''Mitigation'' and ''Monitoring and Reporting'' sections) which, as noted are designed to effect the least practicable impact on affected marine mammal species or stocks.

Possible Effects of Activities on Marine Mammal Habitat

The anticipated adverse impacts upon habitat consist of temporary changes to water quality and the acoustic environment, as detailed in the IHA application and Appendix B of the BA. These changes are minor, temporary, and limited in duration to the period of construction. No restoration is needed because, as detailed in Section 6.1.6 of the BA, the project would have a net beneficial effect on habitat in the activity area by removing an existing source of stormwater discharge and creosote-treated wood. No aspect of the project is anticipated to have any permanent effect on the location of seal and sea lion haul-outs in the area, and no permanent change in seal or sea lion use of haul-outs and related habitat features is anticipated to occur as a result of the project.

The temporary impacts on water quality and acoustic environment and the beneficial long-term effects are not expected to have any permanent effects on the populations of marine mammals occurring in Trinidad Bay. The area of habitat affected is small and the effects are temporary, thus there is no reason to expect any significant reduction in habitat available for foraging and other habitat uses for marine mammals.

Although artificial, the pier functions as a habitat feature. There would probably be a temporary cessation of seal activity in the immediate vicinity of the pier. It is not clear at this time how this would affect seal behavior. The fishing vessels that normally use the pier during the months when construction would occur have two options; they can either transfer their cargoes to smaller vessels capable of landing at the existing boat ramp (which is on the east side of the rocky headland just east of the pier, a few hundred feet away), or they can make temporary use of pier facilities approximately 32.2 km (20 mi) to the south, in Eureka. Vessels opting to travel to Eureka would likely represent a lost foraging opportunity for seals using Trinidad Bay.

NMFS anticipates that the action will result in no impacts to marine mammal habitat beyond rendering the areas immediately around the Trinidad Pier less desirable during pile-driving and pier renovation operations as the impacts will be localized. Impacts to marine mammal, invertebrate, and fish species are not expected to be detrimental.

Mitigation

In order to issue an Incidental Take Authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

The activity planned by the applicant includes a variety of measures calculated to minimize potential impacts on marine mammals, including:

- Timing the activity to occur during seasonal lows in marine mammal use of the activity area;
- Limiting activity to the hours of daylight (approximately 7 a.m. to 7 p.m., with noise generating activities only authorized from one-half hour after sunrise until one-half hour before sunset);
- Use of a vibratory hammer to minimalize the noise of piling and removal and installation; and
- Use of trained PSOs to detect, document, and minimize impacts (*i.e.,* start-up procedures [short periods of driver use with intervening pauses of comparable duration, performed two or three times, before beginning continuous driver use], possible shut-down of noise-generating operations [turning off the vibratory driver or auger so that in-air and/or underwater sounds associated with construction no longer exceed levels that have the potential to injure marine mammals]) to marine mammals, as detailed in the Marine Mammal Monitoring Plan (see Appendix C of the IHA application) and in paragraphs (1)–(8) of the monitoring and reporting provisions found in the ''Monitoring and Reporting'' section later in this document.

Timing Constraints for Underwater Noise

To minimize noise impacts on marine mammals and fish, underwater construction activities shall be limited to the period when the species of concern will be least likely to be in the project area. The construction window for underwater construction activities shall be August 1, 2011 to May 1, 2012. Avoiding periods when marine mammals are in the action area is another mitigation measure to protect marine mammals from pile-driving and renovation operations.

Implementation Assurance: Provide NMFS advance notification of the start dates and end dates of underwater construction activities.

More information regarding the Trinidad Rancheria's monitoring and mitigation measures, as well as research conducted, (*i.e.,* noise study for potential impacts to marine mammals and fish; potential impacts to historical, archeological and human remains; potential impacts to water quality during reconstruction activities; potential impacts to substrate and water quality during tremie concrete seal pouring; and potential temporary impacts to public access to the pier during construction operations) for the Trinidad Pier Reconstruction Project can be found in Appendix B of the IHA application.

NMFS has carefully evaluated the applicant's mitigation measures and has considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. NMFS's evaluation of potential measures included consideration of the following factors in relation in one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicality of the measure for applicant implementation.

Based on NMFS's evaluation of the applicant's measures, as well as other measures considered by NMFS or recommended by the public, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

Consistent with NMFS procedures, the following marine mammal monitoring and reporting shall be performed for the action:

(1) A NMFS-approved or -qualified Protected Species Observer (PSO) shall attend the project site one hour prior until one hour after construction activities cease each day throughout the construction window.

(2) The PSO shall be approved by NMFS prior to reconstruction operations.

(3) The PSO shall search for marine mammals within behavioral harassment threshold areas as identified within the acoustic effect thresholds in Section 6 of Trinidad Rancheria's IHA application. The area observed shall depend upon the type of underwater sound being produced (*e.g.,* pile extraction, augering, or pile installation). No practicable technology exists to allow for monitoring beyond the visual range at which seals and sea lions can be detected using binoculars (approximately 0.8 km [0.5 mi]), depending on visibility and sea state.

The estimated maximum distance at which PSOs will be able to visually detect gray whales is about 1.6 km (1 mi).

(4) The PSO shall be present on the pier during pile-extraction, pile-driving and augering to observe for the presence of marine mammals in the vicinity of the specified activity. All such activity will occur during daylight hours (*i.e.,* 30 min after sunrise and 30 min before sunset). If inclement weather limits visibility within the area of effect, the PSO will perform visual scans to the extent conditions allow, but activity will be stopped at any time that the observer cannot clearly see the water surface out to a distance of at least 30.5 m (100 ft) from the activity. In conditions of good visibility, PSOs will likely be able to detect pinnipeds out to a range of approximately 0.8 km (0.5 mi) from the pier, and to detect whales out to a range of approximately 1.6 km (1.0 mi) from the pier. Animals at greater distances likely would not be detected.

(5) Visibility is a limiting factor during much of the winter in Trinidad Bay. As discussed in the BA, shut-downs during times of fog could well result in prolonging the construction period into the beginning of the pupping season for harbor seals. The estimated distances for Level A harassment do not exceed 4.9 m (16 ft) from the activity. The activities will shut-down if visibility is so poor that seals cannot be detected when they are at risk of injury (*i.e.,* if visibility precludes observation of the area within 30.5 m [100 ft] of the pier). During the 30 min prior to the start of noise-generating activities and the quiet periods between individual noise-generating activities, auditory monitoring may be highly effective for detecting gray whales, but probably less effective for harbor seals and California sea lions.

(6) The PSO will also perform auditory monitoring, and will report any auditory evidence of marine mammal activity. Auditory detection will be based only on the use of the human ear (without technological assistance). Auditory monitoring is effective for detecting the presence of gray whales in close proximity to the action area (*e.g.,* blows, splashes, *etc.*). Close proximity varied depending on how loud the sound produced by the gray whale is, and on the in-air transmission loss rate. Auditory monitoring prior to the start of the noise-generating activity occurs in the absence of masking noise and thus helps to ensure that the auditory monitoring is effective. Auditory monitoring is only likely more effective than visual monitoring under conditions of low visibility (*i.e.,* fog) since work would only occur during daylight hours, at which times the transmission loss rate is very low. Note that there will also be many quiet periods between individual noisy activities, during which whales can be detected. Most of the work day is spent in preparing for a few noisy intervals. Auditory monitoring is less effective for detecting the presence of pinnipeds.

(7) The PSO will scan the area of effect for at least 30 min continuously prior to any episode of pile-driving to determine whether marine mammals are present, and will continue to scan the area during the period of pile-driving. The scan will continue for at least 30 min after each in-water work episode has ceased. The scan will involve two visual ''sweeps'' of the area using the naked eye and binoculars. Typically, the sweep would be conducted slowly as follows: one sweep going from left to right and the other returning from right to left. The length of time it takes to do the sweep will depend on the amount of area that needs to be covered, weather conditions, and the time it takes the monitor to thoroughly survey the area.

(8) Pile removal, augering, and pile placement activities will be shut-down if any cetacean or pinniped is about to enter or within the EZ determined by the estimated Level A harassment thresholds (see Table 3 for estimated distances [above]). Since the activities would produce sound levels that have the unlikely potential to result in Level A harassment (due to the very small radii of effect), a measure such as a shut-down may be unnecessary, but it would be appropriate for the Trinidad Rancheria to shut-down and consult with NMFS if measurements indicate that any activities attain sound levels that reach the Level A harassment threshold. If any other marine mammals are observed within the area of effect, pile-driving will not commence. If a marine mammal swims into the area of effect during pile-driving, the PSO will identify the animal and, if it is not a harbor seal, will notify the Project Engineer who will notify the Contractor, and pile-driving will stop (*i.e.,* shut-down). If the animal has been observed to leave the area of effect, or 15 min for pinnipeds and 30 min for cetaceans have passed since the last observation of the animal, pile-driving will proceed. Visual observation of the area of effect is limited to the area that can be practicably observable for animals to be detected, which is approximately 0.8 km (0.5 mi) for pinnipeds and 1.6 km (1 mi) for gray whales.

(9) Whenever a construction halt is called due to marine mammals presence in the area, the Project Engineer (or their representative) shall immediately notify the designated NMFS representative.

(10) If marine mammals are sighted by the PSO within the Level A and/or Level B harassment acoustic thresholds areas, the PSO shall record the number of marine mammals within the area of effect and the duration of their presence while the noise-generating activity is occurring. The PSO will also note whether the marine mammals appeared to respond to the noise and if so, the nature of that response. The PSO shall record the following information: date and time of initial sighting, tidal stage, weather, conditions, Beaufort sea state, species, behavior (activity, group cohesiveness, direction and speed of travel, *etc.*), number, group composition, distance to sound source, number of animals impacted, construction activities occurring at time of sighting, and monitoring and mitigation measures implemented (or not implemented). The observations will be reported to NMFS in a letter report to be submitted on each Monday, describing the previous week's observations.

(11) A final report will be submitted summarizing all in-water construction activities and marine mammal monitoring during the time of the authorization, and any long term impacts from the project.

A written log of dates and times of monitoring activity will be kept. The log shall report the following information:

- Time of observer arrival on site;
- Time of the commencement of underwater noise generating activities, and description of the activities (*e.g.,* pile removal, augering, or pile installation);
- Distances to all marine mammals relative to the sound source;
- For harbor seal observations, notes on seal behavior during noise-generating activity, as described above, and on the number and distribution of seals observed in the project vicinity;
- For observations of all marine mammals other than harbor seals, the time and duration of each animal's presence in the project vicinity; the number of animals observed; the behavior of each animal, including any response to noise-generating activities; whether activities were halted in response to the animal's presence; and whether, and if so, the time of NMFS notification;
- Time of the cessation of underwater noise generating activities; and
- Time of observer departure from site. All monitoring data collected during construction will be included in the biological monitoring notes to be

submitted weekly be electronic mail. Monthly summary reports will be submitted to NMFS. A report summarizing the construction monitoring and any general trends observed will also be submitted to NMFS within 90 days after monitoring has ended during the period of pier construction.

Underwater Noise Monitoring

Underwater noise monitoring and reporting shall be performed consistent with conditions of Coastal Development Permit 1–07–046. Those conditions are here summarized:

Prior to commencement of demolition and construction authorized by coastal development permit No. 1–07–046, the applicant shall submit a Hydroacoustic Monitoring Plan, containing all supporting information and analysis deemed necessary by the Executive Director for the Executive Director's review and approval. Prior to submitting the plan, to the Executive Director, the applicant shall also submit copies of the Plan to the reviewing marine biologists of the California Department of Fish & Game and the NMFS for their review and consideration.

At a minimum, the Plan shall:

(1) Establish the field locations of hydroacoustic monitoring stations that will be used to document the extent of the hydroacoustic hazard footprint during vibratory extrication or placement of piles or rotary augering activities, and provisions to adjust the location of the acoustic monitoring stations based on data acquired during monitoring, to ensure that the sound pressure field is adequately characterized;

(2) Describe the method of hydroacoustic monitoring necessary to assess the actual conformance of the vibratory extrication or placement of piles or rotary augering with the dual metric exposure criteria in the vicinity of the vibratory extrication or placement of piles or rotary augering locations on a real-time basis, including relevant details such as the number, location, distances, and depths of hydrophones and associated monitoring equipment.

(3) Include provisions to continuously record noise generated by the vibratory extrication or placement of piles or rotary augering in a manner that enables continuous and peak sound pressure and other measures of sound energy per strike, or other information required by the Executive Director in the consultation with marine biologists of the California Department of Fish & Game and NMFS, as well as provisions to supply all monitoring data that is recorded, regardless of whether the data is deemed ''representative'' or ''valid'' by the monitor (accompanying estimates of data significance, confounding factors, *etc.* may be supplied by the acoustician where deemed applicable). The permit also specifies reporting protocols, to be developed in cooperation with and approved by representatives of the California Coastal Commission, the California Department of Fish & Game, and NMFS.

The Trinidad Rancheria would notify NMFS Headquarters and the NMFS Southwest Regional Office prior to initiation of the pier reconstruction activities. A draft final report must be submitted to NMFS within 90 days after the conclusion of the Trinidad Pier Reconstruction Project. The report would include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA, including dates and times of operations, and all marine mammal sightings (dates, times, locations, species, behavioral observations [activity, group cohesiveness, direction and speed of travel, *etc.*], tidal stage, weather conditions, sea state, activities, associated pier reconstruction activities). A final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report would be considered to be the final report.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this Authorization, such as an injury (Level A harassment), serious injury or mortality, Trinidad Rancheria shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by e-mail to *Michael.Payne@noaa.gov* and *Howard.Goldstein@noaa.gov* and the Southwest Regional Stranding Coordinators (*Joe.Cordaro@noaa.gov* and *Sarah.Wilkin@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- The type of activity involved;
- Description of the circumstances during and leading up to the incident;
- Status of all sound source use in the 24 hours preceding the incident; water depth; environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of marine mammal observations in the 24 hours preceding the incident; species identification or description of the animal(s) involved;
- The fate of the animal(s); and photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with Trinidad Rancheria to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Trinidad Rancheria may not resume their activities until notified by NMFS via letter, e-mail, or telephone.

In the event that Trinidad Rancheria discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), Trinidad Rancheria will immediately report the incident to the Chief of the Permits Conservation, and Education Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by e-mail to *Michael.Payne@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS Southwest Regional Office (562–980–4017) and/or by e-mail to the Southwest Regional Stranding Coordinators (*Joe.Cordaro@noaa.gov* and *Sarah.Wilkin@noaa.gov*). The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Trinidad Rancheria to determine whether modifications in the activities are appropriate.

In the event that Trinidad Rancheria discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Trinidad Rancheria shall report the incident to the Chief of the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by e-mail to *Michael.Payne@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS Southwest Regional Office (562–980–4017) and/or by e-mail to the Southwest Regional Stranding Coordinators (*Joe.Cordaro@noaa.gov* and *Sarah.Wilkin@noaa.gov*), within 24 hours of the discovery. Trinidad Rancheria shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Based on NMFS's assessment of the potential effects of the specified activities on marine mammals likely to occur within the action area, NMFS has determined that incidental harassment of Pacific harbor seals, California sea lions, and Eastern Pacific gray whales is anticipated for the following reasons:

(1) Surveys have demonstrated that harbor seals are almost always present within the area that would be affected by underwater sound. Thus, it is not possible to avoid affecting harbor seals at an exposure level below the Level B harassment threshold. Potential effects to harbor seals have been minimized by constructing during a period when sensitive life history stages (pupping and molting) do not occur, and by using construction methods that generate the lowest practicable levels of underwater sound.

(2) California sea lions are found among the harbor seals, at about one percent of the harbor seal abundance; thus there is a risk of incidentally affecting California sea lions at the same times and by the same mechanisms at an exposure level above the Level B harassment threshold that harbor seals are affected.

(3) Gray whales have a high likelihood of occurring in Trinidad Bay during the construction period. They may not be detected by PSOs if they occur near the outer limits of the area of the Level B harassment impact zone.

(4) The area has a high incidence of harbor fog, which complicates successful detection of animals when they enter waters where they may be exposed to sound levels in excess of the Level B harassment threshold. Dense fog is a common occurrence in this area in all seasons of the year. In 2008, for instance, the NOAA weather station in nearby Eureka reported 63 days of fog with visibility less than 0.4 km (0.25 mi), and 176 cloudy days. Local anecdotal reports indicate that the incidence of fog is much higher on the harbor waters than on the adjacent uplands. Attempting to only perform underwater sound generating activities during periods of high visibility is therefore impracticable, as it would greatly prolong the time required for construction. For this reason it is possible that marine mammals may enter waters where they may be exposed to sound levels in excess of the Level B harassment threshold without being detected by PSOs. This is why the Marine Mammal Monitoring Plan (see Appendix C of the IHA application) provides for work stoppage when visibility is less than 30.5 m (100 ft), and provides for auditory detection (for both cetacean and pinniped monitoring) in conditions of reduced visibility and assumes that any auditory direction represents an animal that is within the area with sound levels in excess of the Level B harassment threshold.

Incidental take estimates are based on estimates of use of Trinidad Bay by various species as reported by Goley (2007 and pers. comm.). All reconstruction activities generating underwater sound during the project are expected to exceed background sound levels through Trinidad Bay. Table 5 in this document outlines the number of marine mammals that might be taken by Level B harassment from the various activities (both in-air and underwater estimates are provided for pinnipeds).

TABLE 5—SUMMARY OF THE NOISE PRODUCTION AND ANTICIPATED INCIDENTAL TAKE BY LEVEL B HARASSMENT FOR THE TRINIDAD RANCHERIA'S ACTION GENERATING IN-AIR AND UNDERWATER NOISE

Variable	Wood pile removal		Augering		Vibratory pile installation	
	Underwater noise	In-air noise	Underwater noise	In-air noise	Underwater noise	In-air noise
Sound Amplitude	156.5 dB (rms) at 10.1 m (33 ft).	104 dB at 50 ft	150 dB (rms) at 15.2 m (50 ft).	94 dB at 50 ft	175 dB (rms) at 10.1 m (33 ft).	104 dB at 50 ft.
Sound Duration Per Day (hours).	2.5		2		0.5.	
Activity Frequency Per Day.	2		3.5		2.	
Number of Days *	58		58		58.	
Total Hours of Exposure.	145		116		29.	
Incidental Take of Harbor Seals Per Day.	13	1	7 or 8	1	7 or 8	1.
Incidental Take of Harbor Seals Total.	754	58	435	58	435	58.
Incidental Take of California Sea Lions Total.	7.5	0.6	4.4	0.6	4.4	0.6.
Incidental Take of Gray Whales.	28.7	0	28.7	0	6.04	0.

Note: * No two activities would be performed on any given day.

Encouraging and Coordinating Research

Existing knowledge gaps regarding the Trinidad Bay harbor seals were identified in discussions with Dr. Dawn Goley, professor, HSU. Dr. Goley noted that the timing and movements of the Trinidad Bay harbor seals are not well understood, and could be better understood by radio tracking studies of a representative group of seals. Dr. Goley also noted the uncertain relationship between Trinidad Bay and Patrick's Point seals, and noted that the radio tracking study might help to elucidate that relationship.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, intensity, and duration of Level B harassment (all relatively limited);

(3) The context in which the takes occur (*i.e.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, and impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment or survival; and

(6) The effectiveness of monitoring and mitigation measures (*i.e.,* the manner and degree in which the measure is likely to reduce adverse impacts to marine mammals, the likely effectiveness of the measures, and the practicability of implementation).

For reasons stated previously in this document, and in the proposed notice of the IHA (76 FR 28733, May 18, 2011), the specified activities associated with the Trinidad Pier Reconstruction Project are not likely to cause PTS, or other non-auditory injury, serious injury, or death because of:

(1) The likelihood that marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The potential for permanent hearing impairment is relatively low and would likely be avoided through the incorporation of the required monitoring and mitigation measures (described above);

(3) The fact that cetaceans would have to be closer than 0.9 m (3 ft), 0.3 m (1 ft), and 4.9 m (16 ft) and pinnipeds would have to be closer than 0 m (0 ft), 0 m (0ft), and 0.9 m (3 ft), during pile-removal, augering, and vibratory pile-driving activities, respectively, to be exposed to levels of sound believed to have even a minimal chance of causing a permanent thresholds shift (PTS; *i.e.,* Level A harassment); and

(4) The likelihood that marine mammal detection ability by trained PSOs is high at close proximity to the pier.

No injuries, serious injuries, or mortalities or alteration of reproductive behaviors are anticipated to occur as a result of Trinidad Rancheria's planned renovation operations, and none are authorized by NMFS. Only short-term, minor, behavioral disturbance is anticipated to occur due to the brief and sporadic duration of the renovation activities. Table 5 (above) in this document outlines the number of Level B harassment takes that are anticipated as a result of the activities. Project scheduling avoids sensitive life history phases for harbor seals. Project activities producing underwater noise would commence in August. This is after the end of the annual molt, which normally occurs in June and July. Project activities producing underwater noise are scheduled to terminate at the end of January, which is a full month before female seals commence to seek sites suitable for pupping. It is possible that severe winter storms or other unforeseen events could delay the conclusion of activities producing underwater noise, but the scheduled one month buffer between underwater construction and the start of pupping-related activity provides assurance that a reasonable level of project delays could occur without adverse consequences for the harbor seals. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see Potential Effects on Marine Mammals section above) in this notice, the activity is not expected to impact rates of recruitment or survival for any affected species or stock.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (*i.e.,* 24 hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). While Trinidad Pier operations are anticipated to occur on consecutive days, the entire duration of the project resulting in incidental take of marine mammals is not expected to last more than six months. Of the three marine mammal species under NMFS jurisdiction that are known to or likely to occur in the study area, none are listed as threatened or endangered under the ESA or depleted under the MMPA. To protect these animals (and other marine mammals in the project area), Trinidad Rancheria must cease operations if animals enter designated zones. No injury, serious injury, or mortality is expected to occur and due to the nature, degree, and context of the Level B harassment anticipated, the specified activity is not expected to impact rates of recruitment or survival.

As mentioned previously, NMFS estimates that three species of marine mammals under its jurisdiction could be potentially affected by Level B harassment over the course of the IHA. For each species, these numbers are estimated to be small (*i.e.,* 1,798 harbor seals [5.7 percent], 21 California sea lions [0.02 percent], and 65 gray whales [0.4 percent]), less than a few percent of any of the estimated populations sizes based on data in this notice, and has been mitigated to the lowest level practicable through the incorporation of the monitoring and mitigation measures mentioned previously in this document.

NMFS's practice has been to apply 120 dB re 1 μPa (rms) received level threshold for underwater non-impulse sound levels to determine whether take by Level B harassment occurs. Southall *et al.* (2007) provide a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* [2007]). Current NMFS practice, regarding exposure of marine mammals to high-level in-air sounds, as a threshold for potential Level B harassment, is at or above 90 dB re 20 μPa for harbor seals and at or above 100 dB re 20 μPa for all other pinniped species (Lawson *et al.,* 2002; Southall *et al.,* 2007). NMFS has not determined Level A harassment thresholds for marine mammals for in-air noise.

NMFS has determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting the renovation operations on the Trinidad Pier in Trinidad Bay, August, 2011 through January, 2012, may result, at

worst, in a temporary modification in behavior and/or low level physiological effects (Level B harassment) of small numbers of certain species of marine mammals. See Table 5 (above) for the authorized take numbers of cetaceans and pinnipeds.

While behavioral modifications, including temporarily vacating the area during the renovation operations, may be made by these species to avoid the resultant in-air and/or underwater acoustic disturbance, the availability of alternate areas within these areas and the short and sporadic duration of the research activities, have led NMFS to determine that this action will have a negligible impact on the specified geographic region.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that Trinidad Rancheria's planned renovation activities of the Trinidad Pier, will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the construction project will have a negligible impact on the affected species or stocks of marine mammals; and the impacts to affected species or stocks of marine mammals have been mitigated to the lowest level practicable.

Impact on Availability of Affected Species for Taking for Subsistence Uses

Section 101(a)(5)(D) also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area that implicate MMPA section 101(a)(5)(D).

Endangered Species Act (ESA)

On July 13, 2009, NMFS Southwest Regional Office (SWRO) received the U.S. Army Corps of Engineers (ACOE) July, 9, 2009, letter and Biological Assessment (BA), requesting initiation of informal consultation on the issuance of a Clean Water Act section 404 permit to the Trinidad Rancheria to allow in-water work associated with the proposed action. The BA and informal consultation request were submitted for compliance with Section 7(a)(2) of the ESA, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations (50 CFR 402). On October 27, 2009, NMFS SWRO issued a Letter of Concurrence, concurring with the ACOE's determination that the proposed action is not likely to adversely affect federally threatened Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*), California Coastal (CC) Chinook salmon (*Oncorhynchus tshawytscha*), and Northern California (NC) steelhead (*Oncorhynchus mykiss*).

On November 30, 2009, the NMFS SWRO issued a separate letter assessing project effects relative to marine mammals protected under the Federal ESA. NMFS's letter concurred with the ACOE's determination that the proposed action may affect, but is not likely to adversely affect the Federally threatened Steller sea lion. The USFWS has informed the ACOE that a formal ESA section 7 consultation is not necessary for any of their jurisdictional species (*i.e.,* no listed species are likely to be adversely affected).

National Environmental Policy Act (NEPA)

The ACOE, San Francisco District, has prepared a permit evaluation and decision document that constitutes an Environmental Assessment (EA), Statement of Findings, and review and compliance determination for the proposed action, which analyzed the project's purpose and need, alternatives, affected environment, and environmental effects for the action. NMFS has reviewed the ACOE EA for consistency with the regulations published by the Council of Environmental Quality (CEQ) and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, and conducted a separate NEPA analysis and prepared an ''Environmental Assessment for Issuance of an Incidental Harassment Authorization for Cher-Ae Heights Indian Community of the Trinidad Rancheria's Trinidad Pier Reconstruction Project in Trinidad, California,'' which analyzes the project's purpose and need, alternatives, affected environment, and environmental effects for the action prior to making a determination on the issuance of the IHA. Based on the analysis in the EA and the underlying information in the record, including the application, proposed IHA, public comments and informal ESA section 7 consultation, NMFS has prepared and issued a Finding of No Significant Impact determining that preparation of an Environmental Impact Statement is not required.

Essential Fish Habitat (EFH)

The ACOE requested consultation on EFH, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Pub. L. 104–267, 16 U.S.C 1801 *et seq.*) and its implementing regulations 50 CFR 600.920(a). The ACOE determined that the proposed action would adversely affect EFH for species managed under the Pacific Coast Salmon, Pacific Coast Groundfish, and Coastal Pelagics Fishery Management Plans. NMFS SWRO determined that the proposed action would adversely affect EFH for species managed under the Pacific Coast Salmon, Pacific Coast Groundfish, and Coastal Pelagics Fishery Management Plans. Habitat will be lost during removal of wooden pilings; however, NMFS expected recolonization of the new pilings within a year. NMFS believes the proposed action has been designed to minimize and reduce the magnitude of potential effects during implementation of the proposed action. Therefore, NMFS provides no additional conservation recommendations. In addition, NMFS expects EFH will improve in the vicinity of the pier due to the following:

(1) Removal and replacement of creosote-treated wooden piles with CISS concrete pilings;

(2) A stormwater collection and treatment system where all stormwater will be collected and routed by gravity feed to an upland treatment cell that will provide detention, settling, and active filtering prior to complete infiltration;

(3) Reduced artificial lighting effects; and

(4) The HSU marine lab water intake associated with the pier will be fitted with NMFS-approved screens, minimizing the risk of entrainment of small prey fish species.

Authorization

NMFS has issued an IHA to the Trinidad Rancheria for the take, by Level B harassment, of small numbers of three species marine mammals incidental to specified activities related to renovation of the Trinidad Pier, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 29, 2011.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–19809 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

Federal Register CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 76, No. 145, Thursday, July 28, 2011, pages 45233–45234.

ANNOUNCED TIME AND DATE OF MEETING: Closed to the Public, Wednesday, August 3, 2011, 10–11 a.m.

MATTER TO BE CONSIDERED: Compliance Status Report.

Meeting Canceled.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7923.

Dated: August 2, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–19865 Filed 8–2–11; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Publication of Housing Price Inflation Adjustment

AGENCY: Office of the Under Secretary (Personnel and Readiness), Department of Defense.

ACTION: Notice.

SUMMARY: The Servicemembers Civil Relief Act, as codified at 50 U.S.C. App. 531, prohibits a landlord from evicting a Service member (or the Service member's family) from a residence during a period of military service except by court order. The law as originally passed by Congress applied to dwellings with monthly rents of $2400 or less. The law requires the Department of Defense to adjust this amount annually to reflect inflation and to publish the new amount in the **Federal Register.** We have applied the inflation index required by the statute. The maximum monthly rental amount for 50 U.S.C. App. 531(a)(1)(A)(ii) is $2,975.54.

DATES: *Effective Date:* January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Colonel Shawn Shumake, Office of the Under Secretary of Defense for Personnel and Readiness, (703) 697–3387.

Dated: July 29, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–19722 Filed 8–3–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 3, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 29, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title of Collection: Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Federal Perkins Loan Program: School Closure and False Certification Loan Discharge Applications.

OMB Control Number: 1845–0015.

Agency Form Number(s): N/A.

Frequency of Responses: On Occasion.

Affected Public: Individuals or House.

Total Estimated Number of Annual Responses: 29,543.

Total Estimated Number of Annual Burden Hours: 14,774.

Abstract: These forms serve as the means by which eligible borrowers in the Federal Family Education Loan Program, the William D. Ford Federal Direect Loan Program, and the Federal Perkins Loan Program apply for discharge of a loan based on school closure or false certification of loan eligibility in accordance with federal regulations. The holders of the borrower's loans use the information collected on these forms to determine whether a borrower meets the regulatory eligibility requirements for loan discharge.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4690. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf

(TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–19711 Filed 8–3–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket Number EERE–2011–BT–TP–0041]

RIN 1904–AC50

Energy Efficiency Program: Test Procedure for Lighting Systems (Luminaires)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for Information.

SUMMARY: The U.S. Department of Energy (''DOE'' or the ''Department'') is currently evaluating energy efficiency test procedures for luminaires (also referred to herein as lighting systems) and collecting information for the labeling of such products. DOE recognizes that well-designed test procedures are important to produce reliable, repeatable, and consistent test results and that labeling assists informed consumer choice. The existing luminaire test procedures DOE is evaluating include those already established by the National Electrical Manufacturers Association (NEMA) and ENERGY STAR, which include by reference numerous test procedures established by the American National Standards Institute (ANSI), the Illuminating Engineering Society of North America (IESNA), the International Commission on Illumination (Commission Internationale de l'Eclairage (CIE)), and the Illuminating Engineering Society of North America (IESNA). To inform interested parties, facilitate its consideration of appropriate test procedures, and collect information on labeling, DOE seeks comment and requests information related to test procedures and labels for lighting systems based on industry-standard procedures and practices for luminaires. In particular, DOE is interested in if and how test procedures and labels may include controls for powering the luminaire on or off depending on time of day, daylight or occupancy sensor readings and other factors.

DATES: Written comments and information are requested by September 19, 2011.

ADDRESSES: Interested persons may submit comments in writing, identified by docket number EERE–2011–BT–TP–0041, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

2. *E-mail: LightingSys-2011-TP-0041@ee.doe.gov*. Include EERE–2011–BT–TP–0041 and/or RIN 1904–AC50 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Request for Information for Lighting Systems, EERE–2011–BT–TP–0041 and/or RIN 1904–AC50, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Phone:* (202) 586–2945. Please submit one signed paper original.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. *Phone:* (202) 586–2945. Please submit one signed paper original.

5. *Instructions:* All submissions received must include the agency name and docket number.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information.

The docket also is available for review at regulations.gov, including *Federal Register* notices, and other supporting documents/materials. All documents in the docket are listed in the regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket web page can be found at: *http://www.eere.energy.gov/buildings/appliance_standards/commercial/lighting_systems.html*. This web page contains a link to the docket for this notice on the *regulations.gov* site. The regulations.gov web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Dr. Tina Kaarsberg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 287–1393. *E-mail: Tina.Kaarsberg@ee.doe.gov.*

In the Office of General Counsel, contact Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585. *Telephone:* (202) 586–7796. *E-mail: Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

The Energy Policy Act of 1992 (EPAct 1992, Pub. L. 102–486), Section 126, required DOE to support and monitor a national voluntary testing and information program for widely used luminaires that have significant energy savings potential, and to issue a determination as to whether the program developed was consistent with those objectives. The program was required to include specifications for test procedures and labels that will enable purchasers of such luminaires to make more informed decisions about the energy efficiency and costs of alternative products. If DOE determines that a program of voluntary national testing and information for luminaires consistent with those objectives has not been developed, EPAct 1992 directs DOE to develop test procedures for luminaires. EPAct 1992 also provides for labels for these products. (42 U.S.C. 6292 note) The Energy Policy Act of 2005 (EPAct 2005, Pub. L. 109–58) and the Energy Independence and Security Act of 2007 established Federal efficiency standards for certain classes of luminaires—torchieres, ceiling fan light kits, exit signs, traffic signals, and metal halide lamp fixtures—but currently there are no DOE-approved test procedures for most widely-used classes of luminaires. There are also no labeling requirements for these products.

II. Background

In April 1992, the National Lighting Collaborative (NLC or Collaborative) initiated development of a testing and information program as described under EPAct 1992. The Collaborative, administered by NEMA, included representatives from environmental organizations, State governments, the lighting industry, research entities, and utilities.[1] In 1995, the NLC issued a

[1] In 1999, membership included the following organizations: Environmental groups were represented by the Alliance to Save Energy, the American Council for an Energy-Efficient Economy, and the Natural Resources Defense Council. State and Federal government representatives included the California Energy Commission, the National Institute of Standards and Technology (NIST), the New York State Energy Research and Development Authority, DOE, and the US Environmental Protection Agency. Lighting and related industry organizations were represented by the American Lighting Association, the American Society of Heating, Refrigerating and Air-Conditioning

report on the program to DOE that served as the basis of DOE's provisional determination on whether the program met the objectives set forth in EPAct 1992 (61 FR 10742, March 15, 1996). DOE found that the program would be consistent with the objectives set forth in EPAct 1992 when it had been demonstrated to DOE that the program had been ''fully implemented so that energy efficiency information about luminaires is widely available to luminaire purchasers''. Although the NLC continued activities through 2001,[2] DOE has not yet issued a final determination regarding the program.[3]

a. Evolution of National Luminaire Testing and Definitions

In response to the EPAct 1992 requirement that DOE provide financial and technical assistance to support a voluntary national testing and information program, NEMA developed, and the NLC incorporated into the program, three separate industry standards applicable to luminaires along with their associated test procedures:

- LE 5—Procedure for Determining Luminaire Efficacy Ratings for Fluorescent Luminaires.
- LE 5A—Procedure for Determining Luminaire Efficacy Ratings for Commercial, Non-Residential Downlight Luminaires.
- LE 5B—Procedure for Determining Luminaire Efficacy Ratings for High-Intensity Discharge Industrial Luminaires.

The Environmental Protection Agency (EPA) created a voluntary specification for luminaires under its ENERGY STAR program. The ENERGY STAR specification (*http://www.energystar.gov/index.cfm?c=new_specs.luminaires*) includes a voluntary standard but does not generally include controls. The ENERGY STAR test procedures reference industry test procedures for fluorescent, high-intensity discharge and solid-state luminaires, none of which currently include controls.[4]

In 2008, NEMA introduced its Target Efficacy Rating (TER), documented in NEMA standard LE 6, and adds to the LE 5 series efficacy calculation a factor to address the fraction of light leaving the luminaire that is delivered to the intended target surface. LE 6 is intended to supersede the LE 5 series ratings for all purposes other than ''rating a fixture in accordance with EPAct 1992''. The TER addresses major classes of commercial, residential, and industrial luminaires used for both indoor and outdoor lighting, but does not include controls.

b. Lighting System/Luminaire Controls

The EPAct 1992 requirements for luminaires discussed above pertained to the energy efficiency of entire lighting systems, as opposed to just lamps or lamp and ballast systems. The Illuminating Engineering Society of North America defines luminaire as a ''complete lighting unit consisting of lamp(s) and ballast(s) (when applicable) together with the parts designed to distribute the light, position and protect the lamps, and to connect the lamp(s) to the power supply.''[5] [6] The Energy Policy and Conservation Act of 1975 (EPCA), as amended, adopts the same definition for luminaires with fluorescent light sources: ''a complete lighting unit consisting of a fluorescent lamp or lamps, together with parts designed to distribute the light, to position and protect such lamps, and to connect such lamps to the power supply through the ballast. Controls are considered under these definitions as the part of the lighting system that connects the lamp(s) to the power supply.

Although it has not yet included them in its own industry procedures, NEMA has argued generally that lighting standards should incorporate controls, not just source efficacies, because of their great potential for much larger savings in major applications. On May 10, 2011, NEMA submitted public comments on the current fluorescent ballast rulemaking noting that a ''ballast that is switched off or dimmed uses much less energy and can result in increased user satisfaction'' (Document ID: EERE–2007–BT–STD–0016–0039.1).[7] On May 27, 2010, NEMA submitted public comments for the high-intensity discharge (HID) lamps determination arguing that ''industry believes that the DOE will find much more energy savings from HID systems with the proper application of electronic ballasts and/or intelligent controls [versus] standards that increase average HID lamp efficiencies'' (Document ID: EERE–2006–DET–0112–0021.1).[8] In a May 15, 2008, public workshop for California's metal halide luminaires rulemaking, NEMA proposed using integral controls as an alternative compliance option to high efficiency ballasts and later worked with the Pacific Gas and Electric Company, the American Council for an Energy Efficient Economy, and the California Energy Commission to develop that option for the final rule.[9]

The American Council for an Energy Efficient Economy (ACEEE) also encouraged DOE to take a systems-based approach to lighting in its May 27, 2010 comments on the HID rulemaking: ''In general, we would like to see DOE combine rulemakings—or at least analysis—whenever possible for individual lighting components that are operated together in a system. This would allow for greater efficiencies in the analytical effort, better consideration and coordination of the impacts of standards changes for one component on overall system performance, and potentially for more effective final standards from an energy savings, economic, and environmental perspective.''

C. Evaluation of Luminaire/Lighting Systems Test Procedures

DOE is evaluating whether test procedures for luminaires/lighting

Engineers, the Association of Energy Engineers, the Building Owners and Managers Association, the Illuminating Engineering Society of North America, the International Association of Lighting Designers, the National Association of Lighting Management Companies, the National Association of Electrical Distributors, the National Association of State Energy Officials, the National Electrical Contractors Association, and the National Electrical Manufacturers Association. Testing and research entities included the Lawrence Berkeley National Laboratory, the Lighting Research Center, and the Lighting Research Institute. Utilities were represented by the Edison Electric Institute and the Electric Power Research Institute.

[2] In 1999 the Collaborative issued a new *Report on the Status of the Voluntary National Testing and Information Program for Luminaires,* which described the program and urged DOE to approve it. The Program included luminaire test procedures for widely used fluorescent and HID luminaires, a complaint resolution process to resolve disputes about Luminaire Efficacy Rating (LER) values, and an information program. In addition, the Program recommended that testing be carried out by a laboratory accredited by NIST's National Voluntary Laboratory Accreditation Program.

[3] NEMA's current Lighting Industry Director was unaware of any program activity in recent years. LBNL staff who participated on the NLC stated that the last meeting was in 2001. While conceptually related, NEMA's subsequent LE 6 activity was organizationally unrelated to the NLC. See *http://www.nema.org/stds/le5.cfm* (''When rating a fixture in accordance with EPAct 1992, use this standard. For other purposes, see NEMA LE 6, a newer standard for luminaire efficacy that supersedes the LE 5 series.'').

[4] ENERGY STAR® Program Requirements Product Specification for Luminaires (Light Fixtures) Eligibility Criteria Version 1.0.

[5] Rea, M.S. (Editor), Illuminating Engineering Society of North America, IESNA Lighting Handbook, 9th Edition, 2000.

[6] This ANSI/IESNA definition of luminaire has also been accepted by ENERGY STAR® and the California Energy Commission.

[7] Available online: *http://www.regulations.gov/#!documentDetail;D=EERE-2007-BT-STD-0016-0039.*

[8] Available online: *http://www.regulations.gov/#!searchResults;rpp=10;po=0;s=DET-0112-0021.*

[9] California Energy Commission, 2008 *Appliance Efficiency Rulemaking: Staff Report, Phase I, Part B, Docket #08–AEER–1B,* Report #CEE–400–2008–023, page 7.

systems may be based on existing industry rating systems and test procedures such as NEMA's LE 6 rating system, (which covers 22 classes of interior and exterior luminaires) and EPA's ENERGY STAR luminaire specifications (which covers a range of residential and commercial direction and non-directional products) and is based on IESNA test procedures (LM–46, LM–41, LM–10–11, and LM–31–11). DOE is considering whether to define certain lighting systems and controls terminology to enable development of an appropriate national test procedure.

D. Collection of Information on Luminaire/Lighting Systems Labeling.

DOE is also collecting information on whether labels for luminaires/lighting systems may be based on industry rating systems such as those described in the previous section.

E. Conclusion

The Department recognizes that voluntary luminaire test procedures and labels exist and that the industry is increasingly using controls technologies to reduce lighting energy use. DOE therefore requests information on recent developments in luminaire testing and labeling programs and how energy savings from controls are addressed therein.

III. Public Participation

A. Submission of Information

DOE will accept information and data in response to this Request for Information as provided in the DATES section above. Information submitted to the Department by e-mail should be provided in WordPerfect, Microsoft Word, PDF, or text file format. Those responding should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. Comments submitted to the Department by mail or hand delivery/courier should include one signed original paper copy. No telefacsimiles will be accepted. Comments submitted in response to this notice will become a matter of public record and will be made publicly available.

B. Issues on Which DOE Seeks Information

Although comments are welcome on all issues discussed in this notice, DOE is particularly interested in the following information and substantiating data on existing test procedures and labels for luminaires.

1. Definitions. DOE invites comments on the definition of lighting systems, luminaires and other relevant terms.

2. Lighting systems/luminaire test procedures and labeling. DOE is particularly interested in details on industry, state, and international test procedures and labels including, where feasible: Luminaire classes covered, fraction of current luminaire sales covered, percentage of products covered by the program currently being tested and reported on; the method used to inform purchasers of covered luminaires about the results of the testing and other energy and performance related information.

3. Inclusion of controls in lighting systems test procedures and labeling. DOE requests comments on means to include controls in test procedures and whether the inclusion of controls in labels would provide consumers with useful information.

4. The current status of labeling programs. DOE is particularly interested in what products are currently sold with luminaire efficiency labels, what fraction of the market represents, what the leading labels are and what information the labels contain.

DOE is also interested in comments on other relevant issues that participants think would affect test procedures and labeling applicable to lighting systems or luminaires.

Issued in Washington, DC, on July 29, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–19780 Filed 8–3–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division—2021 Power Marketing Initiative Proposal

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of re-opening of comment period.

SUMMARY: Western Area Power Administration (Western), Upper Great Plains Region, a Federal power marketing agency of the Department of Energy (DOE) published the proposed 2021 Power Marketing Initiative (2021 PMI) in the **Federal Register** on March 4, 2011. The proposed 2021 PMI provides the basis for marketing the long-term firm hydroelectric resources of the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP—ED) beyond December 31, 2020, when Western's Firm Electric Service contracts associated with the current marketing plan will expire. The proposed 2021 PMI extends the current P–SMBP—ED marketing plan, with amendments to the contract term and resource pools marketing plan principles. The comment period for the proposed 2021 PMI ended on May 4, 2011. Western received a comment requesting additional time to supplement comments on the proposed 2021 PMI. This *Federal Register* notice re-opens the written comment period for the proposed 2021 PMI until September 6, 2011.

DATES: Entities interested in commenting on the proposed 2021 PMI must submit written comments to Western's Upper Great Plains Regional Office. Western must receive written comments by 4 p.m., M.D.T., on September 6, 2011. Western reserves the right to not consider any comments that are received after the prescribed date and time.

ADDRESSES: Submit written comments regarding the proposed 2021 PMI to Robert J. Harris, Regional Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266. Comments may also be faxed to (406) 255–2900 or e-mailed to *UGP2021@wapa.gov.*

FOR FURTHER INFORMATION CONTACT: John A. Pankratz, Public Utilities Specialist, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, telephone (406) 255–2932, e-mail *UGP2021@wapa.gov.*

SUPPLEMENTARY INFORMATION: Western initiated 2021 PMI discussions with P–SMBP—ED firm power customers in November 2010 by hosting meetings, including one conference call meeting, throughout the Upper Great Plains Region. The meetings provided all firm power customers the opportunity to review current marketing plan principles and provide informal input to Western for consideration in the 2021 PMI proposal. Western sent a letter to all firm power customers inviting them to attend these meetings. In addition, due to the special and unique relationship between the United States and tribal governments, Western initiated government-to-government consultation by sending a certified letter to each tribal firm power customer, inviting them to attend Native American-focused meetings. As part of,

and in order to facilitate ongoing consultation, Western hosted Native American-focused meetings, including one conference call meeting, throughout the Upper Great Plains Region.

The proposed 2021 PMI (76 FR 12104) was published in the **Federal Register** on March 4, 2011. Western mailed the proposed 2021 PMI **Federal Register** notice to all firm power customers and other interested parties on March 7, 2011. As part of ongoing government-to-government consultation, Western representatives also contacted tribal firm power customers directly to discuss the proposed 2021 PMI **Federal Register** notice, including the information and comment forum dates and times. Western held public information and comment forums on April 13, 14, and 20, 2011, to accept oral and written comments on the proposed 2021 PMI. The proposed 2021 PMI comment period ended on May 4, 2011.

Western received a comment on May 4, 2011, from a Native American tribe requesting further government-to-government consultation and additional time to provide supplemental comments on the proposed 2021 PMI.

Western is granting the request for additional time for all entities to provide new and or supplemental comments and by this **Federal Register** notice is re-opening the comment period for the proposed 2021 PMI until 4 p.m. M.D.T., on September 6, 2011. Western deems any comments submitted between May 4, 2011, and September 6, 2011 to be timely submitted.

Dated: July 27, 2011.

Timothy J. Meeks,

Administrator.

[FR Doc. 2011–19777 Filed 8–3–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9448–2]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Chartered Clean Air Scientific Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the Chartered Clean Air Scientific Advisory Committee (CASAC) on August 29, 2011 to conduct a quality review of a draft CASAC report, Review of EPA's Photochemical Assessment Monitoring Stations (PAMS) Network Re-engineering project.

DATES: The public teleconference will be held on August 29, 2011 from 9 a.m. to 11 a.m. (Eastern Daylight Time).

ADDRESSES: The public teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning the public teleconference may contact Dr. Holly Stallworth, Designated Federal Officer (DFO). Dr. Stallworth may be contacted at the EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or by telephone/voice mail at (202) 564–2073; fax at (202) 565–2098; or e-mail at *stallworth.holly@epa.gov.* General information concerning the EPA CASAC can be found on the EPA Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION:

Background: The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409D(d)(2), to provide advice, information, and recommendations to the Administrator on the scientific and technical aspects of issues related to the criteria for air quality standards, research related to air quality, sources of air pollution, and the strategies to attain and maintain air quality standards and to prevent significant deterioration of air quality. The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the CASAC will hold a public teleconference to conduct a quality review of a CASAC draft report entitled *Review of EPA's Photochemical Assessment Monitoring Stations (PAMS) Network Re-engineering project.* The CASAC will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

EPA's Office of Air and Radiation (OAR) designed the PAMS network in the 1990's to provide comprehensive monitoring data in areas not in attainment for ozone. The PAMS Network monitors for ozone and its precursors, such as oxides of nitrogen and volatile organic compounds and tracks progress for ozone control strategies. Since the promulgation of the PAMS network, there have been changes to the ozone National Ambient Air Quality Standards (NAAQS). OAR requested CASAC advice on options and ideas being considered to potentially revise and improve the scientific and technical aspects of EPA's PAMS program in the context of the most recently revised ozone NAAQS. The CASAC Air Monitoring and Methods Subcommittee (AMMS) has considered OAR's request and prepared an advisory report that will undergo quality review by the chartered CASAC.

The AMMS held three public teleconference calls on May 16, May 17, and July 18, 2011 to review EPA's draft plans for PAMS Network Re-engineering and discuss its draft peer review report. [**Federal Register** Notices dated April 15, 2011 (76 FR 21345–21346) and July 5, 2011 (76 FR 39103–39104)]. Materials from these teleconference calls are posted on the CASAC Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/bf498bd32a1c7fdf85257242006dd6cb/6a62b0219d19df358525785c0064e71b!OpenDocument&Date=2011-05-16, http://yosemite.epa.gov/sab/sabproduct.nsf/bf498bd32a1c7fdf85257242006dd6cb/6abbc18d956a2b768525785c00663487!OpenDocument&Date=2011-05-17,* and *http://yosemite.epa.gov/sab/sabproduct.nsf/bf498bd32a1c7fdf85257242006dd6cb/001ebec35a29e6d5852578be005fc20f!OpenDocument&Date=2011-07-18.* Background information about the CASAC advisory activity can be found on the CASAC Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/PAMS%20Re-engineering?OpenDocument.*

Availability of Meeting Materials: The agenda and other materials in support of the teleconference will be placed on the CASAC Web site at *http://www.epa.gov/casac* in advance of the teleconference.

Procedures for Providing Public Input: Public comment for consideration by EPA's Federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a Federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a Federal advisory committee to consider as it develops advice for EPA. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the Designated Federal Officer directly.

Oral Statements: In general, individuals or groups requesting an oral

presentation at a teleconference will be limited to three minutes. Those interested in being placed on the public speakers list for the August 29, 2011 teleconference should contact Dr. Stallworth at the contact information provided above no later than August 22, 2011.

Written Statements: Written statements should be supplied to the DFO via e-mail at the contact information noted above by August 22, 2011 for the teleconference so that the information may be made available to the CASAC members for their consideration. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format. It is the SAB Staff Office general policy to post public comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Stallworth at (202) 564–2073 or *stallworth.holly@epa.gov.* To request accommodation of a disability, please contact Dr. Stallworth preferably at least ten days prior to the teleconference to give EPA as much time as possible to process your request.

Dated: July 28, 2011.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–19805 Filed 8–3–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS11–22]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

Location: OCC—250 E. Street, SW., Room 7C/7CA, Washington, DC 20219.

Date: August 10, 2011.

Time: Immediately following the ASC open session.

Status: Closed.

Matters To Be Considered: July 21, 2011 minutes—Closed Session.

Dated: August 1, 2011.

James R. Park,

Executive Director.

[FR Doc. 2011–19786 Filed 8–3–11; 8:45 am]

BILLING CODE P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS11–21]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: OCC—250 E Street, SW, Room 7C/7CA. Washington, DC 20219.

Date: August 10, 2011.

Time: 10:30 a.m.

Status: Open.

Matters To Be Considered:

Summary Agenda: July 21, 2011 minutes—Open Session.

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

Discussion Agenda:

AQB Compliance Status for Licensed Appraisers Listed on the National Registry;

Appraisal Foundation April 2011 Grant Reimbursement Request;

Delaware Compliance Review;

Illinois Compliance Review;

Puerto Rico Compliance Review;

Utah Compliance Review;

Virgin Islands Compliance Review.

How to Attend and Observe an ASC Meeting:

E-mail your name, organization and contact information to *meetings@asc.gov.*

You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street, NW., Ste 760, Washington, DC 20005. The fax number is 202–289–4101. Your request must be received no later than 4:30 p.m., E.T., on the Monday prior to the meeting. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: August 1, 2011.

James R. Park,

Executive Director.

[FR Doc. 2011–19787 Filed 8–3–11; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at 202–523–5843 or by e-mail at *oti@fmc.gov*.

Sicomex International Corp (OFF & NVO), 8458 NW 70th Street, Miami, FL 33166, Officers: Angelica Boscan, Treasurer (Qualifying Individual), Tayme Cabeza, President, Application Type: New OFF & NVO License.

Rado Logistics, Inc. (OFF & NVO), 2251 Sylvan Road, Suite 400, East Point, GA 30344, Officer: Lovett Brooks, CEO/Secretary/CFO (Qualifying Individual), Application Type: New OFF & NVO License.

Transit Air Cargo, Inc. (OFF & NVO), 2204 E 4th Street, Santa Ana, CA 92705, Officers: Gary Syner, CEO

(Qualifying Individual), Gul Khodayar, President/Secretary, Application Type: New OFF & NVO License.

Jet Freight Global Co., LTD. (NVO), 312 Emerald Drive, Streamwood, IL 60107, Officer: Tai-Yu Liu, President/Secretary/Treasurer (Qualifying Individual), Application Type: New NVO License.

KT Logistics, Inc. (OFF & NVO), 1915 McKinley Avenue, Suite E, La Verne, CA 91750, Officers: Mary Ann Ruiz, COO (Qualifying Individual), James Amakasu, CFO/President, Application Type: Add NVO Services.

Speedmark Transportation, Inc. (NVO), 1525 Adrian Road, Burlingame, CA 94010, Officers: David Driscoll, Director-Corporate Affairs (USA) (Qualifying Individual), Anthony Tsou, President, Application Type: QI Change.

Airbridge Corp. (OFF & NVO), 147–03 182nd Street, Jamaica, NY 11413, Officer: Byung (Brian) Kim, President/Secretary/Treasurer (Qualifying Individual), Application Type: New OFF & NVO License.

Cargo Alliance Inc. (OFF & NVO), 583 Monterey Pass Road, Suite C, Monterey Park, CA 91754, Officer: Li Chen, President (Qualifying Individual), Application Type: Add OFF Services.

SDV (USA) Inc. (OFF & NVO), 150–10 132nd Avenue, Jamaica, NY 11434, Officers: Dorsey Piscatelli, Vice President (Qualifying Individual), Philippe Naudin, Director/President, Application Type: QI Change.

Winsys Logistics Inc. (NVO), 2628 Walnut Grove Avenue, Suite A, Rosemead, CA 91770, Officer: Winsy Chan, President/Secretary/CFO (Qualifying Individual), Application Type: New NVO License.

Arrival Logistics Inc. (NVO), 14553 White Stallion Court, Chino hills, CA 91709, Officer: Tony Lu, President (Qualifying Individual), Application Type: New NVO License.

Modal Trade USA, Inc. (OFF & NVO), 8200 NW 41st Street, Suite 305, Miami, FL 33166, Officers: Paulina Yusta Castillo, Secretary (Qualifying Individual), Diego Urenda, President, Application Type: New OFF & NVO License.

Wing Bridge Shipping Company (OFF & NVO), 5155 Corporate Way, Unit B, Jupiter, FL 33458, Officer: Craig Firing, President (Qualifying Individual), Application Type: New OFF & NVO License.

Green Integrated Logistics, Inc. (OFF & NVO), 16210 South Maple Avenue, Gardena, CA 90248, Officers: Hyung Man Han, Secretary (Qualifying Individual), Won Kyung Kim, President/CEO/CFO, Application Type: New OFF & NVO License.

Angels Auto Export Inc. (NVO), 2930 South 50th Street, Tampa, FL 33619, Officers: Margara L. Barillas, President (Qualifying Individual), Danihel I. Barillas, Secretary, Application Type: New NVO License.

Russell A. Farrow (U.S.) Inc. (OFF & NVO), 4950 West Dickman Road, Battle Creek, MI 49037, Officers: Dustin H. King, Vice President (Qualifying Individual), Tom Kowalski, President, Application Type: License Transfer.

Ever Line Logistics Inc. (OFF & NVO), 147–35 Farmers Blvd., Suite 208, Jamaica, NY 11434, Officer: Caihong Yang, President/Secretary (Qualifying Individual), Application Type: New OFF & NVO License.

Sprint Global Inc. (NVO), 104 Hockorywood Blvd., Cary, NC 27519, Officers: Jagadeeswari Chandramouleeswaran, President (Qualifying Individual), Saraswathi Lakshmanan, Secretary, Application Type: New NVO License.

VR Logistics Incorporated (OFF & NVO), 30 Sheryl Drive, Edison, NJ 08820, Officers: Govind Shagat, Vice President/Treasurer (Qualifying Individual), Vanita Bhagat, President, Application Type: New OFF & NVO License.

Green World Cargo, LLC (NVO), 150–30 132nd Avenue, Suite 302, Jamaica, NY 11434, Officers: Harjinder P. Singh, President (Qualifying Individual), Salvatore J. Stile, II, Manager, Application Type: New NVO License.

Bandai Logipal America, Inc. (OFF & NVO), 5551 Katella Avenue, Cypress, CA 90630, Officers: Katsumi Imagane, President (Qualifying Individual), Norio Baba, CEO, Application Type: New OFF & NVO License.

Amerifreight (N.A.), Inc. (OFF & NVO), 218 Machlin Court, Walnut, CA 91789, Officer: Lionel Bao, President (Qualifying Individual), Application Type: New OFF & NVO License.

Managed Logistics Services, Incorporation (OFF & NVO), 20603 Wayne River Court, Cypress, TX 77433, Officers: Tiffni Clement, President (Qualifying Individual), Teresa Schouster, Secretary/Treasurer, Application Type: New OFF & NVO License.

Medi Trade Shipping Company, LLC (OFF & NVO), 2711 Centerville Road, Suite 400, Wilmington, DE 19808, Officer: Dina Singer-Badawi, Member (Qualifying Individual), Application Type: New OFF & NVO License.

EZ Logistics LLC (NVO), 120 Sylvan Avenue, Suite 3, Englewood Cliffs, NJ 07632, Officers: Ying Zhao, Member (Qualifying Individual), Jennifer Zheng, Member, Application Type: QI Change.

Dated: August 1, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–19800 Filed 8–3–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

July 28, 2011.

TIME AND DATE: 12 noon, Thursday, August 4, 2011.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Commission will consider the following in a closed session: *Big Ridge, Inc.,* Docket Nos. LAKE 2011–116–R, et al., and *Peabody Midwest Mining, LLC,* Docket Nos. LAKE 2011–118–R, et al. (Issues include whether the Commission should grant an application for temporary relief from orders issued by the Secretary of Labor requiring that mine operators provide certain information and records to the Secretary.)

This meeting will be closed to the public in accordance with the exemption in 5 U.S.C. 552b(c)(10) that is applicable to the consideration of a ''particular case of formal agency adjudication.''

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2011–19969 Filed 8–2–11; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Notice and request for comment.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management

and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposal to extend through September 30, 2014 the current Paperwork Reduction Act clearance for information collection requirements contained in its Funeral Industry Practice Rule (''Funeral Rule'' or ''Rule''). That clearance expires on September 30, 2011.

DATES: Comments must be submitted on or before September 6, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Funeral Rule Paperwork Comment: FTC File No. P084401'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/funeralrulepra2* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following *Address:* Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements for the Funeral Rule should be addressed to Craig Tregillus, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H–288, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2970.

SUPPLEMENTARY INFORMATION:

Title: Funeral Industry Practices Rule.

OMB Control Number: 3084–0025.

Type of Review: Extension of a currently approved collection.

Abstract: The Funeral Rule, 16 CFR part 312, ensures that consumers who are purchasing funeral goods and services have accurate information about the terms and conditions (especially itemized prices) for such goods and services. It requires that funeral providers disclose this information to consumers and maintain records to facilitate enforcement of the Rule.

On May 6, 2011, the FTC sought comment on the information collection requirements associated with the Funeral Rule. 76 FR 26297. No comments were received. Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule. For more details about Funeral Rule requirements and the basis for the calculations summarized below, see 76 FR 26297.

Estimated Annual Burden: 160,782 hours (19,902 hours for recordkeeping, 101,076 hours for disclosures, and 39,804 hours for training).

Likely Respondents, Estimated Number of Respondents, Estimated Average Burden per Respondent:

(a) Recordkeeping—Covered funeral providers, 1 hour/provider for 19,902 providers.

(b) Disclosures—Covered funeral providers, 5.1 hours/provider, for 19,902 providers.

(c) Training—Covered funeral providers, 2 hours/provider, for 19,902 providers. Frequency of Response: Funeral providers must provide price information in response to telephone inquiries and price lists to consumers making funeral arrangements. Total Annual Labor Cost: $4,363,593.

Total Annual Capital or Other Non-Labor Cost: $637,106.

Request For Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 6, 2011. Write ''Funeral Rule Paperwork Comment: FTC File No. P084401'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any ''[trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential * * *'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/funeralrulepra2,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Funeral Rule Paperwork Comment: FTC File No. P084401'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 3, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm.*

Comments on the information collection requirements subject to

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

David C. Shonka,

Acting General Counsel.

[FR Doc. 2011–19670 Filed 8–3–11; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Notice and request for comment.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposal to extend through October 31, 2014, the current PRA clearance for information collection requirements contained in the Commission's Gramm-Leach-Bliley Financial Privacy Rule (''GLB Privacy Rule'' or ''Rule''). The current clearance expires on October 31, 2011.

DATES: Comments must be submitted on or before September 6, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: ''FTC File No. P085405'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/glbprivacyrulepra2* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the collection of information and supporting documentation should be addressed to Katherine White, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2252.

SUPPLEMENTARY INFORMATION:

Title: Gramm-Leach-Bliley Privacy Rule, 16 CFR Part 313.

OMB Control Number: 3084–0121.

Type of Review: Extension of currently approved collection.

Abstract: The GLB Privacy Rule is designed to ensure that customers and consumers, subject to certain exceptions, will have access to the privacy policies of the financial institutions with which they conduct business. As mandated by the Gramm-Leach-Bliley Act (''GLBA''), 15 U.S.C. 6801–6809, the Rule requires financial institutions to disclose to consumers: (1) Initial notice of the financial institution's privacy policy when establishing a customer relationship with a consumer and/or before sharing a consumer's non-public personal information with certain nonaffiliated third parties; (2) notice of the consumer's right to opt out of information sharing with such parties; (3) annual notice of the institution's privacy policy to any continuing customer; and (4) notice of changes in the institution's practices on information sharing.

On May 12, 2011, the Commission sought comment on the information collection requirements associated with the GLB Privacy Rule. 76 FR 27645. No comments were received. Pursuant to the OMB Regulations, 5 CFR Part 1320, that implements the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing a second opportunity for the public to comment while seeking OMB approval to renew the pre-existing clearance for the Rule.

Estimated Annual Burden: 1,930,000 hours.

Likely Respondents, Estimated Number of Respondents, Estimated Average Burden Per Year Per Respondent:

(a) Entities addressing the GLB Privacy Rule for the first time—(1) 5,000 entities at 20 hours each to review internal policies and develop GLBA-implementing instructions, create and disseminate disclosures; (2) 5,000 entities at 3 hours each to create disclosure disclosures; and (3) 5,000 entities at 25 hours each to disseminate initial disclosures (including opt out notices).[1]

(b) Established entities—(1) 70,000 entities at 4 hours each to review GLBA implementing policies and practices; (2) 70,000 entities at 20 hours each to disseminate annual disclosure; (3) 1,000 entities at 10 hours each to change privacy policies and related disclosures.[2]

Frequency of Response: On occasion.

Financial institutions must provide notices to consumers: (1) When initially establishing a customer relationship and/or before sharing a consumer's non-public personal information with certain nonaffiliated third parties; (2) on an annual basis; and (3) upon any changes in the institution's practices on information sharing.

Total Annual Labor Cost: $46,473,780.[3]

Total Annual Capital or Other Non-Labor Cost: Minimal.

Request for Comment: You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 6, 2011. Write ''Paperwork Comment: FTC File No. P085405'' on your comment. Your comment—including your name and your state — will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment

[1] The FTC retains its previously cleared estimate of the number of entities each year that will address the GLB Privacy Rule for the first time.

[2] The FTC retains its prior assumptions to arrive at estimated burden for established entities: (1) 100,000 respondents, approximately 70% of whom maintain customer relationships exceeding one year, (2) no more than 1% (1,000) of whom make additional changes to privacy policies at any time other than the occasion of the annual notice; and (3) such changes will occur no more often than once per year.

[3] This is an increase from the previously published estimate of $45,922,820 (see 76 FR at 27646–7 for details and calculations underlying the preceding total) based on newer BLS data used for hourly wage inputs.

doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any ''[tirade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[4] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/glbprivacyrulepra2,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Paperwork Comment: FTC File No. P085405'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 6, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

David C. Shonka,

Acting General Counsel.

[FR Doc. 2011–19707 Filed 8–3–11; 8:45 am]

BILLING CODE 6750–01–M

[4] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMBReview; Comment Request

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposal to extend through November 30, 2014, the current OMB clearance for the information collection requirements contained in its Use of Prenotification Negative Option Plans (''Negative Option Rule'' or ''Rule''). That clearance expires on November 30, 2011.

DATES: Comments must be submitted by October 3, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Negative Option Rule: FTC File No. P064202'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/NegOptionPRA* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Edwin Rodriguez, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., M–8102B, Washington, DC 20580, (202) 326–3147.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Negative Option Rule, 16 CFR part 425 (OMB Control Number 3084–0104).

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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 Negative Option Rule governs the operation of prenotification subscription plans. Under these plans, sellers notify subscribers that they will automatically ship merchandise, such as books, compact discs, or tapes, and bill subscribers for the merchandise if the subscribers do not expressly reject the merchandise beforehand within a prescribed time. The Rule protects consumers by: (a) Requiring that promotional materials disclose the terms of membership clearly and conspicuously; and (b) establishing

procedures for the administration of such ''negative option'' plans.

Burden Statement

Estimated annual hours burden: 3,875 hours.

Based on industry input, staff estimates that approximately 45 existing clubs each require annually about 75 hours to comply with the Rule's disclosure requirements, for a total of 3,375 hours (45 clubs × 75 hours). These clubs should be familiar with the Rule, which has been in effect since 1974, with the result that the burden of compliance has declined over time. Moreover, a substantial portion of the existing clubs likely would make these disclosures absent the Rule because they have helped foster long-term relationships with consumers.

Approximately 5 new clubs come into being each year. These clubs require approximately 100 hours to comply with the Rule, including start up-time. Thus, the cumulative PRA burden for new clubs is about 500 hours (5 clubs × 100 hours). Combined with the estimated burden for established clubs, the total burden is 3,875 hours.

Estimated annual cost burden: $171,825 (solely related to labor costs).

Based on recent data from the Bureau of Labor Statistics,[1] the mean hourly wage for advertising managers is approximately $47 per hour. Compensation for office and administrative support personnel is approximately $17 per hour. Assuming that managers perform the bulk of the work, while clerical personnel perform associated tasks (*e.g.,* placing advertisements and responding to inquiries about offerings or prices), the total cost to the industry for the Rule's information collection requirements would be approximately $167,125 [(65 hours managerial time 45 existing clubs × $47 per hour) + (10 hours clerical time × 45 existing clubs × $17 per hour) + (90 hours managerial time × 5 new clubs × $47 per hour) + (10 hours clerical time × 5 new clubs × $17)].

Because the Rule has been in effect since 1974, the vast majority of the negative option clubs have no current start-up costs. For the few new clubs that enter the market each year, the costs associated with the Rule's disclosure requirements, beyond the additional labor costs discussed above, are de minimis. Negative option clubs already have access to the ordinary office equipment necessary to achieve compliance with the Rule. Similarly, the Rule imposes few, if any, printing and distribution costs. The required disclosures generally constitute only a small addition to the advertising for negative option plans. Because printing and distribution expenditures are incurred to market the product regardless of the Rule, adding the required disclosures results in marginal incremental expense.

Request for Comment

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before October 3, 2011. Write ''Negative Option Rule: FTC File No. P064202'' on your comment. Your comment—including your name and your state — will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.govios/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''Nrade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential * * *, '' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[2] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/NegOptionPRA* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/Mhome,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Negative Option Rule: FTC File No. P064202'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 3, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy*.htm.

David C. Shonka,

Acting General Counsel.

[FR Doc. 2011–19671 Filed 8–3–11; 8:45 am]

BILLING CODE 6750–01–M

[1] Occupational Employment And Wages—May 2010, Table 1, at *http://www.bls.gov/news.release/pdf/ocwage.pdf.*

[2] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC is seeking public comments on its proposal to extend through January 31, 2015, the current PRA clearance for information sought through compulsory process orders to a combined ten or more a the largest cigarette manufacturers and smokeless tobacco manufacturers in order to obtain

from them information including, among other things, their annual sales and marketing expenditures. The current clearance expires on January 31, 2012. The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA'').

DATES: Comments on the proposed information requests must be received on or before October 3, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: ''Tobacco Reports: Paperwork Comment, FTC File No. P054507'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftchobaccoreportspra* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed collection of information should be addressed to Shira Modell, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., NJ–3212, Washington, DC 20580. *Telephone:* (202) 326–3116.

SUPPLEMENTARY INFORMATION: For more than forty years, the FTC has published periodic reports containing data on domestic cigarette sales and marketing expenditures by the major U.S. cigarette manufacturers. It has published comparable reports on smokeless tobacco sales and marketing expenditures for more than twenty years. Both reports originally were issued pursuant to statutory mandates. After those statutory mandates were terminated, the Commission continued to collect and publish information obtained from the cigarette and smokeless tobacco industries pursuant to Section 6(b) of the FTC Act, 15 U.S.C. 46(b). The current PRA clearance to collect this information is valid through January 31, 2012, under OMB Control No. 3084–0134.

The FTC plans to continue sending information requests annually to the ultimate parent company of several of the largest cigarette companies and smokeless tobacco companies in the United States (''industry members''). The information requests will seek data regarding, inter alia: (1) The tobacco sales of industry members; (2) how much industry members spend advertising and promoting their tobacco products, and the specific amounts spent in each of a number of specified expenditure categories; (3) whether industry members are involved in the appearance of their products or brand imagery in television shows, motion pictures, or the Internet; (4) how much industry members spend on advertising intended to reduce youth tobacco usage; (5) the events, if any, during which industry members' tobacco brands are televised; and (6) for the cigarette industry, the tar, nicotine, and carbon monoxide ratings of their cigarettes, to the extent they possess such data.[1] The information will again be sought using compulsory process under Section 6(b) of the FTC Act.

Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the proposed collection of information.

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

Estimated hours burden: The FTC staffs estimate of the hours burden is based on the time required each year to respond to the Commission's information request. Although the FTC currently anticipates sending information requests each year to the five largest cigarette companies and the five largest smokeless tobacco companies, the burden estimate is based on up to 15 information requests being issued per year to take into account any future changes in these industries. These companies vary greatly in size, in the number of products they sell, and in the extent and variety of their advertising and promotion. Prior input received from the industries, combined with staffs knowledge of them, suggests that the time most companies would require to gather, organize, format, and produce their responses would range from 30 to 80 hours per information request for the smaller companies, to as much as hundreds of hours for the very largest companies. As an approximation, staff continues to assume a per company average of 180 hours for the ten largest recipients of the Commission's information requests to comply—cumulatively, 1,800 hours per year, or 5,400 hours over the three years that would be covered by an extension of OMB's approval under the PRA.

Staff anticipates that if the Commission decides to issue information requests to an additional one or more companies, those companies would be smaller than the primary ten recipients and the burden would therefore be less than on the larger companies. Staff believes that the burden should not exceed 60 hours for these smaller recipients of information requests. Cumulatively, then, the total burden for five additional respondents should not exceed 300 hours per year or 900 hours over a three-year OMB clearance. Thus, the overall estimated burden for a maximum of 15 recipients of the information requests is 2,100 hours per year or a total of 6,300 hours. These estimates include any time spent by separately incorporated subsidiaries and other entities affiliated with the ultimate parent company that has received the information request.

Estimated cost burden: It is not possible to calculate with precision the labor costs associated with this data production, as they entail varying compensation levels of management and/or support staff among companies of different sizes. Commission staff assumes that personnel with technical training will handle most of the tasks involved in the data collection process,

[1] Although the Commission has rescinded the 1966 enforcement policy that allowed factual statements of tar and nicotine yields supported by testing conducted under what was commonly referred to as ''the FTC Test Method,'' 73 FR 74,500 (Dec. 8, 2008), the Commission believes it is important to continue collecting these data, which researchers and policymakers use to track trends over time.

although legal staff likely will be involved in preparing the actual submission to the Commission, and has applied an average hourly wage of $100/hour for their combined labor. Accordingly, staffs best estimate for the total labor costs for up to 15 information requests is $210,000 per year, for a total of $630,000 over the entire three-year period. Staff believes that the capital or other non-labor costs associated with the information requests are minimal. Although the information requests may necessitate that industry members maintain the requested information provided to the Commission, they should already have in place the means to compile and maintain business records.

Request for comment: You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 3, 2011. Write ''Tobacco Reports: Paperwork Comment, FTC File No. P054507'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, don't include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential * * *,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information, such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[2] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/tobaccoreportspra,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Tobacco reports: Paperwork Comment, FTC File No. P054507'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 3, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

David C. Shonka,

Acting General Counsel.

[FR Doc. 2011–19672 Filed 8–3–11; 8:45 am]

BILLING CODE 6750–01–M

[2] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR4.9(c).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 76 FR 34075, dated June 10, 2011) is amended to reflect the establishment of the Office of Minority Health and Health Equity (CAW), Office of the Director (CA), Centers for Disease Control and Prevention (C). This will align this office as a direct report to the Director, Centers for Disease Control and Prevention (CDC), pursuant to passage of the Patient Protection and Affordable Care Act (Pub. L. 111–148).

I. Section C–B, Organization and Functions, is hereby amended as follows:

Under Part C, Centers for Disease Control and Prevention (C), Office of the Director (CA), add the following organizational unit after the Office of Diversity Management and Equal Employment Opportunity (CAV):

Office of Minority Health and Health Equity (CAW): The mission of the Office of Minority Health and Health Equity (OMHHE) is to accelerate CDC's health impact in the U.S population and to eliminate health disparities for vulnerable populations as defined by race/ethnicity, socio-economic status, geography, gender, age, disability status, risk status related to sex and gender, and among other populations that are identified as at-risk for health disparities. As the Office of the Director's organizational focus for eliminating health disparities, OMHHE: (1) Provides leadership for CDC-wide policies, strategies, action planning, implementation and evaluation to eliminate health disparities; (2) coordinates CDC's response to Presidential Executive Orders, Congressional mandates, Secretarial and HHS/ASH/OPHS Initiatives, and provides timely performance reports on minority health and health equity as required; (3) monitors and reports on the health status of vulnerable populations and the effectiveness of health protection programs; (4) evaluates the impact of policies and programs to achieve health disparities elimination; (5) supports internal/

external partnerships to advance the science, practice and workforce for eliminating health disparities inside/outside CDC; (6) maintains critical linkages with federal partners including the Office of the Secretary, Department of Health and Human Services, and represents CDC on related scientific and policy committees; (7) establishes external advisory capacity and internal advisory and action capacity; (8) improves support of efforts to improve minority health and achieve health equity in the U.S. by collaborating with CDC's National Centers and other entities; (9) synthesizes, disseminates, and encourages use of scientific evidence regarding effective interventions to achieve health disparities elimination outcomes; (10) analyzes trends in and determinants of health disparities to provide decision support to CDC's Executive Leadership in allocating CDC resources to agency-wide programs for surveillance, research, intervention and evaluation; (11) positions CDC to address relevant provisions in the 2010 Patient Protection and Affordable Care Act that address health disparities; (12) strengthens CDC's global health work to achieve equity; (13) supports CDC's response to public health emergencies in vulnerable populations; and (14) ensures administrative effectiveness and efficiency of agency-wide efforts to achieve health equity.

II. Delegation of Authority: All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

Authority: 44 U.S.C. 3101.

Dated: July 27, 2011.

Carlton Duncan,

Acting Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–19739 Filed 8–3–11; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services (HHS).

ACTION: Notice of Modified or Altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter a SOR titled, ''Medicare Advantage Prescription Drug (MARx) System, No. 09–70–4001,'' last modified at 70 FR 60530 (October 18, 2005). CMS proposes to broaden the data collected and stored by this system as part of a redesign and modernization of the MARx System. On December 8, 2003, Congress passed the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173). MMA amended the Social Security Act (the Act) by adding the Medicare Part D Program under Title XVIII and mandated that CMS establish a voluntary Medicare prescription drug benefit program effective January 1, 2006. Under the Medicare Part D benefit, the Act allows Medicare payment to plans that contract with CMS to provide qualified Part D prescription drug coverage as described in 42 Code of Federal Regulations (CFR) 423.401. The MARx System processes all enrollment/disenrollment transactions associated with the Part D program.

The modified MARx System will accept and store Health Plan-supplied beneficiary residence addresses on an initial Part C and/or Part D enrollment or a subsequent record update transaction from the Plan. The main source of beneficiary residence address is the Social Security Administration (SSA). The address SSA provides, however, may not be the beneficiary's residence address. Beneficiary addresses are initially provided by SSA from the beneficiary's enrollment in Part A and/or Part B, and frequently reflect an address of a representative payee or a Post Office (P.O.) Box, not the residence of the beneficiary. This limits the effectiveness of geographically-sensitive Plan payment decisions. Plans have more accurate beneficiary address information, which is updated on a case-by-case basis. CMS wishes to allow this data to be transmitted in initial enrollment and subsequent record update transactions from the Plans, and additionally translated into valid residence address State and County Codes for subsequent use in service area determination. Support for Plan-supplied residence address will improve the accurate application of geographically sensitive rates in Plan payment calculation. The Plan-supplied beneficiary residence address will be updated and saved with the beneficiary's enrollment data in the MARx System. The residence address provided by the Plan will only apply to periods when the beneficiary is enrolled in that Plan.

We propose to modify existing routine use number 1 that permits disclosure to agency contractors and consultants to include disclosure to CMS grantees who perform a task for the agency. CMS grantees, charges with completing projects or activities that require CMS data to carry out that activity, are classified separate from CMS contractors and/or consultants. The modified routine use will remain as routine use number 1. We will delete routine use number 7 authorizing disclosure to support constituent requests made to a congressional representative. If an authorization for the disclosure has been obtained from the data subject, then no routine use is needed.

We will broaden the scope of published routine uses number 8 and 9, authorizing disclosures to combat fraud and abuse in the Medicare and Medicaid programs to include combating ''waste'' which refers to specific beneficiary/recipient practices that result in unnecessary cost to all Federally-funded health benefit programs. We will add a new routine use authorizing disclosure of individually identifiable information to assist in efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in these systems of records.

We are modifying the language in the remaining routine uses to provide a proper explanation as to the need for the routine use and to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update language in the administrative sections to correspond with language used in other CMS SORs. We propose to assign a new CMS identification number to this system to simplify the obsolete and confusing numbering system originally designed to identify the Bureau, Office, or Center that maintained information in the Health Care Financing Administration systems of records. The new assigned identifying number for this system should read: System No. 09–70–0588.

The primary purpose of the SOR is to maintain a master file of Medicare Advantage (MA) and Medicare Advantage Prescription Drug (MA–PD) plan members for accounting and payment control; expedite the exchange of data with MA and MA–PD; control the posting of pro-rata amounts to the Part B deductible of currently enrolled

MA members; and track participation of the prescription drug benefits provided under prescription drug plans (PDPs) and Medicare employer plans. Information in this system is disclosed to: (1) Support regulatory, reimbursement, and policy functions performed by a contractor, consultant, or CMS grantee contracted by the Agency; (2) support another Federal or State agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) assist providers and suppliers of service directly or dealing through contractors, fiscal intermediaries (FI) or carriers for the administration of Title XVIII Medicaid state agency; (4) assist third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs; (5) assist insurance companies, third party administrators, employers, self-insurers, managed care organizations, and other supplemental insurers; (6) facilitate research on the quality and effectiveness of care provided, as well as payment-related projects; (7) support litigation involving the Agency; (8) combat fraud and abuse in certain health benefits programs, and (9) assist in a response to a suspected or confirmed breach of the security or confidentiality of information. CMS has provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

DATES: *Effective Dates:* CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on July 28, 2011. To ensure that all parties have adequate time in which to comment, the modified or altered SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Information Security & Privacy Management (DISPM), CMS, Room N1–24–08, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., Eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Ronald Graham, Director, Division of MA & Part D Application Analysis, Information Services Design and Development Group, Office of Information Services, CMS, Room N3–18–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–1513.

SUPPLEMENTARY INFORMATION: CMS will redesign and modernize the MARx System to simplify the data model, modernize the design to build independent component services, and align the system processes to the business cycle. Taking a business-centric approach to the design of this system will better meet customer and CMS needs while reducing maintenance costs. This will provide CMS with a more flexible system able to respond to changing and evolving programmatic needs with greater immediacy than is possible today with the legacy MARx design.

The redesign and modernization of the MARx System will provide enhanced Medicare Part C and Part D functionality to improve processing efficiencies and better support current and future business needs to: (1) Receive, validate and disseminate data for beneficiary membership in Part C and Part D Plans; (2) Calculate and disseminate beneficiary premium amounts, including dissemination to premium withholding agencies; and (3) Calculate and disseminate Plan payment amounts.

I. Description of the Modified System of Records

A. Statutory and Regulatory Basis for the System

Authority for maintenance of the system is given under Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) amended the Title XVIII of the Social Security Act. Authority for maintenance of the system is also given under the provisions of §§ 1833(a)(1)(A), 1860, 1866, and 1876 of Title XVIII of the Act (42 U.S.C. 1395(A)(1)(a), 1395cc, and 1395mm).

B. Collection and Maintenance of Data in the System

The system includes information on recipients of Medicare hospital insurance (Part A), Medicare medical insurance (Part B), and recipients of the Prescription Drug Benefits Program (Part D) enrolled in the Medicare Advantage (MA) Program (Part C). The system also includes information about a beneficiary's entitlement to Medicare benefits and enrollment in Medicare Programs, prescription drug coverage and supplementary medical claims information. The system collects identifying information such as beneficiary name, health insurance claim number (HICN), social security number, and other demographic information such as residence address.

II. Agency Policies, Procedures, and Restrictions on Routine Uses

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release MARx information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

CMS will only collect the minimum personal data necessary to achieve the purpose of MARx. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason data is being collected; *e.g.,* maintain a master file of MA and MA–PD plan members for accounting and payment control; expedite the exchange of data with MA and MA–PD; control the posting of pro-rata amounts to the Part B deductible of currently enrolled MA members; and track participation of the prescription drug benefits provided under private prescription drug plans and Medicare employer plans.

2. Determines that the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

a. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

b. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MARx without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. CMS is not proposing to establish any new or modify any of the following existing routine use disclosures of information maintained in the system as part of the redesign and modernization of the MARx System:

1. To Agency contractors, consultants, or CMS grantees that have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need access to the records in order to assist CMS.

CMS contemplates disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant, or CMS grantees whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant, or CMS grantees from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant, or CMS grantees to return or destroy all information at the completion of the contract.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require MARx information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with the HHS for determining Medicaid and Medicare eligibility, for quality control studies, for determining eligibility of recipients of assistance under Titles IV, XVIII, and XIX of the Act, and for the administration of the Medicaid program. Data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the state or who are residents of that state.

CMS also contemplates disclosing information under this routine use in situations in which state auditing agencies require MARx information for auditing state Medicaid eligibility considerations. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this system to providers and suppliers of services directly or through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

3. To assist providers and suppliers of services directly or through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

Providers and suppliers of services require MARx information in order to establish the validity of evidence or to verify the accuracy of information presented by the individual, as it concerns the individual's entitlement to benefits under the Medicare program, including proper reimbursement for services provided.

4. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: The individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

Third party contacts require MARx information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

5. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.,* health maintenance organizations (HMOs) or a competitive medical plan with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be

limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers, TPAs, HMOs, and HCPPs may require MARx information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

6. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

MARx data will provide for research, evaluation, and epidemiological projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

7. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court, or adjudicatory body involved.

8. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a CMS grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

CMS contemplates disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or CMS grantee whatever information is necessary for the contractor or CMS grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or CMS grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or CMS grantee to return or destroy all information.

9. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require MARx information for the purpose of combating fraud and abuse in such Federally-funded programs.

10. To appropriate Federal agencies, Department officials and Agency contractors that need access to identifiable information to provide assistance to the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information. In order to receive the information, CMS must:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form,

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished;

c. Requires the recipient of the information to:

(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the disclosure, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual, or

(b) When required by law;

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions and complete a Data Use Agreement (CMS Form 0235) in accordance with current CMS policies.

Other Federal agencies and contractors may require MARx information for the purpose of assisting in a respond to a suspected or confirmed breach of the security or confidentiality of information.

B. Additional Circumstances Affecting Routine Use Disclosures

This system contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), Subparts A and E. The protected health information is collected from the Plan during the enrollment process and passed onto the Medicare Beneficiary Database. These elements include the Beneficiary Name, Sex, Date of Birth, and Health Insurance Claim Number. Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if CMS determines there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the

enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Modified System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. CMS will only disclose the minimum personal data necessary to achieve the purpose of MARx. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a higher level of security clearance for the information maintained in this system in an effort to provide added security and protection of data in this system.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: July 28, 2011.

Michelle Snyder,

Deputy Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0588

SYSTEM NAME:

''Medicare Advantage Prescription Drug (MARx)'' System HHS/CMS/CM.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system includes information on recipients of Medicare hospital insurance (Part A) and Medicare medical insurance (Part B), and recipients of the Prescription Drug Benefits Program (Part D) enrolled in the Medicare Advantage (MA) Program .

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes information about a beneficiary's entitlement to Medicare benefits and enrollment in Medicare Programs, prescription drug coverage and supplementary medical claims information. The system contains identifying information such as beneficiary name, health insurance claim number, social security number, and other demographic information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), which amended the Title XVIII of the Social Security Act. Authority for maintenance of the system is also given under the provisions of §§ 1833(a)(1)(A), 1860D–1 to D–43, 1866, and 1876 of Title XVIII of the Act (42 U.S.C. 1395(A)(1)(a), 1395w–101 to 1395w–153, 1395cc, and 1395mm).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the SOR is to maintain a master file of Medicare Advantage (MA) and Medicare Advantage Prescription Drug (MA–PD) plan members for accounting and payment control; expedite the exchange of data with MA and MA–PD; control the posting of pro-rata amounts to the Part B deductible of currently enrolled MA members; and track participation of the prescription drug benefits provided under prescription drug plans (PDPs) and Medicare employer plans.. Information in this system is disclosed to: (1) Support regulatory, reimbursement, and policy functions performed by a contractor, consultant, or CMS grantee contracted by the Agency; (2) support another Federal or State agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) assist providers and suppliers of service directly or dealing through contractors, fiscal intermediaries (FI) or carriers for the administration of Title XVIII (4) assist third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs; (5) assist insurance companies, third party administrators, employers, self-insurers, managed care organizations, and other supplemental insurers; (6) facilitate research on the quality and effectiveness of care provided, as well as payment-related projects; (7) support litigation involving the Agency; (8) combat fraud, waste, and abuse in certain health benefits programs, and (9) assist in a response to a suspected or confirmed breach of the security or confidentiality of information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

B. Entities Who May Receive Disclosures Under Routine Use.

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MARx without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected.

1. To Agency contractors, consultants, or CMS grantees that have been contracted by the Agency to assist in

accomplishment of a CMS function relating to the purposes for this system and who need access to the records in order to assist CMS.

5. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

6. To assist providers and suppliers of services directly or through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

7. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

b. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: The individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

d. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

6. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.,* health maintenance organizations (HMOs) or a competitive medical plan with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

e. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

f. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

g. Safeguard the confidentiality of the data and prevent unauthorized access.

11. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

12. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

13. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a CMS grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

14. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

15. To assist 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 the assistance. In order to receive the information, CMS must:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form,

(2) is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) there is reasonable probability that the objective for the use would be accomplished;

c. Require the recipient of the information to:

(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the disclosure, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual, or

(b) When required by law.

d. Secure a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions and complete a Data Use Agreement (CMS Form 0235) in accordance with current CMS policies.

C. ADDITIONAL CIRCUMSTANCES AFFECTING ROUTINE USE DISCLOSURES

This system contains Protected Health Information as defined by HHS

regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, 65 Fed. Reg. 82462 (12–28–00), Subparts A and E. The protected health information is collected from the Plan during the enrollment process and passed onto the Medicare Beneficiary Database. These elements include the Beneficiary Name, Sex, Date of Birth, and Health Insurance Claim Number. Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if CMS determines there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by name and health insurance claim number of the beneficiary.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

Records are maintained with identifiers for all transactions after they are entered into the system for a period of 6 years and 3 months. Records are housed in both active and archival files. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from the Department of Justice.

SYSTEM MANAGER AND ADDRESS:

Director, Division of MA & Part D Application Analysis, Information Services Design and Development Group, Office of Information Services, CMS.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the systems manager who will require the system name, SSN, address, date of birth, sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Data for this system is collected from MAs, MA–PDs, and PDPs (which obtained the data from the individuals concerned); Social Security Administration; and the Medicare Beneficiary Database, 1–800 Medicare Choice, and Health Plan Management System.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2011–19803 Filed 8–3–11; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Request for Assistance for Child Victims of Human Trafficking

OMB No.: 0970–0362.

Description: The William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, Public Law 110–457, directs the U.S. Secretary of Health and Human Service (HHS), upon receipt of credible information that a non-U.S. citizen, non-Lawful Permanent Resident (alien) child may have been subjected to a severe form of trafficking in persons and is seeking Federal assistance available to victims of trafficking, to promptly determine if the child is eligible for interim assistance. The law further directs the Secretary of HHS to determine if a child receiving interim assistance is eligible for assistance as a victim of a severe form of trafficking in persons after consultation with the Attorney General, the Secretary of Homeland Security, and nongovernmental organizations with expertise on victims of severe form of trafficking.

In developing procedures for collecting the necessary information from potential child victims of trafficking, their case managers, attorneys, or other representatives to allow HHS to grant interim eligibility, HHS devised a form. HHS has determined that the use of a standard form to collect information is the best way to ensure requestors are notified of their option to request assistance for child victims of trafficking and to make prompt and consistent determinations about the child's eligibility for assistance.

Specifically, the form asks the requestor for his/her identifying

information, for information on the child, information describing the type of trafficking and circumstances surrounding the situation, and the strengths and needs of the child. The form also asks the requestor to verify the information contained in the form because the information could be the basis for a determination of an alien child's eligibility for federally funded benefits. Finally, the form takes into consideration the need to compile information regarding a child's circumstances and experiences in a non-directive, child-friendly way, and assists the potential requestor in assessing whether the child may have been subjected to trafficking in persons.

The information provided through the completion of a Request for Assistance for Child Victims of Human Trafficking form will enable HHS to make prompt determinations regarding the eligibility of an alien child for interim assistance, inform HHS' determination regarding the child's eligibility for assistance as a victim of a severe form of trafficking in persons, facilitate the required consultation process, and enable HHS to assess and address potential child protection issues.

Respondents: Representatives of governmental and nongovernmental entities providing social, legal, or protective services to alien persons under the age of 18 (children) in the United States who may have been subjected to severe forms of trafficking in persons.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Request for Assistance for Child Victims of Human Trafficking	200	1	1	200

Estimated Total Annual Burden Hours: 200.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7285, *E-mail: OIRA_SUBMISSION@OMB.eop.gov, Attn:* Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–19715 Filed 8–3–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0543]

Authorization of Emergency Use of Oral Formulations of Doxycycline; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of an Emergency Use Authorization (EUA) (the Authorization) for oral formulations of doxycycline for the post-exposure prophylaxis of inhalational anthrax during a public health emergency involving aerosolized *Bacillus anthracis* (*B. anthracis*). FDA is issuing this Authorization under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as requested by the Centers for Disease Control and Prevention (CDC). The Authorization contains, among other things, conditions on the emergency use of the authorized doxycycline products. The Authorization follows the determination by the Secretary of the Department of Homeland Security (DHS) that there is a significant potential for a domestic emergency involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents—in this case, *B. anthracis.* On the basis of such determination, the Secretary of the Department of Health and Human Services (HHS) declared an emergency justifying the authorization of the emergency use of doxycycline hyclate tablets, accompanied by emergency use information, and later renewed that declaration. The Secretary of HHS then renewed and amended that declaration so that it applies to all doxycycline products covered by this authorization. The Authorization, which includes an explanation of the reasons for issuance, is reprinted in this document.

DATES: The Authorization is effective as of July 21, 2011.

ADDRESSES: Submit written requests for single copies of the EUA to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4121, Silver Spring, MD 20993. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the Authorization may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorization.

FOR FURTHER INFORMATION CONTACT: Luciana Borio, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4280, Silver Spring, MD 20993, 301–796–8510.

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb-3), as amended by the Project BioShield Act of 2004 (Pub. L. 108–276), allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product during a public health emergency that affects,

or has a significant potential to affect, national security, and that involves biological, chemical, radiological, or nuclear agent or agents, or a specified disease or condition that may be attributable to such agent or agents. With this EUA authority, FDA can help assure that medical countermeasures may be used in an emergency to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by such agents, when there are no adequate, approved, and available alternatives.

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary must declare an emergency justifying the authorization based on one of the following grounds: ''(A) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents; (B) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to United States military forces of attack with a specified biological, chemical, radiological, or nuclear agent or agents; or (C) a determination by the Secretary of a public health emergency under section 319 of the Public Health Service Act (PHS Act) that affects, or has a significant potential to affect, national security, and that involves a specified biological, chemical, radiological, or nuclear agent or agents, or a specified disease or condition that may be attributable to such agent or agents.''

Once the Secretary has declared an emergency justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the FD&C Act, FDA is required to publish, in the **Federal Register**, a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use in a declared emergency. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under sections 505, 510(k), and 515 of the FD&C Act (21 U.S.C. 355, 360(k), and 360e) or section 351 of the PHS Act (42 U.S.C. 262). FDA may issue an EUA only if, after consultation with the National Institutes of Health and CDC (to the extent feasible and appropriate given the circumstances of the emergency), FDA [1] concludes: (1) That an agent specified in a declaration of emergency can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that: (A) the product may be effective in diagnosing, treating, or preventing—(1) Such disease or condition; or (2) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; and (4) that such other criteria as the Secretary may by regulation prescribe are satisfied.

No other criteria of issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act. Because the statute is self-executing, FDA does not require regulations or guidance to implement the EUA authority. However, in the **Federal Register** of July 26, 2007 (72 FR 41083), FDA announced the availability of a guidance entitled ''Emergency Use Authorization of Medical Products.'' The guidance provides more information for stakeholders and the public about the EUA authority and the Agency's process for the consideration of EUA requests.

II. EUA Request for Oral Formulations of Doxycycline Products

In 2004, the Secretary of DHS issued a material threat determination indicating that *B. anthracis,* the biological agent that causes anthrax disease, presents a material threat against the population of the United States sufficient to affect national security. On September 23, 2008, under section 564(b)(1)(A) of the FD&C Act, the Secretary of DHS determined that there is a significant potential for a domestic emergency involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents—in this case, *B. anthracis.* On October 1, 2008, under section 564(b) of the FD&C Act, and on the basis of such determination, the Secretary of HHS then declared an emergency justifying the authorization of the emergency use of doxycycline hyclate tablets accompanied by emergency use information subject to the terms of any authorization issued under section 564(a) of the FD&C Act, and on October 1, 2009, and on October 1, 2010, renewed that declaration. On July 20, 2011, the Secretary of HHS renewed and amended that declaration so that it applies to all doxycycline products covered by this authorization. Notice of the determination and the declaration of the Secretary were published in the **Federal Register on** July 27, 2011 (76 FR 44926). On May 5, 2011, CDC requested and, on July 21, 2011, FDA issued an EUA for oral formulations of doxycycline products for the post-exposure prophylaxis of inhalational anthrax during a public health emergency involving aerosolized *B. anthracis,* subject to the terms and conditions of this authorization.

III. Electronic Access

An electronic version of this document and the full text of the Authorization are available on the Internet at *http://www.regulations.gov.*

IV. The Authorization

Having concluded that the criteria for issuance of the Authorization under section 564(c) of the FD&C Act are met, FDA has authorized the emergency use of oral formulations of doxycycline products for the post-exposure prophylaxis of inhalational anthrax during a public health emergency involving aerosolized *B. anthracis* subject to the terms and conditions of the authorization.

The Authorization for doxycycline products follows and provides an explanation of the reasons for its issuance, as required by section 564(h)(1) of the FD&C Act:

BILLING CODE 4160–01–P

[1] The Secretary has delegated her authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Food and Drug Administration
Silver Spring, MD 20993

July 21, 2011

Thomas R. Frieden, M.D., M.P.H.
Director
Centers for Disease Control and Prevention
1600 Clifton Road, MS D-14
Atlanta, GA 30333

Dear Dr. Frieden:

This letter is in response to your May 5, 2011, submission[1] requesting that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for the emergency use of oral formulations of doxycycline products for the post-exposure prophylaxis (PEP)[2] of inhalational anthrax during a public health emergency involving aerosolized *Bacillus anthracis* (*B. anthracis*), pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. § 360bbb-3).

In 2004, the Secretary of the Department of Homeland Security (DHS) issued a Material Threat Determination indicating that *B. anthracis*, the biological agent that causes anthrax disease, presents a material threat against the population of the United States sufficient to affect national security. On September 23, 2008, pursuant to section 564(b)(1)(A) of the Act (21 U.S.C. § 360bbb-3(b)(1)(A)), the Secretary of DHS determined that there is a significant potential for a domestic emergency involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents—in this case, *B. anthracis.*[3] On October 1, 2008, pursuant to section 564(b) of the Act (21 U.S.C. § 360bbb-3(b)), and on the basis of such determination, the Secretary of Health and Human Services (HHS) then declared an emergency justifying the authorization of the emergency use of doxycycline hyclate tablets for PEP accompanied by emergency use information subject to the terms of any authorization issued under section 564(a) of the Act (21 U.S.C. § 360bbb-3(a)), and on October 1, 2009, and on October 1, 2010, renewed that declaration.[4] On July 20, 2011, the Secretary of HHS renewed and amended that declaration so that it applies to all doxycycline products covered by this authorization.

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[1] In submitting this request, the Centers for Disease Control and Prevention (CDC)/Department of Health and Human Services (DHHS) stated that it was acting in coordination with the Department of Homeland Security (DHS) and the Department of Defense. CDC/DHHS will be responsible for requesting any amendments to the EUA.

[2] The Act uses the terms "diagnosing, treating, or preventing" in section 564(c)(2)(A). Post-exposure prophylaxis is encompassed by these statutory terms.

[3] Memorandum from Michael Chertoff to Michael O. Leavitt, Determination Pursuant to § 564 of the Federal Food, Drug, and Cosmetic Act (Sept. 23, 2008).

[4] Declaration of Emergency Pursuant to Section 564 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb-3(b) (Oct. 1, 2008); renewed October 1, 2009 (74 Fed. Reg. 51,279) (Oct. 6, 2009); renewed October 1, 2010 (75 Fed. Reg. 61,489) (Oct. 5, 2010).

The Centers for Disease Control and Prevention (CDC) requested this EUA because oral formulations of doxycycline products will be distributed and stored by stakeholders for preparedness purposes in advance of an actual anthrax event, with the intent that they may be dispensed post-event as part of a mass distribution strategy. As used in this letter, the term "stakeholder(s)" means the public agency or its delegate that has legal responsibility and authority for responding to an incident, based on political or geographical, e.g., city, county, tribal, State, or Federal boundary lines, or functional, e.g., law enforcement or public health range or sphere of authority to prescribe, administer, deliver, distribute, or dispense doxycyline in an emergency situation. An EUA is needed to facilitate stakeholder pre-event planning and preparedness activities, which may include elements that would otherwise violate provisions of the Act under FDA's legal interpretations,[5] to enable rapid initiation of antimicrobial therapy through various distribution and dispensing modalities during an actual emergency event involving *B. anthracis*.

Having consulted with the CDC and the National Institutes of Health (NIH), and having concluded that the criteria for issuance of this authorization under section 564(c) of the Act (21 U.S.C. § 360bbb-3(c)) are met, I am authorizing the emergency use of doxycycline products,[6,7,8] where not contraindicated, for the post-exposure prophylaxis[9] of inhalational anthrax in the event of a public health emergency involving *B. anthracis*, subject to the terms of this authorization. This EUA will apply in all circumstances in which stakeholders reasonably believe that there is a need to mass dispense authorized doxycycline products because of their constituent recipients' suspected or likely imminent exposure to *B. anthracis* spores.

The remainder of this letter is organized into five sections: (I) Criteria for Issuance of Authorization; (II) Scope of Authorization; (III) Current Good Manufacturing Practice (CGMP); (IV) Conditions of Authorization; and (V) Duration of Authorization.

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[5] Such elements include but are not limited to: distribution and use of emergency use information sheets, e.g., fact sheet for health care professionals, fact sheet for recipients, and fact sheet for recipients with home preparation instructions for children or adults who cannot swallow pills; dispensing doxycycline without a prescription and without all of the required information on the prescription label per section 503(b)(2) (U.S.C. § 353(b)(2)); dispensing a partial supply of the full 60-day dosage regimen, i.e., initial start-up 10-day supply; pre-event storage or distribution of doxycycline packaged or repackaged for emergency distribution; and waiver of current good manufacturing practice requirements during an event, under certain circumstances.

[6] FDA is authorizing the emergency use of oral formulations of doxycycline products for the post-exposure prophylaxis of inhalational anthrax as described in the scope section of this letter (see Section II. Scope of Authorization).

[7] For the purpose of this letter, "emergency use of authorized doxycycline product(s)" includes stakeholders' pre-event preparedness activities for, and post-event implementation of, post-exposure prophylaxis for inhalational anthrax with authorized doxycycline products for individuals who have been exposed, or who may have been exposed, to aerosolized *B. anthracis* spores.

[8] For ease of reference, this letter of authorization will use the terms "authorized doxycycline product(s)" or "doxcycline product(s)."

[9] Prophylaxis is generally considered to apply in situations in which the person receiving the drug has not exhibited symptoms. Because, in many cases in which doxycycline may be used pursuant to this authorization, it will not be practical to distinguish between persons who have exhibited symptoms and those who have not, this authorization permits the administration of doxycycline to persons who may have been exposed to *B. anthracis* during a public health emergency whether or not they have begun to exhibit symptoms. We would expect that responsible authorities would direct any persons who have begun to exhibit symptoms to appropriate medical care as expeditiously as possible.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of authorized doxycycline products, where not contraindicated, for the post-exposure prophylaxis of inhalational anthrax during an emergency involving *B. anthracis* meets the criteria for issuance of an authorization under section 564(c) of the Act, because I have concluded that:

(1) *B. anthracis* can cause inhalational anthrax, a serious or life-threatening disease or condition;

(2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that authorized doxycycline products may be effective for the post-exposure prophylaxis of inhalational anthrax, and that the known and potential benefits of authorized doxycycline products, when used for the post-exposure prophylaxis of inhalational anthrax in the specified population, outweigh the known and potential risks of such products; and

(3) there is no adequate, approved, and available alternative to the emergency use of authorized doxycycline products for the post-exposure prophylaxis of inhalational anthrax.[10]

Therefore, I have concluded that the emergency use of authorized doxycycline products for the post-exposure prophylaxis of inhalational anthrax meets the above statutory criteria for issuance of an authorization.

II. Scope of Authorization

I have concluded, pursuant to section 564(d)(1) of the Act, that the scope of this authorization is limited to the emergency use of authorized doxycycline products for purposes of stakeholder pre-event planning and preparedness activities, and, in a post-event scenario, implementation of post-exposure prophylaxis for inhalational anthrax for individuals who have been exposed, or who may have been exposed, to aerosolized *B. anthracis* spores. The emergency use of authorized doxycycline products under this EUA must be consistent with, and may not exceed, the terms of this letter, including the scope and the conditions of authorization set forth below.

The authorized doxycycline products are as follows:

FDA-approved oral formulations of doxycycline, including capsule, tablet, and liquid formulations,[11] such as:

- Doxycycline hyclate 100 mg oral tablets, supplied in a unit-of-use (UoU) bottle containing 120 tablets for a 60-day treatment or containing 20 tablets for an initial 10-day supply;

[10] No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the Act.
[11] FDA-approved drugs can be identified at the *Drugs at FDA* website at http://www.accessdata.fda.gov/scripts/cder/drugsatfda/.

- Doxycycline monohydrate 100 mg oral capsules, supplied in a UoU bottle containing 120 capsules for a 60-day treatment or containing 20 capsules for an initial 10-day supply;
- Doxycycline 25 mg/5 mL suspension, supplied as dry powder in a 60 mL bottle;
- Doxycycline (Vibramycin) 50 mg/5 mL syrup in a 473 mL bottle; and
- Any other formulation of doxycycline that has been approved by the FDA for post-exposure prophylaxis to reduce the incidence or progression of disease, including inhalational anthrax, following exposure to aerosolized *B. anthracis*.

The examples provided are for purposes of illustration. During an emergency, this authorization would permit dispensing of FDA-approved drugs that are not supplied in a UoU container if necessary.

Doxycycline is a semisynthetic tetracycline antimicrobial product approved as a prescription drug by FDA for treatment and post-exposure prophylaxis of anthrax due to *B. anthracis*, including inhalational anthrax, to reduce the incidence or progression of disease following exposure to aerosolized *B. anthracis*.[12] The post-exposure prophylaxis indication generally means that drug administration is expected to start after a known or suspected exposure to aerosolized *B. anthracis* spores, but before clinical symptoms of the disease develop. The indication includes presumed exposure, since it is often difficult to know whether and when exposure has actually occurred. The indication also encompasses instances where *B. anthracis* exposure via inhalation is expected and likely imminent. In such cases, the first few doses of prophylaxis may be taken pre-exposure, but the remainder of the course would be taken post-exposure. The indication is commonly referred to as "post-exposure prophylaxis of inhalational anthrax," and this term will be used throughout this document. Generally, once symptoms develop, the approved indication for "treatment" would apply. Although it is expected that stakeholder emergency use plans will, to the extent possible, direct symptomatic individuals to health care professionals for appropriate treatment, FDA recognizes that circumstances may necessitate dispensing doxycycline product to individuals seeking post-exposure prophylaxis who may be symptomatic; therefore, FDA is authorizing dispensing to symptomatic individuals without a prescription consistent with the conditions set out in this letter.

1. The above doxycycline products are authorized for pre-event storage and distribution, and for post-event storage, distribution, and dispensing, when packaged in their original manufacturers' packaging or repackaged for emergency distribution with labels containing directions for use, National Drug Code, and lot number (pursuant to the requirements under Section III. CGMP of this document), despite the fact that they may not contain all of the required information on the prescription label under section 503(b)(2) of the Act (21 U.S.C. § 353(b)(2)), e.g., name and address of dispenser; serial

[12] The full course of doxycycline tablets for adults for the post-exposure prophylaxis of inhalational anthrax is 100 mg twice daily for 60 days. Children weighing 40 kg or more (89 pounds or more) should receive the adult dose. Children weighing less than 40 kg should receive 2.2 mg/kg of body weight per dose, by mouth, twice daily (maximum 100 mg per dose).

number; date of prescription or of its filling; name of prescriber; name of patient, if stated on prescription; directions for use and cautionary statements, if contained in the prescription. During an emergency, this authorization would permit dispensing of FDA-approved drugs that are not supplied in a UoU container if necessary.

2. The doxycycline products previously referenced are authorized to be dispensed without a prescription[13] and to be accompanied by authorized emergency use information, to be made available to health care professionals and to recipients respectively, to facilitate understanding of anthrax disease and the risks and benefits of doxycycline therapy and to improve medication compliance. Representative examples of such information are as follows:

- Doxycycline EUA Fact Sheet for Health Care Professionals (Exhibit 1)
- Doxycycline EUA Fact Sheet for Recipients (Exhibit 2)

In addition, a short version and a long version of instructions for home preparation of doxycycline for those who cannot swallow pills are authorized as follows:

- Doxycycline EUA Fact Sheet for Recipients—Home Preparation Instructions for Children or Adults Who Cannot Swallow Pills (Exhibit 3—short version) (or as updated by FDA)[14]
- In an Emergency: How to Prepare Doxycycline for Children and Adults Who Cannot Swallow Pills (Exhibit 4—long version) (or as updated by FDA).[15]

3. The doxycycline products previously referenced are authorized to be stored, distributed, and dispensed as a partial supply,[16] e.g., 10-day supply, of a full 60-day dosage regimen

[13] It is expected that stakeholder emergency use plans will, to the extent possible under the circumstances, involve guidance from health care professionals in the dispensing of product under this EUA beyond the fact sheets contemplated by this request. In this request, however, FDA is being asked to recognize that, in some circumstances, such guidance may not be possible and thus to authorize dispensing without a prescription, including dispensing by non-health care professionals. Depending on the state or local health jurisdictions' preparedness plan for a mass distribution strategy, individuals responsible for dispensing doxycycline may include licensed health care professionals, pharmacists, emergency responders, volunteers, or others. This is not intended to be an exhaustive list. It is possible that public health officials or other volunteers might dispense authorized doxycycline products to recipients, if permitted, in accordance with applicable state and local law and/or in accordance with the public health and medical emergency response of the stakeholder to prescribe, administer, deliver, distribute, or dispense the covered countermeasures, and of their officials, agents, employees, contractors, or volunteers, following a declaration of an emergency.

[14] Any such updates will be available at: http://www.fda.gov/doxyprepare.

[15] The Exhibit 4 fact sheet is also available at: http://www.fda.gov/doxyprepare.

[16] The required and FDA-approved duration of doxycycline therapy for PEP against inhalational anthrax is 60 days. An initial, partial supply of doxycycline may be utilized to facilitate a rapid initiation of antimicrobial therapy, i.e., to provide start-up doses through various distribution modalities. Thus, the partial dispensing of the required quantity of doxycycline to complete therapy duration will also be allowed under this EUA. Once the antimicrobial susceptibility of the associated *B. anthracis* strain involved in the exposure has been determined per its minimum inhibitory concentration, and potential exposure to *B. anthracis* has been confirmed, an additional supply of doxycycline must be dispensed to patients to allow the full 60-day antimicrobial PEP regimen. For example, an

when stored, distributed, and dispensed as part of a stakeholder mass distribution strategy.

4. The doxycycline products previously referenced may include pre-event storage, distribution, and potential use of doxycycline products that are distributed from certain stakeholders' stockpiles and are authorized to have their expiration date extended under the federal government's Shelf-Life Extension Program (SLEP).

CDC and stakeholders are also authorized to make available additional information relating to the emergency use of authorized doxycycline products that is consistent with the terms of this letter of authorization. (See Section IV. Conditions of Authorization.)

I have concluded, pursuant to section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of authorized doxycycline products, when used for the post-exposure prophylaxis of inhalational anthrax, outweigh the known and potential risks of such products.

I have concluded, pursuant to sections 564(c)(2)(A) and 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that the authorized doxycycline products may be effective for the post-exposure prophylaxis of inhalational anthrax. FDA has reviewed the scientific information available, including the information supporting the conclusions described in Section I above, and concludes that the authorized doxycycline products, when used for the post-exposure prophylaxis of inhalational anthrax in the specified population in accordance with the conditions set out in this letter, meet the criteria set forth in section 564(c) of the Act concerning safety and potential effectiveness.

Subject to the terms of this EUA and consistent with the Secretary of DHS's determination under section 564(b)(1)(A) of the Act and the Secretary of HHS's corresponding declaration under 564(b)(1) of the Act described above, the doxycycline products described above are authorized for the post-exposure prophylaxis of inhalational anthrax for individuals who have been exposed, or who may have been exposed, to aerosolized *B. anthracis* spores.

This EUA will cease to be effective when the declaration of emergency is terminated under section 564(b)(2) of the Act or when the EUA is revoked under section 564(g) of the Act. When this EUA ceases to be effective, the doxycycline products described herein will no longer be authorized for emergency use under this EUA.[17]

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individual may only receive a 10-day supply as an initial start-up dose. The individual will receive further instructions on whether the additional 50-day supply is necessary based on the results of the antimicrobial susceptibility and on where to obtain the 50-day supply of doxycycline.

[17] Pursuant to Section 564(f)(2) of the Act, 21 U.S.C. 360bbb-3(f)(2), continued use of a product authorized by this letter may continue after the expiration of this authorization to the extent found necessary by the patient's health care professional.

III. Current Good Manufacturing Practice

This authorization only covers doxycycline products that have been manufactured, (re)packaged, and (re)labeled under CGMP requirements and were stored in compliance with the manufacturers' labeled storage conditions for the products, except that, in the event of a release of *B.anthracis* and a decision on the part of the responsible stakeholder to mass dispense doxycycline under the terms and conditions of this EUA, doxycycline products may require transportation for rapid dispensing without the capacity to maintain labeled storage conditions in the midst of the response. The products, i.e., doxycycline tablets, doxycycline delayed release tablets, doxycycline capsules, doxycycline powder for oral suspension, and doxycycline oral suspension, may be stored with temperature excursions up to 40°C for a total period of up to 7 days.

IV. Conditions of Authorization

Pursuant to section 564 of the Act, I am establishing the following conditions on this authorization:

A. Information must be provided to health care professionals administering the product and to recipients that includes the following minimum elements:

(1) For Health Care Professionals:

- Statement that the product is authorized for emergency use, e.g., "The Food and Drug Administration (FDA) has issued an Emergency Use Authorization (EUA) for the distribution of doxycycline to people who may have been exposed to *Bacillus anthracis* (*B. anthracis*), the causative pathogen of anthrax.";
- The significant known and potential benefits, e.g., "The expected benefits are prevention of disease, including death, associated with anthrax exposure.";
- The significant known and potential risks of using this drug, including:
  - Serious allergic/hypersensitivity reactions (anaphylactic);
  - Dental problems in children associated with women taking doxycycline during the last half of pregnancy or when nursing, and associated with children under the age of 8 years taking doxycycline;
  - Slowed bone growth in children;
  - Antibiotic-associated diarrhea and pseudomembranous colitis;
  - Liver failure;
  - Esophogeal ulcers;
  - Photosensitivity;
  - Unusual bleeding or bruising;
  - Severe headaches, dizziness, or double vision; and
  - Decreased effectiveness of oral contraceptives;
- The extent to which such benefits and risks are unknown, e.g., "It is unknown how recipients will respond to the emergency instructions, how many recipients will receive the full, 60-day course of PEP, or what the impact of dispensing without an individual prescription will be. The benefit of mass dispensing to

provide recipients with access to an initial supply of doxycycline is expected to outweigh the risks.";

- If alternatives to the product are available to the recipients, an explanation of their benefits and risks, e.g., "In this emergency situation, you will be informed of any alternative products that are available. The risks and benefits of those products are explained separately with those products.";[18]
- Authorized information on home preparation instructions for children or adults who cannot swallow pills, i.e., Exhibit 3 or Exhibit 4; these instructions are appropriate for tablet formulations;
- Dosing information, including for children weighing less than 14 kg (30 lbs) dosed by weight (see table below); and

Weight in Pounds (lbs)	**Weight in kilograms (kg)**	**Dose in milliliters (mL) (*based on 5mg/mL concentration*)** - Give one dose in the morning and one dose in the evening	**Number of 60 mL bottles provided to each patient to cover first 10 days of treatment**
0-5 lbs	0-2 kg	1 mL	ONE (1) Bottle
6-10 lbs	3-4 kg	2 mL	
11-15 lbs	5-7 kg	3 mL	
16-20 lbs	8-9 kg	4 mL	TWO (2) Bottles
21-25 lbs	10-11 kg	5 mL	
26-30 lbs	12-14 kg	6 mL	

- A statement on adverse event and medication error reporting, e.g., "You should report adverse events or medication errors to MedWatch at www.fda.gov/medwatch, by submitting a MedWatch Form 3500 (available at http://www.fda.gov/medwatch/safety/FDA-3500_fillable.pdf) or by calling 1-800-FDA-1088." or similar information.

(2) For Recipients:[19]

- Statement that the product is authorized for emergency use, e.g., "Doxycycline is a prescription drug approved by the Food and Drug Administration (FDA) to prevent anthrax. Federal authorities have specially authorized certain uses of doxycycline, including use without a prescription, for this emergency situation.";
- The significant known and potential benefits, e.g., "Taking doxycycline to treat anthrax will reduce your risk of getting sick and dying.";

[18] This authorization is intended to apply to the use of doxycycline in a wide range of different circumstances, and it is recognized that the availability of alternatives to the product will vary in different circumstances. If alternatives are available, this requirement may be satisfied by assuring that the health care professional has available any approved labeling for the alternative product or, if that product is covered by an EUA, the authorized health care professional information under that EUA.

[19] To the extent feasible, stakeholders are encouraged to ensure that recipient fact sheets provide information in such a way as to adequately inform individuals with low literacy.

- The significant known and potential risks of using this drug, including:
  - Allergic reaction, such as swelling of the tongue, hands, or feet;
  - Tooth problems in children when women take doxycycline during the last half of pregnancy or when nursing, and associated with children under the age of 8 years taking doxycycline;
  - Slowed bone growth in children;
  - Diarrhea and stomach cramps;
  - Serious liver problems, including liver failure;
  - Pain when swallowing;
  - Sensitivity to the sun;
  - Unusual bleeding or bruising;
  - Severe headaches, dizziness, or double vision; and
  - Birth control pills might stop working;
- The extent to which such benefits and risks are unknown, e.g., "The benefit of providing you with emergency access to an initial supply of doxycycline is expected to outweigh the risks. However, it is unknown how well these emergency instructions will be used, how many individuals will receive the full, 60-day course of (PEP), or what the impact of dispensing without an individual prescription will be.";
- Statement that the recipient is not required to use this drug and the consequences, if any, of refusing administration, e.g., "You do not have to take this drug, but taking doxycycline to treat anthrax will reduce your risk of getting sick and dying.";
- If alternatives to the product are available to recipients, an explanation of their benefits and risks. But in circumstances in which alternatives are not available, an explanation that there are other drugs that may be used as alternatives to doxycycline, but those drugs may not be readily available to the recipient, accompanied by a statement that, if the recipient has access to a medical professional, the recipient may wish to discuss the benefits and risks of any available alternative therapies with that medical professional;
- Dosing information;
- Authorized information on home preparation instructions for children or adults who cannot swallow pills, i.e., Exhibit 3 or Exhibit 4; and
- A statement addressing the reporting of side effects or errors including advising recipients to contact their physician regarding side effects and providing MedWatch contact information for reporting (www.fda.gov/medwatch or 1-800-FDA-1088), e.g., "Tell your doctor right away and report side effects or medication errors to MedWatch at www.fda.gov/medwatch (1-800-FDA-1088).".

B. For planning purposes, Exhibit 1, accompanied by either Exhibit 3 or Exhibit 4 (or any updated home preparation instructions that may be provided by FDA on the FDA website), meets the minimum requirements set forth above for the Doxycycline EUA Fact Sheet for Health Care Professionals. Exhibit 2, accompanied by either Exhibit 3 or Exhibit 4 (or any updated home preparation instructions that may be provided by FDA on the FDA website), meets the minimum requirements set forth above for the Doxycycline EUA Fact Sheet for Recipients.

CDC

C. CDC will ensure that the terms and conditions of this EUA are made available through appropriate means.

D. CDC will make available to stakeholders through appropriate means the following as representative examples of fact sheets pertaining to the emergency use authorized to be made available to health care professionals and to recipients:

(1) Exhibit 1: Doxycycline EUA Fact Sheet for Health Care Professionals. Exhibit 1 is an example fact sheet of the minimum information necessary to provide to health care professionals.

(2) Exhibit 2: Doxycycline EUA Fact Sheet for Recipients. Exhibit 2 is an example fact sheet of the minimum information necessary to provide to recipients.

CDC will make available to stakeholders through appropriate means the following authorized instructions of the home preparation instructions for children or adults who cannot swallow pills:

(3) Exhibit 3: Doxycycline EUA Fact Sheet for Recipients—Home Preparation Instructions for Children or Adults Who Cannot Swallow Pills (short version) (or as updated by FDA); or

(4) Exhibit 4: In an Emergency: How to Prepare Doxycycline for Children and Adults Who Cannot Swallow Pills (long version) (or as updated by FDA).

CDC will also make available to stakeholders through appropriate means at least one representative FDA-approved package insert that covers the dosage forms and strengths of authorized doxycycline products for each type of doxycycline product stockpiled or dispensed.

E. CDC is authorized to issue additional recommendations and instructions related to the emergency use of authorized doxycycline products as described in this letter of authorization, to the extent that additional recommendations and instructions are necessary to meet public health needs during a declared public health emergency involving *B. anthracis* and are reasonably consistent with the authorized emergency use of the products.

Stakeholders (including CDC)

F. Stakeholders will be responsible for authorizing public and/or private entities acting as part of the public health response to dispense authorized doxycycline products in accordance with the terms and conditions of this EUA, including instructing public

and/or private entities acting as part of the public health response about the terms and conditions of the EUA with regard to pre-event storage and distribution and post-event storage, distribution, and dispensing of doxycycline products, and for instructing their constituent recipients about the means through which their constituent recipients are to obtain authorized doxycycline products.

G. Stakeholders must make available through appropriate means information provided to health care professionals and to recipients, respectively, that include the minimum elements set forth above in A. and B. of this section, as exemplified in Exhibit 1 and Exhibit 2, and as authorized in Exhibit 3 and Exhibit 4: Doxycycline EUA Fact Sheet for Health Care Professionals (Exhibit 1), Doxycycline EUA Fact Sheet for Recipients (Exhibit 2), Doxycycline EUA Fact Sheet for Recipients—Home Preparation Instructions for Children or Adults Who Cannot Swallow Pills (short version) (Exhibit 3) (or as updated by FDA), and In an Emergency: How to Prepare Doxycycline for Children and Adults Who Cannot Swallow Pills (long version) (Exhibit 4) (or as updated by FDA). Stakeholders may use Exhibit 1 as the fact sheet for health care professionals and Exhibit 2 as the fact sheet for recipients, or they may develop alternative fact sheets for health care professionals and for recipients, so long as any such information made available to health care professionals and to recipients includes the minimum elements set forth under this EUA in Section IV. Conditions of Authorization. Alternative fact sheets for home preparation instructions for children and adults who cannot swallow pills may not be developed by stakeholders for Exhibit 3 or Exhibit 4.

H. Stakeholders must maintain an inventory record of doxycycline distribution (including lot number, quantity, receiving site, and distribution date) under this EUA, including distribution of doxycycline product prior to, during, or after an anthrax emergency. This requirement does not require record-keeping related to dispensing of doxycycline products to recipients during an emergency in those circumstances in which such record-keeping would not be consistent with an efficient program for the dispensing of the drug to recipients.[20] Stakeholders acting under this EUA will be aware of and ensure that anyone storing and distributing doxycycline for preparedness purposes and storing, distributing, and dispensing doxycycline for response purposes under this EUA are informed of and instructed on the actions necessary to enable stakeholders to comply with the terms and conditions of this EUA, such as data collection, recordkeeping, and records access. Stakeholders acting under this EUA will provide FDA access to such records when requested.

I. Stakeholders are also authorized to make available additional information relating to the emergency use of authorized doxycycline products that is consistent with, and does not exceed, the terms of this letter of authorization.

The emergency use of authorized doxycycline products as described in this letter of authorization must comply with the conditions above and all other terms of this authorization.

[20] While such record-keeping is not a requirement of this EUA, it is expected that stakeholders will, to the extent possible, keep such records for purposes of their own follow-up of recipients, including for the purpose of assuring that any individual who has been provided less than a full course of doxycycline receives, if necessary, a full course.

V. Duration of Authorization

This EUA will be effective until the declaration of emergency is terminated under section 564(b)(2) of the Act or the EUA is revoked under section 564(g) of the Act.

Margaret A. Hamburg

Margaret A. Hamburg, M.D.
Commissioner of Food and Drugs

Enclosures

Dated: July 28, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–19622 Filed 8–3–11; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0518]

Notices of Filing of Petitions for Food Additives and Color Additives; Relocation in the Federal Register

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is notifying the public that notices of filing of petitions for food additives and color additives that are published in accordance with the Federal Food, Drug, and Cosmetic Act (FD&C Act) will now be published in the ''Proposed Rules'' section of the **Federal Register**. Notices of filing have historically been published in the ''Notices'' section of the **Federal Register**. The Office of the Federal Register (OFR) recently informed FDA that, under OFR rules, these documents actually fall into the ''Proposed Rules'' category and requested that FDA reclassify these notices of filing documents as proposed rules. This change is effective immediately.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Regulations Editorial Section, Office of Policy, Planning and Budget, Food and Drug Administration,10903 New Hampshire Ave., Bldg. 32, Rm. 3208, Silver Spring, MD 20993–0002, 301–796–9148, *joyce.strong@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 409 of the FD&C Act (21 U.S.C. 348) establishes the food additive petition approval process for food additives for use in human and animal food. Section 409(b)(5) requires that the Secretary of Health and Human Services publish notice in general terms of the receipt of a petition within 30 days of its filing. Similarly, section 721 of the FD&C Act (21 U.S.C. 379e) establishes a petition approval process for color additives used in food, drugs, cosmetics, and devices, and requires that the Secretary publish notice in general terms of the receipt of a color additive petition within 30 days of its filing. These responsibilities of the Secretary have been delegated to the Commissioner of Food and Drugs and redelegated to certain other FDA officials. These notices of filing are published in the **Federal Register**.

Under the **Federal Register** Act (44 U.S.C. chapter 15), the Administrative Committee of the **Federal Register** issues regulations regarding publishing documents in the **Federal Register** (1 CFR chapter I). Based on these governing regulations, the OFR classifies Agency documents published in the **Federal Register** in one of three categories: rules and regulations, proposed rules, and notices. The regulation establishing document types is 1 CFR 5.9. FDA's section 409 and section 721 notices of filing have historically been published in the ''Notices'' section of the **Federal Register**. OFR recently informed FDA that, in their view, these documents actually fall into the ''Proposed Rules'' category and requested that FDA classify future such notices of filing documents as proposed rules (Ref. 1).

Accordingly, FDA documents providing notice under section 409(b)(5) or section 721(d)(1) of the FD&C Act will appear in the proposed rule section of the **Federal Register**. This change is effective immediately.

II. Reference

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memo from Amy P. Bunk, Office of the Federal Register, to Joyce Strong, Food and Drug Administration, May 9, 2011.

Dated: July 29, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–19765 Filed 8–3–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2011–M–0323, FDA–2011–M–0256, FDA–2011–M–0257, FDA–2011–M–0241, FDA–2011–M–0284, FDA–2011–M–0295, FDA–2011–M–0300, FDA–2011–M–0296, FDA–2011–M–0342, FDA–2011–M–0338, FDA–2011–M–0343, FDA–2011–M–0348, FDA–2011–M–0349, FDA–2011–M–0430, FDA–2011–M–0431, FDA–2011–M–0445, FDA–2011–M–0470, FDA–2011–M–0472, FDA–2011–M–0502, and FDA–2011–M–0503]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the Agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness data to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Nicole Wolanski, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1650, Silver Spring, MD 20993, 301–796–6570.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**. Instead, the Agency now posts this information on the Internet on FDA's home page at *http://www.fda.gov*.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an

order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the FD&C Act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from April 1, 2011, through June 30, 2011. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM APRIL 1, 2011, THROUGH JUNE 30, 2011

PMA No./Docket No.	Applicant	Trade name	Approval date
P050050 FDA–2011–M–0323	Small Bone Innovations, Inc	Scandinavian total ankle replacement system	May 27, 2009.
P060004(S1) FDA–2011–M–0256	Carl Zeiss Meditec, Inc	Meditec MEL 80 excimer laser system	March 28, 2011.
P100040 FDA–2011–M–0257	Medtronic Vascular	Valiant thoracic stent graft system	April 1, 2011.
H100002 FDA–2011–M–0241	NeuroVasx, Inc	cPAX aneurysm treatment system	April 1, 2011.
P100018 FDA–2011–M–0284	Chestnut Medical Technologies, Inc.	Pipeline embolization device	April 6, 2011.
P100034 FDA–2011–M–0295	NovoCure, Ltd	NovoCure Ltd.'s NovoTTF–100A treatment kit	April 8, 2011.
P100020 FDA–2011–M–0300	Roche Molecular Systems, Inc	cobas HPV test	April 19, 2011.
P100029 FDA–2011–M–0296	St. Jude Medical, Inc	Trifecta heart valve	April 20, 2011.
P100023 FDA–2011–M–0342	Boston Scientific Corp	ION paclitaxel-eluting coronary stent system (mono-rail and over-the-wire systems).	April 22, 2011.
P930014 (S45) FDA–2011–M–0338.	Alcon Research, Ltd	AcrySof toric IOL and AcrySof IQ toric IOL	May 3, 2011.
P040012 (S34) FDA–2011–M–0343.	Abbott Vascular, Inc	RX Acculink carotid stent system	May 6, 2011.
P090028 FDA–2011–M–0348	Ortho-Clinical Diagnostics, Inc	Vitros immunodiagnostic products HBeAg reagent pack/products HBeAg calibrator/products HBe controls.	May 11, 2011.
P100017 FDA–2011–M–0349	Abbott Molecular, Inc	Abbott RealTi*me* HCV, Abbott RealTi*me* HCV amplification reagent kit, Abbott RealTi*me* HCV control kit, Abbott RealTi*me* HCV calibrator kit, and optional UNG Uracil-N-glycosylase.	May 17, 2011.
P100013 FDA–2011–M–0430	Cordis Corp	Cordis ExoSeal vascular closure device	May 19, 2011.
P070015 (S54) FDA–2011–M–0431.	Abbott Vascular	Xience nano everolimus-eluting coronary stent system and Promus everolimus-eluting coronary stent system.	May 24, 2011.
P100014 FDA–2011–M–0445	Oceana Therapeutics, Inc	Solesta injectable gel	May 27, 2011.
P090002 FDA–2011–M–0470	Depuy Orthopaedics, Inc	Pinnacle complete acetabular hip system	June 13, 2011.
P100027 FDA–2011–M–0472	Ventana Medical Systems, Inc	INFORM HER2 dual ISH DNA probe cocktail	June 14, 2011.
P100031 FDA–2011–M–0502	Roche Diagnostics Corp	Elecsys anti-HBc immunoassay and Elecsys PreciControl anti-HBc for use on the modular Analytics E170 immunoassay analyzer.	June 22, 2011.
P100032 FDA–2011–M–0503	Roche Diagnostics Corp	Elecsys anti-HBc immunoassay and Elecsys PreciControl anti-HBc for use on the Elecsys 2010 immunoassay analyzer.	June 27, 2011.

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cdrh/pmapage.html*.

Dated: July 29, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–19734 Filed 8–3–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0332]

Report on the Performance of Drug and Biologics Firms in Conducting Postmarketing Requirements and Commitments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: Under the Food and Drug Administration Modernization Act of 1997 (Modernization Act), the Food and Drug Administration (FDA) is required to report annually in the **Federal Register** on the status of postmarketing requirements and commitments required of, or agreed upon by, holders of approved drug and biological products. This notice is the Agency's report on the status of the studies and clinical trials that applicants have agreed to, or are required to, conduct.

FOR FURTHER INFORMATION CONTACT: Beth Duvall-Miller, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6466, Silver Spring, MD 20993–0002, 301–796–0700; or Stephen Ripley, Center for

Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1400 Rockville Pike, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Modernization Act

Section 130(a) of the Modernization Act (Pub. L. 105–115) amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by adding a new provision requiring reports of certain postmarketing studies, including clinical trials, for human drug and biological products (section 506B of the FD&C Act (21 U.S.C. 356b)). Section 506B of the FD&C Act provides FDA with additional authority to monitor the progress of a postmarketing study or clinical trial that an applicant has been required to, or has agreed to, conduct by requiring the applicant to submit a report annually providing information on the status of the postmarketing study/clinical trial. This report must also include reasons, if any, for failure to complete the study/clinical trial. These studies and clinical trials are intended to further define the safety, efficacy, or optimal use of a product, and therefore play a vital role in fully characterizing the product.

Under the Modernization Act, commitments to conduct postmarketing studies or clinical trials included both studies/clinical trials that applicants agreed to conduct, as well as studies/clinical trials that applicants were required to conduct under FDA regulations.[1]

B. The Food and Drug Administration Amendments Act of 2007

On September 27, 2007, the President signed Public Law 110–85, the Food and Drug Administration Amendments Act of 2007 (FDAAA). Section 901, in Title IX of FDAAA, created a new section 505(o) of the FD&C Act authorizing FDA to require certain studies and clinical trials for human drug and biological products approved under section 505 of the FD&C Act or section 351 of the Public Health Service Act. Under FDAAA, FDA has been given additional authority to require applicants to conduct and report on postmarketing studies and clinical trials to assess a known serious risk, assess signals of serious risk, or identify an unexpected serious risk related to the use of a product. This new authority became effective on March 25, 2008. FDA may now take enforcement action against applicants who fail to conduct studies and clinical trials required under FDAAA, as well as studies and clinical trials required under FDA regulations (see sections 505(o)(1), 502(z), and 303(f)(4) of the FD&C Act (21 U.S.C. 355(o)(1), 352(z), and 333(f)(4))).

Although regulations implementing the Modernization Act postmarketing authorities use the term ''postmarketing commitment'' to refer to both required studies and studies applicants agree to conduct, in light of the new authorities enacted in FDAAA, FDA has decided it is important to distinguish between enforceable postmarketing requirements and unenforceable postmarketing commitments. Therefore, in this notice and report, FDA refers to studies/clinical trials that an applicant is required to conduct as ''postmarketing requirements'' (PMRs) and studies/clinical trials that an applicant agrees to but is not required to conduct as ''postmarketing commitments'' (PMCs). Both are addressed in this notice and report.

C. FDA's Implementing Regulations

On October 30, 2000 (65 FR 64607), FDA published a final rule implementing section 130 of the Modernization Act. This rule modified the annual report requirements for new drug applications (NDAs) and abbreviated new drug applications (ANDAs) by revising § 314.81(b)(2)(vii) (21 CFR 314.81(b)(2)(vii)). The rule also created a new annual reporting requirement for biologics license applications (BLAs) by establishing § 601.70 (21 CFR 601.70). The rule described the content and format of the annual progress report, and clarified the scope of the reporting requirement and the timing for submission of the annual progress reports. The rule became effective on April 30, 2001. The regulations apply only to human drug and biological products approved under NDAs, ANDAs, and BLAs. They do not apply to animal drugs or to biological products regulated under the medical device authorities.

The reporting requirements under §§ 314.81(b)(2)(vii) and 601.70 apply to PMRs and PMCs made on or before the enactment of the Modernization Act (November 21, 1997), as well as those made after that date. Therefore, studies and clinical trials required under FDAAA are covered by the reporting requirements in these regulations.

Sections 314.81(b)(2)(vii) and 601.70 require applicants of approved drug and biological products to submit annually a report on the status of each clinical safety, clinical efficacy, clinical pharmacology, and nonclinical toxicology study/clinical trial either required by FDA or that they have committed to conduct, either at the time of approval or after approval of their NDA, ANDA, or BLA. The status of PMCs concerning chemistry, manufacturing, and production controls and the status of other studies/clinical trials conducted on an applicant's own initiative are not required to be reported under §§ 314.81(b)(2)(vii) and 601.70 and are not addressed in this report. It should be noted, however, that applicants are required to report to FDA on these commitments made for NDAs and ANDAs under § 314.81(b)(2)(viii). Furthermore, section 505(o)(3)(E) of the FD&C Act, as amended by FDAAA, requires that applicants report periodically on the status of each required study/clinical trial and each study/clinical trial ''otherwise undertaken * * * to investigate a safety issue * * *.''

According to the regulations, once a PMR has been required, or a PMC has been agreed upon, an applicant must report on the progress of the PMR/PMC on the anniversary of the product's approval until the PMR/PMC is completed or terminated and FDA determines that the PMR/PMC has been fulfilled or that the PMR/PMC is either no longer feasible or would no longer provide useful information. The annual progress report must include a description of the PMR/PMC, a schedule for completing the PMR/PMC, and a characterization of the current status of the PMR/PMC. The report must also provide an explanation of the PMR/PMC status by describing briefly the progress of the PMR/PMC. A PMR/PMC schedule is expected to include the actual or projected dates for the following: (1) Submission of the final protocol to FDA, (2) completion of the study/clinical trial, and (3) submission of the final report to FDA. The status of the PMR/PMC must be described in the annual report according to the following definitions:

- *Pending:* The study/clinical trial has not been initiated *(i.e.,* no subjects have been enrolled or animals dosed), but does not meet the criteria for delayed (*i.e.,* the original projected date for initiation of subject accrual or

[1] Before passage of the Food and Drug Administration Amendments Act of 2007 (FDAAA), FDA could require postmarketing studies and clinical trials under the following circumstances: To verify and describe clinical benefit for a human drug approved in accordance with the accelerated approval provisions in section 506(b)(2)(A) of the FD&C Act (21 CFR 314.510 and 601.41); for a drug approved on the basis of animal efficacy data because human efficacy trials are not ethical or feasible (21 CFR 314.610(b)(1) and 601.91(b)(1)); and for marketed drugs that are not adequately labeled for children under section 505B of the FD&C Act (Pediatric Research Equity Act (21 U.S.C. 355c; Pub. L. 108–155)).

initiation of animal dosing has not passed);

- *Ongoing:* The study/clinical trial is proceeding according to or ahead of the original schedule;
- *Delayed:* The study/clinical trial is behind the original schedule;
- *Terminated:* The study/clinical trial was ended before completion, but a final report has not been submitted to FDA; or
- *Submitted:* The study/clinical trial has been completed or terminated, and a final report has been submitted to FDA.

Databases containing information on PMRs/PMCs are maintained at the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER).

II. Summary of Information From Postmarketing Status Reports

This report, published to fulfill the annual reporting requirement under the Modernization Act, summarizes the status of PMRs and PMCs as of September 30, 2010. If a requirement or commitment did not have a schedule, or a postmarketing progress report was not received in the previous 12 months, the PMR/PMC is categorized according to the most recent information available to the Agency.[2]

Information in this report covers any PMR/PMC that was made, in writing, at the time of approval or after approval of an application or a supplement to an application, including PMRs required under FDAAA (section 505(o)(3) of the FD&C Act), PMRs required under FDA regulations (*e.g.,* PMRs required to demonstrate clinical benefit of a product following accelerated approval (see footnote 1 of this document)), and PMCs agreed to by the applicant.

Information summarized in this report includes the following: (1) The number of applicants with open (uncompleted) PMRs/PMCs, (2) the number of open PMRs/PMCs, (3) the status of open PMRs/PMCs as reported in § 314.81(b)(2)(vii) or § 601.70 annual reports, (4) the status of concluded PMRs/PMCs as determined by FDA, and (5) the number of applications with open PMRs/PMCs for which applicants did not submit an annual report within 60 days of the anniversary date of U.S. approval.

Additional information about PMRs/PMCs submitted by applicants to CDER and CBER is provided on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Post-marketingPhaseIVCommitments/default.htm.* Neither the Web site nor this notice include information about PMCs concerning chemistry, manufacturing, and controls. It is FDA policy not to post information on the Web site until it has been reviewed for accuracy. Numbers published in this notice cannot be compared with the numbers resulting from searches of the Web site because this notice incorporates totals for all PMRs/PMCs in FDA databases, including PMRs/PMCs undergoing review for accuracy. In addition, the report in this notice will be updated annually while the Web site is updated quarterly (*i.e.,* in January, April, July, and October).

Many applicants have more than one approved product and for many products there is more than one PMR or PMC. Specifically, there were 164 unique applicants with 233 NDAs/ANDAs that had open PMRs/PMCs. There were 69 unique applicants with 87 BLAs that had open PMRs/PMCs.

Annual status reports are required to be submitted for each open PMR/PMC within 60 days of the anniversary date of U.S. approval of the original application. In fiscal year 2010 (FY10), 20 percent (36/184) of NDA/ANDA and 36 percent (31/87) of BLA annual status reports were not submitted within 60 days of the anniversary date of U.S. approval of the original application. Of the annual status reports due but not submitted on time, 100 percent of the NDA/ANDA and 52 percent (16/31) of the BLA reports were submitted before the close of FY10 (September 30, 2010).

Most PMRs are progressing on schedule (91 percent for NDAs/ANDAs; 88 percent for BLAs). Most PMCs are also progressing on schedule (84 percent for NDAs/ANDAs; 77 percent for BLAs). Most of the PMCs that are currently listed in the database were developed before the postmarketing requirements section of FDAAA took effect.[3]

III. About This Report

This report provides six separate summary tables. The tables in this document distinguish between PMRs and PMCs and between on-schedule and off-schedule PMRs and PMCs according to the original schedule milestones. On-schedule PMRs/PMCs are categorized as pending, ongoing, or submitted. Off-schedule PMRs/PMCs that have missed one of the original milestone dates are categorized as delayed or terminated. The tables include data as of September 30, 2010.

Table 1 of this document provides an overall summary of the data on all PMRs and PMCs. Tables 2 and 3 of this document provide detail on PMRs. Table 2 of this document provides additional detail on the status of on-schedule PMRs.

Table 1 of this document shows that most PMRs (91 percent for NDAs/ANDAs and 88 percent for BLAs) and most PMCs (84 percent for NDAs/ANDAs and 77 percent for BLAs) are on schedule. Overall, of the PMRs that are pending (*i.e.,* have not been initiated), 92 percent were created within the past 3 years. Table 2 of this document shows that 53 percent of pending PMRs for drug and biological products are in response to the Pediatric Research and Equity Act (PREA), under which FDA requires sponsors to study new drugs, when appropriate, for pediatric populations. Under section 505B(a)(3) of the FD&C Act, the initiation of these studies generally is deferred until required safety information from other studies has first been submitted and reviewed. PMRs for products approved under the animal efficacy rule (21 CFR 314.600 for drugs; 21 CFR 601.90 for biological products) can be conducted only when the product is used for its indication as a counterterrorism measure. In the absence of a public health emergency, these studies/clinical trials will remain pending indefinitely. The next largest category of pending PMRs for drug and biological products (45 percent) comprises those studies/clinical trials required by FDA under FDAAA, which became effective on March 25, 2008.

Table 3 of this document provides additional detail on the status of off-schedule PMRs. The majority of off-schedule PMRs (which account for 9 percent of the total for NDAs/ANDAs and 12 percent for BLAs) are delayed according to the original schedule milestones (96 percent (47/49) for NDAs/ANDAs; 94 percent (17/18) for BLAs). In certain situations, the original schedules may have been adjusted for unanticipated delays in the progress of the study/clinical trial (*e.g.,* difficulties with subject enrollment in a trial for a marketed drug or need for additional time to analyze results). In this report, study/clinical trial status reflects the status in relation to the original study/clinical trial schedule regardless of whether FDA has acknowledged that additional time may be required to complete the study/clinical trial.

[2] Although the data included in this report do not include a summary of reports that applicants have failed to file by their due date, the Agency notes that it may take appropriate regulatory action in the event reports are not filed on a timely basis.

[3] There are existing PMCs established before FDAAA that might meet current FDAAA standards for required safety studies/clinical trials under section 505(o)(3)(B) of the FD&C Act. Under section 505(o)(3)(c) of the FD&C Act, the Agency may convert pre-existing PMCs into PMRs if it becomes aware of new safety information.

Tables 4 and 5 of this document provide additional detail on the status of PMCs. Table 4 of this document provides additional detail on the status of on-schedule PMCs. Pending PMCs comprise 50 percent (201/399) of the on-schedule NDA/ANDA PMCs and 28 percent (66/236) of the on-schedule BLA PMCs.

Table 5 of this document provides additional details on the status of off-schedule PMCs. The majority of off-schedule PMCs (which account for 16 percent for NDAs/ANDAs and 23 percent for BLAs) are delayed according to the original schedule milestones (91 percent (67/74) for NDAs/ANDAs; 97 percent (69/71) for BLAs). As noted previously in this document, this report reflects the original due dates for study/clinical trial results and does not reflect discussions between the Agency and the sponsor regarding studies/clinical trials that may require more time for completion.

Table 6 of this document provides details about PMRs and PMCs that were concluded in the previous year. The majority of concluded PMRs and PMCs were fulfilled (57 percent of NDA/ANDA PMRs and 40 percent of BLA PMRs; 85 percent of NDA/ANDA PMCs and 84 percent of BLA PMCs).

TABLE 1—SUMMARY OF POSTMARKETING REQUIREMENTS AND COMMITMENTS

[Numbers as of September 30, 2010]

	NDA/ANDA (% of total PMR or % of total PMC)	BLA (% of total PMR or % of total PMC) [1]
Number of open PMRs	526	149
On-schedule open PMRs (see table 2 of this document)	477 (91%)	131 (88%)
Off-schedule open PMRs (see table 3 of this document)	49 (9%)	18 (12%)
Number of open PMCs	473	307
On-schedule open PMCs (see table 4 of this document)	399 (84%)	236 (77%)
Off-schedule open PMCs (see table 5 of this document)	74 (16%)	71 (23%)

[1] On October 1, 2003, FDA completed a consolidation of certain therapeutic products formerly regulated by CBER into CDER. Consequently, CDER now reviews many BLAs. Fiscal year statistics for postmarketing requirements and commitments for BLAs reviewed by CDER are included in BLA totals in this table.

TABLE 2—SUMMARY OF ON-SCHEDULE POSTMARKETING REQUIREMENTS

[Numbers as of September 30, 2010]

On-schedule open PMRs	NDA/ANDA (% of total PMR)	BLA (% of total PMR) [1]
Pending (by type):		
Accelerated approval	7	2
PREA [2]	217	27
Animal efficacy [3]	1	0
FDAAA safety (since March 25, 2008)	145	62
Total	370 (70%)	91 (61%)
Ongoing:		
Accelerated approval	12	7
PREA [2]	26	2
Animal efficacy [3]	0	0
FDAAA safety (since March 25, 2008)	28	22
Total	66 (13%)	31 (21%)
Submitted:		
Accelerated approval	5	3
PREA [2]	22	4
Animal efficacy [3]	0	0
FDAAA safety (since March 25, 2008)	14	2
Total	41 (8%)	9 (6%)
Combined total	477 (91%)	131 (88%)

[1] See note 1 for table 1 of this document.

[2] Many PREA studies have a pending status. PREA studies are usually deferred because the product is ready for approval in adults. Initiation of these studies also may be deferred until additional safety information from other studies has first been submitted and reviewed.

[3] PMRs for products approved under the animal efficacy rule (21 CFR 314.600 for drugs; 21 CFR 601.90 for biological products) can be conducted only when the product is used for its indication as a counterterrorism measure. In the absence of a public health emergency, these studies/clinical trials will remain pending indefinitely.

TABLE 3—SUMMARY OF OFF-SCHEDULE POSTMARKETING REQUIREMENTS

[Numbers as of September 30, 2010]

Off-schedule open PMRs	NDA/ANDA (% of total PMR)	BLA (% of total PMR) [1]
Delayed:		
Accelerated approval	5	2
PREA	39	11
Animal efficacy	1	0
FDAAA safety (since March 25, 2008)	2	4
Total	47 (9%)	17 (11%)
Terminated	2 (0.4%)	1 (0.7%)
Combined total	49 (9%)	18 (12%)

[1] See note 1 for table 1 of this document.

TABLE 4—SUMMARY OF ON-SCHEDULE POSTMARKETING COMMITMENTS

[Numbers as of September 30, 2010]

On-schedule open PMCs	NDA/ANDA (% of total PMC)	BLA (% of total PMC) [1]
Pending	201 (42%)	66 (21%)
Ongoing	87 (18%)	95 (31%)
Submitted	111 (23%)	75 (24%)
Combined total	399 (84%)	236 (77%)

[1] See note 1 for table 1 of this document.

TABLE 5—SUMMARY OF OFF-SCHEDULE POSTMARKETING COMMITMENTS

[Numbers as of September 30, 2010]

Off-schedule open PMCs	NDA/ANDA (% of total PMC)	BLA (% of total PMC) [1]
Delayed	67 (14%)	69 (22%)
Terminated	7 (1%)	2 (0.7%)
Combined total	74 (16%)	71 (23%)

[1] See note 1 for table 1 of this document.

TABLE 6—SUMMARY OF CONCLUDED POSTMARKETING REQUIREMENTS AND COMMITMENTS (OCTOBER 1, 2009 TO OCTOBER 1, 2010)

	NDA/ANDA (% of total)	BLA (% of total) [1]
Concluded PMRs:		
Requirement met (fulfilled)	25 (57%)	4 (40%)
Requirement not met (released and new revised requirement issued)	10 (23%)	0
Requirement no longer feasible or product withdrawn (released)	9 (20%)	6 (60%)
Total	44	10
Concluded PMCs:		
Commitment met (fulfilled)	174 (85%)	51 (84%)
Commitment not met (released and new revised requirement/commitment issued)	25 (12%)	1 (2%)
Commitment no longer feasible or product withdrawn (released)	5 (2%)	9 (15%)
Total	204	61

[1] See note 1 for table 1 of this document.

Dated: August 1, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–19806 Filed 8–3–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 76 FR 45584–45585 dated July 29, 2011).

This notice reflects organizational changes to the Health Resources and Services Administration. Specifically, this notice updates the Division of Vaccine Injury Compensation (RR4) functional statement to better align functional responsibility, improve the management and delivery of information technology services, improve management and administrative efficiencies, and optimize use of available staff resources within the Healthcare Systems Bureau (RR).

Chapter RR—Healthcare Systems Bureau

Section RR–10, Organization

Delete in its entirety and replace with the following:

The Healthcare Systems Bureau (RR) is headed by the Associate Administrator, who reports directly to the Administrator, Health Resources and Services Administration. The Healthcare Systems Bureau includes the following components:

(1) Office of the Associate Administrator (RR);

(2) Division of Transplantation (RR1);

(3) Division of Health Facilities (RR9);

(4) Division of Vaccine Injury Compensation (RR4); and

(5) Office of Pharmacy Affairs (RR7).

Section RR–20, Functions

(1) Delete the functional statement for the Division of Vaccine Injury Compensation (RR4) and replace in its entirety.

Division of Vaccine Injury Compensation (RR4)

The Division of Vaccine Injury Compensation (DVIC), on behalf of the Secretary of Health and Human Services (HHS), administers all statutory authorities related to the operation of the National Vaccine Injury Compensation Program (VICP) by: (1) Evaluating petitions for compensation filed under the VICP through medical review and assessment of compensability for all complete claims; (2) processing awards for compensations made under the VICP; (3) promulgating regulations to revise the Vaccine Injury Table; (4) providing professional and administrative support to the Advisory Commission on Childhood Vaccines (ACCV); (5) developing and maintaining all automated information systems necessary for program implementation; (6) providing and disseminating program information; (7) maintaining a working relationship with the Department of Justice (DOJ) and the U.S. Court of Federal Claims (the Court) in the administration and operation of the VICP; (8) providing management, direction, budgetary oversight, coordination, and logistical support for the Medical Expert Panel (MEP) contracts as well as Clinical Reviewer Contracts; (9) maintaining responsibility for activities related to the ACCV, the development of policy, regulations, budget formulation, and legislation, including the development and renewal of the ACCV charter and action memoranda to the Secretary, and the analysis of the findings and proposals of the ACCV; (10) developing, reviewing, and analyzing pending and new legislation relating to program changes, new initiatives, the ACCV, and changes to the Vaccine Injury Table, in coordination with the Office of the General Counsel (OGC); (11) providing programmatic outreach efforts to maximize public exposure to private and public constituencies; (12) providing submission of special reports to the Secretary of HHS, the Office of Management and Budget, the Congress, and other governmental bodies; and (13) providing the coordination of ACCV travel, personnel, meeting sites, and its agenda.

Section RR–30, Delegations of Authority

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is effective upon date of signature.

Dated: July 29, 2011.

Mary K. Wakefield,

Administrator.

[FR Doc. 2011–19804 Filed 8–3–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Expediting Research Tools to NIH Licensees Through the Use of Pay.gov for Rapid Processing of Royalty Payments

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: NIH licensees can now expedite the receipt of research tools through the use of Pay.gov for rapid processing of their royalty payments.

SUPPLEMENTARY INFORMATION: With its introduction earlier this year, NIH licensees have found that using the new royalty payment site within Pay.gov expedites processing times for shipment of their research tools licensed from the NIH and FDA intramural research programs. The value of such time savings to corporate R&D programs is not trivial since waiting too long to secure research materials or tools can delay or sink a critical drug development program or other business venture. By eliminating the need for bank checks, the bank-to-bank transfer system at Pay.gov has shortened the processing time for research tool and other license agreements from several months down to a day or less. For example, a recent transaction for baculovirus vectors at NIH was indeed processed in a single afternoon allowing for almost instantaneous release of the licensed materials from the inventors laboratory.

Informal comments that NIH has received to date from licensees who have started to use Pay.gov for their royalty payments include: ''For Pay.gov, it's easy, convenient and fast, I guess that's what I experienced.'', ''It literally only took me about 5 minutes after reading the email/letter to process payment. Great service!'' and ''I just completed sending all the MAR payments and it was great! I am glad I decided to try the system.''

Pay.gov itself is a multifaceted web-based application allowing anyone to make Automated Clearing House (ACH) payments to government agencies by debit from a checking or savings account. Pay.gov is open 24–7, and is

encouraged for use in all types of royalty payments with NIH.

FOR FURTHER INFORMATION CONTACT: Companies looking to save time on their royalty transactions with NIH can easily pay royalties on Pay.gov by going to *https://www.pay.gov* and clicking on NIH in the agency list. Pay.gov is maintained by the U.S. Department of the Treasury. For more information about the Pay.gov system itself, visit *https://www.pay.gov/paygov/faqs.html*.

Dated: July 28, 2011.

Steven M. Ferguson,

Deputy Director, Licensing & Entrepreneurship, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–19821 Filed 8–3–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

CDK4–Transformed Mouse Podocytes Useful for Studying Glomerular Diseases

Description of Technology: Podocytes, cells of the visceral epithelium in the kidneys, are a key component of the glomerular filtration barrier. Podocyte damage and loss contribute to the initiation of glomerular diseases. Cyclin-dependent kinase 4 (CDK4), a catalytic subunit of the cyclin D–CDK4 serine/threonine kinase complex, is a critical regulator of the cell cycle. Recent studies showed that cells immortalized with CDK4 are useful to study pathophysiology. NIH investigators have generated mouse podocytes transformed with CDK4 as a nonviral immortalizing gene. These transformed podocytes show podocyte characteristics and express podocyte markers. Furthermore, confluent CDK4-podocyte cultures show higher levels of gene expression for multiple podocyte differentiation genes compared with subconfluent or lower density culture.

Development Stage:

- Early-stage.
- Pre-clinical.
- In vitro data available.

Potential Commercial Applications:

- Model system for study of glomerular disorders.
- Useful tools to study podocyte biology.

Competitive Advantage: Better model system to study podocyte structure and function.

Inventors: Drs. Toru Sakairi and Jeffrey B. Kopp (NIDDK).

Publication: Sakairi T, *et al.* Cell-cell contact regulates gene expression in CDK4-transformed mouse podocytes. *Am J Physiol Renal Physiol.* 2010 Oct;299(4):F802–809. [PMID: 20668098].

Intellectual Property: HHS Reference No. E–287–2010/0—Research Tool (Materials available for licensing: CDK4 podocytes). Patent protection is not being pursued for this technology.

Related Technology: HHS Reference No. E–049–2007/0—Model for Study of Glomerular Disorders: Conditionally-Immortalized Mouse Podocyte Cell Line with Tet-on-Regulated Gene Expression (Dr. Jefferey B. Kopp, NIDDK).

Licensing Contact: Suryanarayana (Sury) Vepa, PhD; 301–435–5020; *vepas@mail.nih.gov.*

Conditionally Immortalized Human Podocyte Cell Lines

Description of Technology: Podocytes, cells of the visceral epithelium in the kidneys, are a key component of the glomerular filtration barrier. Podocyte damage and loss contribute to the initiation of glomerular diseases. NIH investigators recently established long-term urinary cell cultures from two patients with focal segmental glomerulosclerosis and two healthy volunteers, via transformation with the thermosensitive SV40 large T antigen (U19tsA58) together with human telomerase (hTERT). Characterization of randomly selected clonal cell lines from each human subject showed mRNA expression for the podocyte markers synaptopodin, nestin, and CD2AP in all clones. Podocin mRNA was absent from all clones. The expression of nephrin, Wilms tumor 1 (WT1), and podocalyxin mRNA varied among the clones, which may be due to transformation and/or cloning. These novel human urine-derived podocyte-like epithelial cell lines (HUPECs) generated from urine of patients and healthy volunteers will be useful to study podocyte cell biology.

Development Stage:

- Early-stage.
- Pre-clinical.
- In vitro data available.

Potential Commercial Applications:

- Model system for study of glomerular disorders.
- Useful tools to study podocyte biology.

Competitive Advantage: These podocyte-like cells are unique and novel compared to the currently available podocyte cells because these are obtained from individuals with glomerular disease.

Inventors: Drs. Toru Sakairi and Jeffrey B. Kopp (NIDDK).

Publication: Sakairi T, *et al.* Conditionally immortalized human podocyte cell lines established from urine. *Am J Physiol Renal Physiol.* 2010 Mar;298(3):F557–67. [PMID: 19955187]

Intellectual Property: HHS Reference No. E–252–2010/0—Research Tool. Patent protection is not being pursued for this technology.

Related Technologies:

- HHS Reference No. E–049–2007/0—Model for Study of Glomerular Disorders: Conditionally-Immortalized Mouse Podocyte Cell Line with Tet-on-Regulated Gene Expression (Dr. Jefferey B. Kopp, NIDDK).
- HHS Reference No. E–287–2010/0—CDK4–Transformed Mouse Podocytes Useful for Studying Glomerular Diseases (Drs. Toru Sakairi and Jeffrey B. Kopp, NIDDK)

Licensing Contact: Suryanarayana (Sury) Vepa, PhD; 301–435–5020; *vepas@mail.nih.gov.*

An *In-Vitro* Cell System Useful For Identification of RORγ Antagonists

Description of Technology: The retinoid-related orphan receptors alpha, beta and gamma (RORα, β and γ, also referred to as NR1F1, 2 and 3, respectively) comprise a distinct subfamily of nuclear receptors. Study of ROR-deficient mice has implicated RORs in the regulation of a number of biological processes and revealed potential roles for these proteins in several pathologies. NIH investigators have developed an *in-vitro* system using CHO cells stably expressing a TET-On expression vector regulating RORγ and a RORE-Luciferase reporter. This system

allows inducible expression of RORγ upon addition of doxycycline. Upon its induction RORγ binds to the RORE in the luciferase reporter plasmid and induces luciferase. This system can be used to identify RORγ antagonists. This system has been tested successfully in 1536-well plate high throughput analysis.

Potential Commercial Applications: Identification of therapeutic compounds to treat asthma, inflammation, and various autoimmune diseases such as osteoarthritis, multiple sclerosis.

Competitive Advantages: Novel and unique system to screen and identify chemical and drugs for their RORγ antagonistic activity.

Development Stage:

- Early-stage.
- Pre-clinical.
- In vitro data available.

Inventors: Drs. Yukimasa Takeda and Anton M. Jetten (NIEHS).

Publications:

1. Jetten AM. Retinoid-related receptors (RORs): Critical roles in development, immunity, circadian rhythm, and cellular metabolism. *Nucl Recept Signal.* 2009;7:1–32. [PMID: 19381306].

2. Yang XO, *et al.* T helper 17 lineage differentiation is programmed by orphan receptors ROR alpha and ROR gamma. *Immunity* 2008 Jan;28(1):29–39. [PMID: 18164222].

3. Kurebayashi S, *et al.* Retinoid-related orphan receptor gamma (RORgamma) is essential for lymphoid organogenesis and controls apoptosis during thymopoiesis. *Proc Natl Acad Sci USA.* 2000 Aug 29;97(18):10132–10137. [PMID:10963675].

Intellectual Property: HHS Reference No. 253–2010/0—Research Tool. Patent protection is not being pursued for this technology.

Related Technology: HHS Reference No. E–222–2009/0—RORgamma (RORC) Deficient Mice Which Are Useful for the Study of Lymph Node Organogenesis and Immune Responses (Dr. Anton M. Jetten, NIEHS).

Licensing Contact: Suryanarayana (Sury) Vepa, PhD; 301–435–5020; *vepas@mail.nih.gov.*

Collaborative Research Opportunity: The NIEHS, Laboratory of Respiratory Biology, Cell Biology Group, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize retinoid-related orphan receptors (RORs) function in chronic diseases. For collaboration opportunities, please contact Elizabeth M. Denholm, PhD at *denholme@niehs.nih.gov.*

Dated: July 27, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–19817 Filed 8–3–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, August 2, 2011, 9 a.m. to August 2, 2011, 3 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on July 20, 2011, 76FFRN43333–43334.

The meeting has been rescheduled for August 23, 2011. The time and meeting location remain the same. The meeting is closed to the public.

Dated: July 29, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–19813 Filed 8–3–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Training Grant Review.

Date: August 24, 2011.

Time: 10:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Roy L. White, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7176, Bethesda, MD 20892–7924, 301–435–0310, *whiterl@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Ancillary Studies Review.

Date: August 26, 2011.

Time: 8 a.m. to 5 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: Tony L. Creazzo, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–435–0725, *creazzotl@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Research Dissemination and Implementation Grants.

Date: August 26, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Keith A. Mintzer, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, 301–435–0280, *mintzerk@nhlbi.nih.gov.*

(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: July 29, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–19796 Filed 8–3–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Liver Pathobiology and Pharmacology.
Date: August 30, 2011.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Peter J. Perrin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Bioengineering Sciences and Technology.
Date: August 31, 2011.
Time: 2:30 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Amy L. Rubinstein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7844, Bethesda, MD 20892, 301–408–9754, *rubinsteinal@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Nursing and Related Clinical Sciences Overflow.
Date: September 8–9, 2011.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Dupont Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.
Contact Person: Katherine Bent, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, 301–435–0695, *bentkn@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cancer Prevention.
Date: September 8, 2011.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Lawrence Ka-Yun Ng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–435–1719, *ngkl@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Immune Mechanism.
Date: September 8, 2011.
Time: 12 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Scott Jakes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301–495–1506, *jakesse@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–19792 Filed 8–3–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4003–DR; Docket ID FEMA–2011–0001]

Pennsylvania; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–4003–DR), dated July 13, 2011, and related determinations.

DATES: *Effective Date:* July 13, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 13, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Pennsylvania resulting from severe storms and flooding April 25–28, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Pennsylvania have been designated as adversely affected by this major disaster:

Bradford, Lycoming, Sullivan, Tioga, and Wyoming Counties for Public Assistance.

All counties within the Commonwealth of Pennsylvania are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–19771 Filed 8–3–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4004–DR; Docket ID FEMA–2011–0001]

Puerto Rico; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–4004–DR), dated July 14, 2011, and related determinations.

DATES: *Effective Date:* July 14, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 14, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Puerto Rico resulting from severe storms, flooding, mudslides, and landslides during the period of May 20 to June 8, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Puerto Rico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Justo Hernández, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Puerto Rico have been designated as adversely affected by this major disaster:

The municipalities of Añasco, Caguas, Camuy, Ciales, Hatillo, Las Piedras, Morovis, Orocovis, San Lorenzo, San Sebastián, Utuado, and Villalba.

All municipalities within the Commonwealth of Puerto Rico are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–19773 Filed 8–3–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4005–DR; Docket ID FEMA–2011–0001]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–4005–DR), dated July 20, 2011, and related determinations.

DATES: *Effective Date:* July 20, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 20, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Tennessee resulting from severe storms, straight-line winds, tornadoes, and flooding during the period of June 18–24, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, W. Montague Winfield, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this major disaster:

Claiborne, Grainger, Henderson, Knox, Loudon, and Marion Counties for Public Assistance.

All counties within the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–19772 Filed 8–3–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4002–DR; Docket ID FEMA–2011–0001]

Ohio; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Ohio (FEMA–4002–DR), dated July 13, 2011, and related determinations.

DATES: *Effective Date:* July 13, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 13, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Ohio resulting from severe storms and flooding during the period of April 4 to May 15, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Ohio.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael J. Lapinski, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Ohio have been designated as adversely affected by this major disaster:

Adams, Athens, Belmont, Brown, Clermont, Gallia, Guernsey, Hamilton, Hocking, Jackson, Jefferson, Lawrence, Meigs, Monroe, Morgan, Noble, Pike, Ross, Scioto, Vinton, and Washington Counties for Public Assistance.

All counties within the State of Ohio are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–19769 Filed 8–3–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1996–DR; Docket ID FEMA–2011–0001]

Montana; Amendment No. 3 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 Montana (FEMA–1996–DR), dated June 17, 2011, and related determinations.

DATES: *Effective Date:* July 26, 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 Montana is hereby amended to include the Individual Assistance program for 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 June 17, 2011.

Big Horn, Carbon, Cascade, Custer, Fergus, Garfield, Hill, Jefferson, Judith Basin, Lewis and Clark, Musselshell, Petroleum, Sweet Grass, Valley, and Yellowstone Counties and the Blackfeet Indian Reservation, Crow Indian Reservation, and the Fort Belknap Reservation for Individual Assistance (already designated for Public Assistance).

Missoula County for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–19760 Filed 8–3–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1984–DR; Docket ID FEMA–2011–0001]

South Dakota; 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 South Dakota (FEMA–1984–DR), dated May 13, 2011, and related determinations.

DATES: *Effective Date:* July 22, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency

Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 22, 2011.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–19761 Filed 8–3–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4001–DR; Docket ID FEMA–2011–0001]

Vermont; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Vermont (FEMA–4001–DR), dated July 8, 2011, and related determinations.

DATES: *Effective Date:* July 25, 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 Vermont 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 July 8, 2011.

Essex and Orange Counties for Public Assistance. Washington County for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–19762 Filed 8–3–11; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4007–DR; Docket ID FEMA–2011–0001]

Wyoming; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Wyoming (FEMA–4007–DR), dated July 22, 2011, and related determinations.

DATES: *Effective Date:* July 25, 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 Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mark H. Landry, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Mark H. Armstrong as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–19763 Filed 8–3–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4004–DR; Docket ID FEMA–2011–0001]

Puerto Rico; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4004–DR), dated July 14, 2011, and related determinations.

DATES: *Effective Date:* July 28, 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 Commonwealth of Puerto Rico 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 July 14, 2011.

The Municipality of Yabucoa for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals

and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–19767 Filed 8–3–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1997–DR; Docket ID FEMA–2011–0001]

Indiana; Amendment No. 2 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 Indiana (FEMA–1997–DR), dated June 23, 2011, and related determinations.

DATES: *Effective Date:* July 28, 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 Indiana 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 June 23, 2011.

Vermillion and Wayne Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–19764 Filed 8–3–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–79]

Notice of Submission of Proposed Information Collection to OMB Relocation and Real Property Acquisition, Recordkeeping Requirements Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as Amended (URA)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Agencies which receive HUD funding for projects that will involve relocation of owners or tenants displaced due to a project which involves rehabilitation, demolition, or acquisition of property are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA). Agencies are required to document their compliance with the requirements of the URA and applicable implementing program regulations.

DATES: *Comments Due Date:* September 6, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0121) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806. *E-mail: OIRA_Submission@omb.eop.gov, fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Relocation and Real Property Acquisition, Recordkeeping Requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA)

OMB Approval Number: 2506–0121.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: Agencies which receive HUD funding for projects that will involve relocation of owners or tenants displaced due to a project which involves rehabilitation, demolition, or acquisition of property are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA). Agencies are required to document their compliance with the requirements of the URA and applicable implementing program regulations.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	2,000	40		3.5	280,000

Total Estimated Burden Hours: 280,000.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 29, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–19731 Filed 8–3–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5545–D–01]

Delegation of Authority for the Office of Public and Indian Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: Section 7(d) of the Department of Housing and Urban Development (HUD) Act, as amended, authorizes the Secretary to delegate functions, powers, and duties as the Secretary deems necessary. In this delegation of authority, the Secretary delegates authority to the Assistant Secretary and the General Deputy Assistant Secretary for the Office of Public and Indian Housing (PIH) and authorizes the Assistant Secretary and the General Deputy Assistant Secretary to redelegate authority for the administration of certain PIH programs. This delegation revokes and supersedes all prior delegations of authority, including the delegation published on August 4, 2004 (69 FR 47171).

DATES: *Effective Date:* July 15, 2011.

FOR FURTHER INFORMATION CONTACT: Linda Bronsdon, AICP, Program Analyst, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 490 L'Enfant Plaza, Suite 2206, Washington, DC 20024; e-mail address *Linda.K.Bronsdon@hud.gov,* telephone number 202–402–3494. (This is not a toll-free number.) This number may be accessed through TTY by calling the toll-free Federal Relay Service at telephone number 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Previous delegations of authority from the Secretary of HUD to the Assistant Secretary and General Deputy Assistant Secretary for PIH, including the delegation published on August 4, 2004 (69 FR 47171), are hereby revoked and superseded by this delegation of authority.

Section A. Authority Delegated

The Secretary hereby delegates to the Assistant Secretary and General Deputy Assistant Secretary for PIH the authority and responsibility to administer the following programs:

1. Programs under the jurisdiction of the Secretary pursuant to the authority transferred from the Public Housing Administration under section 5(a) of the Department of Housing and Urban Development Act (42 U.S.C. 3534) as amended;

2. Each program of the Department authorized by the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437 *et seq.*) as amended, including, but not limited to, the Public Housing Program, Section 8 Programs (except the following Section 8 project-based programs: New Construction, Substantial Rehabilitation, Loan Management Set-Aside, and Property Disposition) and predecessor programs that are no longer funded but have ongoing commitments;

3. PIH programs for which assistance is provided for or on behalf of public housing agencies (PHAs), public housing residents, or other low-income households; and

4. PIH programs for which assistance is provided for or on behalf of Native Americans, Indian Tribes, Alaska Native Villages, Native Hawaiians, tribal entities, tribally designated housing entities, or tribal housing resident organizations. This includes, but is not limited to, programs authorized pursuant to the Native American Housing Assistance and Self-Determination Act of 1966 (NAHASDA) (25 U.S.C. 4101 *et seq.*), as amended; the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages authorized by section 106 of the Housing and Community Development Act of 1974 (42 U.S.C. 5306); the Indian Home Loan Guarantee Program authorized by section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a); the Native Hawaiian Loan Guarantee Program authorized by section 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13b); and Rural Innovation Fund grants and Rural Housing and Economic Development grants awarded to Indian Tribes and tribal entities by the Assistant Secretary for Community Planning and Development, as may be authorized by HUD appropriations acts.

Section B. Authority Excepted

Authority delegated under section A does not include the power to sue or be sued.

Section C. Authority To Redelegate

In accordance with a written redelegation of authority, the Assistant Secretary and the General Deputy Assistant Secretary for PIH may further redelegate specific authority. Redelegated authority to PIH Deputy Assistant Secretaries or other ranking PIH program officials does not supersede the authority of the Assistant Secretary as designee of the Secretary.

Section D. Exceptions to Authority To Redelegate

The authority to redelegate does not include any power or authority under law that specifically requires the action of the Secretary of HUD, the Assistant Secretary of PIH, or the General Deputy Assistant Secretary of PIH. Authority excepted includes authority to:

1. Issue or waive regulations, including waivers pursuant to 24 CFR 982.161(c) that permit HUD field offices to act on waivers of conflict of interests. Public Housing Field Office Directors are not to exercise this authority.

2. Issue notices to clarify regulations;

3. Issue notices of funding availability (NOFAs), handbooks, notices, and other HUD policy directives;

4. Waive any provision of an annual contributions contract (ACC), including a determination of substantial breach or default in response to any violation of statute or regulations;

5. Impose remedies for substantial noncompliance with the requirements of NAHASDA (25 U.S.C. 4101 *et seq.*) and/or its implementing regulations; and

6. Declare a failure to comply with the regulations governing Community Development Block Grants for Indian Tribes and Alaska Native Villages.

Section E. Authority Superseded

The previous delegations of authority from the Secretary of HUD to the Assistant Secretary for PIH are hereby revoked and superseded by this delegation of authority, including the previous delegation of authority for PIH published on August 4, 2004 (69 FR 47171).

Section F. Authority To Represent HUD

This consolidated delegation of authority is conclusive evidence of the authority of the Assistant Secretary for PIH, the General Deputy Assistant Secretary, or those with redelegated authority, to represent the Secretary and to execute, in the name of the Secretary, any instrument or document relinquishing or transferring any right, title, or interest of the Department in real or personal property. The Secretary may revoke the authority authorized herein, in whole or in part, at any time.

Section G. Consultation and Coordination With the General Counsel

The General Counsel shall consult and advise the Assistant Secretary for PIH and the General Deputy Assistant Secretary, as required and when requested, and shall enter into such protocols as administratively agreed to by the General Counsel and the Assistant Secretary for PIH or the General Deputy Assistant Secretary for PIH. This consolidated delegation of authority is to be exercised consistently with the delegation from the Secretary to the General Counsel.

Authority: Section 7 (d) of the Department of Housing and Urban Development Act, as amended, (42 U.S.C. 3535(d).

Dated: July 15, 2011.

Shaun Donovan,

Secretary.

[FR Doc. 2011–19723 Filed 8–3–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5493–N–02]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Administration under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under section 221(g)(4) of the Act during the 6-month period beginning July 1, 2011, is 3 percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning July 1, 2011, is 4⅛ percent. However, as a result of an amendment to section 224 of the Act, if an insurance claim relating to a mortgage insured under sections 203 or 234 of the Act and endorsed for insurance after January 23, 2004, is paid in cash, the debenture interest rate for purposes of calculating a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

FOR FURTHER INFORMATION CONTACT: Yong Sun, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5148, Washington, DC 20410–8000; telephone (202) 402–4778 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning July 1, 2011, is 4⅛ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 4⅛ percent for the 6-month period beginning July 1, 2011. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the latter 6 months of 2011.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	on or after	prior to
9½	Jan. 1, 1980	July 1, 1980
9⅞	July 1, 1980	Jan. 1, 1981
11¾	Jan. 1, 1981	July 1, 1981
12⅞	July 1, 1981	Jan. 1, 1982
12¾	Jan. 1, 1982	Jan. 1, 1983
10¼	Jan. 1, 1983	July 1, 1983
10⅜	July 1, 1983	Jan. 1, 1984
11½	Jan. 1, 1984	July 1, 1984
13⅜	July 1, 1984	Jan. 1, 1985
11⅝	Jan. 1, 1985	July 1, 1985
11⅛	July 1, 1985	Jan. 1, 1986
10¼	Jan. 1, 1986	July 1, 1986
8¼	July 1, 1986	Jan. 1. 1987
8	Jan. 1, 1987	July 1, 1987
9	July 1, 1987	Jan. 1, 1988
9⅛	Jan. 1, 1988	July 1, 1988
9⅜	July 1, 1988	Jan. 1, 1989
9¼	Jan. 1, 1989	July 1, 1989
9	July 1, 1989	Jan. 1, 1990
8⅛	Jan. 1, 1990	July 1, 1990
9	July 1, 1990	Jan. 1, 1991
8¾	Jan. 1, 1991	July 1, 1991
8½	July 1, 1991	Jan. 1, 1992
8	Jan. 1, 1992	July 1, 1992
8	July 1, 1992	Jan. 1, 1993
7¾	Jan. 1, 1993	July 1, 1993
7	July 1, 1993	Jan. 1, 1994
6⅝	Jan. 1, 1994	July 1, 1994
7¾	July 1, 1994	Jan. 1, 1995
8⅜	Jan. 1, 1995	July 1, 1995
7¼	July 1, 1995	Jan. 1, 1996
6½	Jan. 1, 1996	July 1, 1996
7¼	July 1, 1996	Jan. 1, 1997
6¾	Jan. 1, 1997	July 1, 1997
7⅛	July 1, 1997	Jan. 1, 1998
6⅜	Jan. 1, 1998	July 1, 1998
6⅛	July 1, 1998	Jan. 1, 1999
5½	Jan. 1, 1999	July 1, 1999
6⅛	July 1, 1999	Jan. 1, 2000
6½	Jan. 1, 2000	July 1, 2000
6½	July 1, 2000	Jan. 1, 2001

Effective interest rate	on or after	prior to
6	Jan. 1, 2001	July 1, 2001
5⅞	July 1, 2001	Jan. 1, 2002
5¼	Jan. 1, 2002	July 1, 2002
5¾	July 1, 2002	Jan. 1, 2003
5	Jan. 1, 2003	July 1, 2003
4½	July 1, 2003	Jan. 1, 2004
5⅛	Jan. 1, 2004	July 1, 2004
5½	July 1, 2004	Jan. 1, 2005
4⅞	Jan. 1, 2005	July 1, 2005
4½	July 1, 2005	Jan. 1, 2006
4⅞	Jan. 1, 2006	July 1, 2006
5⅜	July 1, 2006	Jan. 1, 2007
4¾	Jan. 1, 2007	July 1, 2007
5	July 1, 2007	Jan. 1, 2008
4½	Jan. 1, 2008	July 1, 2008
4⅝	July 1, 2008	Jan. 1, 2009
4⅛	Jan. 1, 2009	July 1, 2009
4⅛	July 1, 2009	Jan. 1, 2010
4¼	Jan. 1, 2010	July 1, 2010
4⅛	July 1, 2010	Jan. 1, 2011
3⅞	Jan. 1, 2011	July 1, 2011
4⅛	July 1, 2011	Jan. 1, 2012

Section 215 of Division G, Title II of Public Law 108–199, enacted January 23, 2004 (HUD's 2004 Appropriations Act) amended section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, for all claims paid in cash on mortgages insured under section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration has codified this provision in HUD regulations at 24 CFR 203.405(b) and 24 CFR 203.479(b).

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the 6-month period beginning July 1, 2011, is 3 percent.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: July 28, 2011.

Carol J. Galante,

Acting Assistant Secretary for Housing–Federal Housing Commissioner.

[FR Doc. 2011–19735 Filed 8–3–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5527–N–02]

Notice of HUD-Held Multifamily Loan Sale (MLS 2011–2)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sale of mortgage loans.

SUMMARY: This notice announces HUD's sale of certain unsubsidized multifamily mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed bid sale (MLS 2011–2). This notice also describes generally the bidding process used for the sale and certain persons who were ineligible to bid. The Bidder's Information Package (BIP) was made available online to qualified bidders on June 29, 2011. Submission of bids for the loans were required on the bid date, which was August 3, 2011. Awards were made no later than August 4, 2011. Closings are expected to take place by August 19, 2011.

FOR FURTHER INFORMATION CONTACT: John Lucey, Deputy Director, Asset Sales Office, Room 3136, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000; telephone number 202–708–2625, extension 3927. Hearing- or speech-impaired individuals may call 202–708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD announces the sale in MLS 2011–2 of certain unsubsidized mortgage loans (Mortgage Loans) secured by multifamily properties located throughout the United States. The Mortgage Loans were comprised of non-performing mortgage loans. A final listing of the Mortgage Loans was included in the BIP. The Mortgage Loans were sold without FHA insurance and with servicing released. HUD offered qualified bidders the opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans may be stratified for bidding purposes into several mortgage loan pools. Each pool may contain Mortgage Loans that generally have similar performance, property type, geographic location, lien position and other characteristics. Qualified bidders were permited to submit bids on one or more pools of Mortgage Loans or on individual loans. A mortgagor who was a qualified bidder was permitted to submit an individual bid on its own Mortgage Loan. Interested Mortgagors were advised to review the Qualification Statement to determine whether they were eligible to qualify to submit bids on one or more pools of Mortgage Loans or on individual loans in MLS 2011–2.

The Bidding Process

The BIP described in detail the procedure for bidding in MLS 2011–2. The BIP also included a standardized non-negotiable loan sale agreement (Loan Sale Agreement).

As part of its bid, each bidder was required to submit a deposit equal to the greater of $100,000 or 10% of the bid price. In the event the bidder's aggregate bid was less than $100,000.00, the minimum deposit was not less than fifty percent (50%) of the bidder's aggregate bid. HUD evaluated the bids submitted and determined the successful bids in its sole and absolute discretion. If a bidder was successful, the bidder's deposit was non-refundable and will be applied toward the purchase price. Deposits were returned to unsuccessful bidders. Closings are scheduled to occur by August 19, 2011.

These were the essential terms of sale. The Loan Sale Agreement, included in the BIP, contained additional terms and details. To ensure a competitive bidding process, the terms of the bidding process and the Loan Sale Agreement were not subject to negotiation.

Due Diligence Review

The BIP described the due diligence process for reviewing loan files in MLS 2011–2. Qualified bidders were able to access loan information remotely via a high-speed Internet connection. Further information on performing due diligence review of the Mortgage Loans was provided in the BIP.

Mortgage Loan Sale Policy

HUD reserved the right to add Mortgage Loans to or delete Mortgage

Loans from MLS 2011–2 at any time prior to the Award Date. HUD also reserved the right to reject any and all bids, in whole or in part, without prejudice to HUD's right to include any Mortgage Loans in a later sale. Mortgage Loans will not be withdrawn after the Award Date except as is specifically provided in the Loan Sale Agreement.

This sale of unsubsidized mortgage loans was pursuant to Section 204(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1997, 12 U.S.C. 1715z-11a(a).

Mortgage Loan Sale Procedure

HUD selected a competitive sale as the method to sell the Mortgage Loans. This method of sale optimizes HUD's return on the sale of these Mortgage Loans, afforded the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provided the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Eligibility

In order to bid in the sale, prospective bidders were required to complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. The following individuals and entities were ineligible to bid on any of the Mortgage Loans included in MLS 2011–2:

(1) Any employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;

(2) Any individual or entity that is debarred, suspended, or excluded from doing business with HUD pursuant to Title 24 of the Code of Federal Regulations, part 24, and Title 2 of the Code of Federal Regulations, part 2424;

(3) Any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for, or on behalf of, HUD in connection with MLS 2011–2;

(4) Any individual who was a principal, partner, director, agent or employee of any entity or individual described in subparagraph 3 above, at any time during which the entity or individual performed services for or on behalf of HUD in connection with MLS 2011–2;

(5) Any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 4 above to assist in preparing any of its bids on the Mortgage Loans;

(6) Any individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in MLS 2011–2;

(7) Any affiliate, principal or employee of any person or entity that, within the two-year period prior to August 1, 2011, serviced any of the Mortgage Loans or performed other services for or on behalf of HUD;

(8) Any contractor or subcontractor to HUD that otherwise had access to information concerning the Mortgage Loans on behalf of HUD or provided services to any person or entity which, within the two-year period prior to August 1, 2011, had access to information with respect to the Mortgage Loans on behalf of HUD;

(9) Any employee, officer, director or any other person that provides or will provide services to the potential bidder with respect to such Mortgage Loans during any warranty period established for the Loan Sale, that (x) serviced any of the Mortgage Loans or performed other services for or on behalf of HUD or (y) within the two-year period prior to August 1, 2011, provided services to any person or entity which serviced, performed services or otherwise had access to information with respect to the Mortgage Loans for or on behalf of HUD;

(10) Any mortgagor or operator that failed to submit to HUD on or before June 30, 2011, audited financial statements for fiscal years 2007 through 2010 (for such time as the project has been in operation or the prospective bidder served as operator, if less than three (3) years) for a project securing a Mortgage Loan;

(11) Any individual or entity and any Related Party (as such term is defined in the Qualification Statement) of such individual or entity that is a mortgagor in any of HUD's multifamily and or healthcare housing programs and that is in default under such mortgage loan or is in violation of any regulatory or business agreements with HUD, unless such default or violation is cured on or before June 30, 2011;

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding MLS 2011–2, including, but not limited to, the identity of any successful bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to MLS 2011–2, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applied to MLS 2011–2 and does not establish HUD's policy for the sale of other mortgage loans.

Dated: July 29, 2011.

Carol J. Galante,

Acting Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 2011–19736 Filed 8–3–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5545–D–02]

Order of Succession for the Office of Public and Indian Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of order of succession.

SUMMARY: In this notice, the Assistant Secretary for Public and Indian Housing designates the order of succession for the Office of Public and Indian Housing (PIH). This order of succession revokes and supersedes all prior orders of succession for PIH, including that published on October 18, 2006 (71 FR 61500).

DATES: *Effective Date:* July 15, 2011.

FOR FURTHER INFORMATION CONTACT: Linda Bronsdon, AICP, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 490 L'Enfant Plaza, Washington, DC 20024, e-mail address *Linda.K.Bronsdon@hud.gov,* telephone number 202–402–3494. (This is not a toll-free number.) This number may be accessed through TTY by calling the toll-free Federal Relay Service at telephone number 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for PIH is issuing this order of succession of officials to perform the duties and functions of PIH when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the office. This order of succession is subject to the provisions of the Federal Vacancy Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication revokes and supersedes all prior orders of succession for PIH, including that published on October 18, 2006 (71 FR 61500).

Accordingly, the Assistant Secretary for PIH designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the Assistant Secretary of PIH, the following officials within PIH are hereby designated to exercise the powers and perform the duties of the Assistant Secretary for PIH, including the authority to waive regulations:

(1) General Deputy Assistant Secretary for Public and Indian Housing;

(2) Deputy Assistant Secretary for Public Housing and Voucher Programs;

(3) Deputy Assistant Secretary for Public Housing Investments;

(4) Deputy Assistant Secretary for Field Operations;

(5) Deputy Assistant Secretary for the Real Estate Assessment Center;

(6) Deputy Assistant Secretary for Office of Native American Programs;

(7) Deputy Assistant Secretary for Policy, Program and Legislative Initiatives;

(8) Region 7/8 Regional Public Housing; and

(9) Region 6 Regional Public Housing.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This order of succession supersedes all prior order of succession for the Assistant Secretary for Public and Indian Housing, including that published on October 18, 2006 (71 FR 61500).

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 15, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2011–19724 Filed 8–3–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5545–D–05]

Redelegation of Authority to Office of Native American Program (ONAP) Area Office Administrators and Office Directors

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: Section 7(d) of the Department of Housing and Urban Development Act, as amended, provides authority to the Secretary to delegate functions, powers, and duties as the Secretary deems necessary. By separate notice published in today's **Federal Register**, the Assistant Secretary for Public and Indian Housing delegates authority, through the General Deputy Assistant Secretary, to Deputy Assistant Secretary for the Office of Native American Programs to perform program administration, oversight and enforcement responsibilities for certain of HUD's programs directed to Native Americans, and authorizes the Deputy Assistant Secretary for the Office of Native American Programs to redelegate such authority. In this redelegation of authority, the Deputy Assistant Secretary for the Office of Native American Programs (ONAP) redelegates authority for the administration, oversight and enforcement of certain PIH programs.

DATES: *Effective Date:* July 15, 2011

FOR FURTHER INFORMATION CONTACT: Linda Bronsdon, AICP, Program Analyst, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 490 L'Enfant Plaza, Suite 2206, Washington, DC 20024, e-mail address *Linda.K.Bronsdon@hud.gov,* telephone number 202–402–3494. (This is not a toll-free number.) This number may be accessed through TTY by calling the toll-free Federal Relay Service at telephone number 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The management action plan (MAP) for Public and Indian Housing (PIH) calls for the implementation of relevant redelegation to field offices to implement HUD's Strategic Goal 5 to transform the way HUD does business by delegating authority and accountability. All prior redelegations of authority between the Deputy Assistant Secretary for ONAP and ONAP officers, including the redelegations published on September 9, 2003 (68 FR 53195 through 53198), are hereby revoked and superseded by this redelegation of authority.

Section A. Authority Redelegated to Area Office Administrators and Office Directors

Authority is hereby redelegated from the Deputy Assistant Secretary for ONAP to ONAP Area Office Administrators, the Director of the Office of Grants Management, and the Director of the Office of Grants Evaluation for administration, oversight and enforcement of the following:

1. PIH programs for which assistance is provided for or on behalf of Native Americans, Indian Tribes, Alaska Native Villages, Native Hawaiians, tribal entities, tribally designated housing entities, or tribal housing resident organizations;

2. Programs authorized pursuant to the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 *et seq.*), as amended;

3. Community Development Block Grant Program for Indian Tribes and Alaska Native Villages authorized by section 106 of the Housing and Community Development Act of 1974 (42 U.S.C. 5306);

4. Indian Home Loan Guarantee Program authorized by section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a);

5. Native Hawaiian Loan Guarantee Program authorized by section 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13b);

6. Rural Innovation Fund grants and Rural Housing and Economic Development grants awarded to Indian tribes and tribal entities by the Assistant Secretary for Community Planning and Development, as may be authorized by HUD appropriations acts. ONAP Area Office Administrators may issue letters of warning advising grantees of performance problems and describing corrective actions. The Office of Community Planning and Development retains enforcement authority beyond the letter of warning stage;

7. Authority to execute all necessary agreements relating to the programs listed in this section, including but not limited to grant agreements;

8. Authority of an ONAP Area Office Administrator to accept and approve a paper application under the Indian Community Development Block Grant (ICDBG) notice of funding availability (NOFA) as published on grants.gov upon a showing of good cause. Separate

guidance on processing such waivers will be provided to the Area Offices;

9. Authority to approve variances above the published Total Development Costs (TDC) for Affordable Housing under NAHASDA;

10. Authority to approve model activities under NAHASDA that have previously been determined by HUD to be designed to carry out the purposes of NAHASDA;

11. Authority to review performance reports submitted by a Tribe or a tribally designated entity and issue reports based on such review;

12. Authority to enter into Voluntary Compliance Agreements with recipients under the Indian Housing Block Grant Program, Native Hawaiian Housing Block Grant Program, or Community Development Block Grant Program for Indian Tribes and Alaska Native Villages prior to the issuance of a Notice of Intent to Impose Remedies; and

13. Authority to waive the applicability of the Indian Housing Plan requirements under section 101(b)(1) of NAHASDA in whole or in part for a period of not more than 90 days in accordance with the waiver authority provided in section 101(b)(2) of the Act, upon a determination that the recipient's failure to comply is due to exigent circumstances beyond its control.

Section B. Authority Redelegated to Director of Office of Loan Guarantee

Authority is redelegated from the Deputy Assistant Secretary for ONAP to the Director of the Office of Loan Guarantee for administration, oversight and enforcement of the following:

1. Indian Home Loan Guarantee Program authorized by section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a);

2. Native Hawaiian Loan Guarantee Program authorized by section 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13b); and

3. Title VI of NAHASDA (25 U.S.C. 4191–4195).

Section C. Authority Excepted

This redelegation of authority does not include any power or authority under law that specifically requires the action of either the Secretary of HUD, the Assistant Secretary of PIH, or the General Deputy Assistant Secretary. Authority excepted includes the authority to:

1. Issue or waive regulations. ONAP Area Office Administrators may not exercise this authority;

2. Issue notices to clarify regulations;

3. Issue notices of funding availability (NOFAs), handbooks, notices and other HUD policy directives;

4. Impose remedies for substantial noncompliance with the requirements of the NAHASDA (25 U.S.C. 4101 *et seq.*) and/or its implementing regulations; and

5. Declare a failure to comply with the regulations of the Community Development Block Grants for Indian Tribes and Alaska Native Villages.

Section D. Exceptions to Authority of Deputy Assistant Secretary for ONAP To Redelegate

Some authority may not be redelegated from the Deputy Assistant Secretary for ONAP to an ONAP Area Office Administrator or other ranking program official. The power and authority to take the following actions is not redelegated to an ONAP Area Office Administrator or other ranking program official and remains with the Deputy Assistant Secretary for ONAP:

1. Offer new legislative proposals to Congress;

2. Allocate or reallocate funding among area offices;

3. Approve grant extensions or grant requirements, unless specifically or otherwise noted; and

4. Issue a Notice of Intent to Impose Remedies under the Indian Housing Block Grant Program, Native Hawaiian Housing Block Grant Program, or Community Development Block Grant Program for Indian Tribes and Alaska Native Villages.

Section E. Authority To Further Redelegate

In accordance with a written redelegation of authority, ONAP Area Office Administrators or other ranking program officials may further redelegate specific authority. Other redelegated authority does not supersede the authority of a Deputy Assistant Secretary as designee of the Assistant Secretary for PIH.

Section F. Authority Superseded

All prior redelegations of authority between the Deputy Assistant Secretary for ONAP and ONAP officers are hereby revoked and superseded by this redelegation of authority, including the redelegations published on September 9, 2003 (68 FR 53195 through 53198).

Section G. Actions Ratified

Actions, including limited denials of participation (LDP), but not including actions that violate NAHASDA or federal regulations, previously taken by ONAP Area Office Administrators or other ranking program officials through the effective date of this redelegation with respect to programs and matters listed in this redelegation of authority, are hereby ratified.

Section H. Consultation and Coordination With the General Counsel

The General Counsel shall consult and advise the Assistant Secretary for PIH, the General Deputy Assistant Secretary, Deputy Assistant Secretary for Native American Programs, Area Office Administrators and Officer Directors, and all others covered by this redelegation, as required and when requested, and shall enter into such protocols as administratively agreed to by the General Counsel and the Assistant Secretary for PIH or the General Deputy Assistant Secretary. This consolidated delegation of authority is to be exercised consistently with the delegation from the Secretary to the General Counsel.

Authority: Section 7 (d) of the Department of Housing and Urban Development Act, as amended, (42 U.S.C. 3535(d).

Dated: July 15, 2011.

Rodger J. Boyd,

Deputy Assistant Secretary, Office of Native American Programs.

[FR Doc. 2011–19730 Filed 8–3–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5545–D–04]

Redelegation of Authority to Regional Public Housing Directors

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: Section 7(d) of the Department of Housing and Urban Development Act, as amended, authorizes the Secretary to delegate functions, powers, and duties as the Secretary deems necessary. By separate notice published in today's **Federal Register**, the Secretary delegates to the Assistant Secretary for Public and Indian Housing and the General Deputy Assistant Secretary for Public and Indian Housing authority for the administration of certain Public and Indian Housing (PIH) programs, and authorizes the Assistant Secretary to further redelegate such authority. In this Redelegation of Authority for Public and Indian Housing (PIH), the Assistant Secretary for PIH redelegates authority through the PIH General Deputy

Assistant Secretary to the Regional Public Housing Directors for the administration of certain PIH programs. This notice also supersedes all prior redelegations of authority to the Regional Public Housing Directors.

DATES: *Effective Date:* July 15, 2011.

FOR FURTHER INFORMATION CONTACT: Linda Bronsdon, AICP, Program Analyst, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 490 L'Enfant Plaza, Suite 2206, Washington, DC 20024, e-mail address *Linda.K.Bronsdon@hud.gov,* telephone number 202–402–3494. (This is not a toll-free number.) This number may be accessed through TTY by calling the toll-free Federal Relay Service at telephone number 1–800–877–8339.

SUPPLEMENTARY INFORMATION: By separate notice published in today's **Federal Register**, the Secretary delegates to the Assistant Secretary for PIH and the General Deputy Assistant Secretary for PIH authority for the administration of certain PIH programs, and authorizes the Assistant Secretary to further redelegate such authority. In this consolidated redelegation of authority, the Assistant Secretary for PIH redelegates authority through the General Deputy Assistant Secretary for PIH, to the Regional Public Housing Directors for the administration of certain PIH programs. All previous redelegations of authority to the Regional Public Housing Directors, including the ''Redelegation of Authority Regarding Local Public Housing Program Center Coordinators'' (70 FR 1454, published January 7, 2005 with an effective date of December 23, 2004), are hereby revoked and superseded by this redelegation of authority. This consolidated redelegation of authority implements, in part, the Department's Strategic Plan to transform the way HUD does business.

Section A. Authority Redelegated

Authority is hereby redelegated by the Assistant Secretary, through the Deputy Assistant Secretary for PIH, to Regional Public Housing Directors for administration of the following:

1. Programs under the jurisdiction of the Secretary of HUD that are carried out pursuant to the authority transferred from the Public Housing Administration under section 5(a) of the HUD Act (42 U.S.C 3534) as amended;

2. Programs authorized pursuant to the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437 *et seq.*) as amended, including but not limited to the Public Housing Program, Section 8 Programs (except the following Section 8 Project-Based programs: New Construction, Substantial Rehabilitation, Loan Management Set-Aside and Property Disposition); and predecessor programs that are no longer funded but have ongoing commitments;

3. PIH programs for which assistance is provided for or on behalf of public housing agencies (PHAs), public housing residents or other low-income households; and

4. Except as noted in section C, all powers and authorities of the Deputy Assistant Secretary of the Office of Field Operations necessary to carry out Public and Indian Housing Programs and matters.

Section B. Program Specific Functions

In addition to the general redelegations listed in section A, specific authority is hereby redelegated to Regional Public Housing Directors for administration of the following:

1. Annual Contributions Contract (ACCs) amendments for annual grants under the Capital Fund program, but excluding the waiver of ACC provisions;

2. Execution of ACC amendments or releases of Declarations of Trust (DOTs) for Capital Fund Financing or mixed finance transactions when requested pursuant to an approval letter by the Deputy Assistant Secretary for the Office of Public Housing Investments.

3. Release of DOTs pursuant to a section 18 approval;

4. Coordination with the respective program office to address specific programs including Family Self Sufficiency (FSS), Resident Opportunities and Supportive Services (ROSS), Family Unification, HOPE for Elderly Independence and Service Coordinators, HUD–Veterans Administration Supportive Housing, and Moving to Opportunity and Moving to Work;

5. Concurrent approval authority for energy performance contracts (EPC) (EPCs may be approved in the Field Offices or in Headquarters);

6. Actions associated with the renewal of designated housing plans;

7. Execution of letters of support and correspondence with local congressional offices for programs, projects and ventures within the appropriate region;

8. Approval of requests by PHAs to change their fiscal year end (FYE) dates subject to coordination with the Real Estate Assessment Center for PHAs with public housing units and with the Financial Management Division of the Housing Choice Vouchers program for vouchers-only PHAs;

9. Coordination of audit responses through PIH's Audit Liaison Officer on reports by the U.S. General Accounting Office and through PIH's Action Official (AO) for reports by HUD's Office of Inspector General; and

10. Approval of grant extensions under the Public Housing Family Self-Sufficiency (PH–FSS) and Resident Opportunities Self Sufficiency (ROSS) programs. Such grant extensions may be made at the field level for any length of time deemed reasonable by the Public Housing Director or designee; denials of FSS and ROSS extensions remain with the Deputy Assistant Secretary of the Office of Public Housing Investments.

Section C. Excepted Authority That Remains With the Secretary or Assistant Secretary

The redelegation of authority does not include any power or authority under law that specifically requires the action of either the Secretary of HUD, the Assistant Secretary of PIH, or the General Deputy Assistant Secretary for PIH. Such excepted authority includes, but is not limited to authority to:

1. Issue or waive regulations, including waivers pursuant to 24 CFR 982.161(c) which permits HUD field offices to act on waivers of conflict of interests. Regional Public Housing Directors and Public Housing Field Office Directors are to not exercise this authority;

2. Issue notices to clarify regulations;

3. Issue notices of funding availability (NOFAs), handbooks, notices and other HUD policy directives;

4. Waive any provision of an ACC including a determination of substantial breach or default; taking possession or title of property from a PHA; and declaring breach or default in response to any violation of statute or regulations.

Section D. Excepted Authority That Remains With Deputy Assistant Secretaries

The redelegation of authority does not include any power or authority under law that specifically requires the action of a PIH Deputy Assistant Secretary. This excepted authority includes, but is not limited to authority to:

1. Offer new legislative proposals to Congress;

2. Allocate or reallocate funding amongst field offices;

3. Approve remedies for noncompliance requiring notice and opportunity for administrative hearing;

4. Waive provisions or instructions of PIH directives relating to the obligation or payment of operating subsidies;

5. Solicit competitive proposals for the management of all or part of public housing administered by a PHA;

6. Approve special rent adjustments;

7. Conduct tax credit and/or subsidy layering reviews;

8. Approve PHA requests for exception payment standards that exceed 120 percent of the fair market rent (FMR); and

9. Approve grant extensions, unless specifically or otherwise noted. Approval of grant extensions under FSS and ROSS may be extended by Public Housing Directors. Extensions may be made by Regional Public Housing Directors for any length of time deemed reasonable; denials of FSS and ROSS extensions remain with the Deputy Assistant Secretary of the Office of Public Housing Investments.

Section E. Authority To Further Redelegate

The authority not excepted herein may be further redelegated, as appropriate, by Regional Public Housing Directors to Public Housing Hub Directors, Program Center Coordinators and other ranking program officials on site or out-stationed in accordance with a written redelegation of authority. Such subsequent redelegations may follow the format presented herein or may be a memorandum stating that specific authority is hereby designated. Time limits for such any further redelegated authority may be added.

Section F. Actions Ratified

The Deputy Assistant Secretaries hereby ratify all actions, including limited denials of participation, but not including actions that violate the 1937 Act, federal regulations or ACC provisions, previously taken by Regional Public Housing Directors, PIH Hub Directors, Deputy Directors, Program Center Coordinators, Division Directors of Public Housing in HUD Field Offices, under prior redelegations, including those noted below, through the effective date of this redelegation:

1. **Federal Register** Docket Number 4837–D–32 ''Notice of Revocation and Redelegation of Authority for Indian and Alaska Native Programs'', (68 FR 53197, published September 9, 2003 with an effective date of July 18, 2003) revoked prior redelegations to the Deputy Director for Headquarter Operations and the Deputy for Field Operations;

2. **Federal Register** Docket Number 4837–D–56 ''Redelegation of Authority Regarding Local Public Housing Program Center Coordinators'', (70 FR 1454, published January 7, 2005 with an effective date of December 23, 2004) redelegated approval authority from the Assistant Secretary for PIH for renewals of designated housing plans pursuant to section 7 of the United States Housing Act of 1937. Approval of new designated housing plans was not redelegated.

3. **Federal Register** Docket Number 5076–D–13 ''Delegation of Authority to the Deputy Assistant Secretary for the Office of Public Housing Investments'', (71 Federal Register 70783, published December 6, 2006 with an effective date of November 28, 2006) redelegated authority from the Assistant Secretary to Public Housing Field Office Directors to execute amendments to the ACC associated with proposals submitted by PHAs pursuant to section 30, which have been approved by either the Assistant Secretary, General Deputy Assistant Secretary, or the Deputy Assistant Secretary of OPHI.

Section G. Authority Superseded

All previous redelegations of authority to the Regional Public Housing Directors are hereby revoked and superseded, including the ''Redelegation of Authority Regarding Local Public Housing Program Center Coordinators'', published on January 7, 2005 (70 FR 1454).

Section H. Consultation and Coordination With the General Counsel

The General Counsel shall consult and advise the Assistant Secretary for PIH, the General Deputy Assistant Secretary, Deputy Assistant Secretaries, Regional Public Housing Directors and all others covered by this redelegation, as required and when requested and shall enter into such protocols as administratively agreed to by the General Counsel and the Assistant Secretary for PIH or the General Deputy Assistant Secretary. This consolidated delegation of authority is to be exercised consistently with the delegation from the Secretary to the General Counsel.

Authority: Section 7 (d) of the Department of Housing and Urban Development Act, as amended, (42 U.S.C. 3535(d)).

Dated: July 15, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2011–19729 Filed 8–3–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5545–D–03]

Redelegation of Authority to the Deputy Assistant Secretaries for Public and Indian Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: Section 7(d) of the Department of Housing and Urban Development Act, as amended, authorizes the Secretary to delegate functions, powers, and duties as the Secretary deems necessary. By separate notice published in today's **Federal Register**, the Secretary delegates to the Assistant Secretary for Public and Indian Housing and the General Deputy Assistant Secretary for Public and Indian Housing authority for the administration of certain Public and Indian Housing (PIH) programs, and authorizes the Assistant Secretary to further redelegate such authority. In this consolidated redelegation of authority the Assistant Secretary for PIH redelegates to the PIH Deputy Assistant Secretaries authority for the administration of certain PIH programs.

DATES: *Effective Date:* July 15, 2011.

FOR FURTHER INFORMATION CONTACT: Linda Bronsdon, AICP, Program Analyst, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 490 L'Enfant Plaza, Suite 2206, Washington, DC 20024, e-mail address, *Linda.K.Bronsdon@hud.gov,* telephone number 202–402–3494. (This is not a toll-free number.) This number may be accessed through TTY by calling the toll-free Federal Relay Service at telephone number 1–800–877–8339.

SUPPLEMENTARY INFORMATION: By separate notice published in today's **Federal Register**, the Secretary delegates to the Assistant Secretary for Public and Indian Housing and the General Deputy Assistant Secretary for Public and Indian Housing authority for the administration of certain PIH programs, and authorizes the Assistant Secretary to further redelegate such authority. In this consolidated redelegation of authority, the Assistant Secretary for PIH redelegates, through the General Deputy Assistant Secretary for PIH, to the Deputy Assistant Secretaries authority for the administration of certain PIH programs. All previous delegations of authority from the

Assistant Secretary for PIH to PIH's Deputy Assistant Secretaries are hereby revoked and superseded by this consolidated redelegation of authority, including the redelegation of authority from the PIH General Deputy Assistant Secretary to PIH's Deputy Assistant Secretaries published on January 13, 2009 (74 FR 1704). This consolidated redelegation of authority implements, in part, the Department's Strategic Plan to transform the way HUD does business.

Section A. Authority Redelegated

The Assistant Secretary for PIH hereby redelegates, through the General Deputy Assistant Secretary for PIH, to Deputy Assistant Secretaries for PIH the following authorities:

1. Programs under the jurisdiction of the Secretary carried out pursuant to the authority transferred from the Public Housing Administration under section 5(a) of the Department of Housing and Urban Development Act (42 U.S.C. 3534) as amended;
2. Each program of the Department authorized pursuant to the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437 *et seq.*) as amended, including but not limited to the Public Housing Program, Section 8 Programs (except the following Section 8 Project-Based Programs: New Construction, Substantial Rehabilitation, Loan Management Set-Aside and Property Disposition) and predecessor programs that are no longer funded but have ongoing commitments;
3. PIH programs for which assistance is provided for or on behalf of public housing agencies (PHAs), public housing residents or other low-income households; and
4. PIH programs for which assistance is provided for or on behalf of Native Americans, Indian Tribes, Alaska Native Villages, Native Hawaiians, tribal entities, tribally designated housing entities, or tribal housing resident organizations, as further described in Section H.

Section B. Authority Excepted

The redelegation of authority to a Deputy Assistant Secretary does not include any authority under law specifically requiring the action of the Secretary of HUD, Assistant Secretary of PIH, or the General Deputy Assistant Secretary for PIH. Authority excepted includes authority to:

1. Issue or waive regulations, including waivers pursuant to 24 CFR 982.161(c), which permits HUD field offices to act on waivers of conflict of interests. Public Housing Field Office Directors are not to exercise this authority;
2. Issue notices to clarify regulations;
3. Issue notices of funding availability (NOFAs), handbooks, notices and other HUD policy directives; and
4. Waive any provision of an Annual Contributions Contract (ACC) including a determination of substantial breach or default in response to any violation of statute or regulations;
5. Impose remedies for substantial noncompliance with the requirements of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 *et seq.*) and/or it's implementing regulations;
6. Declare a failure to comply with the regulations of the Community Development Block Grants for Indian Tribes and Alaska Native Villages;
7. Execute Moving to Work agreements or amendments thereto; and
8. Issue limited denials of participation (LDP).

Section C. Authority To Further Redelegate

In accordance with a written redelegation of authority, a Deputy Assistant Secretary may further redelegate specific authority to PIH Directors or to other ranking PIH program officials. Redelegated authority to PIH Directors or other ranking PIH program officials does not supersede the authority of a Deputy Assistant Secretary as designee of the Assistant Secretary for PIH.

Section D. Exceptions to Authority To Further Redelegate

Authority redelegated from a Deputy Assistant Secretary to PIH Directors or other ranking PIH program officials is limited. Excepted power and authority, meaning authority that may not be further redelegated by a Deputy Assistant Secretary, includes authority to:

1. Offer new legislative proposals to Congress;
2. Allocate or reallocate funding among field offices;
3. Approve remedies for noncompliance requiring notice and opportunity for administrative hearing;
4. Issue a Notice of Intent to Impose Remedies under the Indian Housing Block Grant Program, Native Hawaiian Housing Block Grant Program, or Community Development Block Grant Program for Indian Tribes and Alaska Native Villages;
5. Waive provisions or instructions of PIH directives relating to the obligation or payment of operating subsidies;
6. Solicit competitive proposals for the management of all or part of public housing administered by a PHA;
7. Approve special rent adjustments;
8. Conduct tax credit and/or subsidy layering reviews, unless specifically or otherwise noted;
9. Approve PHA requests for exception payment standards that exceed 120 percent of the fair market rent (FMR); and
10. Approve grant extensions, unless specifically or otherwise noted.

Section E. Redelegation of Authority Concerning the Office of Public Housing and Vouchers

The Assistant Secretary for PIH hereby redelegates, through the General Deputy Assistant Secretary for PIH, to the Deputy Assistant Secretary for the Office of Public Housing and Vouchers (OPHV) administrative, oversight and enforcement responsibilities and the authority to:

1. Administer the rental voucher assistance programs under section 8 of the 1937 Act (42 U.S.C. 1437f), including the section 8 Family Self-Sufficiency (FSS) program and section 8 Management Assessment Program (SEMAP);
2. Establish targeting and eligibility for participation in the Housing Choice Voucher (HCV) programs pursuant to section 8(o)(3) of the 1937 Act;
3. Determine payment standards for subsidy amounts by program participants pursuant to sections 8(o)(1)(B), (D), and (E) 1937 Act;
4. Develop program requirements for tenant rent and maximum rent burdens pursuant to sections 8(o)(2)(A) and 8(o)(2)(B)) and section 8(o)(3) 1937 Act, respectively;
5. Set guidance regarding violent criminal activity on or near premises and implement the statutory grounds for termination of tenancy pursuant to section 8(o)(7)(D) 1937 Act;
6. Administer tenant-based and project-based voucher assistance under section 8(o) 1937 Act;
7. Administer homeownership voucher assistance under section 8(y) 1937 Act as amended by the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569) (42 U.S.C. 1437f(y); and
8. Administer enhanced voucher assistance under section 8(t) 1937 Act.

Section F. Redelegation of Authority Concerning the Office of Public Housing Investments

The Assistant Secretary for PIH hereby redelegates authority, through the General Deputy Assistant Secretary for PIH, to the Deputy Assistant Secretary for the Office of Public Housing Investments (OPHI) to perform administrative, oversight and

enforcement responsibilities and authority for:

1. Public Housing Capital Fund pursuant to section 9 of the 1937 Act, including but not limited to, approvals of proposals submitted under the Capital Fund Financing Program (CFFP) or the Operating Fund Financing Program (OFFP) under section 9(e) of the 1937 Act, with OFFP approvals subject to coordination and consultation with PIH's Real Estate Assessment Center;

2. Required conversions pursuant to section 33, voluntary conversions pursuant to section 22, and mandatory conversions pursuant to section 202 of the 1937 Act (section 202 is repealed but continues to apply to identified and non-appealed public housing developments subject to mandatory conversion until all requirements are satisfied);

3. Resident Opportunities and Self-Sufficiency (ROSS) program pursuant to the Quality Housing and Work Responsibility Act of 1998 (QHWRA), including grant extensions for the expenditure of these funds;

4. Public Housing Neighborhood Networks (NN) program pursuant to section 9 of the 1937 Act;

5. HOPE VI Program pursuant to section 24 of the 1937 Act and Appropriation Acts, including grant extensions and issuance of defaults of HOPE VI grant agreements;

6. Choice Neighborhoods program pursuant to the FY 2010 Consolidated Appropriations Act, Division A, Title II (Pub. L. 111–117, approved December 16, 2009) and any future appropriations or authority enacted for the Choice Neighborhood Program in consultation and coordination with the Office of Housing's Multifamily Housing Programs;

7. Public Housing mortgages and security interests pursuant to section 30 of the 1937 Act, and approvals of proposals submitted thereto;

8. Mixed finance transactions, including approvals of proposals submitted thereto, pursuant to section 35 of the 1937 Act;

9. Moving to Work (MTW) demonstration program pursuant to section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 including approvals of MTW annual plans and issuance of defaults of MTW agreements;

10. Demolition or disposition applications pursuant to section 18 of the 1937 Act and the implementing regulations at 24 CFR part 970;

11. Agreements for the taking of public housing property in eminent domain proceedings;

12. Homeownership programs pursuant to section 32 of the 1937 Act and including amendments under previously approved 5(h) and Turnkey III homeownership plans; and

13. Execute amendments to ACCs regarding provisions for under the Capital Fund Program and/or coordinate such executions with field offices.

Section G. Redelegation of Authority Concerning the Office of Field Operations

The Assistant Secretary for PIH hereby redelegates authority, through the General Deputy Assistant Secretary for PIH, to the Deputy Assistant Secretary for the Office of Field Operations (OFO) to perform administrative, oversight and enforcement responsibilities of receiverships, regional, hub and field operations for redelegated authority under section A and the following specific authority for further redelegation:

1. ACC amendments for annual grants under the Capital Fund Program, but excluding the waiver of ACC provisions;

2. Execution of ACC amendments or releases of Declarations of Trust (DOTs) for Capital Fund Financing or mixed finance transactions when requested pursuant to an approval letter by the Deputy Assistant Secretary for the Office of Public Housing Investments.

3. Release of DOTs pursuant to a section 18 approval;

4. Coordination with the respective program office to address specific programs including Family Self Sufficiency (FSS), Resident Opportunities and Supportive Services (ROSS), Family Unification, HOPE for Elderly Independence and Service Coordinators, HUD–Veterans Administration Supportive Housing, and Moving to Opportunity and Moving to Work;

5. Concurrent approval authority for energy performance contracts (EPC) (EPCs may be approved in the Field Offices or in Headquarters);

6. Actions associated with the renewal of designated housing plans;

7. Execution of letters of support and correspondence with local congressional offices for programs, projects and ventures within the appropriate region;

8. Approval of requests by PHAs to change their fiscal year end (FYE) subject to coordination with the Real Estate Assessment Center (REAC) for PHAs with public housing units and with the Financial Management Division of the Housing Choice Vouchers program for vouchers-only PHAs;

9. Coordination of audit responses through PIH's Audit Liaison Officer on reports by the United States General Accounting Office and through PIH's Action Official (AO) for reports by HUD's Office of Inspector General; and

10. Approval of grant extensions under the Public Housing Family Self-Sufficiency (PH–FSS) and Resident Opportunities Self Sufficiency (ROSS) programs. Such grant extensions may be made at the field level for any length of time deemed reasonable by the Public Housing Director or designee; denials of FSS and ROSS extensions remain with the Deputy Assistant Secretary of the Office of Public Housing Investments.

Section H. Redelegations of Authority Concerning the Office of Native American Programs

The Assistant Secretary for PIH hereby redelegates authority, through the General Deputy Assistant Secretary for PIH, to the Deputy Assistant Secretary for the Office of Native American Programs to perform program administration, oversight and enforcement responsibilities associated with the following:

1. Programs authorized pursuant to the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*), as amended;

2. The Community Development Block Grant Program for Indian Tribes and Alaska Native Villages authorized by section 106 of the Housing and Community Development Act of 1974 (42 U.S.C. 5306);

3. The Indian Home Loan Guarantee Program authorized by section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a);

4. The Native Hawaiian Loan Guarantee Fund authorized by section 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13b); and

5. Grants awarded to Indian tribes and tribal entities by the Assistant Secretary for Community Planning and Development under the Rural Innovation Fund Program, and under the Rural Housing and Economic Development Program; and

6. Coordination of audit responses through PIH's Audit Liaison Officer on reports by the U.S. General Accounting Office and through PIH's AO for reports by HUD's Office of Inspector General.

Section I. Redelegation of Authority Concerning the Real Estate Assessment Center

The Assistant Secretary for PIH hereby redelegates authority, through the General Deputy Assistant Secretary for PIH, to the Deputy Assistant Secretary for the Real Estate Assessment Center to perform program administration, oversight and enforcement responsibilities associated with the Public Housing Operating Fund, as the annual subsidy to PHAs for operations and management pursuant to section 9(e) of the 1937 Act (42 U.S.C. 1437g(e)) and regulations at 24 CFR part 990.

Section J. Redelegation of Authority Concerning the Office of Policy, Program and Legislative Initiatives

The Assistant Secretary for PIH hereby redelegates authority, through the General Deputy Assistant Secretary for PIH, to the Deputy Assistant Secretary for the Office of Policy, Program and Legislative Initiatives to perform administration and oversight responsibilities associated with policy analysis, research, actions by Congress, Executive Orders, rulemaking and directives management on behalf of the Assistant Secretary for PIH, including redelegated authority to execute certain clearance and administrative records on behalf of the Assistant Secretary for PIH.

Section K. Authority Superseded

All previous redelegations of authority from the Assistant Secretary for PIH to the PIH Deputy Assistant Secretaries are hereby revoked and superseded by this consolidated redelegation of authority, including the PIH redelegation published on January 13, 2009 (74 FR 1704) and the ''Delegation of Authority to the Deputy Assistant Secretary for the Office of Public Housing Investments'' published on December 6, 2006 (71 FR 70783).

Section L. Actions Ratified

The Assistant Secretary for PIH hereby ratifies all actions previously taken by PIH Deputy Assistant Secretaries under any previous redelegation of authority through the effective date of this redelegation, with respect to programs and matters listed in this redelegation of authority. Any previous actions ratified, remain ratified.

Section M. Consultation and Coordination With the General Counsel

The General Counsel shall consult and advise the Assistant Secretary for PIH, the General Deputy Assistant Secretary, and Deputy Assistant Secretaries as required and when requested and shall enter into such protocols as administratively agreed to by the General Counsel and the Assistant Secretary for PIH or the General Deputy Assistant Secretary. This consolidated delegation of authority is to be exercised consistently with the delegation from the Secretary to the General Counsel.

Authority: Section 7 (d) of the Department of Housing and Urban Development Act, as amended, (42 U.S.C. 3535(d).

Dated: July 15, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2011–19728 Filed 8–3–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6705–E, AA–6705–K, AA–6705–A2, LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Togiak Natives Limited. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act. The subsurface estate in these lands will be conveyed to Bristol Bay Native Corporation when the surface estate is conveyed to Togiak Natives Limited. The lands are in the vicinity of Togiak, Alaska, and are located in:

Seward Meridian, Alaska

T. 11 S., R. 67 W.,
Sec. 17.
Containing 630.27 acres.

T. 12 S., R. 67 W.,
Sec. 7.
Containing 624.91 acres.

T. 15 S., R. 69 W.,
Sec. 15.
Containing 1.55 acres.
Aggregating 1,256.73 acres.

Notice of the decision will also be published four times in the *Bristol Bay Times.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until September 6, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by e-mail at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Judy A. Kelley,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2011–19782 Filed 8–3–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON06000 L1610000.DP0000]

Notice of Intent To Solicit Nominations for the Dominguez-Escalante National Conservation Area Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: The Secretary of the Interior (Secretary) was directed by the Omnibus Public Lands Management Act of 2009 to establish the Dominguez-Escalante National Conservation Area (D–E NCA) Advisory Council (Council). The 10-member Council was formed in December 2010 to provide recommendations to the Secretary

through the Bureau of Land Management (BLM) during the development of a resource management plan (RMP) for the D–E NCA. Since this council was formed, one council member representing Delta County and one council member representing natural values have expressed interest in resigning from the council due to time conflicts. As a result, the Secretary is soliciting applications to replace the current occupants of these two seats.

DATES: Submit nomination packages on or before September 6, 2011.

ADDRESSES: Send completed Council nominations to D–E NCA Interim Manager, Grand Junction Field Office, 2815 H Road, Grand Junction, Colorado 81506. Nomination forms may be obtained at the Grand Junction Field Office at the above address or at the BLM Uncompahgre Field Office, 2465 S. Townsend Ave., Montrose, Colorado 81401.

FOR FURTHER INFORMATION CONTACT: Katie A. Stevens, D–E NCA Interim Manager, 970–244–3049, *kasteven@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The D–E NCA and Dominguez Canyon Wilderness Area, located within the D–E NCA, were established by the Omnibus Public Land Management Act of 2009, Public Law 111–11 (Act). The D–E NCA is comprised of approximately 209,610 acres of public land, including approximately 66,280 acres designated as Dominguez Canyon Wilderness Area located in Delta, Montrose, and Mesa counties, Colorado. The purpose of the D–E NCA is to conserve and protect the unique and important resources and values of the land for the benefit and enjoyment of present and future generations. These resources and values include the geological, cultural, archaeological, paleontological, natural, scientific, recreational, wilderness, wildlife, riparian, historical, educational, and scenic resources of the public lands, and the water resources of area streams based on seasonally available flows that are necessary to support aquatic, riparian, and terrestrial species and communities. According to the Act, the 10-member council is to include, to the extent practicable:

1. One member appointed after considering the recommendations of the Mesa County Commission;

2. One member appointed after considering the recommendations of the Montrose County Commission;

3. One member appointed after considering the recommendations of the Delta County Commission;

4. One member appointed after considering the recommendations of the permittees holding grazing allotments within the D–E NCA or the wilderness; and

5. Five members who reside in, or within reasonable proximity to Mesa, Delta, or Montrose counties, Colorado, with backgrounds that reflect:

a. The purposes for which the D–E NCA or wilderness was established; and

b. The interests of the stakeholders that are affected by the planning and management of the D–E NCA and wilderness.

Any individual or organization may nominate one or more persons to serve on the Council. Individuals may nominate themselves for Council membership. The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all Federal Advisory Committee Act (FACA) and non-FACA boards, committees, or councils. Nomination forms may be obtained from the BLM Grand Junction or Uncompahgre Field Offices, or may be downloaded from the following Web site: *http://www.blm.gov/co/st/en/nca/denca/denca_rmp/DENCA_Resource_Advisory_Council.html.*

Nomination packages must include a completed nomination form, letters of reference from the represented interests or organizations, as well as any other information relevant to the nominee's qualifications.

The Grand Junction and Uncompahgre Field Offices will review the nomination packages in coordination with the affected counties and the Governor of Colorado before forwarding recommendations to the Secretary, who will make the appointments. The Council shall be subject to the FACA, 5 U.S.C. App. 2; and the Federal Land Management Policy Act of 1976, 43 U.S.C. 1701 *et seq.*

Helen M. Hankins,

State Director.

[FR Doc. 2011–19778 Filed 8–3–11; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD0900, L51010000.LVRWB09B2380.FX0000]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Stateline Solar Farm, San Bernardino County, CA and Possible Land Use Plan Amendments and Notice of Segregation of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Needles Field Office, Needles, California, intends to prepare an Environmental Impact Statement (EIS), which may include potential land use plan amendments to the California Desert Conservation Area (CDCA) Plan, as amended, and the Las Vegas Resource Management Plan (RMP), related to First Solar Development, Inc.'s (First Solar) right-of-way (ROW) application for the Stateline Solar Farm (Stateline), a 300–Megawatt (MW) photovoltaic (PV) Solar electricity generation project.

By this notice, the BLM is: (1) Announcing the beginning of the scoping process to solicit public comments and identify issues related to the EIS; and (2) Segregating the public lands located within the Stateline ROW application area from operation of the public land laws including the Mining Law, but not the Mineral Leasing or Material Sales Acts, for a period of 2 years from the date of publication of this notice.

DATES: This notice initiates: (1) The public scoping process for the EIS; and (2) The 2-year segregation period for the public lands within the Stateline ROW application area, effective as of August 4, 2011. The segregation will terminate as described below (see **SUPPLEMENTARY INFORMATION** section).

Comments on issues related to the EIS may be submitted in writing until September 6, 2011. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local news media, newspapers, and the BLM Web site at: *http://www.blm.gov/ca/st/en/fo/cdd.html.* In order for comments to be fully considered in the Draft EIS, all comments must be received prior to the close of the scoping period or 15 days

after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments on issues and planning criteria related to the Stateline project by any of the following methods:

- *Web site: http://www.blm.gov/ca/st/en/fo/cdd.html.*
- *E-mail: statelinesolar@blm.gov.*
- *Fax:* (951) 697–5299.
- *Mail:* ATTN: Jeffery Childers, Project Manager, BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553–9046.

Documents pertinent to this proposal may be examined at the California Desert District office (see address above).

FOR FURTHER INFORMATION CONTACT: And/or to have your name added to our mailing list, contact Jeffery Childers; telephone 951–697–5308; address BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553–9046; e-mail at *jchilders@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the 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: First Solar has requested a ROW authorization to construct, operate, maintain, and decommission the 300–MW PV Stateline solar energy project. The BLM is responding to First Solar's ROW application as required by FLPMA. The Stateline project would be located on BLM-administered lands and would include access roads, PV arrays, an electrical substation, meteorological station, monitoring and maintenance facility, and a 2.3 mile generation tie-line on approximately 2,000 acres. Potential alternatives to the proposed action may include reduced acreage, reduced MW, and/or modified footprint alternatives. The project location is in San Bernardino County approximately 2 miles south of the Nevada-California border and 0.5 miles west of Interstate 15. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues: special status species, cultural resources, route designation, social and economic impacts, traffic, water, and visual resource resources.

Pursuant to the BLM's CDCA Plan, sites associated with power generation or transmission not identified in the CDCA Plan will be considered through the plan amendment process to determine the suitability of the site for solar development. The BLM may also consider additional potential plan amendments to the CDCA Plan and the Las Vegas RMP that might arise based on its assessment of the potential cumulative effects of other projects in the larger Ivanpah Valley watershed in California and Nevada to a range of resources, including, without limitation, biological, physical, and cultural resources. By this notice, the BLM is complying with requirements in 43 CFR 1610.2(c) to notify the public of potential amendments to the CDCA Plan and Las Vegas RMP, predicated on the findings of the EIS. If land use plan amendments are necessary, the BLM will integrate the land use planning process with the NEPA process for the Stateline project.

The plan amendments will be completed in compliance with FLPMA, NEPA, and all other relevant Federal law, executive orders, and BLM policies. Any new plan decisions will complement existing plan decisions and recognize valid existing rights.

The BLM will use and coordinate the NEPA commenting process to satisfy the public involvement process pursuant to Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American tribal consultations will be conducted in accordance with policy, and tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency. In connection with its processing of First Solar's ROW application, the BLM is also segregating, under the authority contained in 43 CFR 2091.3–1(e) and 43 CFR 2804.25(e), subject to valid existing rights, the public lands within the Stateline application area from the operation of the public land laws including the Mining Law, but not the Mineral Leasing or the Material Sales Acts, for a period of 2 years from the date of publication of this notice. The public lands contained within this segregation total approximately 2,000 acres and are described as follows:

San Bernardino Meridian,

Township 16 North, Range 14 East,
Sec. 1, lots 1 and 2, W½ SW¼;
Sec. 2, lots 1 and 2, SE¼;
Sec. 3, lot 1;
Sec. 11, NE¼ NE¼ , NW¼ NE¼;
Sec. 12, NW¼ NW¼.
Township 17 North, Range 14 East,
Sec. 13, W½ , SE¼;
Sec. 14, All;
Sec. 15, All;
Sec. 22, All excluding the solar ROW CACA 48668;
Sec. 23, All;
Sec. 24, N½, SW¼, NW¼ NE¼ SE¼, W½ SE¼;
Sec. 25, All;
Sec. 26, All;
Sec. 34, SE¼ SE¼;
Sec. 35, All.

The BLM has determined that this segregation is necessary to ensure the orderly administration of the public lands by maintaining the status quo while it processes the First Solar's ROW authorization request for the above described lands.

The segregation period will terminate and the lands will automatically reopen to appropriation under the public land laws, including the Mining Law, if one of the following events occurs: (1) The BLM issues a decision granting, granting with modifications, or denying First Solar's ROW authorization request; (2) Publication of a **Federal Register** notice of termination of this segregation; or (3) No further administrative action occurs at the end of this segregation. Any segregation made under this authority is effective only for a period of up to 2 years.

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.

Authority: 40 CFR 1501.7, 43 CFR 1610.2, 2091.3–1(e), and 2804.25(e)

Thomas Pogacnik,

Deputy State Director, Natural Resources.

[FR Doc. 2011–19781 Filed 8–3–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA9300000 L58790000 EU0000; CACA 50168–14]

Notice of Realty Action: Direct Sale of Public Land in Monterey County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM), Hollister Field Office, proposes to sell a parcel of public land consisting of approximately 40 acres in Monterey County, California. The public land would be sold to Anthony Lombardo for the appraised fair market value of $25,000.

DATES: Written comments regarding the proposed sale must be received by the BLM on or before September 19, 2011.

ADDRESSES: Written comments concerning the proposed sale should be sent to the Field Manager, BLM Hollister Field Office, 20 Hamilton Court, Hollister, California 95023.

FOR FURTHER INFORMATION CONTACT: Christine Sloand, Realty Specialist, BLM, Hollister Field Office, 20 Hamilton Court, Hollister, California 95023, or phone 831–630–5022. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The following public land is proposed for direct sale to Anthony Lombardo, the adjoining landowner, in accordance with Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended (43 U.S.C. 1713 and 1719).

Mount Diablo Meridian

T. 23 S., R. 12 E.,
Sec. 18, NE¼SW¼.

The area described contains approximately 40 acres, more or less, in Monterey County. The public land was first identified as suitable for disposal in the 1984 BLM Hollister Resource Management Plan (RMP) and remains available for sale under the 2007 Hollister RMP revision, and is not needed for any other Federal purpose. The disposal is in the public interest. The purpose of the sale is to dispose of public land which is difficult and uneconomic to manage as part of the public lands. The land proposed for sale is difficult and uneconomic for the BLM to manage because it is a small, isolated parcel which lacks legal access. The BLM is proposing a direct sale to Anthony Lombardo, who owns the surrounding private land and controls access to the public land. A competitive sale is not considered appropriate because the surrounding private land is owned by one party and the public land has little utility except as part of the surrounding ranch lands. The BLM has completed a mineral potential report which concluded there are no known mineral values in the land proposed for sale. The BLM proposes that conveyance of the Federal mineral interests would occur simultaneously with the sale of the land. The purchaser would be required to pay a $50 non-refundable filing fee for processing the conveyance of the mineral interests.

On August 4, 2011, the above described land will be temporarily segregated from all forms of appropriation under the public land laws, including the mining laws, except for the sale provisions of the FLPMA. Until completion of the sale, the BLM will no longer accept land use applications affecting the identified public land, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2802.15 and 2886.15. The temporary segregation will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or on August 5, 2013 unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date. The land would not be sold until at least October 3, 2011. Any conveyance document issued would contain the following terms, conditions, and reservations:

1. A reservation of a right-of-way to the United States for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);
2. A condition that the conveyance be subject to all valid existing rights of record;
3. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on the patented lands; and
4. Additional terms and conditions that the authorized officer deems appropriate. Detailed information concerning the proposed land sale including the appraisal, planning and environmental documents, and a mineral report are available for review at the location identified in **ADDRESSES** above. Public Comments regarding the proposed sale may be submitted in writing to the attention of the BLM Hollister Field Manager (see **ADDRESSES** above) on or before September 19, 2011. Comments received in electronic form, such as e-mail or facsimile, will not be considered. Any adverse comments regarding the proposed sale will be reviewed by the BLM State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2711.1–2(a) and (c).

Tom Pogacnik,
Deputy State Director, Natural Resources.

[FR Doc. 2011–19779 Filed 8–3–11; 8:45 am]
BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Public Meeting for the Glen Canyon Dam Adaptive Management Work Group Federal Advisory Committee

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Glen Canyon Dam Adaptive Management Work Group (AMWG) makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam, consistent with the Grand Canyon Protection Act. The AMWG meets two to three times a year.

DATES: The meeting will be held on Wednesday, August 24, 2011, from 9:30 a.m. to approximately 5 p.m., and Thursday, August 25, 2011, from 8 a.m. to approximately 3 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Hotel & Suites Phoenix Airport North, 1515 North 44th Street, Phoenix, Arizona 85008.

FOR FURTHER INFORMATION CONTACT: Glen Knowles, Bureau of Reclamation, telephone (801) 524–3781; facsimile (801) 524–3858; e-mail at *gknowles@usbr.gov*.

SUPPLEMENTARY INFORMATION: The Glen Canyon Dam Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP includes a Federal advisory committee, the AMWG, a technical work group (TWG), a Grand Canyon Monitoring and Research Center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and recommendations to the AMWG.

Agenda: The primary purpose of the meeting will be for the AMWG to approve the Fiscal Year 2012 budget and hydrograph, and receive updates on the two environmental assessments being prepared by the Bureau of Reclamation, the Long Term Experiment and Management Plan environmental impact statement, current basin hydrology and Glen Canyon Dam operational changes, and project updates from the Grand Canyon Monitoring and Research Center. The AMWG will also address other administrative and resource issues pertaining to the AMP.

To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's Web site at *http://www.usbr.gov/uc/rm/amp/amwg/mtgs/11aug24.html*. Time will be allowed at the meeting for any individual or organization wishing to make formal oral comments. To allow for full consideration of information by the AMWG members, written notice must be provided to Glen Knowles, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138; telephone 801–524–3781; facsimile 801–524–3858; e-mail at *gknowles@usbr.gov* at least five (5) days prior to the meeting. Any written comments received by the deadline will be provided to the AMWG members.

Public Disclosure of Comments

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 20, 2011.

Glen Knowles,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. 2011–19759 Filed 8–3–11; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–856; Second Review]

Ammonium Nitrate From Russia

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the antidumping duty order on ammonium nitrate from Russia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on March 1, 2011 (76 FR 11273) and determined on June 6, 2011 that it would conduct an expedited review (76 FR 34749, June 14, 2011). The Commission transmitted its determination in this review to the Secretary of Commerce on July 29, 2011. The views of the Commission are contained in USITC Publication 4249 (August 2011), entitled *Ammonium Nitrate from Russia: Investigation No. 731–TA–856 (Second Review).*

By order of the Commission.
Issued: July 29, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–19776 Filed 8–3–11; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Ninth Administrative Review of Honey From the People's Republic of China: Extension of Time Limit for the Preliminary Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 4, 2011.

FOR FURTHER INFORMATION CONTACT: Josh Startup, 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) 482–5260.

Background

On January 28, 2011, the Department of Commerce (''Department'') published in the **Federal Register** a notice of initiation of an administrative review of honey from the People's Republic of China (''PRC''), covering the period December 1, 2009 through November 30, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews in Part,* 76 FR 5137 (January 28, 2011). On February 16, 2011, after receiving U.S. Customs and Border Protection (''CBP'') data, the Department selected Dongtai Peak Honey Industry Co., Ltd. (''Dongtai Peak'') as the respondent.

The Department sent its antidumping questionnaire to Dongtai Peak on February 25, 2011. On March 17, 2011, Dongtai Peak submitted its response to Section A of the Department's questionnaire. On April 4, 2011, Dongtai Peak submitted its Section C & D response. The Petitioners [1] provided comments on Dongtai Peak's March 17, 2011 Section A and April 4, 2011 Sections C & D questionnaire responses on April 29, 2011. On May 20, 2011, Dongtai Peak filed its responses to the Department's Sections A, C & D Supplemental Questionnaires. On July 5, 2011, Dongtai Peak submitted its response to the Department's second Supplemental Questionnaire. On July 5, 2011, Dongtai Peak and petitioners submitted surrogate value information. The preliminary results of this administrative review are currently due on September 2, 2011.

[1] The American Honey Producers Association and the Sioux Honey Association.

Extension of Time Limits for the Preliminary Results

The Department determines that completion of the preliminary results of this review within the statutory time period is not practicable. The Department requires more time to gather and analyze surrogate value information, and to review questionnaire responses and issue supplemental questionnaires. Therefore, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), we are extending the time period for issuing the preliminary results of review by 120 days until January 3, 2012.[2] The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: July 29, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–19820 Filed 8–3–11; 8:45 am]

BILLING CODE 3510–DS–P

[2] 120 days from September 2, 2011, is Saturday, December 31, 2011. Monday, January 2, 2012, is designated as a federal holiday. Department practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act and Chapter 11 of the United States Bankruptcy Code

Notice is hereby given that on July 28, 2011, a proposed Settlement Agreement (''Agreement'') in *In re Philadelphia Newspapers, LLC, et al.,* Case No. 09–11204 (SR), was lodged with the United States Bankruptcy Court for the Eastern District of Pennsylvania. The Agreement was entered into by the United States, on behalf of the United States Environmental Protection Agency (''EPA'') and Philadelphia Newspapers, LLC and certain of its affiliates (the ''Debtors''). The Agreement relates to liabilities of the Debtors under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et seq.* (''CERCLA''), at the Swope Oil Superfund Site located in Pennshauken, New Jersey (the ''Swope Oil Site'').

The Agreement provides that EPA will have an allowed Class 5D General Unsecured Claim in the amount of $652,440 under the Fifth Amended Joint Chapter 11 Plan with respect to the Swope Oil Site. Under the Agreement, EPA has agreed not to bring a civil action or take administrative action against the Debtors pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973, relating to the Swope Oil Site.

For a period of 30 days from the date of this publication, the Department of Justice will receive comments relating to the Agreement. To be considered, comments must be received by the Department of Justice by the date that is 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044, and should refer to *In re Philadelphia Newspapers, LLC, et al.,* Case No. 09–11204 (SR) (Bankr. E.D. Pa.), D.J. Ref. No. 90–11–3–09822. A copy of the comments should be sent to Donald G. Frankel, Senior Counsel, Department of Justice, Environmental Enforcement Section, One Gateway Center, Suite 616, Newton, MA 02458 or e-mailed to *donald.frankel@usdoj.gov.*

The Agreement may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106 (contact Virginia Powell at 215–861–8200). During the public comment period, the Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Agreement from the Consent Decree Library, please enclose a check in the amount of $3.25 (25 cents per page reproduction cost) payable to the U.S. Treasury (if the request is by fax or e-mail, forward a check to the Consent Decree library at the address stated above). Commenters may request an opportunity for a public meeting, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–19732 Filed 8–3–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that on July 28, 2011, a proposed Consent Decree in *United States* v. *Caterpillar Inc.,* Civ. A. No. 11–1373 (BAH) was lodged with the United States Court for the District of Colombia. In this action, Plaintiff the United States sought penalties and injunctive relief for violations of the Clean Air Act (''CAA'') by Caterpillar Inc.

Pursuant to the proposed Consent Decree, Defendants will pay to the United States and State of California (pursuant to a separate agreement) a total of $2,550,000 in civil penalties and undertake injunctive measures designed to correct past violations and prevent their reoccurrence.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *Caterpillar Inc.,* Civ. A. No. 11–1373 (BAH) (District of Colombia, Department of Justice Case Number 90–5–2–1–09846.

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7 (25 cents per page

reproduction cost) payable to the U.S. Treasury.

Karen Dworkin,

Assistant Section Chief.

[FR Doc. 2011–19716 Filed 8–3–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Request for Assistance From Department of Labor, Employee Benefits Security Administration

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the proposed Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Request for Assistance From Department of Labor, EBSA,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before September 6, 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, Employee Benefits Security Administration (EBSA), 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 EBSA assists employee benefit plan participants in understanding their rights, responsibilities, and benefits under employee benefit law and intervenes informally on their behalf with the plan sponsor in order to assist participants in obtaining the health and retirement benefits that may have been inappropriately denied. Such informal intervention can avert the necessity for a formal investigation or a civil action. The EBSA maintains a toll-free telephone number through which inquirers can reach Benefits Advisors in ten Regional Offices. The EBSA has also made a request for assistance form available on its Web site for those wishing to obtain assistance in this manner. To date, the Web form has included only basic identifying information necessary for reaching the inquirer. A Federal agency does not need OMB approval to request such basic contact information. *See* 5 CFR 1320.3(h)(1). Contact with the EBSA is voluntary.

The proposed information collection is a revised Web intake form. The number of required fields—first name, last name, street address, city, zip code, and telephone number—does not differ from the current form. Through its experience with electronic requests for review under the American Recovery and Reinvestment Act of 2009, approved under OMB Control Number 1210–0135, however, the EBSA has found that obtaining certain additional information can significantly expedite the handling of requests for assistance, resulting in both improved service to customers and enhanced capacity to handle inquiry volume. This information includes the plan type, broad categories of problem type, contact information for responsible parties, and a mechanism for the inquirer to attach relevant documents.

This proposed 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. For additional information, see the related notice published in the **Federal Register** on April 28, 2011 (76 FR 23844).

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 ICR Reference Number 201106–1210–001. 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: Employee Benefits Security Administration (EBSA).

Title of Collection: Request for Assistance from Department of Labor, EBSA.

OMB ICR Reference Number: 201106–1210–001.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 30,000.

Total Estimated Number of Responses: 30,000.

Total Estimated Annual Burden Hours: 15,000.

Total Estimated Annual Other Costs Burden: $3,100.

Dated: July 29, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–19756 Filed 8–3–11; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of Disability Employment Policy

''Add Us In'' Initiative

AGENCY: Office of Disability Employment Policy, Department of Labor.

Announcement Type: New Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for Cooperative Agreements. The full announcement is posted on *http://www.grants.gov.*

Funding Opportunity Number: SGA 11–02.

DATES: *Key Dates:* The closing date for receipt of applications is September 6, 2011 via *http://www.grants.gov.*

Funding Opportunity Description

The U.S. Department of Labor (''DOL'' or ''Department''), Office of Disability Employment Policy (ODEP) announces the availability of approximately $1.65 million to be awarded to consortia to fund three cooperative agreements ranging from $500,000 to $550,000. The goal of the Add Us In initiative is to identify and develop strategies to increase the capacity of small businesses and communities, including underrepresented and historically excluded communities, to employ youth and adults with disabilities. Add Us In aims to achieve these goals through: (1) The development and evaluation of replicable models, strategies and policies [1] that would ensure that youth and adults with disabilities from communities that include underrepresented and historically excluded communities have access to a broader range of employment and mentoring opportunities; (2) the development of active and sustainable partnerships between targeted businesses, diversity-serving organizations, youth-serving organizations and disability-serving organizations; and (3) the building of a national and local network of experts skilled in meeting the employment needs of individuals with disabilities and the hiring needs of targeted business owners. The goal of Add Us In will be accomplished through the competitive funding of consortia tasked to design, implement and evaluate innovative systems models that support competitive employment opportunities for people with disabilities within targeted businesses.

For the purpose of this solicitation, the inclusion of underrepresented and historically excluded communities, defined below, is a specific focus. The make-up of these communities may vary in different regions, and can include: ethnic and racial minorities including African American, Asian American (including Asian Americans of West Asian decent, e.g., India, and Asian Americans of East Asian decent, *e.g.,* Japan and Korea); Latino or Hispanic American; Federally recognized Tribes and Native American communities (including American Indians; Alaska Natives, Native Hawaiians, and other Native Pacific Islanders (including American Samoan Natives)); Lesbian, Gay, Bisexual, Transgender (LGBT) individuals; women; veterans; and other similar groups.

Historically excluded communities are areas or groups that face some or all of the following economic challenges: blight, underinvestment, low per capita income, high poverty, high unemployment, discrimination in housing, credit or the labor market, environmental or natural resource degradation, and mass layoffs. A *targeted business* is a small for-profit enterprise such as a sole proprietorship, partnership, corporation, or joint venture of any kind, physically located in the United States or its trust territories that is at least 51 percent owned, operated and controlled on a daily basis by a United States citizen (or citizens) who are members of underrepresented and historically excluded communities.[2]

The full Solicitation for Grant Applications is posted on *http://www.grants.gov* under U.S. Department of Labor/ODEP. Applications submitted through *http://www.grants.gov* or hard copy will be accepted. If you need to speak to a person concerning these grants, you may telephone Cassandra Mitchell at 202–693–4570 (not a toll-free number). If you have issues regarding access to the *http://www.grants.gov* Web site, you may telephone the Contact Center Phone at 1–800–518–4726.

Signed in Washington, DC, this 1st day of August 2011.

Cassandra R. Mitchell,

Grant Officer.

[FR Doc. 2011–19823 Filed 8–3–11; 8:45 am]

BILLING CODE 4510–FT–P

[1] Replicable models, strategies and policies are methods of connecting people with disabilities to employment and might include, but are not limited to, mentoring, entrepreneurial activities, internships, training and leadership opportunities.

[2] For the purposes of this solicitation, the definition of a ''small'' (with regard to the size of the business) is as determined by the U.S. Small Business Administration (SBA) regulations addressing business size standards (13 CFR part 121).

DEPARTMENT OF LABOR

Employment and Training Administration

Training and Employment Guidance (TEGL) Letter No. 33–10: Special Procedures: Labor Certification Process for Itinerant Commercial Beekeeping Employers in the H–2A Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the United States. Department of Labor (Department) is publishing, for public information, notice of the issuance and availability of TEGL 33–10 entitled, *Special Procedures: Labor Certification Process for Itinerant Commercial Beekeeping Employers in the H–2A Program,* signed on June 14, 2011, by Jane Oates, Assistant Secretary for Employment and Training Administration.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, PhD, Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Special Procedures: Labor Certification Process for Itinerant Commercial Beekeeping Employers in the H–2A Program

1. *Purpose.* To establish special procedures for itinerant commercial beekeeper employers who apply to the Department to obtain labor certifications to hire temporary agricultural foreign workers to perform work in the United States (U.S.)

2. *References.*

- 20 CFR part 655, subpart B;
- 20 CFR part 653, subparts B and F;
- 20 CFR part 654, subpart E.

3. *Background.* In 1986, Congress passed the Immigration Reform and Control Act of 1986 (IRCA) which amended the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.* and established the H–2A Program. In 1987, the Department issued an Interim Final Rule, promulgating the first H–2A regulations (the 1987 regulations) in accordance with IRCA. 54 FR 20496, Jun. 1, 1987. The 1987 regulations provided for the administration of the H–2A Program by ETA Regional Administrators, and instituted procedures to offset the adverse effects of immigration on U.S. workers. Additionally, the 1987 regulations also established special procedures for certain occupations, as long as they did not deviate from the Secretary's statutory responsibility to determine U.S. worker availability and the adverse effect of foreign workers on

the wages and working conditions of U.S. workers.

The 1987 regulations remained in effect, largely unchanged, until the Department promulgated new H–2A regulations on December 18, 2008. 73 FR 77110, Dec. 18, 2008 (the 2008 Final Rule). The 2008 Final Rule implemented an attestation-based application process and made several substantive changes to the program, but retained the special procedures concept. After the Department determined that the 2008 Final Rule did not meet policy objectives of the H–2A Program, the Department commenced another rulemaking process culminating in the publication of new H–2A regulations on February 12, 2010. 75 FR 6884, Feb. 12, 2010 (the 2010 Final Rule). Section 20 CFR 655.102 provides the Administrator of the Office of Foreign Labor Certification (OFLC) with authority to establish, continue, revise or revoke special procedures for processing certain H–2A applications, as long as those procedures do not deviate from statutory requirements under the INA.

After receiving a request from the American Beekeeping Federation and in consideration of the unique characteristics of itinerant commercial beekeeping operations, the Department is exercising its authority to establish certain special procedures for processing H–2A applications for itinerant commercial beekeeping occupations. The Department recognizes that an industry-wide standard exists among commercial beekeeping employers to transport honey bee colonies to farms and orchards throughout the U.S. Itinerant commercial beekeepers typically transport their honey bee colonies north in the summer and south in the winter, stopping as needed to pollinate crops in bloom. For both commercial beekeepers and farmers, the need to move bees from one State to another throughout the growing season has intensified as the number of bees and beekeepers decline and agricultural methods evolve.

Large farms and orchards require a large concentration of healthy, active pollinators during specific periods when crops are in flower. In addition, beekeepers have determined that they can maintain stronger, healthier honey bee colonies by transporting their colonies to warmer, southern States during the cold months. Providing flexibility in the H–2A Program for itinerant commercial beekeepers to move honey bee colonies to various parts of the U.S. will enable this industry to maintain strong, healthy honey bee colonies and provide the pollination services which are vital to successful crop production. Accordingly, the Department is establishing special procedures enabling itinerant commercial beekeeper employers to use the H–2A Program while moving their beekeeping activities among farms and orchards located in multiple areas of intended employment throughout the U.S.

4. *Special Procedures.* Attachment A outlines special procedures for applications submitted by itinerant commercial beekeeping employers under the H–2A Program. Unless otherwise specified in Attachment A, applications submitted by itinerant commercial beekeeper employers must comply with the requirements for H–2A applications contained at 20 CFR part 655, subpart B. Similarly, unless otherwise specified, job orders submitted for these occupations must comply with the requirements of 20 CFR parts 655, subpart B, 653 subparts B and F, and 654.

5. *Effective Date.* This guidance applies to all temporary labor certification applications for occupations in itinerant commercial beekeeping in the H–2A Program with a start date of need on or after October 1, 2011.

6. *Action.* The Chicago National Processing Center (Chicago NPC) Program Director and State Workforce Agency (SWA) Administrators are directed to immediately provide copies of these special procedures to all staff involved in processing H–2A labor certification applications from itinerant commercial beekeeping employers.

7. *Inquiries.* Questions from SWA staff should be directed to the Chicago NPC. Questions from the Chicago NPC staff should be directed to the OFLC National Office.

8. *Attachment.*

Attachment A: Special Procedures: Labor Certification Process for Itinerant Commercial Beekeeping Employers under the H–2A. *See full text below.*

Attachment A: Special Procedures: Labor Certification Process for Applications in the Itinerant Commercial Beekeeping Industry Under the H–2A Program

This document outlines special procedures for applications submitted by employers in the itinerant commercial beekeeping industry under the H–2A Program. Unless otherwise specified in this attachment, applications submitted for itinerant commercial beekeeping occupations must comply with the requirements for processing H–2A applications outlined in 20 CFR part 655, subpart B. Similarly, unless otherwise specified, job orders submitted for itinerant commercial beekeeping occupations must comply with the requirements of 20 CFR parts 655, subpart B, 653, subparts B and F, and 654.

I. Prefiling Procedures

A. *Job Orders and SWA Review (20 CFR 655.121).* An employer engaged in commercial beekeeping activities is allowed to submit a single Agricultural and Food Processing Clearance Order, ETA Form 790 (job order), Office of Management and Budget (OMB) 1205–0134, and all appropriate attachments covering a planned itinerary of work in multiple States. If the job opportunity is located in more than one State, either within the same area of intended employment or multiple areas of intended employment, the employer must submit the job order and all attachments (including a detailed itinerary) to the SWA having jurisdiction over the anticipated worksite(s) where the work is expected to begin. The employer must submit the job order no more than 75 calendar days and no less than 60 calendar days before the employer's first date of need.

Unless otherwise specified in these special procedures, the job order submitted to the SWA must satisfy the requirements for agricultural clearance orders outlined in 20 CFR part 653, subpart F and the requirements set forth in 20 CFR 655.122. The SWA will review the job order for regulatory compliance and will work with the employer to address any noted deficiencies. Upon its clearance of the job order, the SWA must promptly place the job order in intrastate clearance and commence recruitment of U.S. workers.

The job order shall remain active until 50 percent of the work contract period has elapsed for all SWAs in possession of the employer's job order (including those receiving in interstate clearance under 20 CFR 655.150), unless otherwise advised by the Chicago NPC.

B. *Contents of Job Offers (20 CFR 655.122).* Unless otherwise specified in this section, the content of job offers submitted to the SWAs and the Chicago NPC for itinerant beekeeping activities must comply with all of the requirements of 20 CFR parts 655, subpart B, 653, subparts B and F, and 654.

1. *Job qualifications and requirements.*

Experience. Due to the unique nature of the work to be performed, the job offer may specify that applicants possess up to 3 months of experience as a beekeeper and may require reference(s) to verify the applicant's experience performing such activities.

Applicants must provide the name, address, and telephone number of any previous employer used as a reference. The appropriateness of any other experience requirements must be substantiated by the employer and approved by the Chicago NPC.

Completion of Itinerary. An itinerant beekeeping employer may require in its job offer that an applicant for the job must be available to work for the entire itinerary. An applicant referred to the employer after the labor certification has been granted, but before 50 percent of the work contract period for the entire itinerary has elapsed, must be available and willing to join the employer at whatever place the employer is located at the time and remain with the employer for the duration of the beekeeping itinerary. An employer's rejection of an applicant who is unable or unwilling to accept such a requirement is considered a lawful job-related rejection.

Other Requirements. Due to the unique nature of the work to be performed, the job offer may specify that applicants may not have bee-, pollen- or honey-related allergies and must have or be able to obtain within 30 days of employment, a valid U.S. driver's license. Any other requirements must be normal and accepted for the occupation, and the SWA and the Chicago NPC have the authority to request supporting documentation substantiating the appropriateness of the duties prior to accepting the job order.

2. *Workers' compensation.* The employer must provide workers' compensation insurance coverage, as described in 20 CFR 655.122(e), in all States where commercial migratory beekeeping work will be performed. Prior to the issuance of the Temporary Labor Certification, the employer must provide the Certifying Officer (CO) with proof of workers' compensation coverage, including the name of the insurance carrier, the insurance policy number, and proof of insurance for the dates of need, or if appropriate, proof of State law coverage for each State where the commercial migratory beekeeping work will be performed. In the event that the current coverage will expire before the end of the certified work contract period or the insurance statement does not include all of the information required under the regulations at 20 CFR 655.122(e), the employer will be required to supplement its proof of workers' compensation for that State before a final determination is due. Where the employer's coverage will expire before the end of the certified work contract period, the employer may submit as proof of renewed coverage a signed and dated statement or letter showing proof of intent to renew and maintain coverage for the dates of need. The employer must maintain evidence that its workers' compensation was renewed, in the event the Department requests it.

3. *Housing.* The employer must state in its job offer that sufficient housing will be provided at no cost to H–2A workers and any workers in corresponding employment who are not reasonably able to return to their residence within the same day. All employer-provided housing must comply with requirements set out in 20 CFR 655.122(d) for the entire period of occupancy. For each anticipated worksite covering the itinerary, the job offer must disclose the type, location, and capacity of all housing that will be provided to the workers. Prior to the issuance of the Temporary Labor Certification, the CO must receive evidence that all housing complies with the applicable local, State, or Federal housing standards.

4. *Rates of pay.* For each State listed in an approved itinerary, the employer must state in its job offer and agree to pay a wage that is at least the highest of the Adverse Effect Wage Rate, the prevailing hourly wage, the agreed-upon collective bargaining wage, or the Federal or State minimum wage, in effect at the time the work is performed.

II. Application for Temporary Employment Certification Filing Procedures

A. *Application Filing Requirements (20 CFR 655.130).* An individual employer that desires to apply for temporary employment certification for one or more nonimmigrant workers must file the following documentation with the Chicago NPC no less than 45 calendar days before the employer's date of need:

- ETA Form 9142 (OMB 1205–0466), Application for Temporary Employment Certification, and Appendix A.2;
- Copy of the ETA Form 790 and all attachments previously submitted to the SWA;
- A planned itinerary listing the names and contact information of all farmers/ranchers and identifying, with as much geographic specificity as possible and for each farmer/rancher, all of the physical locations and estimated start and end dates of need where work will be performed; and
- All other required documentation supporting the application.

B. *H–2A Labor Contractor (H–2ALC) Filing Requirements (20 CFR 655.132).* The Department is granting a special variance to the application filing procedures for H–2ALCs contained at 20 CFR 655.132(a). Specifically, an employer engaged in commercial beekeeping activities is authorized to file an *Application for Temporary Employment Certification* covering one or more areas of intended employment based on a planned itinerary. An itinerant beekeeping employer who desires to employ one or more nonimmigrant workers on an itinerary to provide beekeeping services to fixed-site farmers/ranchers is, by definition, an H–2ALC. Therefore, the itinerant beekeeping labor contractor must identify itself as the employer of record on the ETA Form 9142 by completing Section C and marking item C.17 as ''H–2A Labor Contractor,'' and submitting, in addition to the documentation required under 20 CFR 655.130, all other required documentation supporting an H–2ALC application.

Signed in Washington, DC this 29th day of July 2011.

Jane Oates,

Assistant Secretary for Employment and Training Administration.

[FR Doc. 2011–19751 Filed 8–3–11; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

Training and Employment Guidance (TEGL) Letter No. 15–06, Change 1, Special Procedures: Labor Certification Process for Occupations Involved in the Open Range Production of Livestock Under the H–2A Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the United States Department of Labor (Department) is publishing, for public information, notice of the issuance and availability of TEGL 15–06, Change 1 entitled, *Special Procedures: Labor Certification Process for Occupations Involved in the Open Range Production of Livestock under the H–2A Program,* signed on June 14, 2011, by Jane Oates, Assistant Secretary for Employment and Training Administration.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, PhD, Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a

toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Special Procedures: Labor Certification Process for Occupations Involved in the Open Range Production of Livestock Under the H–2A Program

1. Purpose. To transmit special procedures, updated to reflect regulatory and organizational changes in the H–2A Program, for employers who apply to the Department of Labor (Department) to obtain labor certifications to hire temporary agricultural foreign workers in occupations involved in the open range production of livestock in the United States (U.S.).

2. References.

- 20 CFR part 655, subpart B;
- 20 CFR part 653, subparts B and F;
- 20 CFR part 654, subpart E;
- Training and Employment Guidance Letter (TEGL) No. 15–06, Special Procedures for Processing H–2A Applications for Occupations Involved in the Open Range Production of Livestock;
- ETA Handbook No. 385.

3. Background. In 1986, Congress passed the Immigration Reform and Control Act of 1986 (IRCA) which amended the Immigration and Nationality Act (INA), 8 U.S.C. 1101, *et seq.,* and established the H–2A program. In 1987, the Department issued an Interim Final Rule, promulgating the first H–2A regulations (the 1987 regulations) in accordance with IRCA. 54 FR 20496, Jun. 1, 1987. The 1987 regulations provided for the administration of the H–2A program by the ETA Regional Administrators, and instituted procedures to offset the adverse effects of immigration on U.S. workers. The 1987 regulations also established special procedures for certain occupations, as long as they did not deviate from the Secretary's statutory responsibility to determine U.S. worker availability and the adverse effect of foreign workers on the wages and working conditions of U.S. workers.

Due to the unique characteristics of the open range production of livestock, the Department established special procedures for the processing of H–2A applications for certification of temporary employment in those occupations. These special procedures were contained most recently in the TEGL No. 15–06.

The 1987 regulations remained in effect, largely unchanged, until the Department promulgated new H–2A regulations on December 18, 2008. 73 FR 77110, Dec. 18, 2008 (the 2008 Final Rule). The 2008 Final Rule implemented an attestation-based application process and made several substantive changes to the program, but retained the special procedures concept. After the Department determined that the 2008 Final Rule did not meet H–2A program policy objectives, the Department commenced another rulemaking process culminating in the publication of new H–2A regulations on February 12, 2010. 75 FR 6884, Feb. 12, 2010 (the 2010 Final Rule). The Final Rule implements changes that affect special procedures for the occupations involved in the open range production of livestock. Section 20 CFR 655.102 provides the Office of Foreign Labor Certification (OFLC) Administrator with the authority to establish, continue, revise or revoke special procedures for processing of certain H–2A applications, including those for occupations involved in the open range production of livestock, as long as those procedures do not deviate from the statutory requirements under the INA.

This TEGL updates the special procedures previously established for occupations involved in the open range production of livestock to reflect organizational changes, in addition to new regulatory and policy objectives. It replaces previous guidance disseminated under TEGL No. 15–06, Special Procedures for Processing H–2A Applications for Occupations Involved in the Open Range Production of Livestock.

4. Special Procedures. Attachment A outlines special procedures for labor certification applications submitted by employers for occupations involved in the open range production of livestock under the H–2A Program. Attachment B outlines standards for mobile housing applicable to occupations involved in the open range production of livestock under the H–2A Program. Unless otherwise specified in Attachments A and B, applications submitted for these occupations must comply with the requirements for processing H–2A applications contained at 20 CFR part 655, subpart B. Similarly, unless otherwise specified, job orders submitted for these occupations must comply with the requirements of 20 CFR parts 655, subpart B, 653, subparts B and F, and 654.

5. Effective Date. This guidance applies to all temporary labor certification applications for occupations in the open range production of livestock in the H–2A Program with a start date of need on or after October 1, 2011.

6. Action. The Chicago National Processing Center (Chicago NPC) Program Director and State Workforce Agency (SWA) Administrators are directed to immediately provide copies of these special procedures to all staff involved in processing H–2A labor certification applications from employers in the open range production of livestock occupations.

7. Inquiries. Questions from SWA staff should be directed to the Chicago NPC. Questions from the Chicago NPC staff should be directed to the OFLC National Office.

8. Attachment.

Attachment A—Special Procedures: Labor Certification Process for Occupations Involved in the Open Range Production of Livestock Under the H–2A Program. *See full text below.*

Attachment B—Standards for Mobile Housing Applicable to Occupations Involved in the Open Range Production of Livestock. *See full text below.*

Attachment A: Special Procedures: Labor Certification Process for Applications Involved in the Open Range Production of Livestock in the H–2A Program

This document outlines special procedures for applications submitted by employers involved in the open range production of livestock under the H–2A Program. Unless otherwise specified in this attachment, applications submitted for open range livestock occupations must comply with the requirements for processing H–2A applications outlined in 20 CFR part 655, subpart B. Similarly, unless otherwise specified, job orders submitted for open range livestock occupations must comply with the requirements of 20 CFR parts 655, subpart B, 653, subparts B and F, and 654.

I. Prefiling Procedures

A. Offered Wage Rate (20 CFR 655.120(a))

The Department is continuing a special variance to the offered wage rate requirements contained at 20 CFR 655.120(a). Because occupations involving the open range production of livestock are characterized by other than a reasonably regular workday or workweek, an employer must continue to offer, advertise in the course of its recruitment, and pay the monthly, weekly, or semi-monthly prevailing wage established by the OFLC Administrator for each State listed in an approved itinerary. In establishing the

offered wage rate for the range production of livestock, the Department uses findings from prevailing wage surveys conducted by SWAs in accordance with the procedures in the ETA Handbook No. 385. SWAs are required to transmit official wage rate findings covering the range production of livestock to the OFLC between May 1st and June 1st of each calendar year. Following a review of the SWA wage rate findings, the OFLC will publish the new agricultural prevailing wage rates in a **Federal Register** notice with an immediate effective date.

SWA wage rate findings will continue to establish monthly, weekly, or semi-monthly prevailing wages for a statewide or other geographical area in a manner that is consistent with the wage setting procedures applied to sheepherder occupations in the Western States. In circumstances where a SWA is unable to produce a wage rate finding for an occupation, due to an inadequate sample size or another valid reason, the wage setting procedures allow the OFLC to continue to issue a prevailing wage rate for that State based on the wage rate findings submitted by an adjoining or proximate SWA for the same or similar agricultural activities.

If the OFLC cannot establish a prevailing wage rate by using comparable survey data from an adjoining or proximate SWA, the OFLC will give consideration to aggregating survey data for the range production of livestock activities across States to create regional prevailing wage rates. When regional prevailing wages are considered, the OFLC may use the U.S. Department of Agriculture's (USDA) production or farm resource regions or other groupings of States used to conduct the USDA Farm Labor Survey.

B. Job Orders and SWA Review (20 CFR 655.121)

An employer engaged in the range production of livestock is allowed to submit a single Agricultural and Food Processing Clearance Order, ETA Form 790 (job order), Office of Management and Budget (OMB) 1205–0134, and all appropriate attachments covering a planned itinerary of work in multiple States. If the job opportunity is located in more than one State, either within the same area of intended employment or multiple areas of intended employment, the employer must submit the job order and all attachments (including a detailed itinerary) to the SWA having jurisdiction over the anticipated worksite(s) where the work is expected to begin. The employer must submit the job order no more than 75 calendar days and no less than 60 calendar days before the employer's first date of need.

Unless otherwise specified in these special procedures, the job order submitted to the SWA must satisfy the requirements for agricultural clearance orders outlined in 20 CFR part 653, subpart F and the requirements set forth in 20 CFR 655.122. The SWA will review the job order for regulatory compliance and will work with the employer to address any noted deficiencies. Upon its clearance of the job order, the SWA must promptly place the job order in intrastate clearance and commence recruitment of U.S. workers.

The job order shall remain active until 50 percent of the work contract period has elapsed for all SWAs in possession of the employer's job order (including those receiving it in interstate clearance under 20 CFR 655.150), unless otherwise advised by the Chicago NPC.

C. Contents of Job Offers (20 CFR 655.122)

Unless otherwise specified in this section, the content of job offers submitted to the SWAs and the Chicago NPC for occupations involved in the open range production of livestock must comply with all of the requirements of 20 CFR parts 655, subpart B, 653, subparts B and F, and 654.

1. Job duties, qualifications and requirements.

Job duties. Based on the current industry practice, the SWAs may rely on the following standard description of the job duties for a job opportunity in the open range livestock production industry:

Perform any combination of the following tasks to attend to livestock on the open range: feeds and waters livestock; herds livestock to pasture for grazing; examines animals to detect diseases and injuries; assists with the vaccination of livestock by herding into corral and/or stall or manually restraining animal on the range; applies medications to cuts and bruises; sprays livestock with insecticide; assists with castration of livestock; clips identifying notches on or brands animals; may assist with irrigating, planting, cultivating, and harvesting hay. Workers must be able to ride and handle horses in a manner to assure the safety of the worker, co-workers, and livestock. Must be able to find and maintain bearings to grazing areas. Must be willing and able to occasionally live and work independently or in small groups of workers in isolated areas for extended periods of time.

Any additional job duties must be normal and accepted for the occupation, and the SWA and Chicago NPC have the authority to request supporting documentation substantiating the appropriateness of the duties prior to accepting the job order. Additionally, the SWA or Chicago NPC may request modifications to the job duties if additional information, such as climatic conditions and/or the size of herd, necessitates the use of pack and saddle horses to reach the range, in order to fully apprise U.S. workers of the nature of the work to be performed.

Experience. Due to the unique nature of the work to be performed, the job offer may specify that applicants possess up to 6 months of experience in similar occupations involving the range tending or production of livestock covering multiple seasons and may require reference(s) to verify experience in performing these activities. Applicants must provide the name, address, and telephone number of any previous employer being used as a reference. The appropriateness of any other experience requirements must be substantiated by the employer and approved by the Chicago NPC.

Hours. The description of anticipated hours of work must show ''on call for up to 24 hours per day, 7 days per week'' in the job order. If an application filed for an open range livestock worker does not include the requirements of being on call 24 hours per day, 7 days per week, the Chicago NPC may not process the employer's application under the special procedures enumerated in this TEGL, and must instead require compliance with all the requirements of the H–2A regulations outlined in 20 CFR part 655, subpart B.

2. Housing. The employer must state in its job order that sufficient housing will be provided at no cost to H–2A workers and any workers in corresponding employment who are not reasonably able to return to their residence within the same day. Except for long-established standards for mobile housing in Attachment B, all employer-provided housing must comply with requirements set out in 20 CFR 655.122(d) for the entire period of occupancy. An employer whose itinerary requires mobile housing may provide mobile housing to its workers.

3. Workers' compensation. The employer must provide workers' compensation insurance coverage as described in 20 CFR 655.122(e) in all States where open range work will be performed. Prior to the issuance of the Temporary Labor Certification, the employer must provide the Certifying Officer (CO) with proof of workers' compensation coverage, including the name of the insurance carrier, the insurance policy number, and proof of

insurance for the dates of need, or if appropriate, proof of State law coverage for each State where the open range work will be performed. In the event that the current coverage will expire before the end of the certified work contract period or the insurance statement does not include all of the regulatory information required under the regulations at 20 CFR 655.122(e), the employer will be required to supplement its proof of workers' compensation for that State before a final determination is due. Where the employer's coverage will expire before the end of the certified work contract period, the employer may submit as proof of renewed coverage a signed and dated statement or letter showing proof of intent to renew and maintain coverage for the dates of need. The employer must maintain evidence that its workers' compensation was renewed, in the event the Department requests it.

4. Employer-provided items. Due to the remote and unique nature of the work to be performed, the employer must also specify in the job order and provide at no cost to workers an effective means of communicating with persons capable of responding to the worker's needs in case of an emergency. These means are necessary to perform the work and can include, but are not limited to, satellite phones, cell phones, wireless devices, radio transmitters, or other types of electronic communication systems.

5. Earnings records and statements. The employer must keep accurate and adequate records with respect to the workers' earnings and furnish to the worker on or before each payday a statement of earnings. Because the unique circumstances of employing range livestock workers (*i.e.,* on call 24/7 in remote locations) prevent the monitoring and recording of hours actually worked each day as well as the time the worker began and ended each workday, the employer is exempt from reporting on these two specific requirements at 20 CFR 655.122(j) and (k). However, all other regulatory requirements related to earnings records and statements apply.

6. Frequency of pay. Consistent with 20 CFR 655.122(m), the employer must state in the job offer the frequency with which the worker will be paid, which must be at least twice monthly or according to the prevailing practice in the area of intended employment, whichever is more frequent. Due to the unique circumstances of employing range livestock workers, the employer may, upon mutual agreement with the worker, pay the worker once per month as long as the monthly payment arrangement is reflected in the job offer and work contract, if any. Employers must pay wages when due.

II. Application for Temporary Employment Certification Filing Procedures

Application Filing Requirements (20 CFR 655.130). An individual employer that desires to apply for temporary employment certification for one or more nonimmigrant workers must file the following documentation with the Chicago NPC no less than 45 calendar days before the employer's date of need:

- ETA Form 9142 (OMB 1205–0466), Application for Temporary Employment Certification, and Appendix A.2;
- Copy of the ETA Form 790 and all attachments previously submitted to the SWA;
- A planned itinerary listing the names and contact information of all farmers/ranchers and identifying, with as much geographic specificity as possible and for each farmer/rancher, all of the physical locations and estimated start and end dates of need where work will be performed; and
- All other required documentation supporting the application.

Attachment B: Standards for Mobile Housing Applicable to Occupations Involved in the Open Range Production of Livestock

I. Procedures

Occupations involving the open range production of livestock generally require workers to live in remote housing of a mobile nature, rather than ''a fixed-site farm, ranch or similar establishment.'' This type of housing is typically referred to as mobile housing. For purposes of these special procedures, mobile housing is any housing that is capable of being moved from one area on the open range to another. The employer must provide housing at no cost to the H–2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day.

Where housing for work performed on the range is provided, the regulations at 20 CFR 655.122(d)(2) require that such housing meet standards of the DOL Occupational Safety and Health Administration (OSHA). In the absence of such standards, range housing for sheepherders and other workers engaged in the range production of livestock must meet guidelines issued by OFLC. Due to the fact that OSHA standards currently do not cover mobile housing, Section II of this attachment establishes the standards for determining the adequacy of employer-provided mobile housing for use on a range. However, any other type of housing, used by an employer to house workers engaged in open range production of livestock activities, must meet the standards applicable to such housing under 20 CFR 655.122(d).

Both mobile housing and fixed-site farm or ranch housing may be self-certified by an employer. Employers must submit a signed statement to the SWA and the Chicago NPC with the application for labor certification assuring that the housing is available, sufficient to accommodate the number of workers being requested, and meets all applicable standards.

SWAs must develop and implement a schedule which ensures that each employer's self-certified housing is inspected no less frequently than at least once every 3 years. These inspections may be performed either before or after a request is submitted for nonimmigrant livestock workers on the open range. Before referring a worker who is entitled to such housing, the SWA office must ensure that the housing is available and has been inspected in accordance with the inspection schedule. If the SWA determines that an employer's housing cannot be inspected in accordance with the inspection schedule or, when it is inspected, does not meet all the applicable standards, the Chicago NPC may deny the H–2A application in full or in part or require additional inspections in order to satisfy the regulatory requirement.

II. Mobile Housing Standards

An employer may use a mobile unit, camper, or other similar mobile vehicle for housing workers that meets the following standards:

A. Housing Site

Mobile housing sites shall be well drained and free from depressions in which water may stagnate.

B. Water Supply

1. An adequate and convenient supply of water that meets standards of the State health authority shall be provided. The amount of water provided must be enough for normal drinking, cooking, and bathing needs of each worker; and

2. Individual drinking cups shall be provided.

C. Excreta and Liquid Waste Disposal

1. Facilities shall be provided and maintained for effective disposal of excreta and liquid waste in accordance with requirements of the State health

authority or involved Federal agency; and

2. If pits are used for disposal by burying of excreta and liquid waste, they shall be kept fly-tight when not filled in completely after each use. The maintenance of disposal pits must be in accordance with State and local health and sanitation requirements.

D. Housing Structure

1. Housing shall be structurally sound, in good repair, in sanitary condition and shall provide protection to occupants against the elements;

2. Housing, other than tents, shall have flooring constructed of rigid materials easy to clean and so located as to prevent ground and surface water from entering;

3. Each housing unit shall have at least one window which can be opened or skylight opening directly to the outdoors; and

4. Tents may be used where terrain and/or land regulations do not permit use of other more substantial mobile housing which provides facilities and protection closer in conformance with the Department's intent.

E. Heating

1. Where the climate in which the housing will be used is such that the safety and health of a worker requires heated living quarters, all such quarters shall have properly installed operable heating equipment which supplies adequate heat. In considering whether the heating equipment is acceptable, the Chicago NPC shall first determine if the housing will be located in a National Forest Wilderness Section as specified in the Wilderness Act (16 U.S.C. 1131–1136). Such a location has a bearing on the type of equipment practicable, and whether any heavy equipment can be used. For example, the Wilderness Act (16 U.S.C. 1133(c)) restricts certain motorized or mechanical transport on certain roads in wilderness areas. The U.S. Forest Service has regulations for this at 36 CFR part 293. Aside from the above, other factors to consider in evaluating heating equipment are the severity of the weather and the types of protective clothing and bedding made available to the worker. If the climate in which the housing will be used is mild and not reasonably expected to drop below 50 degrees Fahrenheit continuously for 24 hours, no separate heating equipment is required if proper protective clothing and bedding are made available;

2. Any stoves or other sources of heat using combustible fuel shall be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases. Portable electrical heaters may be used, and if approved by Underwriters' Laboratory, kerosene heaters may be used according to manufacturer's instructions. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there shall be a concrete slab, insulated metal sheet, or other fireproof material on the floor under each stove, extending at least 18 inches beyond the perimeter of the base of the stove;

3. Any wall or ceiling within 18 inches of a solid or liquid fuel stove or stove pipe shall be made of fireproof material. A vented metal collar shall be installed around a stovepipe or vent passing through a wall, ceiling, floor or roof; and

4. When a heating system has automatic controls, the controls shall be of the type which cuts off the fuel supply when the flame fails or is interrupted or whenever a predetermined safe temperature or pressure is exceeded.

F. Lighting

1. In areas where it is not feasible to provide electrical service to mobile housing, including tents, lanterns shall be provided (kerosene wick lights meet the definition of lantern); and

2. Lanterns, where used, shall be provided in a minimum ratio of one per occupant of each unit, including tents.

G. Bathing, Laundry and Hand Washing

Movable bathing, laundry and hand washing facilities shall be provided when it is not feasible to provide hot and cold water under pressure.

H. Food Storage

When mechanical refrigeration of food is not feasible, the worker must be provided with another means of keeping food fresh and preventing spoilage, such as a butane or propane gas refrigerator. Other proven methods of safeguarding fresh foods, such as salting, are acceptable.

I. Cooking and Eating Facilities

1. When workers or their families are permitted or required to cook in their individual unit, a space shall be provided with adequate lighting and ventilation; and

2. Wall surfaces next to all food preparation and cooking areas shall be of nonabsorbent, easy to clean material. Wall surfaces next to cooking areas shall be of fire-resistant material.

J. Garbage and Other Refuse

1. Durable, fly-tight, clean containers shall be provided to each housing unit, including tents, for storing garbage and other refuse; and

2. Provision shall be made for collecting or burying refuse, which includes garbage, at least twice a week or more often if necessary. Refuse disposal shall conform to Federal, State, or local law, whichever applies.

K. Insect and Rodent Control

Appropriate materials, including sprays, must be provided to aid housing occupants in combating insects, rodents and other vermin.

L. Sleeping Facilities

A separate sleeping unit shall be provided for each person, except in a family arrangement. Such a unit shall include a comfortable bed, cot, or bunk with a clean mattress. When filing an application for certification and only where it is demonstrated to the Certifying Officer that is impractical to set up a second sleeping unit, the employer may request a variance from the separate sleeping unit requirement to allow for a second worker to temporarily join the open range operation. The second worker may be temporarily housed in the same sleeping unit for no more than three consecutive days and the employer must supply a sleeping bag or bed roll free of charge.

M. Fire, Safety and First Aid

1. All units in which people sleep or eat shall be constructed and maintained according to applicable State or local fire and safety law;

2. No flammable or volatile liquid or materials shall be stored in or next to rooms used for living purposes, except for those needed for current household use;

3. Mobile housing units for range use must have a second means of escape. One of the two required means of escape must be a window which can be easily opened, a hutch, or other provision. It must be demonstrated that the custom combine worker would be able to crawl through the second exit without difficulty;

4. Tents are not required to have a second means of escape, except when large tents with walls of rigid material are used. A heater may be used in a tent if the heater is approved by a testing service, such as Underwriters' Laboratory, and if the tent is fireproof; and

5. Adequate fire extinguishers in good working condition and first aid kits shall be provided in the mobile housing.

Signed in Washington, DC this 29 day of July 2011.

Jane Oates,

Assistant Secretary for Employment and Training Administration.

[FR Doc. 2011–19754 Filed 8–3–11; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Training and Employment Guidance (TEGL) Letter No. 16–06, Change 1, Special Procedures: Labor Certification Process for Multi-State Custom Combine Owners/Operators Under the H–2A Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the United States Department of Labor (Department) is publishing, for public information, notice of the issuance and availability of TEGL 16–06, Change 1, entitled, *Special Procedures: Labor Certification Process for Multi-State Custom Combine Owners/Operators under the H–2A Program,* signed on June 14, 2011, by Jane Oates, Assistant Secretary for Employment and Training Administration.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, PhD, Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Special Procedures: Labor Certification Process for Multi-State Custom Combine Owners/Operators Under the H–2A Program

1. *Purpose.* To transmit special procedures, updated to reflect regulatory and organization changes in the H–2A Program, for multi-state custom combine owners/operators (including Canadian) who apply to the Department of Labor (Department) to obtain labor certifications to hire temporary agricultural foreign workers as crew members to perform work in the United States (U.S.).

2. *References.*

- 20 CFR part 655, subpart B;
- 20 CFR part 653, subparts B and F;
- 20 CFR part 654, subpart E;
- Training and Employment Guidance Letter (TEGL) No. 16–06, Special Procedures for Processing H–2A Applications for Multi-State Custom Combine Owners/Operators;
- Field Memorandum (FM) No. 5–04, Special Procedures: Labor Certification for Processing H–2A Applications for Multi-State Custom Combine Owners/Operators;
- ETA Handbook No. 385.

3. *Background.* In 1986, Congress passed the Immigration Reform and Control Act of 1986 (IRCA) which amended the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.,* and established the H–2A Program. In 1987, the Department issued an Interim Final Rule, promulgating the first H–2A regulations (the 1987 regulations) in accordance with IRCA. 54 FR 20496, Jun. 1, 1987. The 1987 regulations provided for the administration of the H–2A Program by ETA Regional Administrators, and instituted procedures to offset the adverse effects of immigration on U.S. workers. The 1987 regulations also established special procedures for certain occupations, as long as they did not deviate from the Secretary's statutory responsibility to determine U.S. worker availability and the adverse effect of foreign workers on the wages and working conditions of U.S. workers.

The significance of the custom combine activity on the U.S. economy resulted in the promulgation of H–2A special procedures that were initially published in the **Federal Register** on April 12, 1989 (54 FR 14703, Apr. 12, 1989). Upon a request from the U.S. Custom Harvesters, Inc., the special procedures for custom combine owners/operators were revised and transmitted by FM No. 5–04 on January 28, 2004, which was directed to all ETA Regional Administrators. The processing of H–2A applications at that time was conducted by ETA Regional Offices. FM No. 5–04 was rescinded by TEGL 16–06.

The 1987 regulations remained in effect, largely unchanged, until the Department promulgated new H–2A regulations on December 18, 2008. 73 FR 77110, Dec. 18, 2008 (the 2008 Final Rule). The 2008 Final Rule implemented an attestation-based application process and made several substantive changes to the program, but retained the special procedures concept. After the Department determined that the 2008 Final Rule did not meet H–2A Program policy objectives, the Department commenced another rulemaking process culminating in the publication of new H–2A regulations on February 12, 2010. 75 FR 6884, Feb. 12, 2010 (the 2010 Final Rule). The 2010 Final Rule implements changes that affect special procedures for multi-state custom combine owners and operators.

Section 20 CFR 655.102 provides the Administrator of the Office of Foreign Labor Certification (OFLC) with authority to establish, continue, revise or revoke special procedures for processing of certain H–2A applications, including those for custom combine harvesting crews, as long as those procedures do not deviate from statutory requirements under the INA.

This TEGL updates the special procedures previously established for applications for multi-state custom combine owners and operators to reflect organizational changes, in addition to new regulatory and policy objectives. It rescinds and replaces previous guidance disseminated under TEGL No. 16–06, Special Procedures for Processing H–2A Applications for Multi-State Custom Combine Owners/Operators.

4. *Special Procedures.* Attachment A outlines special procedures for applications submitted by multi-state custom combine owners/operators under the H–2A Program. Attachment B outlines standards for housing applicable to multi-state custom combine owners/operators under the H–2A Program. Unless otherwise specified in Attachments A and B, applications submitted for these occupations must comply with the requirements for processing H–2A applications contained at 20 CFR part 655, subpart B. Similarly, unless otherwise specified, job orders submitted for these occupations must comply with the requirements of 20 CFR parts 655, subpart B, 653, subparts B and F, and 654.

5. *Effective Date.* This guidance applies to all temporary labor certification applications for occupations in custom combine operations in the H–2A Program with a start date of need on or after October 1, 2011.

6. *Action.* Chicago National Processing Center (Chicago NPC) Program Director and State Workforce Agency (SWA) Administrators are directed to immediately provide copies of these special procedures to all staff involved in processing H–2A applications from multi-state custom combine owners/operators.

7. *Inquiries.* Questions from SWA staff should be directed to the Chicago NPC. Questions from the Chicago NPC staff should be directed to the OFLC National Office.

8. *Attachments.*

Attachment A—Special Procedures: Labor Certification Process for the Multi-State Custom Combine Owners/Operators under the H–2A Program. *See full text below.*

Attachment B—Standards for Housing Applicable to Multi-State Custom Combine Owners/Operators. *See full text below.*

Attachment A: Special Procedures: Labor Certification Process for Applications for Multi-State Custom Combine Owners/Operators Under the H–2A Program

This document outlines special procedures for applications submitted by multi-state custom combine owners/operators under the H–2A Program. Unless otherwise specified in this attachment, applications submitted for custom combine occupations must comply with the requirements for processing H–2A applications outlined in 20 CFR part 655, subpart B. Similarly, unless otherwise specified, job orders submitted for custom combine occupations must comply with the requirements of 20 CFR parts 655, subpart B, 653, subparts B and F, and 654.

I. Prefiling Procedures

A. Offered Wage Rate (20 CFR 655.120(a)). An employer must offer, advertise in the course of its recruitment, and pay a wage that is the highest of the Adverse Effect Wage Rate, the prevailing hourly wage, the agreed-upon collective bargaining wage, or the Federal or State minimum wage, in effect at the time custom combine work is performed and for each State listed in an approved itinerary. In establishing agricultural prevailing wages, including those for custom combine activities, the Department continues to use findings from prevailing wage surveys conducted by SWAs in accordance with the procedures in the ETA Handbook No. 385. SWAs are required to transmit wage rate findings covering custom combine activities to the OFLC between May 1st and June 1st of each calendar year. Following a review of the SWA wage rate findings, the OFLC will publish the new agricultural prevailing wage rates in a **Federal Register** notice with an immediate effective date.

B. Job Orders and SWA Review (20 CFR 655.121). An employer engaged in custom combine activities is allowed to submit a single Agricultural and Food Processing Clearance Order, ETA Form 790 (job order), Office of Management and Budget (OMB) 1205–0134, and all appropriate attachments covering a planned itinerary of work in multiple States. If the job opportunity is located in more than one State, either within the same area of intended employment or multiple areas of intended employment, the employer must submit the job order and all attachments (including a detailed itinerary) to the SWA having jurisdiction over the anticipated worksite(s) where the work is expected to begin. The employer must submit the job order no more than 75 calendar days and no less than 60 calendar days before the employer's first date of need.

Unless otherwise specified in these special procedures, the job order submitted to the SWA must satisfy the requirements for agricultural clearance orders outlined in 20 CFR part 653, subpart F and the requirements set forth in 20 CFR 655.122. The SWA will review the job order for regulatory compliance and will work with the employer to address any noted deficiencies. Upon its clearance of the job order, the SWA must promptly place the job order in intrastate clearance and commence recruitment of U.S. workers.

The job order shall remain active until 50 percent of the work contract period has elapsed for all SWAs in possession of the employer's job order (including those receiving it in interstate clearance under 20 CFR 655.150), unless otherwise advised by the Chicago NPC.

C. Contents of Job Offers (20 CFR 655.122). Unless otherwise specified in this section, the content of job offers submitted to the SWAs and the Chicago NPC for custom combine activities must comply with all of the requirements of 20 CFR parts 655, subpart B, 653, subparts B and F, and 654.

1. Job qualifications and requirements.

Experience. Due to the unique nature of the work to be performed, the job offer may require that applicants possess up to 6 months of experience in custom combining activity and may require reference(s) to verify experience in performing such activities. Applicants must provide the name, address, and telephone number of any previous employer being used as a reference. The appropriateness of any other experience requirements must be substantiated by the employer and approved by the Chicago NPC.

Completion of Itinerary. An employer engaged in multi-state custom combine activity may require in its job offer that an applicant for the job must be available to work for the remainder of the entire itinerary. An applicant referred to the employer after the labor certification has been granted, but before 50 percent of the work contract period for the entire itinerary has elapsed, must be available and willing to join the crew at whatever place the crew is located at the time and remain with the crew for the duration of the custom combine itinerary.

2. *Housing.* The employer must state in its job offer that sufficient housing will be provided at no cost to H–2A workers and any workers in corresponding employment who are not reasonably able to return to their residence within the same day. Except for long-established standards for mobile housing in Attachment B, all employer-provided housing must comply with requirements set out in 20 CFR 655.122(d) for the entire period of occupancy. A custom combine employer whose itinerary requires mobile housing may provide mobile housing to its workers.

3. *Workers' compensation.* The employer must provide workers' compensation insurance coverage as described in 20 CFR 655.122(e) in all States where custom combine work will be performed. Prior to the issuance of the Temporary Labor Certification, the employer must provide the Certifying Officer (CO) with proof of workers' compensation coverage, including the name of the insurance carrier, the insurance policy number, and proof of insurance for the dates of need, or, if appropriate, proof of State law coverage for each State where the custom combine work will be performed. In the event that the current coverage will expire before the end of the certified work contract period or the insurance statement does not include all of the information required under the regulations at 20 CFR 655.122(e), the employer will be required to supplement its proof of workers' compensation for that State before a final determination is due. Where the employer's coverage will expire before the end of the certified work contract period, the employer may submit as proof of renewed coverage a signed and dated statement or letter showing proof of intent to renew and maintain coverage for the dates of need. The employer must maintain evidence that its workers' compensation was renewed, in the event the Department requests it.

4. *Employer-provided items.* Due to the remote and unique nature of the work to be performed, the employer must also specify in the job offer and provide at no cost to workers an effective means of communicating with persons capable of responding to the worker's needs in case of an emergency. These means are necessary to perform the work and can include, but are not limited to, satellite phones, cell phones, wireless devices, radio transmitters, or other types of electronic communication

systems to assist workers in performing assigned duties.

II. Application for Temporary Employment Certification Filing Procedures

A. Application Filing Requirements (20 CFR 655.130). An individual employer that desires to apply for temporary employment certification for one or more nonimmigrant workers must file the following documentation with the Chicago NPC no less than 45 calendar days before the employer's date of need:

- ETA Form 9142 (OMB 1205–0466), Application for Temporary Employment Certification, and Appendix A.2;
- Copy of the ETA Form 790 and all attachments previously submitted to the SWA;
- A planned itinerary listing the names and contact information of all farmers/ranchers and identifying, with as much geographic specificity as possible and for each farmer/rancher, all of the physical locations and estimated start and end dates of need where work will be performed; and
- All other required documentation supporting the application.

Because of delays in mail delivery from Canada, Canadian employers are encouraged to use express overnight mail service to expedite the delivery and receipt of communications between employers and the Chicago NPC, so as to ensure meeting regulatory deadlines.

B. H–2A Labor Contractor (H–2ALC) Filing Requirements (20 CFR 655.132). The Department is granting a special variance to the application filing procedures for H–2ALCs contained at 20 CFR 655.132(a). Specifically, an employer engaged in multi-state custom combine activities is authorized to file an *Application for Temporary Employment Certification* covering one or more areas of intended employment based on a definite itinerary. An employer who desires to employ one or more nonimmigrant workers on an itinerary to provide custom combine services to fixed-site farmers/ranchers is, by definition, an H–2ALC. Therefore, the custom combine labor contractor must identify itself as the employer of record on the ETA Form 9142 by completing Section C and marking item C.17 as ''H–2A Labor Contractor,'' and submitting, in addition to the documentation required under 20 CFR 655.130, all other required documentation supporting an H–2ALC application. The only special variance to the requirements at 20 CFR 655.132(b) is the recognized exemption of custom combine activities from the requirements of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) (29 U.S.C. 1801, 1803(a)(30)(E) *et seq.*).

III. Post-Acceptance Requirements

Billing (20 CFR 655.163(a)). When Canadian custom combine owners/operators are billed for approved labor certifications, the billing notice will instruct the employer to pay by check or money order (including International Money Order), and require that the check or money order be payable in U.S. currency.

Attachment B: Standards for Housing Applicable to Multi-State Custom Combine Owners/Operators

I. Procedures

Multi-state custom combine occupations generally require workers to live in housing of a mobile nature, a fixed-site farm, ranch or similar establishment or rental or public accommodations. For purposes of these special procedures, mobile housing is any housing that is capable of being moved from one area to another. The employer must provide housing at no cost to the H–2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day.

Except for long-standing standards for mobile housing which are listed under II below, all employer-provided housing must comply with 20 CFR 655.122(d). Multi-state custom combine owner/operators must provide an annual housing inspection report for all employer-owned housing (mobile or fixed-site housing) or other similar establishment used for sleeping purposes. Where the required inspection and approval report does not accompany the application, the employer may submit the report before the determination due date. However, the Chicago NPC will not certify applications unless the CO receives the required inspection report from the employer. The employer may amend the application with a written statement of assurance that motels, instead of mobile units, or other similar vehicles will be used to lodge crew members until the required SWA inspection report is submitted. When lodging will be in a motel or other public accommodation, the H–2A application must identify the rental, public accommodation, or other substantially similar class of habitation to be provided for the contract period, and the employer must submit a written statement of assurance to the Chicago NPC that such accommodations will comply with established standards for such housing during the entire period of occupancy. Any charges for rental or public accommodations must be paid directly by the employer to the owner or operator of the housing.

Multi-state custom combine owners/operators from Canada who indicate that lodging for their crew members will be mobile units or other similar vehicles must submit a report of inspection of such vehicles conducted by a representative of the Canadian government with their H–2A applications. A new inspection report is required annually for each vehicle. I

II. Mobile Housing Standards

An employer may use a mobile unit, camper, or other similar mobile vehicle for housing workers that meets the following standards:

A. Housing Site

Mobile housing sites shall be well drained and free from depressions in which water may stagnate.

B. Water Supply

1. An adequate and convenient supply of water that meets standards of the State health authority shall be provided. The amount of water provided must be enough for normal drinking, cooking, and bathing needs of each worker; and

2. Individual drinking cups shall be provided.

C. Excreta and Liquid Waste Disposal

1. Facilities shall be provided and maintained for effective disposal of excreta and liquid waste in accordance with requirements of the State health authority or involved Federal agency; and

2. If pits are used for disposal by burying of excreta and liquid waste, they shall be kept fly-tight when not filled in completely after each use. The maintenance of disposal pits must be in accordance with State and local health and sanitation requirements.

D. Housing Structure

1. Housing shall be structurally sound, in good repair, in sanitary condition and shall provide protection to occupants against the elements;

2. Housing, other than tents, shall have flooring constructed of rigid materials easy to clean and so located as to prevent ground and surface water from entering;

3. Each housing unit shall have at least one window which can be opened or skylight opening directly to the outdoors; and

4. Tents may be used where terrain and/or land regulations do not permit use of other more substantial mobile

housing which provides facilities and protection closer in conformance with the Department's intent.

E. Heating

1. Where the climate in which the housing will be used is such that the safety and health of a worker requires heated living quarters, all such quarters shall have properly installed operable heating equipment which supplies adequate heat. In considering whether the heating equipment is acceptable, the Chicago NPC shall first determine if the housing will be located in a National Forest Wilderness Section as specified in the Wilderness Act (16 U.S.C. 1131–1136). Such a location has a bearing on the type of equipment practicable, and whether any heavy equipment can be used. For example, the Wilderness Act (16 U.S.C. 1133(c)) restricts certain motorized or mechanical transport on certain roads in wilderness areas. The U.S. Forest Service has regulations for this at 36 CFR part 293. Aside from the above, other factors to consider in evaluating heating equipment are the severity of the weather and the types of protective clothing and bedding made available to the worker. If the climate in which the housing will be used is mild and not reasonably expected to drop below 50 degrees Fahrenheit continuously for 24 hours, no separate heating equipment is required if proper protective clothing and bedding are made available;

2. Any stoves or other sources of heat using combustible fuel shall be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases. Portable electrical heaters may be used, and if approved by Underwriters' Laboratory, kerosene heaters may be used according to manufacturer's instructions. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there shall be a concrete slab, insulated metal sheet, or other fireproof material on the floor under each stove, extending at least 18 inches beyond the perimeter of the base of the stove;

3. Any wall or ceiling within 18 inches of a solid or liquid fuel stove or stove pipe shall be made of fireproof material. A vented metal collar shall be installed around a stovepipe or vent passing through a wall, ceiling, floor or roof; and

4. When a heating system has automatic controls, the controls shall be of the type which cuts off the fuel supply when the flame fails or is interrupted or whenever a predetermined safe temperature or pressure is exceeded.

F. Lighting

1. In areas where it is not feasible to provide electrical service to mobile housing, including tents, lanterns shall be provided (kerosene wick lights meet the definition of lantern); and

2. Lanterns, where used, shall be provided in a minimum ratio of one per occupant of each unit, including tents.

G. Bathing, Laundry and Hand Washing

Movable bathing, laundry and hand washing facilities shall be provided when it is not feasible to provide hot and cold water under pressure.

H. Food Storage

When mechanical refrigeration of food is not feasible, the worker must be provided with another means of keeping food fresh and preventing spoilage, such as a butane or propane gas refrigerator. Other proven methods of safeguarding fresh foods, such as salting, are acceptable.

I. Cooking and Eating Facilities

1. When workers or their families are permitted or required to cook in their individual unit, a space shall be provided with adequate lighting and ventilation; and

2. Wall surfaces next to all food preparation and cooking areas shall be of nonabsorbent, easy to clean material. Wall surfaces next to cooking areas shall be of fire-resistant material.

J. Garbage and Other Refuse

1. Durable, fly-tight, clean containers shall be provided to each housing unit, including tents, for storing garbage and other refuse; and

2. Provision shall be made for collecting or burying refuse, which includes garbage, at least twice a week or more often if necessary. Refuse disposal shall conform to Federal, State, or local law, whichever applies.

K. Insect and Rodent Control

Appropriate materials, including sprays, must be provided to aid housing occupants in combating insects, rodents and other vermin.

L. Sleeping Facilities

A separate sleeping unit shall be provided for each person, except in a family arrangement. Such a unit shall include a comfortable bed, cot, or bunk with a clean mattress. When filing an application for certification and only where it is demonstrated to the Certifying Officer that it is impractical to set up a second sleeping unit, the employer may request a variance from the separate sleeping unit requirement to allow for a second worker to temporarily join the custom combine operation. The second worker may be temporarily housed in the same sleeping unit for no more than three consecutive days and the employer must supply a sleeping bag or bed roll free of charge.

M. Fire, Safety and First Aid

1. All units in which people sleep or eat shall be constructed and maintained according to applicable State or local fire and safety law;

2. No flammable or volatile liquid or materials shall be stored in or next to rooms used for living purposes, except for those needed for current household use;

3. Mobile housing units for range use must have a second means of escape. One of the two required means of escape must be a window which can be easily opened, a hutch, or other provision. It must be demonstrated that the custom combine worker would be able to crawl through the second exit without difficulty;

4. Tents are not required to have a second means of escape, except when large tents with walls of rigid material are used. A heater may be used in a tent if the heater is approved by a testing service, such as Underwriters' Laboratory, and if the tent is fireproof; and

5. Adequate fire extinguishers in good working condition and first aid kits shall be provided in the mobile housing.

Signed in Washington, DC, this 29th day of July 2011.

Jane Oates,

Assistant Secretary for Employment and Training Administration.

[FR Doc. 2011–19752 Filed 8–3–11; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

Training and Employment Guidance (TEGL) Letter No. 17–06, Change 1, Special Procedures: Labor Certification Process for Employers in the Itinerant Animal Shearing Industry Under the H–2A Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the United States Department of Labor (Department) is publishing, for public information, notice of the issuance and availability of TEGL 17–06, Change 1 entitled, *Special Procedures: Labor*

Certification Process for Employers in the Itinerant Animal Shearing Industry under the H–2A Program, signed on June 14, 2011, by Jane Oates, Assistant Secretary for Employment and Training Administration.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, PhD, Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Special Procedures: Labor Certification Process for Employers in the Itinerant Animal Shearing Industry Under the H–2A Program

1. *Purpose.* To transmit special procedures, as updated to reflect regulatory and administrative changes in the H–2A Program, for employers who apply to the Department of Labor (Department) to obtain labor certifications to hire temporary agricultural foreign workers in occupations involving an itinerary for the shearing of sheep, goats, alpacas, or other animals requiring shearing in the United States (U.S.).

2. *References.*

- 20 CFR part 655, subpart B;
- 20 CFR part 653, subparts B and F;
- 20 CFR part 654, subpart E;
- Paperwork Reduction Act of 1995 (Pub. L. 104–13);
- Training and Employment Guidance Letter (TEGL) No. 17–06, Special Procedures for Employers in the Itinerant Animal Shearing Industry Under the H–2A Program;
- ETA Handbook No. 385.

3. *Background.* In 1986, Congress passed the Immigration Reform and Control Act of 1986 (IRCA) which amended the Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq., and established the H–2A Program. In 1987 the Department issued an Interim Final Rule, promulgating the first H–2A regulations (the 1987 regulations) in accordance with IRCA. 54 FR 20496, Jun. 1, 1987. The 1987 regulations provided for the administration of the H–2A Program by ETA Regional Administrators, and instituted procedures to offset the adverse effects of immigration on U.S. workers. The 1987 regulations also established special procedures for certain occupations, as long as they did not deviate from the Secretary's statutory responsibility to determine U.S. worker availability and the adverse effect of foreign workers on the wages and working conditions of U.S. workers.

Due to the unique nature of the itinerant animal shearing industry, the Department established special procedures for the processing of H–2A applications for labor certification of temporary agricultural foreign workers. These special procedures were contained most recently in the TEGL No. 17–06.

The 1987 regulations remained in effect, largely unchanged, until the Department promulgated new H–2A regulations on December 18, 2008. 73 FR 77110, Dec. 18, 2008 (the 2008 Final Rule). The 2008 Final Rule implemented an attestation-based application process and made several substantive changes to the program, but retained the special procedures concept. After the Department determined that the 2008 Final Rule did not meet H–2A Program policy objectives, the Department commenced another rulemaking process culminating in the publication of new H–2A regulations on February 12, 2010. 75 FR 6884, Feb. 12, 2010 (the 2010 Final Rule). The 2010 Final Rule implements changes that affect special procedures for the occupations involved in the itinerant animal shearing industry. Section 20 CFR 655.102 provides the Office of Foreign Labor Certification (OFLC) Administrator with the authority to establish, continue, revise or revoke special procedures for processing of certain H–2A applications, including those for itinerant animal shearing industry, as long as those procedures do not deviate from the statutory requirements under the INA.

This TEGL updates the special procedures previously established for occupations involved in itinerant animal shearing to reflect organizational changes, in addition to new regulatory and policy objectives. It rescinds and replaces previous guidance disseminated under TEGL 17–06, Special Procedures for Employers in the Itinerant Animal Shearing Industry Under the H–2A Program.

4. *Special Procedures.* Attachment A outlines special procedures for applications submitted by employers in the itinerant animal shearing industry under the H–2A Program. Attachment B outlines standards for mobile housing applicable to employers in the itinerant animal shearing industry under the H–2A Program. Unless otherwise specified in Attachments A and B, applications submitted for these occupations must comply with the requirements for processing H–2A applications contained at 20 CFR part 655, subpart B. Similarly, unless otherwise specified, job orders submitted for these occupations must comply with the requirements of 20 CFR parts 655, subpart B, 653, subparts B and F, and 654.

5. *Effective Date.* This guidance applies to all temporary labor certification applications for occupations in itinerant animal shearing in the H–2A Program with a start date of need on or after October 1, 2011.

6. *Action.* The Chicago National Processing Center (Chicago NPC) Program Director and State Workforce Agency (SWA) Administrators are directed to immediately provide copies of these special procedures to all staff involved in processing H–2A labor certification applications from employers in the itinerant animal shearing industry. The revised special procedures will apply to all employer applications with a start date of need on or after October 1, 2011.

7. *Inquiries.* Questions from the Public should be directed to the local SWA. Questions from SWA staff should be directed to the Chicago NPC. Questions from the Chicago NPC staff should be directed to the OFLC National Office.

8. *Attachment.*

Attachment A: Special Procedures: Labor Certification Process for Applications in the Itinerant Animal Shearing Industry under the H–2A Program. *See full text below.*

Attachment B: Standards for Mobile Housing Applicable to Occupations in the Itinerant Animal Shearing Industry. *See full text below.*

Attachment A: Special Procedures: Labor Certification Process for Applications in the Itinerant Animal Shearing Industry Under the H–2A Program

This document outlines special procedures for applications submitted by employers in the itinerant animal shearing industry under the H–2A Program. Unless otherwise specified in this attachment, applications submitted for shearing occupations must comply with the requirements for processing H–2A applications outlined in 20 CFR part 655, subpart B. Similarly, unless otherwise specified, job orders submitted for shearing occupations must comply with the requirements of 20 CFR parts 655, subpart B, 653, subparts B and F, and 654.

I. Prefiling Procedures

A. Offered Wage Rate (20 CFR 655.120(a)). An employer must offer, advertise in the course of its

recruitment, and pay a wage that is the highest of the Adverse Effect Wage Rate (AEWR), the prevailing hourly or piece rate, the agreed-upon collective bargaining wage, or the Federal or State minimum wage, in effect at the time the itinerant animal shearing services are performed and for each State listed in an approved itinerary. In establishing agricultural prevailing piece rates for itinerant animal shearing activities, the Department continues to use findings from prevailing wage surveys conducted by SWAs in accordance with the procedures in the ETA Handbook No. 385. SWAs are required to transmit piece rate findings covering itinerant animal shearing activities to the OFLC between May 1st and June 1st of each calendar year. Following a review of the SWA-reported piece rate findings, the OFLC will publish the new agricultural prevailing piece rates in a **Federal Register** notice with an immediate effective date.

In circumstances where a SWA is unable to produce a piece rate finding for an occupation, due to an inadequate sample size or another valid reason, the wage setting procedures allow the OFLC to continue to issue a prevailing piece rate for that State based on the piece rate findings submitted by an adjoining or proximate SWA for the same or similar agricultural activities.

If the OFLC cannot establish a prevailing wage rate by using comparable survey data from an adjoining or proximate SWA, the OFLC will give consideration to aggregating survey data from the itinerant sheep shearing activities across States to create regional prevailing piece rates. When regional prevailing wages are considered, the OFLC may use the U.S. Department of Agriculture's (USDA) production or farm resource regions or other groupings of States used to conduct the USDA Farm Labor Survey.

B. Job Orders and SWA Review (20 CFR 655.121). An employer engaged in animal shearing activities is allowed to submit a single Agricultural and Food Processing Clearance Order, ETA Form 790 (job order), Office of Management and Budget (OMB) 1205–0134, and all appropriate attachments covering a planned itinerary of work in multiple States. If the job opportunity is located in more than one State, either within the same area of intended employment or multiple areas of intended employment, the employer must submit the job order and all attachments (including a detailed itinerary) to the SWA having jurisdiction over the anticipated worksite(s) where the work is expected to begin. The employer must submit the job order no more than 75 calendar days and no less than 60 calendar days before the employer's first date of need.

Unless otherwise specified in these special procedures, the job order submitted to the SWA must satisfy the requirements for agricultural clearance orders outlined in 20 CFR part 653, subpart F and the requirements set forth in 20 CFR 655.122. The SWA will review the job order for regulatory compliance and will work with the employer to address any noted deficiencies. Upon its clearance of the job order, the SWA must promptly place the job order in intrastate clearance and commence recruitment of U.S. workers.

The job order shall remain active until 50 percent of the work contract period has elapsed for all SWAs in possession of the employer's job order (including those receiving in interstate clearance under 20 CFR 655.150), unless otherwise advised by the Chicago NPC.

C. Contents of Job Offers (20 CFR 655.122). Unless otherwise specified in this section, the content of job orders submitted to the SWAs and the Chicago NPC for animal shearing activities must comply with all of the requirements of 20 CFR parts 655, subpart B, 653, subparts B and F, and 654.

1. Job qualifications and requirements.

Experience. Due to the unique nature of the work to be performed, the job offer may specify that applicants possess up to 6 months of experience as a shearer covering multiple seasons and may require reference(s) to verify the experience performing these activities. Applicants must provide the name, address, and telephone number of any previous employer being used as a reference. Except as provided below, the appropriateness of any other experience requirements must be substantiated by the employer and approved by the Chicago NPC.

Shearing Method. An employer may require that the workers perform the ''Australian'' or ''free-style'' method of shearing as a lawful, job-related requirement. A U.S. worker who otherwise qualifies for the job but whose experience has been limited to shearing using the ''tying'' method must be afforded a specified break-in period, which may not be any fewer than 5 working days, to improve his/her performance and adapt to the ''free-style'' method.

Completion of Itinerary. An animal shearing employer may require in its job offer that an applicant for the job must be available to work for the remainder of the entire animal shearing itinerary. An applicant referred to the employer after the labor certification has been granted, but before 50 percent of the work contract period for the entire itinerary has elapsed, must be available and willing to join the crew at whatever place the crew is located at the time and remain with the crew for the duration of the animal shearing itinerary.

2. *Housing.* The employer must state in its job offer that sufficient housing will be provided at no cost to H–2A workers and any workers in corresponding employment who are not reasonably able to return to their residence within the same day. Except for long-established standards for mobile housing in Attachment B, all employer-provided housing must comply with requirements set out in 20 CFR 655.122(d) for the entire period of occupancy. An animal shearing employer whose itinerary requires mobile housing may provide mobile housing to its workers.

3. *Workers' compensation.* The employer must provide workers' compensation insurance coverage, as described in 20 CFR 655.122(e), in all States where shearing work will be performed. Prior to the issuance of the Temporary Labor Certification, the employer must provide the Certifying Officer (CO) with proof of workers' compensation coverage, including the name of the insurance carrier, the insurance policy number, and proof of insurance for the dates of need, or if appropriate, proof of State law coverage for each State where the animal shearing work will be performed. In the event that the current coverage will expire before the end of the certified work contract period or the insurance statement does not include all of the information required under the regulations at 20 CFR 655.122(e), the employer will be required to supplement its proof of workers' compensation for that State before a final determination is due. Where the employer's coverage will expire before the end of the certified work contract period, the employer may submit as proof of renewed coverage a signed and dated statement or letter showing proof of intent to renew and maintain coverage for the dates of need. The employer must maintain evidence that its workers' compensation was renewed, in the event the Department requests it.

4. *Employer-provided items.* An employer in the H–2A Program must provide to the worker, without charge or deposit charge, all tools, supplies, and equipment required to perform the duties assigned. The Department's regulations have previously recognized that the wage rates prevailing in the animal shearing industry reflect a historical and common practice of employees providing their own tools.

Employers were permitted, upon prior approval by the Department, to require that workers provide their own tools. Alternatively, employers who did provide tools to the workers were permitted to apply a wage differential of $ 0.05 per animal shorn to the required wage. However, after the enactment of the 2010 Final Rule, an animal shearing employer may no longer require that employees provide their own tools. In addition, an animal shearing employer may no longer deduct from an employee's pay the cost of any item that is an employer's business expense where doing so would reduce the employee's wages below the required wage rate, consistent with 20 CFR 655.120(a) and 655.122(f) and (p).

5. Due to the remote and unique nature of the work to be performed, the employer must also specify in the job order, and provide at no cost to workers, an effective means of communicating with persons capable of responding to the worker's needs in case of an emergency. These means are necessary to perform the work and can include, but are not limited to, satellite phones, cell phones, wireless devices, radio transmitters, or other types of electronic communication systems.

6. Rates of pay. If paying by the piece rate, the animal shearing employer must specify in the job order the established piece rates (*i.e.,* rate of pay per head sheared) for each State where shearing will be performed and that is no less than the piece rate prevailing for the activity in the area of intended employment.

If the worker is paid on a piece rate basis, the worker's pay must be supplemented if at the end of the pay period the piece rate does not result in average hourly rate earnings at least equal to the amount the worker would have earned had the worker been paid at the highest of the AEWR, the prevailing hourly wage rate, the agreed-upon collective bargaining wage, or the Federal or State minimum wage, in effect at the time and in the State where shearing work was performed.

Productivity Standards. Where an employer pays a piece rate and requires that workers meet a minimum productivity standard in order to retain employment, that productivity standard must be specified in the job offer and must be consistent with 20 CFR 655.122(l)(2)(iii). The SWA and/or Chicago NPC will review the employer's minimum production requirements and may request additional documentation to substantiate the appropriateness of any requirement prior to approving the application.

II. Application for Temporary Employment Certification Filing Procedures

A. Application Filing Requirements (20 CFR 655.130). An individual employer that desires to apply for temporary employment certification for one or more nonimmigrant workers must file the following documentation with the Chicago NPC no less than 45 calendar days before the employer's date of need:

- ETA Form 9142 (OMB 1205–0466), Application for Temporary Employment Certification, and Appendix A.2;
- Copy of the ETA Form 790 and all attachments previously submitted to the SWA;
- An itinerary listing the names and contact information of all employers and identifying, with as much geographic specificity as possible for each farmer/rancher, all of the physical locations and estimated start and end dates of need where work will be performed; and
- All other required documentation supporting the application.

B. H–2A Labor Contractor (H–2ALC) Filing Requirements (20 CFR 655.132). The Department is granting a special variance to the application filing procedures for H–2ALCs contained at 20 CFR 655.132(a). Specifically, an employer engaged in animal shearing activities is authorized to file an *Application for Temporary Employment Certification* covering one or more areas of intended employment based on a definite itinerary. An itinerant animal shearing employer who desires to employ one or more nonimmigrant workers on an itinerary to provide itinerant animal shearing services to fixed-site farmers/ranchers is, by definition, an H–2ALC. Therefore, the itinerant animal shearing labor contractor must identify itself as the employer of record on the ETA Form 9142 by completing Section C and marking item C.17 as ''H–2A Labor Contractor,'' and submitting, in addition to the documentation required under 20 CFR 655.130, all other required documentation supporting an H–2ALC application. The only special variance to the requirements at 20 CFR 655.132(b) is the recognized exemption of sheep shearing activities from the requirements of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) (29 U.S.C. 1801, 1803 (a)(3)(E) *et seq.*).

III. Post-Acceptance Requirements

A. Additional Positive Recruitment (20 CFR 655.154). An animal shearing employer will be required to conduct positive recruitment within a multistate region of traditional or expected labor supply where the Chicago NPC finds that there are a significant number of qualified U.S. workers who, if recruited, would be willing to make themselves available for work at the time and place needed.

Based on long standing practice, one primary source of domestic workers for animal shearing has traditionally been the labor organization that represents sheep shearers, the Sheep Shearers Union of North America. Therefore, when the Chicago NPC issues a Notice of Acceptance, the employer will receive instructions to contact the Sheep Shearers Union of North America. In accordance with 20 CFR 655.154(d), the CO will specify the documentation or other supporting evidence that must be maintained by the employer as proof that this positive recruitment requirement was met.

Attachment B: Standards for Mobile Housing Applicable to Occupations in the Itinerant Animal Shearing Industry

I. Procedures

Occupations involving itinerant animal shearing generally require workers to live in remote housing of a mobile nature, rather than ''a fixed-site farm, ranch or similar establishment.'' This type of housing is typically referred to as mobile housing. For purposes of these procedures, mobile housing is any housing that is capable of being moved from one area on the open range to another. The employer must provide housing at no cost to the H–2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day.

Where housing for work performed on the range is provided, the regulations at 20 CFR 655.122(d)(2) require that such housing meet standards of the DOL Occupational Safety and Health Administration (OSHA). In the absence of such standards, range housing must meet guidelines issued by OFLC. Due to the fact that OSHA standards currently do not cover mobile housing, Section II of this attachment establishes the standards for determining the adequacy of employer-provided mobile housing for use on the range. However, any other type of housing, used by an employer to house the workers engaged in itinerant animal shearing activities, must meet the standards applicable to such housing under 20 CFR 655.122(d).

Both mobile housing and fixed-site farm or ranch housing may be self-certified by an employer. Employers must submit a signed statement to the

SWA and the Chicago NPC with the application for labor certification assuring that the housing is available, sufficient to accommodate the number of workers being requested, and meets all applicable standards.

SWAs must develop and implement a schedule which ensures that each employer's self-certified housing is inspected no less frequently than at least once every 3 years. These inspections may be performed either before or after a request is submitted for nonimmigrant workers on the open range. Before referring a worker who is entitled to such housing, the SWA office must ensure that the housing is available and has been inspected in accordance with the inspection schedule. If the SWA determines that an employer's housing cannot be inspected in accordance with the inspection schedule or, when it is inspected, does not meet all the applicable standards, the Chicago NPC may deny the H–2A application in full or in part or require additional inspections in order to satisfy the regulatory requirement.

An animal shearing contractor may lease a mobile unit owned by a crew member or other person or make some other type of ''allowance'' to the owner. Neither the SWA nor Chicago NPC should be involved in establishing or negotiating the amount an employer offers to provide to a worker or other person who owns a mobile unit and desires to lease it to the employer. The employer may not accept the use of a housing unit owned by a worker without remuneration, and the compensation provided to the owner must be reasonable and consistent with leasing rates normally applicable to such units. Further, nothing in this paragraph alters the employer's obligation under 20 CFR 655.122 to provide housing at no cost to the H–2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day, nor the employer's obligation to pay the workers' wages free and clear.

In addition, if the employer represents such mobile unit as ''housing or lodging provided by the employer'', the employer ''controls'' the mobile unit and is subject to ensuring that the housing unit complies with the applicable mobile housing standards for such housing. In addition, the employer is subject to the SWA inspection schedule for such a unit.

II. Mobile Housing Standards

An employer may use a mobile unit, camper, or other similar mobile vehicle for housing workers that meets the following standards:

A. Housing Site

Mobile housing sites shall be well drained and free from depressions in which water may stagnate.

B. Water Supply

1. An adequate and convenient supply of water that meets standards of the State health authority shall be provided. The amount of water provided must be enough for normal drinking, cooking, and bathing needs of each worker; and

2. Individual drinking cups shall be provided.

C. Excreta and Liquid Waste Disposal

1. Facilities shall be provided and maintained for effective disposal of excreta and liquid waste in accordance with requirements of the State health authority or involved Federal agency; and

2. If pits are used for disposal by burying of excreta and liquid waste, they shall be kept fly-tight when not filled in completely after each use. The maintenance of disposal pits must be in accordance with State and local health and sanitation requirements.

D. Housing Structure

1. Housing shall be structurally sound, in good repair, in sanitary condition and shall provide protection to occupants against the elements;

2. Housing, other than tents, shall have flooring constructed of rigid materials easy to clean and so located as to prevent ground and surface water from entering;

3. Each housing unit shall have at least one window which can be opened or skylight opening directly to the outdoors; and

4. Tents may be used where terrain and/or land regulations do not permit use of other more substantial mobile housing which provides facilities and protection closer in conformance with the Department's intent.

E. Heating

1. Where the climate in which the housing will be used is such that the safety and health of a worker requires heated living quarters, all such quarters shall have properly installed operable heating equipment which supplies adequate heat. In considering whether the heating equipment is acceptable, the Chicago NPC shall first determine if the housing will be located in a National Forest Wilderness Section as specified in the Wilderness Act (16 U.S.C. 1131–1136). Such a location has a bearing on the type of equipment practicable, and whether any heavy equipment can be used. For example, the Wilderness Act (16 U.S.C. 1133(c)) restricts certain motorized or mechanical transport on certain roads in wilderness areas. The U.S. Forest Service has regulations for this at 36 CFR part 293. Aside from the above, other factors to consider in evaluating heating equipment are the severity of the weather and the types of protective clothing and bedding made available to the worker. If the climate in which the housing will be used is mild and not reasonably expected to drop below 50 degrees Fahrenheit continuously for 24 hours, no separate heating equipment is required if proper protective clothing and bedding are made available;

2. Any stoves or other sources of heat using combustible fuel shall be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases. Portable electrical heaters may be used, and if approved by Underwriters' Laboratory, kerosene heaters may be used according to manufacturer's instructions. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there shall be a concrete slab, insulated metal sheet, or other fireproof material on the floor under each stove, extending at least 18 inches beyond the perimeter of the base of the stove;

3. Any wall or ceiling within 18 inches of a solid or liquid fuel stove or stove pipe shall be made of fireproof material. A vented metal collar shall be installed around a stovepipe or vent passing through a wall, ceiling, floor or roof; and

4. When a heating system has automatic controls, the controls shall be of the type which cuts off the fuel supply when the flame fails or is interrupted or whenever a predetermined safe temperature or pressure is exceeded.

F. Lighting

1. In areas where it is not feasible to provide electrical service to mobile housing, including tents, lanterns shall be provided (kerosene wick lights meet the definition of lantern); and

2. Lanterns, where used, shall be provided in a minimum ratio of one per occupant of each unit, including tents.

G. Bathing, Laundry and Hand Washing

Movable bathing, laundry and hand washing facilities shall be provided when it is not feasible to provide hot and cold water under pressure.

H. Food Storage

When mechanical refrigeration of food is not feasible, the worker must be provided with another means of keeping food fresh and preventing spoilage, such as a butane or propane gas refrigerator. Other proven methods of safeguarding fresh foods, such as salting, are acceptable.

I. Cooking and Eating Facilities

1. When workers or their families are permitted or required to cook in their individual unit, a space shall be provided with adequate lighting and ventilation; and

2. Wall surfaces next to all food preparation and cooking areas shall be of nonabsorbent, easy to clean material. Wall surfaces next to cooking areas shall be of fire-resistant material.

J. Garbage and Other Refuse

1. Durable, fly-tight, clean containers shall be provided to each housing unit, including tents, for storing garbage and other refuse; and

2. Provision shall be made for collecting or burying refuse, which includes garbage, at least twice a week or more often if necessary. Refuse disposal shall conform to Federal, State, or local law, whichever applies.

K. Insect and Rodent Control

Appropriate materials, including sprays, must be provided to aid housing occupants in combating insects, rodents and other vermin.

L. Sleeping Facilities

A separate sleeping unit shall be provided for each person, except in a family arrangement. Such a unit shall include a comfortable bed, cot, or bunk with a clean mattress. When filing an application for certification and only where it is demonstrated to the CO that is impractical to set up a second sleeping unit, the employer may request a variance from the separate sleeping unit requirement to allow for a second worker to temporarily join the shearing operation. The second worker may be temporarily housed in the same sleeping unit for no more than three consecutive days and the employer must supply a sleeping bag or bed roll free of charge.

M. Fire, Safety and First Aid

1. All units in which people sleep or eat shall be constructed and maintained according to applicable State or local fire and safety law;

2. No flammable or volatile liquid or materials shall be stored in or next to rooms used for living purposes, except for those needed for current household use;

3. Mobile housing units for range use must have a second means of escape. One of the two required means of escape must be a window which can be easily opened, a hatch, or other provision. It must be demonstrated that the custom combine worker would be able to crawl through the second exit without difficulty;

4. Tents are not required to have a second means of escape, except when large tents with walls of rigid material are used. A heater may be used in a tent if the heater is approved by a testing service, such as Underwriters' Laboratory, and if the tent is fireproof; and

5. Adequate fire extinguishers in good working condition and first aid kits shall be provided in the mobile housing.

Signed in Washington, DC, this 29th day of July 2011.

Jane Oates,

Assistant Secretary for Employment and Training Administration.

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DEPARTMENT OF LABOR

Employment and Training Administration

Training and Employment Guidance (TEGL) Letter No. 32–10: Special Procedures: Labor Certification Process for Employers Engaged in Sheepherding and Goatherding Occupations Under the H–2A Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the United States Department of Labor (Department) is publishing, for public information, notice of the issuance and availability of TEGL 32–10 entitled *Special Procedures: Labor Certification Process for Employers Engaged in Sheepherding and Goatherding Occupations under the H–2A Program,* signed on June 14, 2011, by Jane Oates, Assistant Secretary for Employment and Training Administration.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, PhD, Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Special Procedures: Labor Certification Process for Employers Engaged in Sheepherding and Goatherding Occupations under the H–2A Program

1. *Purpose.* To transmit special procedures, as updated to reflect regulatory and administrative changes in the H–2A Program, for employers who apply to the Department to obtain labor certifications to hire temporary agricultural foreign workers to perform sheepherding and/or goatherding activities.

2. *References.*

- 20 CFR part 655, subpart B;
- 20 CFR part 653, subparts B and F;
- 20 CFR part 654, subpart E;
- Field Memorandum (FM) 24–01, Special Procedures: Labor Certification for Sheepherders and Goatherders under the H–2A Program;
- FM 74–89, Special Procedures: Labor Certification for Sheepherders under the H–2A Program;
- ETA Handbook No. 385.

3. *Background.* Historically, employers in several western States have utilized the provisions of the Immigration and Nationality Act (INA), 8 U.S.C. 1101, *et seq.,* to import nonimmigrant foreign workers to work as sheepherders and goatherders in conjunction with their ranching activities.

The unique occupational characteristics of sheepherding (spending extended periods of time with grazing herds of sheep in isolated mountainous terrain; being on call to protect flocks from predators 24 hours a day, 7 days a week) have been recognized by the Department, the United States Citizenship and Immigration Service (USCIS), and Congress as significant factors in limiting the number of United States (U.S.) workers who might be available for and capable of performing these jobs.

During the early 1950's, Congress enacted three special laws authorizing the admission of a certain number of ''foreign workers skilled in sheepherding'' for many of these jobs. Special privileges were granted with respect to the issuance of visas which enabled the foreign workers to gain entry into the U.S. on an expedited basis, provided that they were otherwise admissible into the U.S. for permanent residence.

During 1955 and 1956, the House Judiciary Committee (Committee), in response to requests from sheep ranchers, undertook an investigation to examine allegations that a number of

foreign sheepherders and goatherders admitted under the special laws were leaving sheepherding shortly after arriving in the U.S., and were instead employed in other industries and occupations.

The Committee's investigation substantiated many of these allegations. In a report issued on February 14, 1957, the Committee stated that American employers and the sheep raising industry had not fully benefitted from the services of foreign sheepherders, as was intended by the special legislation. The Committee recommended that no additional special legislation be enacted to admit foreign sheepherders and also that the future importation of foreign sheepherders be governed by the H–2 temporary worker provisions of the INA and administered by the Immigration and Naturalization Service (INS) (now, USCIS) and the Department. H.R. Rep. No. 67, 85th Cong., 1st Session (1957).

Following the issuance of the Committee's report, Congress permitted the special legislation to expire. No additional legislation for sheepherders has been enacted to date. The labor certification program for temporary foreign sheepherders and goatherders was implemented consistent with the H–2 program administered by INS (now, USCIS) and the Department.

In 1986, Congress passed the Immigration Reform and Control Act of 1986 (IRCA) which amended the INA and established the H–2A Program. In 1987, the Department issued an Interim Final Rule, promulgating the first H–2A regulations (the 1987 regulations) in accordance with IRCA. 54 FR 20496, Jun. 1, 1987. The 1987 regulations provided for the administration of the H–2A Program by the ETA Regional Administrators, and instituted procedures to offset the adverse effects of immigration on U.S. workers, procedures which did not exist until that time. Although neither the IRCA amendments nor the INA specifically address the employment of nonimmigrant foreign sheepherders and goatherders in the U.S., the Department's 1987 regulations established special procedures for certain occupations, as long as they did not deviate from the Secretary's statutory responsibility to determine U.S. worker availability and to make a determination as to the adverse effect of foreign workers on the wages and working conditions of U.S. workers.

After the promulgation of the 1987 regulations, the Department clarified precisely how and when certain new H–2A requirements and procedures would be applied to the sheepherder program. Subsequently, in 1989, the Department established special procedures for sheepherders and goatherders through FM 74–89. Due to the evolution of the H–2A Program, these special procedures were rescinded and new special procedures established by FM 24–01, which has been in use since August 1, 2001.

The 1987 regulations remained in effect, largely unchanged, until the Department promulgated new H–2A regulations on December 18, 2008. 73 FR 77110, Dec. 18, 2008 (the 2008 Final Rule). The 2008 Final Rule implemented an attestation-based application process and made several substantive changes to the program, but retained the special procedures concept. After the Department determined that the 2008 Final Rule did not meet H–2A Program policy objectives, the Department commenced another rulemaking process culminating in the publication of new H–2A regulations on February 12, 2010. 75 FR 6884, Feb. 12, 2010 (the 2010 Final Rule). The 2010 Final Rule implements changes that affect special procedures for the occupations involved in sheep and goat herding. Under 20 CFR 655.102 (as amended by the 2010 Final Rule) the Office of Foreign Labor Certification (OFLC) Administrator is provided with the authority to establish, continue, revise or revoke special procedures for processing H–2A applications, including those for sheepherders and goatherders, so long as those procedures do not deviate from statutory requirements under the INA.

This TEGL updates the special procedures previously established for applications for occupations involved in sheepherding and goatherding to reflect organizational changes, in addition to new regulatory and policy objectives. It rescinds and replaces previous guidance disseminated under FM 24–01, Special Procedures: Labor Certification for Sheepherders and Goatherders Under the H–2A Program.

4. *Special Procedures.* Attachment A outlines special procedures for labor certification applications submitted by employers for occupations in sheepherding and goatherding under the H–2A Program. Attachment B outlines standards for mobile housing applicable to occupations in sheepherding and goatherding under the H–2A Program. Unless otherwise specified in Attachments A and B, applications submitted for these occupations must comply with the requirements for processing H–2A applications contained at 20 CFR part 655, subpart B. Similarly, unless otherwise specified, job orders submitted for these occupations must comply with the requirements of 20 CFR parts 655, subpart B, 653, subparts B and F, and 654.

5. *Effective Date.* This guidance applies to all temporary labor certification applications for occupations in sheepherding and goatherding in the H–2A Program with a start date of need on or after October 1, 2011.

6. *Action.* The Chicago National Processing Center (Chicago NPC) Program Director and the State Workforce Agency (SWA) Administrators are directed to immediately provide copies of these special procedures to all staff involved with processing H–2A labor certification applications for sheepherders and/or goatherders. The revised special procedures will apply to all employer applications with a start date of need on or after October 1, 2011.

7. *Inquiries.* Questions from the Public should be directed to the local SWA. Questions from SWA staff should be directed to the Chicago NPC. Questions from the Chicago NPC staff should be directed to the OFLC National Office.

8. *Attachment.*

Attachment A: Special Procedures: Labor Certification Process for Applications for Sheepherding and Goatherding Occupations under the H–2A Program. *See full text below.*

Attachment B: Standards for Mobile Housing Applicable to Sheepherders and Goatherders. *See full text below.*

Attachment A: Special Procedures: Labor Certification Process for Applications for Sheepherding and Goatherding Occupations under the H–2A Program

This document outlines special procedures for applications submitted by employers for sheepherding and/or goatherding occupations under the H–2A Program. Unless otherwise specified in this attachment, applications submitted for these occupations must comply with the requirements for processing H–2A applications outlined in 20 CFR part 655, subpart B. Similarly, unless otherwise specified, job orders submitted for these occupations must comply with the requirements of 20 CFR parts 655, subpart B, 653, subparts B and F, and 654.

I. Prefiling Procedures

A. *Offered Wage Rate (20 CFR 655.120(a)).* The Department is continuing a special variance to the offered wage rate requirements contained at 20 CFR 655.120(a). Because occupations involving sheepherding and/or goatherding are characterized by other than a reasonably regular workday

or workweek, an employer must agree to offer, advertise in the course of its recruitment, and pay the monthly, weekly, or semi-monthly prevailing wage established by the OFLC Administrator for each State listed in an approved itinerary. As a condition of receiving an H–2A labor certification, an employer must comply with all applicable Federal, State and local employment-related laws and regulations, including the mandatory State minimum wage rates for the occupation.

In establishing the prevailing wage rate for sheepherding and/or goatherding, the Department uses findings from prevailing wage surveys conducted by SWAs in accordance with the procedures in the ETA Handbook No. 385, and consistent with the wage setting procedures historically applied to sheepherder occupations in the Western States. SWAs are required to transmit wage rate findings covering sheepherding and/or goatherding to the OFLC between May 1st and June 1st of each calendar year. Following a review of the SWA wage rate findings, the OFLC will publish the new agricultural prevailing wage rates in a **Federal Register** notice with an immediate effective date.

In circumstances where a SWA is unable to produce a wage rate finding for an occupation, due to an inadequate sample size or another valid reason, the wage setting procedures allow the OFLC to issue a prevailing wage rate for that State based on the wage rate findings submitted by an adjoining or proximate SWA for the same or similar agricultural activities to ensure that the wages of similarly employed workers are not adversely affected.

If the OFLC cannot establish a wage rate by using comparable survey data from an adjoining or proximate SWA, the OFLC will give consideration to aggregating survey data for sheepherding and/or goatherding activities across States to create regional prevailing wage rates. When regional prevailing wages are considered, the OFLC may use the U.S. Department of Agriculture's (USDA) production or farm resource regions or other groupings of States used to conduct its Farm Labor Survey.

B. Job Orders and SWA Review (20 CFR 655.121)

1. *Basic Process.* An employer engaged in sheepherding and/or goatherding activities is allowed to submit a single Agricultural and Food Processing Clearance Order, ETA Form 790 (job order), Office of Management and Budget (OMB) 1205–0134, and all appropriate attachments covering a planned itinerary of work in multiple States. If the job opportunity is located in more than one State, either within the same area of intended employment or multiple areas of intended employment, the employer must submit the job order and all attachments (including a detailed itinerary) to the SWA having jurisdiction over the anticipated worksite(s) where the work is expected to begin. The employer must submit the job order no more than 75 calendar days and no less than 60 calendar days before the employer's first date of need.

Unless otherwise specified in these special procedures, the job order submitted to the SWA must satisfy the requirements for agricultural clearance orders outlined in 20 CFR part 653, subpart F and the requirements set forth in 20 CFR 655.122. The SWA will review the job order for regulatory compliance and will work with the employer to address any noted deficiencies. Upon clearance of the job order, the SWA must promptly place the job order in intrastate clearance and commence recruitment of U.S. workers.

The job order shall remain active until 50 percent of the work contract period has elapsed for all SWAs in possession of the employer's job order (including those receiving it in interstate clearance under 20 CFR 655.150), unless otherwise advised by the Chicago NPC.

2. *Master Job Orders Filed by Associations.* The Department is granting a waiver of the required time period and location(s) of filing job orders prepared by associations acting as a joint employer with its members. Where the job order is being prepared in connection with a future master application, the joint employer association will submit a single ''master'' job order directly to the Chicago NPC once each calendar year in accordance with a schedule approved by the Chicago NPC. Because of the unique nature of sheepherding and/or goatherding work, and the historic shortage of domestic workers, an association is permitted to file a master job order on behalf of a number of its employer-members in more than two contiguous States as long as (a) the job order remains active on a year-round basis, (b) the job order contains the names, addresses, telephone numbers, and number of openings of each employer and identifying, with as much geographic specificity as possible and for each employer, all of the physical locations, directions, and estimated start and end dates of need where work will be performed, and (c) the association agrees to place with any of its employer-members any qualified U.S worker who applies for employment.

The Chicago NPC will review the job order for compliance with all regulatory requirements and work with the association to address any deficiencies in a manner that is consistent with 20 CFR 655.140 and 141. Once the job order is determined to meet all regulatory requirements, the Chicago NPC will issue a Notice of Acceptance consistent with 20 CFR 655.143, place a copy of the master job order on the Department's national electronic job registry, and notify the association and all appropriate SWAs with jurisdiction over the anticipated worksites.

C. *Contents of Job Offers (20 CFR 655.122).* Unless otherwise specified in this section, the content of job orders submitted to the SWAs and the Chicago NPC for sheepherding and/or goatherding occupations must comply with all of the requirements of 20 CFR parts 655, subpart B, 653, subparts B and F, and, 654.

1. Job Duties, Qualifications, and Requirements

Job Duties. Based on current industry practice, the SWA may rely on the following standard description of the duties to be performed by sheepherders and/or goatherders:

Attends sheep and/or goat flock grazing on the range or pasture. Herds flock and rounds up strays using trained dogs. Beds down flock near evening campsite. Guards flock from predatory animals and from eating poisonous plants. Drenches sheep and/or goats. May examine animals for signs of illness and administer vaccines, medications and insecticides according to instructions. May assist in lambing, docking, and shearing. May perform other farm or ranch chores related to the production and husbandry of sheep and/or goats on an incidental basis.

Any additional job duties must be normal and accepted for the occupation, and the SWA and Chicago NPC have the authority to request supporting documentation substantiating the appropriateness of the duties prior to accepting the job order. Additionally, the SWA or Chicago NPC may request modifications to the job duties if additional information, such as climatic conditions and/or the size of flocks (*e.g.,* open range bands of sheep are often 1,000 heads or more), necessitates the use of pack and saddle horses to reach the range in order to fully apprise U.S. workers of the nature of the work to be performed.

Experience. Due to the unique nature of the work to be performed, the job offer may specify that applicants

possess up to 6 months of experience in sheepherding or similar occupations involving the range tending or production of livestock covering multiple seasons and may require reference(s) to verify experience in performing these activities. Applicants must provide the name, address, and telephone number of any previous employer being used as a reference. The appropriateness of any other experience requirements must be substantiated by the employer and approved by the Chicago NPC.

Hours. The description of anticipated hours of work must show ''on call for up to 24 hours per day, 7 days per week'' in the job order. If an application filed for a sheepherder or goatherder does not include the requirements of being on call 24 hours per day, 7 days per week, the Chicago NPC may not process the employer's application under the special procedures enumerated in this TEGL, and must instead require compliance with all the requirements of the H–2A regulations outlined in 20 CFR part 655, subpart B.

1. *Housing.* The employer must state in its job order that sufficient housing will be provided at no cost to H–2A workers and any workers in corresponding employment who are not reasonably able to return to their residence within the same day. Except for long-established standards for mobile housing as set out in Attachment B, all employer-provided housing must comply with requirements set out in 20 CFR 655.122(d) for the entire period of occupancy. An employer whose itinerary requires mobile housing may provide mobile housing to its workers.

2. *Workers' compensation.* The employer must provide workers' compensation insurance coverage as described in 20 CFR 655.122(e) in all States where sheepherding and/or goatherding work will be performed. Prior to the issuance of the Temporary Labor Certification, the employer must provide the Certifying Officer (CO) with proof of workers' compensation coverage, including the name of the insurance carrier, the insurance policy number, and proof of insurance for the dates of need, or if appropriate, proof of State law coverage for each State where the sheepherding and/or goatherding work will be performed. In the event that the current coverage will expire before the end of the certified work contract period or the insurance statement does not include all of the information required under the regulations at 20 CFR 655.122(e), the employer will be required to supplement its proof of workers' compensation for that State before a final determination is due. Where the employer's coverage will expire before the end of the certified work contract period, the employer may submit as proof of renewed coverage a signed and dated statement or letter showing proof of intent to renew and maintain coverage for the dates of need. The employer must maintain evidence that its workers' compensation was renewed, in the event the Department requests it.

3. *Employer-provided items.* Due to the remote and unique nature of the work to be performed, the employer must also specify in the job order and provide at no cost to workers an effective means of communicating with persons capable of responding to the worker's needs in case of an emergency. These means are necessary to perform the work and can include, but are not limited to, satellite phones, cell phones, wireless devices, radio transmitters, or other types of electronic communication systems.

4. *Meals.* Based on long standing practice in the industry, the employer must provide its U.S. and H–2A workers free of charge either three prepared meals a day, when workers are in camp, or free and convenient cooking facilities and provision of food for the workers to prepare their own meals while in camp or on the range.

5. *Transportation; daily subsistence.* Based on long standing practice in the industry, the employer must advance inbound transportation and subsistence costs to both U.S. and H–2A workers being recruited and extend the same benefit to workers in corresponding employment, consistent with 20 CFR 655.122(h).

6. *Earnings records and statements.* The employer must keep accurate and adequate records with respect to the workers' earnings and furnish to the worker on or before each payday a statement of earnings. Because the unique circumstances of employing sheepherders and/or goatherders (*i.e.,* on call 24/7 in remote locations) prevent the monitoring and recording of hours actually worked each day as well as the time the worker begins and ends each workday, the employer is exempt from reporting on these two specific requirements at 20 CFR 655.122(j) and (k). However, all other regulatory requirements related to earnings records and statements apply.

7. *Frequency of pay.* The employer must state in the job offer the frequency with which the worker will be paid, which must be at least twice monthly or according to the prevailing practice in the area of intended employment, whichever is more frequent. Due to the unique circumstances of employing sheepherders and/or goatherders, the employer is authorized to pay the worker based on a monthly payment arrangement as long as the worker mutually agrees and the arrangement is reflected in the work contract. Employers must pay wages when due.

8. *Period of Employment and Work Contract.* The total period of employment (Item No. 9 on ETA Form 790) contained in a job offer must be for no more than one year. Employers whose original certified period of employment is less than the maximum permissible duration, may negotiate a longer-term contract with an H–2A or a U.S. worker after workers arrive at the job site consistent with 20 CFR 655.170. An extension of the work contract period that is negotiated between the H–2A employer and a worker which would extend the work contract period beyond the 12 months permitted by the Department's H–2A regulations, requires that the employer obtain a new labor certification from the Department.

Short term extensions which do not exceed two weeks may be submitted directly to the Department of Homeland Security for approval. However, the employer must first submit for approval any change in the period of employment to the Chicago NPC, consistent with 20 CFR 655.170, if the change would result in an extension of the work contract period in excess of two weeks.

When a longer term contract is negotiated with a worker, the employer is not relieved of the responsibility for reimbursement to the worker for travel and subsistence expenses incurred in getting to the job site which were advanced by the employer and subsequently withheld from the worker's pay until 50 percent of the original contract period elapsed. These payments must be made at the 50 percent completion point of the original certified period of employment. The employer is also responsible for transportation and subsistence expenses from the place of employment if the worker successfully fulfills his/her obligations under the original certified terms of employment or is terminated without cause and has no subsequent H–2A employment. The employer must provide or pay for the worker's return transportation and subsistence whenever the employment relationship is severed after the completion of the original certified work contract period or where the worker is terminated without cause. Similarly, an employer is not relieved of its obligation to pay for return transportation and subsistence if an H–2A worker is displaced as a result of the employer's compliance with the 50 percent rule. Successful completion

of the original certified work contract period or job order entitles the worker to return transportation and subsistence regardless of performance under any short or long-term extension of the contract.

II. Application for Temporary Employment Certification Filing Procedures

A. *Application Filing Requirements (20 CFR 655.130).* An individual employer that desires to apply for temporary employment certification for one or more nonimmigrant foreign workers must file the following documentation with the Chicago NPC no less than 45 calendar days before the employer's date of need:

- ETA Form 9142 (OMB 1205–0466), Application for Temporary Employment Certification, and Appendix A.2;
- Copy of the ETA Form 790 and all attachments previously submitted to the SWA;
- A planned itinerary listing the names and contact information of all farmers/ranchers and identifying, with as much geographic specificity as possible and for each farmer/rancher, all of the physical locations and estimated start and end dates of need where work will be performed; and
- All other required documentation supporting the application.

B. *Master Applications Filed by Associations.* An association filing as a joint employer may submit a master application on behalf of a number of its employer-members in more than two contiguous States covering multiple start dates of employment as long as the application identifies the names, addresses, telephone numbers, directions to all work locations/ itinerary, estimated dates of need, and the number of openings for each employer-member that will employ workers. The association may prepare, sign, and submit the Appendix A.2 on behalf of its members.

An association with a master job order on file with the Chicago NPC is not required to re-submit the ETA Form 790 and all attachments unless the association is requesting modifications. The Chicago NPC will verify that the master job order associated with a master application is available on the national electronic job registry and covers all the employer-members duly named on the ETA Form 9142. Any changes to the master job order and/or application must be reviewed and approved by the Chicago NPC. Any approved modifications to the master job order will be placed on the Department's national electronic job registry and notification provided to the association and all appropriate SWAs with jurisdiction over the anticipated worksites.

For both individual employer applications and master applications, the filing procedures at 20 CFR 655.130–655.135 apply to ''initial'' applications (*i.e.,* where the employer is requesting a labor certification to hire a nonimmigrant foreign worker to fill a vacant position) as well as to ''renewal'' applications (*i.e.,* where the employer is requesting certification for a position which is already held by a nonimmigrant foreign worker completing the first or second year of a planned 3-year work period with the employer).

III. Post-Acceptance Requirements

A. *Interstate clearance of job order.* The Chicago NPC Certifying Officer will place a copy of the master job order on the Department's national electronic job registry, and notify the association and all appropriate SWAs with jurisdiction over the anticipated worksites to make available a copy of the master job order on their active files and initiate recruitment of U.S. workers. This procedure applies to applications filed by an individual employer as well as an association and satisfies the agricultural clearance order requirements at 20 CFR part 653, subpart F.

B. *Newspaper advertisements.* Because of the unique nature of sheepherding and/or goatherding work, and the consistent lack of qualified applicants responding to newspaper advertisements, all applications filed by an individual employer and/or an association are exempt from the regulatory requirements at 20 CFR 655.151 to place advertisements in a newspaper of general circulation.

C. *Referrals of U.S. workers.* In accordance with 20 CFR 655.155, SWAs may only refer for employment individuals who have been apprised of all the material terms and conditions of employment and have indicated, by accepting referral to the job opportunity, that he or she is qualified, able, willing, and available for employment. For master job orders, the association may accept referrals of U.S. workers, conduct interviews, and make hiring commitments on behalf of its employer-members. In such circumstances, the master job order must clearly explain how applicants will be considered for hire through the association, including the method(s) for contact (*e.g.,* telephone, in person), hours and/or location(s) for conducting interviews, an indication that collect calls will be accepted, and whether referred applicants should report to the nearest local office of the SWA when they arrive in the area of intended employment. Employers who wish to conduct interviews must do so at little or no cost to the worker, in accordance with 20 CFR 655.152(j).

Because of the unique nature of master job orders, the association will need to determine if there is a job opening in the geographic area of the applicant's choice. The association will make every effort to place a qualified applicant with an employer-member in the geographic area of the applicant's choice within 3 working days of the telephone interview. If the applicant is determined to be qualified and the geographic assignment choice can be accommodated, the association, after receiving authorization or confirmation from the specific employer, will make a hiring commitment on behalf of the employer-member who has the job opening to which the applicant will be placed.

The association may also make available to applicants information on job openings with non-association employers, particularly in situations where the association is not able to readily accommodate the applicant's geographic choice of employment. However, receiving such a referral will not preclude the applicant from choosing a different geographic area covering an employer-member or from deferring a decision to accept a job offer until a job opening in the geographic area of choice becomes available with an employer-member. After the matter of geographic location/assignment is resolved, the association will provide notification to the SWA when the applicant has been hired and facilitate the arrangements necessary to ensure that transportation and subsistence are provided in advance to the worker by the association. The association will retain all documentation related to referrals of U.S. workers, interviews and the results of such actions for a period of 3 years and will make all materials related to the recruitment and consideration of U.S. applicants available to the Chicago NPC pursuant to a request for audit as required by 20 CFR 655.180(b).

IV. Post-Certification: Transfer of Workers

A. Authority

Pursuant to 8 U.S.C. 1188(d)(2), the Department's certification granted to the association may be used for the certified job opportunities of any of its members and such workers may be transferred among its members to perform the services for which the certification was

granted. Although a worker may be transferred from one member to another member, the association may not transfer workers to any non-member employer or employer-members not disclosed on the master job order.

The employer must disclose in the job offer that workers may be transferred to any of its certified members and guarantee that workers will be notified at least 7 working days in advance of such transfer. When a worker objects to a transfer, the association will consider the worker's concerns and preferences. However, ultimate refusal on the part of a worker to a transfer may subject the worker to dismissal based on a lawful, job-related reason.

B. Notification to the DOL and SWA

To ensure the employer to whom a worker is being transferred has sufficient housing meeting the applicable standards, the association shall provide written notification to the SWA with jurisdiction over the area of intended employment and the Chicago NPC no less than 7 working days prior to the transfer. Such notification shall describe the details of the transfer, including the number and names of workers and employers affected and housing information. This notification will provide the SWA with time to make a determination regarding the suitability of the housing and, where such a transfer affects the available job openings of the association's employer member(s), allow the SWA and Chicago NPC to make appropriate modifications to the active master job order to reflect any changes in the employer's situation.

If the SWA determines that suitable housing is not available, the SWA shall provide written notification to the association and the Chicago NPC that the planned transfer shall be put in abeyance until the housing is determined by the SWA to be sufficient and meets the applicable standards, or the association agrees to transfer the worker to another employer where the SWA has issued a determination that housing is suitable.

C. Contractual Obligations

The employer who employs the newly transferred worker assumes the existing obligations of the work contract entered into with the previous employer including any multi-year contract negotiated with the worker. The association is responsible for maintaining and making available for inspection a copy of all work contracts for its employer-members. Where the worker is moved to another State with a different offered wage rate, the employer will be required to pay the worker the established prevailing wage for that State.

Attachment B: Standards for Mobile Housing Applicable to Sheepherders and Goatherders

I. Procedures

Occupations involving sheepherding/goatherding generally require workers to live in remote housing of a mobile nature, rather than ''a fixed-site farm, ranch or similar establishment.'' This type of housing is typically referred to as mobile housing. For purposes of these special procedures, mobile housing is any housing that is capable of being moved from one area on the open range to another. The employer must provide housing at no cost to the H–2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day.

Where housing for work performed on the range is provided, the regulations at 20 CFR 655.122(d)(2) require that such housing meet standards of the DOL Occupational Safety and Health Administration (OSHA). In the absence of such standards, range housing must meet guidelines issued by OFLC. Due to the fact that OSHA standards currently do not cover mobile housing, Section II of this attachment establishes the standards for determining the adequacy of employer-provided mobile housing for use on the range.

Both mobile housing and fixed-site farm or ranch housing may be self-certified by an employer. Employers must submit a signed statement to the SWA and the Chicago NPC with the application for labor certification assuring that the housing is available, sufficient to accommodate the number of workers being requested, and meets all applicable standards. However, any other type of housing used by an employer to house the workers engaged in sheepherding/goatherding activity must meet the standards applicable to such housing under 20 CFR 655.122(d).

SWAs must develop and implement a schedule which ensures that each employer's self-certified housing is inspected no less frequently than at least once every 3 years. These inspections may be performed either before or after a request is submitted for nonimmigrant workers on the open range. Before referring a worker who is entitled to such housing, the SWA office must ensure that the housing is available and has been inspected in accordance with the inspection schedule. If the SWA determines that an employer's housing cannot be inspected in accordance with the inspection schedule or, when it is inspected, does not meet all the applicable standards, the Chicago NPC may deny the H–2A application in full or in part or require additional inspections in order to satisfy the regulatory requirement.

II. Mobile Housing Standards

An employer may use a mobile unit, camper, or other similar mobile vehicle for housing workers that meets the following standards:

A. Housing Site

Mobile housing sites shall be well drained and free from depressions in which water may stagnate.

B. Water Supply

1. An adequate and convenient supply of water that meets standards of the State health authority shall be provided. The amount of water provided must be enough for normal drinking, cooking, and bathing needs of each worker; and

2. Individual drinking cups shall be provided.

C. Excreta and Liquid Waste Disposal

1. Facilities shall be provided and maintained for effective disposal of excreta and liquid waste in accordance with requirements of the State health authority or involved Federal agency; and

2. If pits are used for disposal by burying of excreta and liquid waste, they shall be kept fly-tight when not filled in completely after each use. The maintenance of disposal pits must be in accordance with State and local health and sanitation requirements.

D. Housing Structure

1. Housing shall be structurally sound, in good repair, in sanitary condition and shall provide protection to occupants against the elements;

2. Housing, other than tents, shall have flooring constructed of rigid materials easy to clean and so located as to prevent ground and surface water from entering;

3. Each housing unit shall have at least one window which can be opened or skylight opening directly to the outdoors; and

4. Tents may be used where terrain and/or land regulations do not permit use of other more substantial mobile housing which provides facilities and protection closer in conformance with the Department's intent.

E. Heating

1. Where the climate in which the housing will be used is such that the safety and health of a worker requires

heated living quarters, all such quarters shall have properly installed operable heating equipment which supplies adequate heat. In considering whether the heating equipment is acceptable, the Chicago NPC shall first determine if the housing will be located in a National Forest Wilderness Section as specified in the Wilderness Act (16 U.S.C. 1131–1136). Such a location has a bearing on the type of equipment practicable, and whether any heavy equipment can be used. For example, the Wilderness Act (16 U.S.C. 1133(c)) restricts certain motorized or mechanical transport on certain roads in wilderness areas. The U.S. Forest Service has regulations for this at 36 CFR part 293. Aside from the above, other factors to consider in evaluating heating equipment are the severity of the weather and the types of protective clothing and bedding made available to the worker. If the climate in which the housing will be used is mild and not reasonably expected to drop below 50 degrees Fahrenheit continuously for 24 hours, no separate heating equipment is required if proper protective clothing and bedding are made available;

2. Any stoves or other sources of heat using combustible fuel shall be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases. Portable electrical heaters may be used, and if approved by Underwriters' Laboratory, kerosene heaters may be used according to manufacturer's instructions. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there shall be a concrete slab, insulated metal sheet, or other fireproof material on the floor under each stove, extending at least 18 inches beyond the perimeter of the base of the stove;

3. Any wall or ceiling within 18 inches of a solid or liquid fuel stove or stove pipe shall be made of fireproof material. A vented metal collar shall be installed around a stovepipe or vent passing through a wall, ceiling, floor or roof; and

4. When a heating system has automatic controls, the controls shall be of the type which cuts off the fuel supply when the flame fails or is interrupted or whenever a predetermined safe temperature or pressure is exceeded.

F. Lighting

1. In areas where it is not feasible to provide electrical service to mobile housing, including tents, lanterns shall be provided (kerosene wick lights meet the definition of lantern); and

2. Lanterns, where used, shall be provided in a minimum ratio of one per occupant of each unit, including tents.

G. Bathing, Laundry and Hand Washing

Movable bathing, laundry and hand washing facilities shall be provided when it is not feasible to provide hot and cold water under pressure.

H. Food Storage

When mechanical refrigeration of food is not feasible, the worker must be provided with another means of keeping food fresh and preventing spoilage, such as a butane or propane gas refrigerator. Other proven methods of safeguarding fresh foods, such as salting, are acceptable.

I. Cooking and Eating Facilities

1. When workers or their families are permitted or required to cook in their individual unit, a space shall be provided with adequate lighting and ventilation; and

2. Wall surfaces next to all food preparation and cooking areas shall be of nonabsorbent, easy to clean material. Wall surfaces next to cooking areas shall be of fire-resistant material.

J. Garbage and Other Refuse

1. Durable, fly-tight, clean containers shall be provided to each housing unit, including tents, for storing garbage and other refuse; and

2. Provision shall be made for collecting or burying refuse, which includes garbage, at least twice a week or more often if necessary. Refuse disposal shall conform to Federal, State, or local law, whichever applies.

K. Insect and Rodent Control

Appropriate materials, including sprays, must be provided to aid housing occupants in combating insects, rodents and other vermin.

L. Sleeping Facilities

A separate sleeping unit shall be provided for each person, except in a family arrangement. Such a unit shall include a comfortable bed, cot, or bunk with a clean mattress. When filing an application for certification and only where it is demonstrated to the Certifying Officer that it is impractical to set up a second sleeping unit, the employer may request a variance from the separate sleeping unit requirement to allow for a second worker to temporarily join the sheepherding/goatherding operation. The second worker may be temporarily housed in the same sleeping unit for no more than three consecutive days and the employer must supply a sleeping bag or bed roll free of charge.

M. Fire, Safety and First Aid

1. All units in which people sleep or eat shall be constructed and maintained according to applicable State or local fire and safety law;

2. No flammable or volatile liquid or materials shall be stored in or next to rooms used for living purposes, except for those needed for current household use;

3. Mobile housing units for range use must have a second means of escape. One of the two required means of escape must be a window which can be easily opened, a hutch, or other provision. It must be demonstrated that the custom combine worker would be able to crawl through the second exit without difficulty;

4. Tents are not required to have a second means of escape, except when large tents with walls of rigid material are used. A heater may be used in a tent if the heater is approved by a testing service, such as Underwriters' Laboratory, and if the tent is fireproof; and

5. Adequate fire extinguishers in good working condition and first aid kits shall be provided in the mobile housing.

Signed in Washington, DC, this 29th day of July 2011.

Jane Oates,

Assistant Secretary for Employment and Training Administration.

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BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Brookwood-Sago Mine Safety Grants

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Solicitation for Grant Applications (SGA).

SUMMARY: The U.S. Department of Labor, Mine Safety and Health Administration (MSHA), is making $1,000,000 available in grant funds for educational and training programs to help identify, avoid, and prevent unsafe working conditions in and around mines. The focus of these grants for the Fiscal Year (FY) 2011 will be on training and training materials for mine emergency preparedness and mine emergency prevention for all underground mines. Applicants for the grants may be States and nonprofit (private or public) entities. MSHA could award as many as 20 separate grants. The amount of each individual grant will be at least $50,000.00. The maximum amount for a 12-month

period of performance is $250,000. Also, MSHA is announcing a new program structure allowing applicants to apply for a renewal grant. This notice contains all of the information needed to apply for grant funding.

DATES: The closing date for applications will be August 31, 2011 (no later than 11:59 p.m. EDST). MSHA will award grants on or before September 30, 2011.

ADDRESSES: Applications for grants submitted under this competition must be submitted electronically using the Government-wide site at *http://www.grants.gov*. If applying online poses a hardship to any applicant, the MSHA Directorate of Educational Policy and Development will provide assistance to help applicants submit online. MSHA's Web page at *http://www.msha.gov* is a valuable source of background for this initiative.

FOR FURTHER INFORMATION CONTACT: Any questions regarding this solicitation for grant applications (SGA 11–3BS) should be directed to Robert Glatter at *glatter.robert@dol.gov* or at 202–693–9570 (this is not a toll-free number) or the Grant Officer, Carl Campbell at *campbell.carl@dol.gov* or at 202–693–9839 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Announcement Type: New.

Funding Opportunity Number: SGA 11–3BS.

Catalog of Federal Domestic Assistance (CFDA) Number: 17.603.

This solicitation provides background information and the critical elements required of projects funded under the solicitation. It also describes the application submission requirements, the process that eligible applicants must use to apply for funds covered by this solicitation, and how grantees will be selected. Further information regarding submitting the grant application electronically is listed in Section IV.C., Submission Date, Times, and Addresses. This solicitation consists of eight parts:

- Part I provides background information on the Brookwood-Sago grants.
- Part II describes the size and nature of the anticipated awards.
- Part III describes the qualifications of an eligible applicant.
- Part IV provides information on the application and submission process.
- Part V explains the review process and rating criteria that will be used to evaluate applications.
- Part VI provides award administration information.
- Part VII contains MSHA contact information.
- Part VIII addresses Office of Management and Budget information collection requirements.

I. Funding Opportunity Description

A. Overview of the Brookwood-Sago Mine Safety Grant Program

Responding to several coal mine disasters, Congress enacted the Mine Improvement and New Emergency Response Act of 2006 (MINER Act). When Congress passed the MINER Act, it expected that requirements for new and advanced technology, *e.g.,* fire-resistant lifelines and increased breathable air availability in escapeways would increase safety in mines. The MINER Act also required that every underground coal mine would have persons trained in emergency response. Congress emphasized its commitment to training for mine emergencies when it strengthened the requirements for the training of mine rescue teams. Recent events demonstrate that training is the key for proper and safe emergency response and that all miners employed underground should be trained in emergency response.

Under Section 14 of the MINER Act, the Secretary of Labor (Secretary) is required to establish a competitive grant program called the ''Brookwood-Sago Mine Safety Grants'' (Brookwood-Sago grants). This program provides funding of education and training programs to better identify, avoid, and prevent unsafe working conditions in and around mines. This program will use grant funds to establish and implement education and training programs or to create training materials and programs. The MINER Act requires the Secretary to give priority to mine safety demonstrations and pilot projects with broad applicability. It also mandates that the Secretary emphasize programs and materials that target miners in smaller mines, including training mine operators and miners on new MSHA standards, high-risk activities, and other identified safety priorities.

B. Grant Structures

MSHA currently funds the Brookwood-Sago grants annually for 12 months of performance and requires an applicant to compete each year for the available funds. MSHA is identifying these grants as ''annual grants.''

MSHA is announcing the availability of a renewal grant program structure. Under this new structure, MSHA will award a grant eligible for two separate years of funding with two separate 12-month performance periods. MSHA is identifying these grants as ''renewal grants.''

The awardees' eligibility for the second-year of funding in FY 2012 is contingent on certain conditions being met. MSHA will award funding for the second-year of performance based on the following requirements:

1. The grant topics are still a priority with MSHA for training under the Brookwood-Sago grants;
2. Funds are available for the Brookwood-Sago grant program; and
3. The grantee has demonstrated acceptable performance under the first year of the grant.

If MSHA funds the second year of renewal grants, it will advise, in the FY 2012 Brookwood-Sago SGA, those grantees eligible for renewal grants of the paperwork necessary to obtain their second year of funding. If a renewal grantee chooses not to pursue the second year of funding, the grantee may still compete for a new Brookwood-Sago grant in FY 2012. MSHA would not penalize an eligible grantee for not applying for its second year of funding under the renewal grant and would permit the grantee to compete for another Brookwood-Sago grant.

C. Educational and Training Program Priorities

MSHA priorities for the FY 2011 funding of the annual Brookwood-Sago grants will focus on training or training materials for mine emergency preparedness and mine emergency prevention for all underground mines. MSHA expects Brookwood-Sago grantees to develop training materials or to develop and provide mine safety training or educational programs, recruit mine operators and miners for the training, and conduct and evaluate the training.

For the renewal grants, MSHA's priorities will focus on training for mine emergency preparedness and mine emergency prevention for all underground mines. Except for creating very innovative educational material or equipment, MSHA expects that renewal grants will focus primarily on training mine operators and miners. A renewal grant may include a request for creating educational materials or equipment, but the purpose of these grants is to provide training for as many mine operators and miners as possible. MSHA also expects grantees with renewal grants to recruit mine operators and miners for the training, and conduct and evaluate the grant program on mine emergency preparedness or mine emergency prevention.

For both programs, grantees are also expected to conduct follow-up evaluations with the people who receive training in their programs. The

evaluation will focus on determining how effective their training was in either reducing hazards or improving skills for the selected training topics or in improving the conditions in mines. Grantees must also cooperate fully with MSHA evaluators of their programs.

II. Award Information

A. Award Amount for FY 2011

MSHA is providing $1,000,000 total for both the FY 2011 annual and renewal Brookwood-Sago grants program and may award as many as 20 grants. The amount of each individual grant will be no less than $50,000.00 for a 12-month performance period; and the maximum award for a 12-month performance period is $250,000. Applicants requesting less than $50,000 or more than $250,000 for a 12-month performance period will not be considered for funding.

B. Period of Performance

The period of performance will be 12 months from the date of execution of the grant documents awarding the funds. This performance period must include all necessary implementation and start-up activities, as well as follow-up for performance. A timeline clearly detailing these required grant activities and their expected completion dates must be included in the grant application.

MSHA may approve a request for a one time no-cost extension to grantees for an additional period of up to 12 months from the expiration date of the annual award based on the success of the project and other relevant factors. See 29 CFR 95.25 (e)(2). At the end of the second year of funding for a renewal grant, MSHA may approve a request for a no-cost extension for an additional period of performance of up to 6 months based on the success of the project and other relevant factors.

III. Eligibility Information

A. Eligible Applicants

Applicants for the grants may be States and nonprofit (private or public) entities. Eligible entities may apply for funding independently or in partnership with other eligible organizations. For partnerships, a lead organization must be identified.

Applicants other than States and State-supported or local government-supported institutions of higher education will be required to submit evidence of nonprofit status, preferably from the Internal Revenue Service. A nonprofit entity as described in 26 U.S.C. 501(c)(4), which engages in lobbying activities, is not eligible for a grant award. See 2 U.S.C. 1611.

B. Cost-Sharing or Matching

Cost-sharing or matching of funds is not required for eligibility. The leveraging of public or private resources to achieve project sustainability, however, is highly encouraged and may be awarded up to 10 application evaluation points.

C. Other Eligibility Requirements

1. Dun and Bradstreet Number (DUNS)

Under 2 CFR 25.200, every applicant for a Federal funding opportunity is required to include a DUNS number with its application. The DUNS number is a nine-digit identification number that uniquely identifies business entities. An applicant's DUNS number is to be entered into Block 8 of Standard Form (SF) 424. There is no charge for obtaining a DUNS number. To obtain a DUNS number, call 1–866–705–5711 or access the following Web site: *http://fedgov.dnb.com/webform/displayHomePage.do*.

After receiving a DUNS number, all grant applicants must also register as a vendor with the Central Contractor Registration (CCR) through the Web site at *http://www.ccr.gov* or apply by phone (1–888–227–2423). 2 CFR 25.200. Grant applicants must create a user account and then complete and submit the online registration. Once you have completed the registration, it will take three to five business days to process. The applicant will receive an e-mail notice that the registration is active.

2. Legal Rules Pertaining to Inherently Religious Activities by Organizations That Receive Federal Financial Assistance

The government generally is prohibited from providing direct Federal financial assistance for inherently religious activities. See 29 CFR Part 2, Subpart D. Grants under this solicitation may not be used for religious instruction, worship, prayer, proselytizing, or other inherently religious activities. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of grant recipients and must be employed by grantees in the selection of contractors and subcontractors.

3. Non-Compliant Applications

Applications that are lacking any of the required elements or do not follow the format prescribed in IV.B will not be reviewed.

4. Late Applications

Applications received after the deadline will not be reviewed unless it is determined to be in the best interest of the Government.

IV. Application and Submission Information

A. Application Forms

This announcement includes all information and links needed to apply for this funding opportunity. The full application is available through the Grants.gov Web site *http://www.grants.gov/* under ''Apply for Grants''. The Catalog of Federal Domestic Assistance (CFDA) number needed to locate the appropriate application for this opportunity is 17.603. If an applicant has problems downloading the application package from Grants.gov, contact Grants.gov Contact Center at 1–800–518–4726 or by e-mail at *support@grants.gov.*

B. Content and Form of the Application

Each grant application must address mine emergency preparedness or mine emergency prevention for underground mines. The applicant must identify that an application is for an annual or a renewal grant. Applicants must submit a separate application for each topic and each type of grant. The application must consist of three separate and distinct sections. The three required sections are:

- Section 1—Project Financial Plan and Forms (No page limit).
- Section 2—Executive Summary (Not to exceed two pages).
- Section 3—Technical Proposal (Not to exceed 12 pages). Illustrative material can be submitted as an attachment.

The following are mandatory requirements for each section.

1. Project Financial Plan and Forms

This section contains the forms and budget section of the application. The Project Financial Plan will not count against the application page limits. A person with authority to bind the applicant must sign the application and forms. Applications submitted electronically through Grants.gov do not need to be signed manually; electronic signatures will be accepted.

(a) Completed SF–424, ''Application for Federal Assistance.'' This form is part of the application package on Grants.gov and is also available at *http://www.msha.gov.* The SF–424 must identify the applicant clearly and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF–424 on behalf

of the applicant shall be considered the representative of the applicant.

(b) Completed SF–424A, ''Budget Information for Non Construction Programs.'' This form is part of the application package on Grants.gov and is also available at *http://www.msha.gov.* The project budget should demonstrate clearly that the total amount and distribution of funds is sufficient to cover the cost of all major project activities identified by the applicant in its proposal, and must comply with the Federal cost principles and the administrative requirements set forth in this SGA. (Copies of all regulations that are referenced in this SGA are available online at *http://www.msha.gov.* Select ''Education & Training,'' click on ''Courses,'' then select ''Brookwood-Sago Mine Safety Grants.'')

For renewal grant applications, applicants must include all the renewal grants information on the SF–424 forms. For example, if the applicant is applying for a renewal grant, the total amount of the grant might be $100,000, and each year's funding could be $50,000. When filling out the SF–424 Application for Federal Assistance form, the proposed project start date in Item No. 17 for renewal grants is 9/30/2011, and the end date is 9/29/2013. The estimated funding in Item No. 18 would be $100,000. On the SF–424A Budget Information for Non-Construction Programs, the applicant would provide a total of $50,000 for the first-year funding and $50,000 for the second-year funding.

(c) Budget Narrative. The applicant must provide a concise narrative explaining the request for funds. The budget narrative should separately attribute the Federal funds and leveraged resources to each of the activities specified in the technical proposal and it should discuss precisely how any administrative costs support the project goals. Indirect cost charges, which are considered administrative costs, must be supported with a copy of an approved Indirect Cost Rate Agreement. Indirect Costs are those costs that are not readily identifiable with a particular cost objective but nevertheless are necessary to the general operation of an organization, *e.g.,* personnel working in accounting. Administrative costs may not exceed 15% of the total grant budget.

If applicable, the applicant must provide a statement about its program income. Program income is gross income earned by the grantee directly generated by a supported activity, or earned as a result of the award.

Any leveraged resources should not be listed on the SF–424 or SF–424A Budget Information Form, but must be described in the budget narrative and in the technical proposal of the application (as described in Part IV.B.3(d) of this SGA). The amount of Federal funding requested for the entire period of performance must be shown on the SF–424 and SF–424A forms. Note: Grantees will be responsible for obtaining any leveraged resources proposed in their applications. Failure to do so may result in the disallowance and required return of funds in the amount of the proposed leveraged resources.

(d) Completed SF–424B, ''Assurances for Non-Construction Programs.'' Each applicant for these grants must certify compliance with a list of assurances. This form is part of the application package on *http://www.Grants.gov* and also is available at *http://www.msha.gov.*

(e) Supplemental Certification Regarding Lobbying Activities Form. If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of a grant or cooperative agreement, the applicant shall complete and submit SF–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. This form is part of the application package on *http://www.Grants.gov* and is also available at *http://www.msha.gov.* Select ''Education & Training,'' click on ''Courses,'' then select ''Brookwood-Sago Mine Safety Grants.''

(f) Non-profit status. Applicants must provide evidence of non-profit status, preferably from the Internal Revenue Service (IRS), if applicable. (This requirement does not apply to State and local government-supported institutions of higher education.)

(g) Accounting System Certification. An organization that receives less than $1 million annually in Federal grants must attach a certification stating that the organization (directly or through a designated qualified entity) has a functioning accounting system that meets the criteria below. The certification should attest that the organization's accounting system provides for the following:

(1) Accurate, current and complete disclosure of the financial results of each Federally sponsored project.

(2) Records that identify adequately the source and application of funds for Federally sponsored activities.

(3) Effective control over and accountability for all funds, property, and other assets.

(4) Comparison of outlays with budget amounts.

(5) Written procedures to minimize the time elapsing between transfers of funds.

(6) Written procedures for determining the reasonableness, allocability, and allowability of cost.

(7) Accounting records, including cost accounting records that are supported by source documentation.

(h) Attachments. The application may include attachments such as resumes of key personnel or position descriptions, exhibits, information on prior government grants, and signed letters of commitment to the project.

2. Executive Summary

The executive summary is a short one-to-two page abstract that succinctly summarizes the proposed project and provides information about the applicant organization. (MSHA will publish, as submitted, all grantees' executive summaries on its Web site.) The executive summary must include the following information:

(a) Applicant. Provide the organization's full legal name and address.

(b) Funding requested. List how much Federal funding is being requested. If requesting a renewal grant, include the total for the two years of funding and list each year's requested funding levels. If the organization is contributing non-Federal resources, also list the amount of non-Federal resources and the source of the funds.

(c) Grant Topic. List the grant topic and the location and number of mine operators and miners that the organization has selected to train or describe the training materials or equipment to be created with these funds.

(d) Program Structure. Identify the type of grant: an annual or a renewal grant.

(e) Summary of the Proposed Project. Write a brief program summary of the proposed project. This summary must identify the key points of the proposal, including an introduction describing the project activities and the expected results. If requesting a renewal grant, also provide a summary of the key points of the second-year's activities and expected outcomes.

3. Technical Proposal

The technical proposal must demonstrate the applicant's capabilities to plan and implement a project or create educational materials or

equipment to meet the objectives of this solicitation. MSHA's focus for these grants is on training mine operators and miners and developing training materials for mine emergency preparedness and mine emergency prevention for underground mines. MSHA has two program goals, described below, that will be considered indicators of the success of the program as a whole. The following table explains the types of data grantees must provide and their relationship with the Agency's program goals and performance measures for the Brookwood-Sago grants.

MSHA's program goals	MSHA's performance measures	Data grantee provides each 12-month performance period
1. Agency creates more effective training and improves safety.	Increase the number of trainers trained	Number of training events during the period.
	Increase the number of mine operators and miners trained.	Number of trainers trained.
	Provide quality training with clearly stated goals and objectives for improving safety.	Number of mine operators and miners trained during the current reporting period. Number of course days of training provided to industry during the current reporting period. Pre-test and post-test results of trainees. Course evaluations of trainer and training materials. A description of the extent to which others will replicate (i.e., adopt or adapt) or institutionalize and continue the training or educational programs after grant funding ends.
2. Agency creates training materials and improves safety.	Increase number of quality educational materials developed.	Pre-test and post-test results of the training materials.
	Provide quality training materials with clearly stated goals and objectives for improving safety.	Evaluation of training materials to include the target audience, statement of goals and objectives, learning level, instructions for using, additional material requirements, secondary purposes, adult learning principles and usability in the mine training environment.
	Develop training materials that are reproducible.	A description of the extent to which others will replicate (i.e., adopt or adapt) the funded training materials.

The technical proposal narrative is not to exceed 12 single-sided, double-spaced pages, using 12-point font, and must contain the following sections: Program Design, Overall Qualifications of the Applicant, Output and Evaluation, and Leveraging of Funds. Any pages over the 12-page limit will not be reviewed. Major sections and sub-sections of the proposal should be divided and clearly identified. MSHA will review and rate the technical proposal in accordance with the selection criteria specified in Part V.

(a) Program Design

(1) Statement of Problem/Need for Funds. Applicants must identify a clear and specific need for proposed activities. They must identify whether they are providing a training program or creating training materials or both. They also must identify whether their application is for an annual or a renewal Brookwood-Sago grant. Applicants also must identify the number of individuals that will benefit from their training and education program; this should include identifying the type of underground mines, the geographic locations, and the number of mine operators and miners. Applicants must also identify other Federal funds they receive for similar activities.

(2) Quality of the Project Design. MSHA requires that each applicant include a 12-month workplan that correlates with the grant project period that will begin September 30, 2011, and end September 29, 2012. Renewal grant applicants must also include a second 12-month workplan covering the period from September 30, 2012, and ending September 29, 2013. An outline of specific items required in the workplan follows.

(i) Plan Overview. Describe the plan for grant activities and the anticipated results. The overall plan will describe such things as the development of training materials, the training content, recruiting of trainees, where or how training will take place, and the anticipated benefits to mine operators and miners receiving the training.

(ii) Activities. Break the overall plan down into activities or tasks. For each activity, explain what will be done, who will do it, when it will be done, and the anticipated results of the activity. For training, discuss the subjects to be taught, the length of the training sessions, and training locations (classroom/worksites). Describe how the applicant will recruit mine operators and/or miners for the training. (Note: Any commercially developed training materials the applicant proposes to use in its training must undergo an MSHA review before being used.)

(iii) Quarterly Projections. For training and other quantifiable activities, estimate the quantities involved. For example, estimate how many classes will be conducted and how many mine operators and miners will be trained each quarter of the grant (grant quarters match calendar quarters, *i.e.,* January to March, April to June) and also provide the training number totals for the full year. Quarterly projections are used to measure the actual performance against the plan. Applicants planning to conduct a train-the-trainer program should estimate the number of individuals to be trained during the grant period by those who received the train-the-trainer training. These second tier training numbers should be included only if the organization is planning to follow up with the trainers to obtain this data during the grant period.

(iv) Materials. Describe each educational material, including any piece of equipment (*e.g.,* mine

simulator) to be produced under the grant. Provide a timetable for developing and producing the material. The timetable must include provisions for an MSHA review of draft and camera-ready products or evaluation of equipment. MSHA must review and approve training materials or equipment for technical accuracy and suitability of content before use in the grant program. Whether or not an applicant's project is to develop training materials only, the applicant should provide an overall plan that includes time for MSHA to review any materials produced.

(b) Overall Qualifications of the Applicant

(1) Applicant Background. Describe the applicant, including its mission, and a description of its membership, if any. Provide an organizational chart (the chart may be included as a separate page which will not count toward the page limit). Identify the following:

(i) Project Director. The project director is the person who will be responsible for the day-to-day operation and administration of the program. Provide the name, title, street address and mailing address (if it is different from the organization's street address), telephone and fax numbers, and e-mail address of the project director.

(ii) Certifying Representative. The certifying representative is the official in the organization who is authorized to enter into grant agreements. Provide the name, title, street address and mailing address (if it is different from the organization's street address), telephone and fax numbers, and e-mail address of the certifying representative.

(2) Administrative and Program Capability. Briefly describe the organization's functions and activities, *i.e.,* the applicant's management and internal controls. Relate this description of functions to the organizational chart. If the applicant has received within the last five years any other government (Federal, State or local) grant funding, the application must have, as an attachment (which will not count towards the page limit), information regarding these previous grants. This information must include each organization for which the work was done and the dollar value of each grant. If the applicant does not have previous grant experience, it may partner with an organization that has grant experience to manage the grant. If the organization uses this approach, the management organization must be identified and its grant program experience discussed.

Lack of past experience with Federal grants is not a determining factor, but an applicant should show a successful experience relevant to the opportunity offered in the application. Such experience could include staff members' experience with other organizations.

(3) Program Experience. Describe the organization's experience conducting the proposed mine training program or other relevant experience. Include program specifics such as program title, numbers trained, and duration of training. If creating training materials, include the title of other materials developed. Nonprofit organizations, including community-based and faith-based organizations that do not have prior experience in mine safety may partner with an established mine safety organization to acquire safety expertise.

(4) Staff Experience. Describe the qualifications of the professional staff you will assign to the program. Attach resumes of staff already employed (resumes will not count towards the page limit). If some positions are vacant, include position descriptions and minimum hiring qualifications instead of resumes. Staff should have, at a minimum, mine safety experience, training experience, or experience working with the mining community.

(c) Outputs and Evaluations. There are two types of evaluations that must be conducted. First, describe the methods, approaches, or plans to evaluate the training sessions and/or training materials to meet the data requirements listed in the table above. Second, describe plans to assess the long-term effectiveness of the training materials and/or training conducted. The type of training given will determine whether the evaluation should include a process-related outcome or an impact-related outcome or both. This will involve following up with an evaluation, or on-site review, if feasible, of miners trained to find out what changes were made to abate hazards and improve workplace conditions, or to incorporate the training in the workplace, or both.

For training materials, include an evaluation from individuals on the clarity of the presentation, organization, and the information provided on the subject matter and whether they would continue to use the training materials. Include timetables for follow-up and for submitting a summary of the assessment results to MSHA.

For renewal grants, applicants must describe how the program will address the feedback from its or MSHA's evaluations to improve its training program, materials (including equipment), or both during the second year.

(d) Leveraging of Funds. Leveraged resources are cash or in-kind contributions obtained from sources other than the Federal government devoted to advancing the strategies described in the applicant's proposal. Applicants must include a description of any non-Federal contribution or commitments, including the source of funds and the estimated amount.

C. Submission Date, Times, and Addresses

The closing date for receipt of applications under this announcement is August 31, 2011 (no later than 11:59 p.m. EDST). Grant applications must be submitted electronically through the Grants.gov Web site. The Grants.gov site provides all the information about submitting an application electronically through the site as well as the hours of operation. Interested parties can locate the downloadable application package by the CFDA number 17.603.

Applications received by Grants.gov are electronically date and time stamped. An application must be fully uploaded and submitted (and must be date and time stamped by the Grants.gov system) before the application deadline date. Once an interested party has submitted an application, Grants.gov will notify the interested party with an automatic notification of receipt that contains a Grants.gov tracking number. MSHA then will retrieve the application from Grants.gov and send a second notification to the interested party by e-mail.

D. Intergovernmental Review

The Brookwood-Sago grants are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' MSHA, however, reminds applicants that if they are not operating MSHA-approved State training grants, they should contact the State grantees and coordinate any training or educational program in order not to duplicate any training or educational program offered. Information about each state grant and the entity operating the state grant is provided online at: *http://www.msha.gov/TRAINING/STATES/STATES.asp.*

E. Funding Restrictions

MSHA will determine whether costs are allowable under the applicable Federal cost principles and other conditions contained in the grant award.

1. Allowable Costs

Grant funds may be spent on conducting training, conducting outreach and recruiting activities to increase the number of mine operators and miners participating in the program,

developing educational materials, and on necessary expenses to support these activities. Allowable costs are determined by the applicable Federal cost principles identified in Part VI.B. Program income earned during the award period shall be retained by the recipient, added to funds committed to the award, and used for the purposes and under the conditions applicable to the use of the grant funds.

2. Unallowable Costs

Grant funds may not be used for the following activities under this grant program:

(a) Any activity inconsistent with the goals and objectives of this SGA;

(b) Training on topics that are not targeted under this SGA;

(c) Duplicating training or services offered by MSHA or any MSHA State grant under section 503 of the Federal Mine Safety and Health Act of 1977;

(d) Purchasing any equipment unless pre-approved and in writing by the MSHA grant officer;

(e) Administrative costs that exceed 15% of the total grant budget; and

(f) Any pre-award costs.

Unallowable costs also include any cost determined by MSHA as not allowed according to the applicable cost principles or other conditions in the grant.

V. Application Review Information

A. Evaluation Criteria

MSHA will screen all applications to determine whether all required proposal elements are present and clearly identifiable. Those that do not comply with mandatory requirements will not be evaluated. The technical panels will review grant applications against the criteria listed below on the basis of 100 maximum points for one-year grants and 20 maximum points for the renewal portion of the grant applications. Up to 10 additional points may be given for leveraging non-Federal resources.

MSHA will evaluate the applications for annual grants and the annual portion of the two-year applications using the first five categories below. From this group, MSHA will select applicants to receive one-year funding. From these selectees, MSHA will review those that applied for option year (renewable) grants against the criteria listed in category 6 on the basis of 20 maximum points. Please note that MSHA may offer an annual grant to applicants that may not be selected for renewable grants.

1. Program Design—40 Points Total

(a) Statement of Problem/Need for Funds. (3 points)

The proposed training and education program or training materials must address either mine emergency preparedness or mine emergency prevention.

(b) Quality of the Project Design. (25 points)

(1) The proposal to train mine operators and/or miners clearly estimates the number to be trained and clearly identifies the types of mine operators and miners to be trained.

(2) If the proposal contains a train-the-trainer program, the following information must be provided:

- What ongoing support the grantee will provide to new trainers;
- The number of individuals to be trained as trainers;
- The estimated number of courses to be conducted by the new trainers;
- The estimated number of students to be trained by these new trainers and a description of how the grantee will obtain data from the new trainers documenting their classes and student numbers if conducted during the grant period.

(3) The work plan activities and training are described.

- The planned activities and training are tailored to the needs and levels of the mine operators and miners to be trained. Any special constituency to be served through the grant program is described, *e.g.,* smaller mines, limited English proficiency miners *etc.* Organizations proposing to develop materials in languages other than English also will be required to provide an English version of the materials.
- If the proposal includes developing training materials, the work plan must include time during development for MSHA to review the educational materials for technical accuracy and suitability of content. If commercially developed training products will be used for a training program, applicants should also plan for MSHA to review the materials before using the products in their grant programs.
- The utility of the educational materials is described.
- The outreach or process to find mine operators, miners or trainees to receive the training is described.

(c) Replication. The extent to which a project is expected to be replicated and the potential for the project to serve a variety of mine operators, miners or mine sites. (4 points)

(d) Innovativeness. The originality and uniqueness of the approach used. (3 points)

(e) MSHA's Performance Goals. The extent the proposed project will contribute to MSHA's performance goals. (5 points)

2. Budget—20 Points Total

(a) The budget presentation is clear and detailed. (15 points)

- The budgeted costs are reasonable.
- No more than 15% of the total budget is for administrative costs.
- The budget complies with Federal cost principles (which can be found in the applicable Office of Management and Budget (OMB) Circulars and with MSHA budget requirements contained in the grant application instructions).

(b) The application demonstrates that the applicant has strong financial management and internal control systems. (5 points)

3. Overall Qualifications of the Applicant—25 Points Total

(a) The applicant has administered, or will work with an organization that has administered, a number of different Federal or State grants in the past five years. The applicant may demonstrate this experience by having project staff that has experience administering Federal and/or State grants in the past five years. (6 points)

(b) The applicant applying for the grant demonstrates experience with mine safety teaching or providing mine safety educational programs. Applicants that do not have prior experience in providing mine safety training to mine operators or miners may partner with an established mine safety organization to acquire mine safety expertise. (13 points)

- Project staff has experience in mine safety, the specific topic chosen, or in training mine operators and miners.
- Project staff has experience in recruiting, training, and working with the population the organization proposes to serve.
- Applicant has experience in designing and developing mine safety training materials for a mining program.
- Applicant has experience in managing educational programs.

(c) Applicant demonstrates internal control and management oversight of the project. (6 points)

4. Outputs and Evaluations—15 Points Total

The proposal should include provisions for evaluating the organization's progress in accomplishing the grant work activities and accomplishments, evaluating training sessions, and evaluating the program's effectiveness and impact to determine if the safety training and services provided resulted in workplace change and improved workplace conditions. The proposal should include a plan to follow up with

trainees to determine the impact the program has had in abating hazards and reducing miner injuries and illnesses.

5. Leveraged Resources—10 Points Total

MSHA will award up to 10 additional rating points to applications that include non-Federal resources that expand the size and scope of project-related activities. To be eligible for the additional points, the applicant must list the resources, the nature of programmatic activities anticipated and any partnerships, linkages, or coordination of activities, cooperative funding, *etc.,* including the monetary value of such contributions.

6. Renewal Grants: Second-Year Request—20 Points Total

A renewal proposal must include a description of the project design and budget for the second-year funding. The applicant must also describe how it will obtain input and feedback from first-year training recipients and how it will improve its program based on its or MSHA evaluations.

B. Review and Selection Process

A technical panel will rate each complete application against the criteria described in this SGA. One or more applicants may be selected as grantees on the basis of the initial application submission or a minimally acceptable number of points may be established. MSHA may request final revisions to the applications, and then evaluate the revised applications. MSHA may consider any information that comes to its attention in evaluating the applications.

The panel recommendations are advisory in nature. The Deputy Assistant Secretary of Labor for Mine Safety and Health (Deputy Assistant Secretary of Policy) will make a final selection determination based on what is most advantageous to the government, considering factors such as panel findings, geographic presence of the applicants or the areas to be served, Agency priorities, and the best value to the government, cost and other factors. The Deputy Assistant Secretary's determination for award under this SGA is final.

C. Anticipated Announcement and Award Dates

Announcement of these awards is expected to occur by September 17, 2011. The grant agreement will be signed no later than September 30, 2011.

VI. Award Administration Information

A. Award Process

Organizations selected as potential grant recipients will be notified by a representative of the Deputy Assistant Secretary, usually the Grant Officer or his staff. An applicant whose proposal is not selected will be notified in writing. The fact that an organization has been selected as a potential grant recipient does not necessarily constitute approval of the grant application as submitted (revisions may be required).

Before the actual grant award, MSHA may enter into negotiations with the potential grant recipient concerning such matters as program components (including the type of grant), staffing and funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Deputy Assistant Secretary reserves the right to terminate the negotiations and decline to fund the proposal.

B. Administrative and National Policy Requirements

All grantees will be subject to applicable Federal laws and regulations (including provisions of appropriations law) and applicable OMB Circulars. The grants awarded under this competitive grant program will be subject to the following administrative standards and provisions, if applicable:

- 29 CFR part 2, subpart D, Equal Treatment for Religious Organizations.
- 29 CFR parts 31, 32, 35 and 36, Nondiscrimination.
- 29 CFR part 93, Restrictions on Lobbying.
- 29 CFR part 94, Drug-free Workplace.
- 29 CFR part 95, Uniform Grant Requirements for Nonprofit Organizations.
- 29 CFR parts 96 and 99, Audits.
- 29 CFR part 97, Uniform Grant Requirements for States.
- 29 CFR part 98, Debarment and Suspension.
- 2 CFR part 25, Universal Identifier and Central Contractor Registration.
- 2 CFR part 170, Reporting Subawards.
- 2 CFR part 175, Award Term for Trafficking in Persons.
- 2 CFR part 220, Cost Principles for Educational Institutions.
- 2 CFR part 225, Cost Principles for State and Local Governments.
- 2 CFR part 230, Cost Principles for Other Nonprofit Organizations.
- Federal Acquisition Regulation (FAR) Subpart 31.2, Cost Principles for Commercial Organizations. (Codified at 48 CFR Subpart 31.2.)

Administrative costs for these grants may not exceed 15%. Unless specifically approved, MSHA's acceptance of a proposal or MSHA's award of Federal funds to sponsor any program does not constitute a waiver of any grant requirement or procedure. For example, if an application identifies a specific sub-contractor to provide certain services, the MSHA award does not provide a basis to sole-source the procurement (to avoid competition).

C. Special Program Requirements

1. MSHA Review of Educational Materials

MSHA will review all grantee-produced educational and training materials for technical accuracy and suitability of content during development and before final publication. MSHA also will review training curricula and purchased training materials for technical accuracy and suitability of content before the materials are used. Grantees developing training materials must follow all copyright laws and provide written certification that their materials are free from copyright infringements.

When grantees produce training materials, they must provide copies of completed materials to MSHA before the end of the grant period. Completed materials should be submitted to MSHA in hard copy and in digital format (CD–ROM/DVD) for publication on the MSHA Web site. Two copies of the materials must be provided to MSHA. Acceptable formats for training materials include Microsoft XP Word, PDF, PowerPoint, and any other format agreed upon by MSHA.

2. License

As listed in 29 CFR 95.36, the Department of Labor reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use for Federal purposes any work produced under a grant, and to authorize others to do so. Grantees must agree to provide the Department of Labor a paid-up, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use for Federal purposes all products developed, or for which ownership was purchased, under an award. Such products include, but are not limited to, curricula, training models, technical assistance products, and any related materials. Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronic, or otherwise.

3. Acknowledgement on Printed Materials

All approved grant-funded materials developed by a grantee shall contain the

following disclaimer: ''This material was produced under grant number XXXXX from the Mine Safety and Health Administration, U.S. Department of Labor. It does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.''

When issuing statements, press releases, request for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds must clearly state:

(a) The percentage of the total costs of the program or project that will be financed with Federal money;

(b) The dollar amount of Federal financial assistance for the project or program; and

(c) The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

4. Use of U.S. Department of Labor (USDOL) and MSHA Logos

MSHA may allow the USDOL or the MSHA logo to be applied to the grant-funded material including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications. Before the DOL or MSHA logos are used on grant-funded materials, the grantees must consult with MSHA. In no event shall the USDOL or the MSHA logo be placed on any item until MSHA has given the grantee written permission to use either logo on the item.

5. Reporting

Grantees are required by Departmental regulations to submit financial and project reports, as described below, each calendar quarter. All reports are due no later than 30 days after the end of the calendar quarter and shall be submitted to MSHA. Grantees also are required to submit final reports 90 days after the end of the grant period.

(a) Financial Reports. The grantee shall submit financial reports on a quarterly basis.

(b) Technical Project Reports. After signing the agreement, the grantee shall submit technical project reports to MSHA at the end of each calendar quarter. Technical project reports provide both quantitative and qualitative information and a narrative assessment of performance for the preceding three-month period. See 29 CFR 95.51 and 29 CFR 97.40. This should include the current grant progress against the overall grant goals.

Between reporting dates, the grantee shall immediately inform MSHA of significant developments or problems affecting the organization's ability to accomplish the work.

(c) Final Reports. At the end of each 12-month performance period, each grantee must provide a final financial report, a summary of its technical project reports, and an evaluation report. In addition to these requirements, in its second-year final report, renewal grantees must provide the total outputs for the two years, a list of best practices used, and any changes made as a result of evaluation feedback.

H. Freedom of Information

Any information submitted in response to this SGA will be subject to the provisions of the Freedom of Information Act, as appropriate.

I. Transparency in the Grant Process

DOL is committed to conducting a transparent grant award process and publicizing information about the program's performance. Posting grant applications on public Web sites is a means of promoting and sharing innovative ideas. For this grant competition, we will publish the Executive Summary as required by this solicitation for all applications on the Department's Web site or similar location. Additionally, we will publish a version of the Technical Proposal required by this solicitation, for all those applications that are awarded grants, on the Department's Web site or a similar location. No other parts of or attachments to the application will be published. The Technical Proposals and Executive Summaries will not be published until after the grants are awarded. In addition, information about grant progress and results may also be made publicly available.

DOL recognizes that grant applications sometimes contain information that an applicant may consider proprietary or business confidential information, or may contain personally identifiable information. Information is considered proprietary or confidential commercial/business information when it is not usually disclosed outside your organization and when its disclosure is likely to cause substantial competitive harm. Personally identifiable information is information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records, or other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.[1]

Executive Summaries will be published in the form originally submitted, without any redactions. However, in order to ensure that confidential information is properly protected from disclosure when DOL posts the winning Technical Proposals, applicants whose technical proposals will be posted will be asked to submit a second redacted version of their Technical Proposal, with proprietary, confidential commercial/business, and personally identifiable information redacted. All non-public information about the applicant's staff should be removed as well.

The Department will contact the applicants whose technical proposals will be published by letter or e-mail, and provide further directions about how and when to submit the redacted version of the Technical Proposal. Submission of a redacted version of the Technical Proposal will constitute permission by the applicant for DOL to post that redacted version. If an applicant fails to provide a redacted version of the Technical Proposal, DOL will publish the original Technical Proposal in full, after redacting personally identifiable information. (Note that the original, unredacted version of the Technical Proposal will remain part of the complete application package, including an applicant's proprietary and confidential information and any personally identifiable information.)

Applicants are encouraged to maximize the grant application information that will be publicly disclosed, and to exercise restraint and redact only information that truly is proprietary, confidential commercial/business information, or capable of identifying a person. The redaction of entire pages or sections of the Technical Proposal is not appropriate, and will not be allowed, unless the entire portion merits such protection. Should a dispute arise about whether redactions are appropriate, DOL will follow the procedures outlined in the Department's Freedom of Information Act (FOIA) regulations (29 CFR part 70).

If DOL receives a FOIA request for your application, the procedures in DOL's FOIA regulations for responding to requests for commercial/business information submitted to the

[1] Memorandums 07–16 and 06–19. GAO Report 08–536, *Privacy: Alternatives Exist for Enhancing Protection of Personally Identifiable Information,* May 2008, *http://www.gao.gov/new.items/d08536.pdf.*

government will be followed, as well as all FOIA exemptions and procedures. 29 CFR 70.26. Consequently, it is possible that application of FOIA rules may result in release of information in response to a FOIA request that an applicant redacted in its ''redacted copy.''

VII. Agency Contacts

Any questions regarding this solicitation for grant applications (SGA 11–3BS) should be directed to Robert Glatter at *glatter.robert@dol.gov* or at 202–693–9570 (this is not a toll-free number) or the Grant Officer, Carl Campbell at *campbell.carl@dol.gov* or at 202–693–9839 (this is not a toll-free number). MSHA's Web page at *http://www.msha.gov* is a valuable source of background for this initiative.

VIII. Office of Management and Budget Information Collection Requirements

This SGA requests information from applicants. This collection of information is approved under OMB Control No. 1225–0086 (expires November 30, 2012).

In accordance with the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for the grant application is estimated to average 20 hours per response, for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Each recipient who receives a grant award notice will be required to submit nine progress reports to MSHA. MSHA estimates that each report will take approximately five hours to prepare.

Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the OMB Desk Officer for MSHA, Office of Management and Budget Room 10235, Washington DC 20503 and MSHA, electronically to Robert Glatter at *glatter.robert@dol.gov* or the Grant Officer, Carl Campbell at *campbell.carl@dol.gov* or by mail to Robert Glatter, Room 2102, 1100 Wilson Boulevard, Arlington, Virginia 22209.

This information is being collected for the purpose of awarding a grant. The information collected through this ''Solicitation for Grant Applications'' will be used by the Department of Labor to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the respondent's application is not considered to be confidential.

Authority: 30 U.S.C. 965.

Dated: July 29, 2011.

Patricia W. Silvey,

Deputy Assistant Secretary for Operations, Mine Safety and Health.

[FR Doc. 2011–19710 Filed 8–1–11; 11:15 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Implementation of Scientific Integrity Principles: Draft Plan for Public Comment

AGENCY: National Science Foundation.

ACTION: National Science Foundation (NSF) Implementation of Scientific Integrity Principles: Draft Plan for Public Comment.

SUMMARY: On March 9, 2009, President Obama issued a Memorandum for the Heads of Executive Departments and Agencies on Scientific Integrity. Shortly thereafter the Office of Science and Technology Policy (OSTP) led an interagency task group to develop an implementation strategy, and NSF was represented on the task group. On December 17, 2010, the OSTP Director issued a Memorandum with implementation guidance (for copies of both memoranda, see: *http://www.whitehouse.gov/administration/eop/ostp/library/scientificintegrity*).

NSF is fully committed to its efforts to ensure that our processes will advance the goals articulated in the Memoranda. This report summarizes NSF practices both current and planned to maintain and enhance scientific integrity across our S&E community. The report is organized according to the major headings and topics of the December 2010 OSTP Memorandum.

DATES: Comments on the report are welcome before September 6, 2011. Comments will be useful in shaping the agency's implementation. Please send comments to *siip_comments@nsf.gov.* All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business information that is included. Because they will be made public, comments should not include any sensitive information.

FOR FURTHER INFORMATION CONTACT: *siip_comments@nsf.gov.*

I. Foundations of Scientific Integrity In Government

NSF works to maintain a culture of scientific integrity. Although NSF does not employ government scientists to conduct intramural research on behalf of the federal government, we do fund basic science and engineering research and education through awards to colleges and universities through the country. Consequently, we strongly believe that research results should be objective and not influenced by a potential awardee's financial interests or affiliations. We are one of only two agencies within the Federal Government that has an investigator conflict-of-interest policy that requires our grantee institutions to (1) Collect financial disclosure reports from investigators; (2) review financial disclosure reports; and (3) manage, reduce, or eliminate any conflicts of interest prior to the expenditure of any award funds.

In addition to ensuring research results are not influenced by conflicts of interest, NSF has a thorough and rigorous conflict of interest merit review process. And we expect the scientists and engineers at NSF who conduct our merit review process and make funding decisions to adhere to the highest standards of ethical conduct. This includes civil service employees and contractors; visiting scientists, engineers, and educators; and those working at NSF under the Intergovernmental Personnel Act.

NSF's internal procedures (*http://www.nsf.gov/publications/pub_summ.jsp?ods_key=manual15*) summarize the various government conflicts rules that guide NSF staff.

NSF staff who report information on potential violations of rules and regulations are protected from retaliation; NSF participates in the Office of Special Counsel's (OSC) 2302(c) Certification Program which allows federal agencies to meet the statutory obligation to inform their workforces about the rights and remedies available to them under the Whistleblower Protection Act (WPA) and related civil service laws. (See: *http://www.nsf.gov/od/odi/nofear/notice.jsp* and *http://www.osc.gov/outreachAgenciesCertified.htm.*)

Similarly, NSF awardees, whether current or prospective, also are expected to adhere to high standards of ethical conduct. All allegations of research misconduct are promptly reported to the Office of the Inspector General (OIG). (See: *http://www.nsf.gov/oig/misconscieng.jsp;* 45 CFR part 689 *http://law.justia.com/us/cfr/title45/45cfr689_main_02.html*).

NSF awardees are also subject to the responsible conduct of research requirement of the America COMPETES Act of 2007 (Pub. L. 110–69). In accordance with Section 7009, NSF requires awardees to provide appropriate training and oversight in the responsible and ethical conduct of research to undergraduates, graduate students, and postdoctoral researchers who will be supported by NSF to conduct research. (For more information on NSF's implementation of Section 7009, please see *http://edocket.access.gpo.gov/2009/E9–19930.htm*.)

Facilitating the free flow of scientific and technological information and maintaining open communication are critical to NSF. The Foundation participates in the Administration's Open Government Initiative (*http://www.nsf.gov/open*). Through this initiative, NSF publishes high-value datasets such as information on Freedom of Information Act requests, Graduate Research Fellowship Award recipients, abstracts of all funded NSF awards, and NSF funding rates. Another way that NSF facilitates the free flow of information is through Research.gov (*http://www.research.gov*), a portal that provides information on research spending and results. Research.gov publishes summaries of results supported by NSF. For awards made effective January 2010, the Foundation requires investigators to submit a brief summary, prepared specifically for the public, on the nature and outcomes of their NSF-funded award (See *Award & Administration Guide,* Chapter II: *http://www.nsf.gov/pubs/policydocs/pappguide/nsf11001/aag_2.jsp*.)

II. Public Communications

The Office of Legislative and Public Affairs (OLPA) is the authorized news media liaison for NSF. Within OLPA, the Public Affairs staff works to promote science, engineering and education research coverage in mainstream and targeted media, facilitating the *timely* release of *accurate* information. The overriding goal is openness and accessibility. In this section, NSF proposes a revised media policy as follows:

Media Policy: Purpose

This document establishes NSF's media policy governing media communications including advisories, press releases, statements, interviews, news conferences, and other related media contacts. Federal public affairs offices have been established to facilitate the active dissemination of agency research results and to coordinate media and public relations activities. A principal goal of public affairs is to help NSF most efficiently achieve its agency mission through policy making based on sound and objective science.

Media Policy: Rights

NSF-funded scientists and staff have the fundamental right to express their personal views, provided they specify that they are not speaking on behalf of, or as a representative of, the agency but rather in their private capacity. So long as this disclaimer is made, the employee is permitted to mention his or her institutional affiliation and position if this has helped inform his or her views on the matter.

Employees have the right to review, approve, and comment publicly on the final version of any proposed publication that significantly relies on their research, identifies them as an author or contributor, or purports to represent their scientific opinion.

Media Policy: Responsibilities

NSF's public affairs office is responsible for:

- promoting media attention on important scientific and institutional developments;
- coordinating and facilitating contact between journalists and the requested agency staff;
- providing both reporters and scientists with timely, accurate, and professional media assistance; and
- providing draft press releases or other public statements to agency scientists whose work is included, to assure the accuracy of scientific information being communicated.

NSF employees are responsible for working with the agency's public affairs staff to make significant research developments accessible and comprehensible to the public.

NSF employees are responsible for the accuracy and integrity of their communications and should not represent the agency on issues of politics or policy without prior approval from the public affairs office.

Media Policy: Media and Public Interactions

To help NSF public affairs best fulfill its responsibilities, agency employees should:

- Keep the public affairs office informed of any media interest or potential for interest in their work;
- Notify the public affairs office of impending media contacts and provide the public affairs office with a recap of the non-confidential aspects of the media conversation afterward;
- Review drafts of press releases written by staff from the public affairs office both for their format and non-scientific content, as well as for the accuracy of scientific information being communicated; and
- Work with the public affairs office to review presentations or news conferences for their format and content to assure the accuracy of scientific information being communicated.

NSF's public affairs officers should:

- Respond to all initial media inquiries as soon as possible, but seeking to respond within 30 minutes whenever possible;
- Do all they can to help reporters get the appropriate information needed for an article;
- Know the reporter's deadline to ensure timely response;
- Provide contact information where they will be available, even after hours, on weekends, and on holidays;
- Draft press releases and/or other multimedia products whenever warranted;
- Ensure a timely turnaround on press releases (within one week or less);
- Develop (or coordinate the development of) talking points in collaboration with the relevant experts for the release of scientific papers and other agency products; and
- Assure agency compliance with the No Fear Act (a federal law that holds agencies accountable for violations of employee protection laws) by informing employees of their rights under federal anti-discrimination and whistleblower protection laws.

Media Policy: Media Coverage

In the spirit of openness, media representatives should be granted free access to open meetings of NSF advisory committees, open sessions of the National Science Board meetings, and other meetings open to the public and convened by NSF, as well as permission to reasonably use tape recorders, cameras, and electronic equipment for broadcast purposes in these public meetings.

The public affairs officer coordinating a meeting may be present, or consulted, to undertake all responsibilities of a news media nature, including but not restricted to necessary physical arrangements.

It shall be the responsibility of the public affairs office to cooperate fully with and accede to all reasonable requests from news media representatives. In instances where conflicts or misunderstandings may arise from the expressed views, wishes, or demands on the part of news media representatives, such matters should be

referred at once to the head of NSF's Office of Legislative and Public Affairs for resolution.

The head of NSF's Office of Legislative and Public Affairs shall exercise full authority and assume responsibility for all decisions involving the news media and related activity.

Media Policy: Scope

Below are examples of the types of information that NSF considers within and outside the scope of the policy guidelines. Neither of these lists should be considered comprehensive.

A. Covered Information

- NSF-funded science, engineering and education research papers, books, journal articles, reports, and similar materials, unless they have disclaimers to distinguish the research from NSF views and positions;
- NSF-generated reports, brochures, documents, newsletters, and audiovisual products;
- Oral information, including speeches, interviews, expert opinions only if representing NSF's views, official positions, or policies; and
- Science & Engineering Indicators reports of a statistical nature, which includes statistical analyses, trend data, etc., aggregated by the National Science Board and NSF's National Centers for Science & Engineering Statistics.

B. Information Not Covered

- Documents or multimedia materials not authored by NSF and not representing official views, including research supported by NSF funding;
- Opinions where the presentation makes it clear that what is being offered is personal opinion rather than fact or NSF's views;
- Information dissemination limited to government employees or agency contractors or grantees;
- Information intended solely for intra- or inter-agency use or sharing of government information, such as budget discussions, National Science Board and NSF deliberations, and other information that serves to assess the success in achieving the agency's objectives, programs, training materials, manuals, etc.; and
- Information intended to be limited to public filings, subpoenas, or adjudicative processes.

Media Policy: Types of Information Disseminated by NSF to the Public

Annually, NSF produces hundreds of various types of outreach and communication materials and provides thousands of pages of Web content for access by the public. NSF's public affairs office works with university and institution public information offices to generate and distribute content.

Types of Dissemination

NSF disseminates information through a wide range of methods, using more than one medium for the same information. In light of the Paperwork Reduction Act of 1995, NSF strides to publish most of its print products in electronic, rather than paper, format.

- Print: Including limited quantities of NSF's Strategic Plan, Science & Engineering Indicators, National Science Board special reports, etc.;
- Electronic: Such as NSF Web sites, Listservs, e-mail, social media sites such as Facebook, Twitter, YouTube and FlickR;
- Audiovisual: Audio or video programs, media webcasts, slideshows, powerpoint presentations by the agency Director and Deputy Director; and
- Oral: Formal speeches, oral presentations, lectures, and interviews for publication or broadcast.

Media Policy: Guidelines for the Media

NSF's public affairs office has established these guidelines. They are available online at *http://nsf.gov/news/policies_for_media.jsp.*

When seeking information about NSF, or interviews with NSF leadership or staff, we ask that media contact Public Affairs for assistance. Our Public Affairs media team members, their contact information and the ''beats'' they cover are listed at *http://www.nsf.gov/news/olpastaff.jsp.*

When you interview a member of NSF leadership or staff, a member of the media team may sit in/listen in on the interview. Our goal is to support the interviewee and to assist you with any follow-up information needed.

If you contact us during normal business hours (East Coast time), you can expect a return call or message as soon as possible, within 30 minutes of your call or message, or at the most, the same day. We will do all we can to respond to your query by your deadline.

We will always provide you with accurate information and will work to put you directly in contact with the best expert to respond to your questions. Be aware that there are circumstances where the information we can provide is limited. These include details about possible or ongoing investigative work, pre-decisional budget data, and NSF personnel records.

When we provide editorial content to media, as with our partnerships with LiveScience.com and *U.S. News and World Report,* the content is clearly labeled as such.

We encourage you to make use of resources available on our Web site. Images and video in our press releases and Discovery feature stories are generally available for your use. Credit information and any restrictions on use will be listed with the image or video. Our Multimedia Gallery at *http://www.nsf.gov/news/mmg/* offers images, videos and audio files, and is searchable by topic. Remember to check for credit information and any restrictions on use.

Our National Center for Science and Engineering Statistics (NCSES) site at *http://www.nsf.gov/statistics/* provides useful statistics about the science and engineering enterprise, and links to the biennial *Science and Engineering Indicators,* published by the National Science Board.

III. Use of Federal Advisory Committees (FAC)

NSF's scientific advisory committees provide advice and recommendations to NSF concerning support for science research and education. This may include advice on program management, overall program balance, and other aspects of program performance; on the impact of NSF research support and NSF-wide policies on the scientific community; and on potential science and research thrusts, long-range plans and partnership opportunities.

Currently NSF invites suggestions for FAC membership on the NSF Web page (*http://www.nsf.gov/about/performance/dir_advisory.jsp*). NSF plans to revise the text on this page for consistency with the OSTP Memorandum. In addition, NSF plans to issue a **Federal Register** notice at least once a year to alert a wider audience to the NSF Advisory Committees. Since vacancies come up on an ad hoc basis, this **Federal Register** notice would cover NSF's scientific Advisory Committees and refer persons interested in serving as members or recommending members to the point of contact for the specific Committee.

NSF provides biographical information for some but not all FAC members. NSF will ensure that the practice is consistent across the agency.

Selection of FAC members is at the discretion of the Assistant Director/Office Head or some combination of these senior management officials. The NSF leadership plans to devote an annual senior management session to discuss expectations and best practices for FAC member selection.

The NSF Designated Agency Ethics Official will provide copies of all Conflict of Interest waivers granted to FAC members to the respective

Designated Federal Official to be posted on the appropriate FAC Web site.

NSF will use the following disclaimer on all FAC reports, recommendations, and products, unless there is prior agreement to do otherwise:

The function of Federal advisory committees is advisory only. Any opinions, findings, conclusions, or recommendations expressed in this material are those of the Advisory Committee, and do not necessarily reflect the views of the National Science Foundation.

IV. Professional Development of Government Scientists and Engineers

NSF has a strong commitment to ensuring that its staff remains at the cutting edge of the nation's workforce by fostering a culture of continuous learning. To that end, NSF permits staff (including scientists and engineers) to pursue research and developmental activities related to NSF's mission and goals such as attending or giving presentations at conferences or involvement in committees on Government time.

NSF also allows its staff to participate in any research or educational institution, scientific society, professional association or editorial board, provided written permission is obtained from the scientist's or engineer's supervisor or ethics counselor.

V. Implementation

NSF plans to develop a single, easily accessible Web site for Scientific Integrity with appropriate links and points of contact. NSF plans to follow the OSTP guidelines for Federal Advisory Committees as outlined in Section II above and will offer appropriate training to staff on implementation. These steps will be taken by December 31, 2011.

Dated: July 29, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–19701 Filed 8–3–11; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–34; Order No. 782]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Innis, Louisiana post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): August 10, 2011; *deadline for notices to intervene:* August 23, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

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 the **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: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on July 26, 2011, the Commission received a petition for review of the Postal Service's determination to close the post office in Innis, Louisiana. The petition was filed by Larry Rebalais (Petitioner) and is postmarked July 19, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–34 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than August 30, 2011.

Categories of issues apparently raised. Petitioner contends that: (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i); and (2) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is August 10, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is August 10, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than the Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before August 23, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate

issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than August 10, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than August 10, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Emmett Rand Costich is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

July 26, 2011	Filing of Appeal.
August 10, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
August 10, 2011	Deadline for the Postal Service to file any responsive pleading.
August 23, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
August 30, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
September 19, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
October 4, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
October 11, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
November 16, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–19770 Filed 8–3–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. N2011–1; Order No. 778]

Postal Service Initiative on Retail Postal Locations

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request for an advisory opinion on an initiative involving examination of the continuation of service at postal retail locations. This document invites public comments on the request and addresses several related procedural steps.

DATES: *Notices of intervention are due:* August 19, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

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 *http://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: On July 27, 2011, the United States Postal Service (Postal Service) filed a request with the Postal Regulatory Commission (Commission) for an advisory opinion under 39 U.S.C. 3661 regarding use of a centrally directed Retail Access Optimization (RAO) initiative for examining the continuation of service at approximately 3,650 postal retail locations.[1]

Jurisdiction. The Postal Service contends that in its present form, the RAO initiative ''could be at least 'substantially nationwide,' within the meaning of 39 U.S.C. 3661(b).'' *Id.* at 2. The Postal Service states that if it determines any facilities should be closed, postal patrons would have to obtain services at a different postal facility or alternate access channel. *Id.* The Postal Service asks the Commission to consider whether it has jurisdiction to offer an advisory opinion on the RAO initiative, and if so, to render it. *Id.*

The RAO initiative applies to postal retail facilities across the country, without limit to geography or population, and is driven by Headquarters. The Commission finds that because the Postal Service's RAO initiative appears to encompass a Headquarters' mandated, systemwide review of postal retail facilities, similar to the review of station and branch discontinuation in Docket No. N2009–1, a Commission advisory opinion pursuant to 39 U.S.C. 3661 is appropriate.

Request. The Request is accompanied by testimony from one witness, James J. Boldt (USPS–T–1), and five library references (two of which are non-public).[2]

Witness Boldt is identified asthe National Manager, Customer Service Operations, in the Office of Delivery and Post Office Operations at Postal Service Headquarters. USPS–T–1 at i. Witness Boldt's office is described as having primary responsibility for developing policies and procedures relating to the day-to-day operations of post offices, opening or closing of those facilities, and improving customer experience. *Id.*

Witness Boldt's testimony describes the current state of the Postal Service's retail network, including alternative access channels and underlying trends. *Id.* at 2–10. The testimony also describes the RAO initiative as a systemwide approach to the decline in demand for retail services and the widespread availability of alternative access channels. *Id.* at 13–14. The testimony indicates that the Postal Service will evaluate postal offices with low workload, stations and branches with insufficient demand and available alternate access, and retail annexes with insufficient demand and available alternate access. *Id.* at 14–16.

The Postal Service intends to make use of the new ''USPS Handbook PO–101'' that reflects recent rules promulgated by the Postal Service concerning the methods to close or consolidate postal retail facilities.[3] *Id.* at 17–18. Finally, the testimony explains how the Postal Service's new rules work

[1] Request of the United Postal Service for an Advisory Opinion on Changes in the Nature of Postal Services, July 27, 2011 at 1 (Notice).

[2] *See* Notice of United States Postal Service of Filing of Initial Labrary References and Application for Non-Public Treatment of Materials, July 27, 2011, identifying and describing the library references filed in support of the Postal Service's direct case.

[3] *See* 39 CFR Part 241.

and how they will be applied in the RAO initiative. *Id.* at 19–23.

The Request and all supporting public materials are on file in the Commission's docket room for inspection during regular business hours, and are available on the Commission's Web site at *http://www.prc.gov*.

Timing. The Postal Service believes that its filing satisfies the 39 CFR 3001.72 requirement that a request for an advisory opinion must be filed at least 90 days in advance of the effective date of the proposed changes. The Postal Service indicates that it started discontinuance actions consistent with the RAO initiative beginning July 26, 2011. Notice at 9. The Postal Service contends that these actions are not ''implementation'' of a service change because the initial action of public notice of discontinuance is only an ''information-gathering process.'' *Id.* The Postal Service states further that if discontinuation is announced, the facility must remain open for a further 60 days. *Id.* at 10. The Postal Service states that it expects notices announcing discontinuances of particular facilities to be issued starting in late October through late December of 2011. *Id.*

Further procedures. 39 U.S.C. 3661(c) requires that the Commission afford an opportunity for a formal, on-the-record hearing of the Postal Service's Request under the terms specified in sections 556 and 557 of title 5 of the U. S. Code before issuing its advisory opinion. The Postal Service's request raises important issues. Given the Postal Service's financial position, the Commission finds it appropriate to expedite the proceeding. To facilitate expeditious review of the matter, the Commission expects parties to make judicious use of discovery, discovery objections, and motions' practice. Every effort should be made to confer to resolve disputes informally.

All interested persons are hereby notified that notices of intervention in this proceeding shall be due on or before August 19, 2011. *See* 39 CFR 3001.20 and 3001.20a. Discovery may be propounded upon filing a notice of intervention. Responses to discovery shall be due within 7 days.

The full procedural schedule shown below the signature of this Order will be followed in this proceeding:

- The hearing to receive the Postal Service's direct case shall begin September 8, 2011.
- Intervenor evidence must be submitted by September 16, 2011.
- The hearing to receive intervenor evidence shall begin October 3, 2011.
- Unless the Postal Service elects to submit surrebuttal evidence, briefs shall be due October 14, 2011, and reply briefs shall be due October 21, 2011.
- If the Postal Service elects to submit surrebuttal evidence, that evidence is due by October 11, 2011.
- The hearing to receive the surrebuttal evidence shall be October 17, 2011.
- If surrebuttal evidence is submitted, briefs shall be due October 26, 2011, and reply briefs shall be due November 2, 2011.

Public Representative. Section 3661(c) of title 39 requires the participation of an ''officer of the Commission who shall be required to represent the interests of the general public.'' Tracy Ferguson is designated to serve as the Public Representative to represent the interests of the general public in this proceeding, assisted by John P. Klingenberg. Neither the Public Representative nor any additional persons assigned to assist her shall participate in or advise as to any Commission decision in this proceeding, other than in their designated capacity.

It is ordered:

1. The Commission establishes Docket No. N2011–1 to consider the Postal Service Request referred to in the body of this Order.

2. The Commission will sit *en banc* in this proceeding.

3. The complete procedural schedule for this proceeding is set forth below the signature of this order.

4. Pursuant to 39 U.S.C. 505 and 3661(c), the Commission appoints Tracy Ferguson to represent the interests of the general public in this proceeding.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

August 19, 2011	Notices of intervention due.
August 20, 2011	Close of discovery on Postal Service direct case.
September 2, 2011	Notice of intent to conduct oral cross-examination.
September 8, 2011	Hearing on the Postal service's direct case (9:30 AM in the ommission's hearing room).
September 9, 2011	Close of discovery for developing intervenors' direct case.
September 16, 2011	Filing of rebuttal testimony.
September 23, 2011	Conclusion of discovery directed towards rebuttal testimony.
September 30, 2011	Notice of intent to conduct oral cross-examination (rebuttal).
October 3, 2011	Hearing to enter rebuttal testimony into the record (9:30 AM in the commission's hearing room).
October 5, 2011	Notice of intent to file surrebuttal testimony.
October 11, 2011	Filing of surrebuttal testimony (if requested).
October 14, 2011	Filing of briefs if no surebuttal testimony filed.
October 17, 2011	Hearing to enter surrebuttal testimony into the record (9:30 AM in the commission's hearing room, if necessary).
October 21, 2011	Filing of reply briefs if no surrebutal testimony is filed.
October 26, 2011	Filing of briefs if surrebuttal testimony filed.
November 2, 2011	Filing of reply briefs if surrebuttal testimony filed.

[FR Doc. 2011–19725 Filed 8–3–11; 8:45 am]
BILLING CODE 7710–FW–P

RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

[Doc. No. 11–004]

Privacy Act of 1974; System of Records

AGENCY: Recovery Accountability and Transparency Board.

ACTION: Notice of new Privacy Act system of records.

SUMMARY: The Recovery Accountability and Transparency Board (Board) proposes a new system of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended (Privacy Act or the Act), entitled ''Fast Alert System.'' Under the American Recovery and Reinvestment Act of 2009, Public Law 111–5 (Recovery Act), the Recovery Accountability and Transparency Board (Board) is responsible for coordinating and conducting oversight of covered funds to prevent fraud, waste, and abuse. The Board has determined that, to further its mission of fraud and waste prevention, recipients of Recovery Act funds and those seeking Recovery Act funds should be reviewed against existing public, private, and commercially available information, including but not limited to information regarding past recipients of or those that have sought Federal funds. The Board has further determined that direct participation in such reviews by agency procurement and grant personnel, as well as by Offices of Inspector General and other law enforcement authorities, will improve the efficiency and economy of achieving the Board's mission of preventing and detecting fraud, waste, and abuse of Recovery Act funds.

RATB—13

SYSTEM NAME:

Fast Alert System.

SECURITY CLASSIFICATION:

Controlled Unclassified Information.

SYSTEM LOCATION:

The principal location for the system is the Recovery Accountability and Transparency Board, located at 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on individuals acting in a personal capacity who relate to official Board efforts undertaken in support of its mission to coordinate and conduct oversight of Recovery Act funds to prevent fraud, waste, and abuse. These individuals include but are not limited to those that have applied for, sought or received Federal funds, including but not limited to Recovery Act funds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Every possible type of information that contributes to effective oversight of fraud, waste, and abuse of Recovery Act funds may be maintained in this system of records, including but not limited to records on Recovery Act recipients and subrecipients (including vendors) and records on other individuals, corporations, sole proprietors, and other legal entities that have applied for, sought, or received Federal funds, including but not limited to Recovery Act funds.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

The Recovery Act established the Board to coordinate and conduct oversight of Recovery Act funds to prevent fraud, waste, and abuse. Public Law 111–5, 1521, 1523(a)(1).

PURPOSE(S):

The purpose of collecting this information is to assist with the Board's efforts to prevent fraud, waste, and abuse of Recovery Act funds. By collecting data that is relevant to determinations of recipient and potential recipient responsibility and risk, the Board can create an oversight tool to be utilized by the Board and by those agencies responsible for distributing and/or overseeing Recovery Act funds.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in the Fast Alert System may be used:

A. For auditing or other internal purpose of the Board, including but not limited to: review, analysis, and investigation of possible fraud, waste, abuse, and mismanagement of Recovery Act funds.

B. To provide responses to queries from Federal agencies, including but not limited to regulatory and law enforcement agencies, regarding Recovery Act fund recipients, subrecipients, or vendors, or those seeking Recovery Act funds.

C. To furnish information to the appropriate Federal, state, local, or tribal agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

D. To disclose information to a Federal, state, local, or tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee or retention of a security clearance. That entity, authority, or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses.

E. To disclose information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

F. To disclose information to the Department of Justice (DOJ), or in a proceeding before a court, adjudicative body, or other administrative body before which the Board is authorized to appear, when:

1. The Board, or any component thereof; or

2. Any employee of the Board in his or her official capacity; or

3. Any employee of the Board in his or her individual capacity where the DOJ or the Board has agreed to represent the employee; or

4. The United States, if the Board determines that litigation is likely to affect the Board or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ or the Board is deemed by the Board to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

G. To disclose information to the National Archives and Records Administration in records management inspections.

H. To disclose information to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Board and who have a need to have access to the information in the performance of their duties or activities for the Board.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Fast Alert System records will be stored in digital format on a digital storage device. All record storage procedures are in accordance with current applicable regulations.

RETRIEVABILITY:

Records are retrievable by database management systems software designed to retrieve data elements based upon role-based (*e.g.,* law enforcement or non-law enforcement) user access privileges.

SAFEGUARDS:

The Board has minimized the risk of unauthorized access to the system by establishing a secure environment for exchanging electronic information. Physical access uses a defense in-depth approach restricting access at each layer closest to where the actual system resides. The entire complex is patrolled by security during non-business hours. Physical access to the data system housed within the facility is controlled by a computerized badge-reading system. Multiple levels of security are maintained via dual factor authentication for access using biometrics. The computer system offers a high degree of resistance to tampering and circumvention. This system limits data access to Board and contract staff on a need-to-know basis, and controls individuals' ability to access and alter records within the system. All users of the system of records are given a unique user identification (ID) with personal identifiers, and those user IDs are consistent with the above referenced role-based access privileges to maintain proper security of law enforcement and any other sensitive information. All interactions between the system and the authorized individual users are recorded.

RETENTION AND DISPOSAL:

Board personnel will review records on a periodic basis to determine whether they should be retained or modified. Further, the Board will retain and dispose of these records in accordance with Board Records Control Schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER AND ADDRESS:

Michael Wood, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Any individual who wants to know whether this system of records contains a record about him or her acting in a personal capacity, who wants access to such records, or who wants to contest the contents of such records should make a written request to the system manager.

RECORD ACCESS PROCEDURES:

A request for record access shall follow the directions described under Notification Procedure and will be addressed to the system manager at the address listed above. To the extent a portion of this system contains law enforcement records, such records are exempt from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). To the extent that such law enforcement records are not subject to exemption, they are subject to access. A determination as to exemption shall be made at the time a request for access is received. Access requests shall be directed to the

System Manager listed above.

CONTESTING RECORDS PROCEDURES:

If you wish to contest a record in the system of records, contact the system manager and identify the record to be changed, identify the corrective action sought, and provide a written justification.

RECORD SOURCE CATEGORIES:

Information may be obtained from recipients and subrecipients (including vendors) of Recovery Act funds or other Federal funds for which the Board has been assigned oversight responsibilities; Federal, state, and local agencies; public-source and/or commercially available materials.

DATES: Comments on this proposed new system of records must be received by the Board on or before September 13, 2011. The Privacy Act, at 5 U.S.C. 552a(e)(11), requires that the public be provided a 30-day period in which to comment on an agency's intended use of information in a system of records. Appendix I to Office of Management and Budget Circular A–130 requires an additional 10-day period, for a total of 40 days, in which to make such comments. The system of records will be effective, as proposed, at the end of the comment period unless the Board determines, upon review of the comments received, that changes should be made. In that event, the Board will publish a revised notice in the **Federal Register**.

ADDRESSES: Comments on the proposed new system of records should be clearly identified as such and may be submitted:

By Mail or Hand Delivery: Jennifer Dure, General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006;

By Fax: (202) 254–7970; or

By E-mail to the Board: comments@ratb.gov.

FOR FURTHER INFORMATION CONTACT: Jennifer Dure, General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006, (202) 254–7900.

Ivan J. Flores,

Paralegal Specialist, Recovery Accountability and Transparency Board.

[FR Doc. 2011–19714 Filed 8–3–11; 8:45 am]

BILLING CODE 6821–15–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29739]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

July 29, 2011.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of July 2011. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 23, 2011, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

For Further Information Contact: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–8010.

Arrow Funds Trust

[File No. 811–22325]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its

securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on July 20, 2011.

Applicant's Address: 2943 Olney-Sandy Spring Rd., Suite A, Olney, MD 20832.

Highland Pharmaceutical Royalty Fund

[File No. 811–22266]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on May 17, 2011, and amended on July 21, 2011.

Applicant's Address: NexBank Tower, 13455 Noel Rd., Suite 800, Dallas, TX 75240.

Wells Fargo Family Office Fund I, LLC; Wells Fargo Family Office Master Fund, LLC; Wells Fargo Family Office Fund FW, LLC

[File No. 811–22513]; [File No. 811–22514]; [File No. 811–22515]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

Filing Dates: The applications were filed on May 23, 2011, and amended on July 15, 2011.

Applicants' Address: 333 Market St., 29th floor, MAC A0119–291, San Francisco, CA 94105.

Prudential Investment Portfolios 11

[File No. 811–3264]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 3, 2011, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $14,000 incurred in connection with the liquidation were borne by Prudential Investments LLC, applicant's investment adviser.

Filing Date: The application was filed on July 5, 2011.

Applicant's Address: Gateway Center Three, 100 Mulberry St., Newark, NJ 07102–4077.

Embarcadero Funds, Inc.

[File No. 811–9116]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 25, 2011, applicant transferred the assets of its two remaining series, Embarcadero Absolute Return Fund and Embarcadero Market Neutral Fund, to Tanaka Growth Fund, a series of Tanaka Funds, Inc., based on net asset value. Expenses of $133,600 incurred in connection with the reorganization were paid by applicant and Tanaka Capital Management, Inc., investment adviser to the acquiring fund.

Filing Date: The application was filed on July 8, 2011.

Applicant's Address: 3 Embarcadero Center, Suite 1120, San Francisco, CA 94111.

BlackRock Global Financial Services Fund, Inc.; Global Financial Services Master LLC

[File No. 811–9375]; [File No. 811–9633]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On or about April 27, 2011, each applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $8,606 incurred in connection with the liquidation of BlackRock Global Financial Services Fund, Inc. were paid by BlackRock Advisors, LLC, or its affiliates.

Filing Date: The applications were filed on July 6, 2011.

Applicants' Address: 100 Bellevue Parkway, Wilmington, DE 19809.

Pioneer Protected Principal Trust

[File No. 811–21163]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 21, 2009, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $25,878 incurred in connection with the liquidation were paid by applicant and Pioneer Investment Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on June 24, 2011.

Applicant's Address: 60 State St., Boston, MA 02109.

Special Situations Fund III, L.P.

[File No. 811–8110]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 27, 2011, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $82,500 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on September 17, 2009, and amended on December 11, 2009, and July 6, 2011.

Applicant's Address: 527 Madison Ave., Suite 2600, New York, NY 10022.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–19810 Filed 8–3–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64992; File No. SR–ISE–2011–43]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

July 29, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on July 19, 2011, the International Securities Exchange, LLC (the ''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its transaction fees and rebates for adding and removing liquidity. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses a per contract transaction charge to market participants that add or remove liquidity from the Exchange (''maker/taker fees'') in 99 options classes (the ''Select Symbols'').[3] The purpose of this proposed rule change is to amend the list of Select Symbols on the Exchange's Schedule of Fees, titled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols.'' Specifically, the Exchange proposes to add Motorola Solutions, Inc. (''MSI'') to the list of Select Symbols.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on August 1, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(4) of the Act[5] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable to add MSI to its list of Select Symbols to attract additional order flow to the Exchange. The Exchange anticipates that the addition of MSI to the list of Select Symbols will attract market participants to transact equity options at the Exchange because of the available rebates.

The Exchange believes that it is equitable to amend the list of Select Symbols by adding MSI because the list of Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols would be subject to the applicable maker/taker fees and rebates.

[3] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2011–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–43. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2011–43 and should be submitted on or before August 25, 2011.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–19727 Filed 8–3–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64991; File No. SR–CBOE–2011–039]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change To List and Trade Single Stock Dividend Options

July 29, 2011.

On May 31, 2011, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to list and trade cash-settled options that overlie the ordinary cash

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

dividends paid by an issuer over an annual, semi-annual, or quarterly ''accrual period.'' The proposed rule change was published for comment in the **Federal Register** on June 17, 2011.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

I. Description of Proposal

CBOE proposes to list and trade cash-settled, P.M.-settled, European-style exercise options that overlie the ordinary cash dividends paid by an issuer (''SSDO'') over an annual accrual period. CBOE also may list series of SSDOs with an accrual period of less than a year, but in no event less than one quarter of a year.

Product Design

Each SSDO represents the accumulated ordinary dividend amounts paid by a specific issuer over a specified accrual period.[4] Each annual accrual period will run from the business day after the third Friday of December through the third Friday of the following December. For an SSDO with an accrual period of less than a year, the accrual period runs from the business day after the third Friday of the month beginning the accrual period through the third Friday of the month ending the accrual period.[5]

The underlying value for SSDOs will be equal to ten (10) times the ex-dividend amounts of an issuer accumulated over the specified accrual period. Each day, CBOE will calculate the aggregate daily dividend totals for the specific issuer, which are summed up over any accrual period. During each business day, CBOE will disseminate the underlying SSDO value, multiplied by ten (10), through the Options Price Reporting Authority (''OPRA''), the Consolidated Tape Association (''CTA'') tape and/or the Market Data Index (''MDI'') feed.

Options Trading

Each SSDO will be quoted in decimals and one point will be equal to $100. The Exchange proposes that the minimum price variation for quotes shall be established on a class-by-class basis by the Exchange and shall not be less than $0.01. CBOE also proposes to list series at 1 point ($1.00) or greater strike price intervals if the strike price is equal to or less than $200 and 2.5 points ($2.50) or greater strike price intervals if the strike price exceeds $200. Initially, the Exchange will list in-, at- and out-of-the-money strike prices and may open for trading up to five annual contract months expiring in December in different years for any single stock underlying an SSDO and up to ten contract months for accrual periods of less than a year.[6] The Exchange is proposing to use the expected dividend (*i.e.,* the aggregate value of dividends that are expected to be paid by the issuer over a given accrual period) amount for setting the initial strikes. Near-term SSDOs will reflect dividends accumulating in the then-current accrual period. All other SSDO options (*i.e.,* contracts listed for trading that are not in the then-current accrual period) will reflect dividends expected in comparable accrual periods beyond the current accrual period. The Exchange may open for trading additional series, either in response to customer demand or as the price of the expected dividends for an issuer changes.

Exercise and Settlement

The proposed options will expire on the Saturday following the third Friday of the expiring month. Trading in the expiring contract month will normally cease at 3 p.m. Chicago time on the last day of trading (ordinarily the Friday before expiration Saturday, unless there is an intervening holiday). When the last trading day is moved because of an Exchange holiday (such as when CBOE is closed on the Friday before expiration), the last trading day for expiring options will be Thursday.

Exercise will result in delivery of cash on the business day following expiration. SSDOs will be P.M.-settled. The Exchange is proposing P.M.-settlement for SSDOs because options trading on individual stocks are P.M. settled. As a result, the Exchange is proposing to match the expiration style for SSDOs to individual stock option exercise. The exercise-settlement amount will be equal to ten times the ordinary cash dividends paid by the issuer over the accrual period. The exercise settlement amount is equal to the difference between the exercise-settlement value and the exercise price of the option, multiplied by the contract multiplier ($100).

If the exercise settlement value is not available or the normal settlement procedure cannot be utilized due to a trading disruption or other unusual circumstance, the settlement value will be determined in accordance with the rules and bylaws of the OCC.

Surveillance

CBOE has represented that it will use the same surveillance procedures currently utilized for each of the Exchange's other single stock options to monitor trading in SSDOs. Such procedures include, for example, monitoring dividend announcements. The Exchange represents that these surveillance procedures shall be adequate to monitor trading in these option products. For surveillance purposes, the CBOE has represented that it will have complete access to information regarding trading activity in the pertinent securities whose dividend payment is the basis for particular SSDOs.

Position Limits

CBOE proposes that position and exercise limits for SSDOs will be the same as those for standard options overlying the same security. While positions in SSDOs will be aggregated with longer-dated positions in SSDOs with the same underlying stock for position and exercise limits purposes, they will not be aggregated with positions in the ordinary options overlying the stock of the issuer paying the dividends underlying the SSDO. CBOE represents that the reason for not aggregating positions with ordinary options is that SSDOs are based solely on expected dividends for an issuer and will reflect the forward value of that expectation. CBOE states that because the pricing of ordinary options versus SSDOs will differ dramatically, the Exchange believes there is no need to aggregate positions to prevent manipulative practices involving the underlying options.

Exchange Rules Applicable

New Rule 5.9 is proposed to govern the listing and trading of SSDOs. In addition, SSDOs will be margined in the same manner as single stock options under Exchange Rule 12.3. Purchasers of puts or calls, however, must be paid in full, even if there remains longer than nine months until expiration for the position. For SSDOs, the aggregate contract value on which the margin amount will be calculated will be the product of the forward expected dividend amount for the accrual period (as adjusted for any contract scaling factor) and the applicable multiplier ($100).

CBOE proposes to designate SSDO options as eligible for trading as Flexible

[3] *See* Securities Exchange Act Release No. 64654 (June 13, 2011), 76 FR 35503 (''Notice'').

[4] For purposes of SSDOs, dividends are deemed to be ''paid'' on the ex-dividend date.

[5] The Exchange will assign separate trading symbols to SSDOs overlying the accumulated ex-dividends of the same issuer that have different accrual periods.

[6] *See* Notice, *supra* note 3, for an example of listing five annual contract months expiring in December in different years.

Exchange Options (''FLEX options'') as provided for in Chapters XXIVA (Flexible Exchange Options) and XXIVB (FLEX Hybrid Trading System).

Capacity

CBOE represents that it has analyzed its capacity and believes that the Exchange and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of new series that will result from the introduction of SSDOs.

II. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that CBOE's proposal gives options investors the ability to make an additional investment choice in a manner consistent with the requirements of Section 6(b)(5) of the Act.[9] The Commission notes that SSDOs will allow market participants to hedge their exposure to changes in the dividend payment policies of the underlying securities. Further, the Commission believes that the listing rules proposed by CBOE for SSDOs are reasonable and consistent with the Act, as discussed below.

The Commission believes that permitting $1.00 strike price intervals if the strike price is equal to or less than $200 will provide investors with added flexibility in the trading of these options and will further the public interest by allowing investors to establish positions that are better tailored to meet their investment objectives. As explained by CBOE, the underlying value of an SSDO is expected to fluctuate around a limited expected dividend value range,[10] and therefore, the implementation of $1.00 strike price intervals is designed to provide investors with flexibility. Because of this characteristic the Commission believes that the implementation of $1 strike price intervals for SSDOs, within the parameters of the rule, is appropriate.

The Commission believes that CBOE's proposal to allow the minimum price variation to be no less than $0.01, as established on a class-by-class basis, is consistent with the Act, given the expected low underlying dividend values for SSDOs. CBOE has represented that it expects that the underlying dividend values for SSDOs will be relatively low, and that granular pricing will provide for more pricing points. Further, CBOE has represented that it has analyzed its capacity and believes that it and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of new series that will result from the introduction of SSDOs. In particular, the Exchange noted that expected dividend payments, on which the value of SSDOs are predicated, are generally much less volatile than share prices, and thus there is less need to list numerous strike prices for each expiration date of an SSDO or to add many new strikes over the life of an SSDO.

The Commission notes that, on a daily basis, CBOE will calculate the aggregate daily dividend totals for the specific issuer, and will disseminate the underlying SSDO value, multiplied by ten (10), through OPRA, the CTA and/or the MDI feed.

The Exchange has proposed to apply the same position and exercise limits as those for standard options overlying the same security. However, the Exchange notes that positions in SSDOs will not be aggregated with positions in the ordinary positions overlying the stock of the issuer paying the dividends underlying the SSDO, because the pricing of ordinary options and SSDOs vary greatly and thus it is unnecessary to aggregate the positions to prevent manipulative practices involving the underlying. The Commission believes that CBOE's proposed rules relating to position and exercise limits are appropriate and consistent with the Act.

The Exchange also proposes to margin SSDOs in the same manner as single stock options; however, the aggregate contract value on which the margin amount will be calculated will be the product of the forward expected dividend amount for the accrual period and the applicable modifier. The Commission believes that CBOE's proposed rules relating to margin requirements are appropriate.

The Commission also believes that CBOE's proposal to allow SSDOs to be eligible for trading as FLEX options is consistent with the Act. The Commission previously approved rules relating to the listing and trading of FLEX options on CBOE, which give investors and other market participants the ability to individually tailor, within specified limits, certain terms of those options.[11]

The Commission notes that CBOE represented that it has an adequate surveillance program to monitor trading of SSDOs and intends to apply its existing surveillance program for single stock options to support the trading of these options. As with other securities, there is a potential risk that a corporate insider may exploit his or her advance knowledge of changes to an issuer's dividend policy through the purchase or sale of an SSDO. The Commission has taken a number of enforcement actions in cases where insiders executed securities transactions to exploit their knowledge of changes in issuers' dividend policies.[12] Accordingly, adequate surveillance is an important responsibility of the CBOE. In addition, CBOE has represented that it is confident that it has adequate tools in place to surveil for market manipulation. Further, CBOE is a member of the ISG and can obtain trading activity in information in the underlying securities whose dividend payment is the basis for particular SSDOs from the exchanges that list the securities. The Commission believes that CBOE should have the ability and resources to adequately surveil for manipulation in SSDOs.

In approving the proposed rule change, the Commission has also relied upon CBOE's representation that it has the necessary systems capacity to support the new options series that will result from this proposal.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(5).

[10] The Commission notes that, in the Notice the Exchange provided a number of examples of values underlying SSDOs using past ordinary dividend payouts over varying accrual periods, and these values ranged from 1 to 22.70. *See* Notice, *supra* note 3.

[11] *See* Securities Exchange Act Release No. 31910 (February 23, 1993), 58 FR 12056 (March 2, 1993).

[12] *See, e.g., SEC* v. *David L. Johnson,* Civil Action No. 05–CV–4789 (USDC E.D. Pa.) (Sept. 7, 2005) (consent to permanent injunction, disgorgement and civil penalty for a person who allegedly sold shares of an issuer based on inside information of a dividend cut, and tipped his son to do likewise); *SEC* v. *Barry Hertz,* Civil Action No. 05–2848 (USDC E.D.N.Y.) (Mar. 16, 2007) (consent to final judgment, including an injunction and two-year bar from serving as an officer or director of a public corporation, for a person alleged to have traded on inside information, including purchasing shares of an issuer while in possession of positive news of a first time dividend issuance).

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–2011–039) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–19748 Filed 8–3–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64989; File No. SR–EDGA–2011–23]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

July 29, 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 July 27, 2011, the EDGA Exchange, Inc. (the ''Exchange'' or the ''EDGA'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With respect to the category of securities priced at or above $1.00, when Members add liquidity, they are currently assessed a charge of $0.00025 per share. Alternatively, when Members remove liquidity, they are currently rebated in the amount of $0.00015 per share. The Exchange proposes to amend the fee structure (and related Flags) set forth in the fee schedule to instead provide a rebate for Members in the amount of $0.0005 per share when adding liquidity and assess a $0.0006 per share charge when removing liquidity.

The Exchange proposes to make conforming changes to the relevant flags, as described below, for adding and removing liquidity from the EDGA book. Specifically, the Exchange proposes to: (a) Discontinue the $0.00025 per share charge for adding liquidity to EDGA book in Tape B securities (Flag B) and instead offer a rebate of $0.0005 per share; (b) discontinue the rebate of $0.00015 per share for removing liquidity from the EDGA book in Tapes B and C securities (Flag N) and instead assess a $0.0006 per share charge; (c) discontinue the $0.00025 per share charge for adding liquidity to the EDGA book in Tape A securities (Flag V) and instead offer a rebate of $0.0005 per share; (d) discontinue the rebate of $0.00015 per share for removing liquidity from the EDGA book in Tape A securities (Flag W) and instead assess a $0.0006 per share charge; (e) discontinue the $0.00025 per share charge for adding liquidity to the EDGA book in Tape C securities (Flag Y) and instead offer a rebate of $0.0005 per share; (f) discontinue the $0.00025 per share charge for adding liquidity in the pre- and post-market trading sessions in Tapes A and C securities (Flag 3) and instead offer a rebate of $0.0005 per share; (g) discontinue the $0.00025 per share charge for adding liquidity in the pre- and post-market trading sessions in Tape B securities (Flag 4) and instead offer a rebate of $0.0005 per share; and (h) discontinue the rebate of $0.00015 per share for removing liquidity in the pre- and post-market trading sessions in securities on all Tapes (Flag 6) and instead assess a $0.0006 per share charge.

The Exchange also proposes to delete, in its entirety, footnote 12, which describes a tiered rate ($0.00005 per share) if Members, measured monthly, post 0.9% of the Total Consolidated Volume (''TCV'') in average daily volume to EDGA. As a result of the deletion of footnote 12, current footnotes 13–14 have been re-numbered as footnotes 12–13.

Currently, the BY flag is yielded when an order is routed to BATS BYX Exchange and removes liquidity using order types ROUC, ROBY, ROBB, or ROCO, as defined in Exchange Rules 11.9(b)(3)(a), (c), and (g). The Exchange proposes to decrease the rebate from $0.0004 to $0.0002 when an order is routed to BATS BYX Exchange and removes liquidity.

The Exchange also proposes to eliminate the text in footnote 7, which describes the INET tier, and replace it with the words ''intentionally omitted.'' This tier provides that ''Members routing an average daily volume (''ADV''): (i) Less than 5,000,000 shares will be charged $0.0030 per share, as described in the schedule; (ii) equal to or greater than 5,000,000 shares but less than 20,000,000 shares will be charged Nasdaq's best removal tier rate per share; (iii) equal to or greater than 20,000,000 shares but less than 30,000,001 shares will be charged Nasdaq's best removal tier rate—$0.0001 per share; and (iv) equal to or greater than 30,000,001 shares will be charged Nasdaq's best removal tier rate—$0.0002 per share. The rates, in all cases, are calculated for shares removed from Nasdaq.'' Conforming changes have been made to eliminate the references to footnotes 7 and a on Flags 2 and L, as they are no longer applicable.

The Exchange proposes to implement these amendments to its fee schedule on August 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Exchange Act,[4] in general, and furthers

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[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

[4] 15 U.S.C. 78f.

the objectives of Section 6(b)(4),[5] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Exchange's proposal to provide a rebate of $0.0005 per share for adding liquidity and assess a charge of $0.0006 per share for removing liquidity is designed to allow the Exchange to compete with other market centers, and at the same time preserve its current spread of $0.0001 per share. Because the Exchange's spread remains at $0.0001 per share under the proposed rate, the Exchange believes the proposed maker/taker fee spread to be reasonable. The proposed maker/taker spread is competitive with other market centers maker/taker spreads (BATS BZX Exchange, $0.0001 per share), Nasdaq ($.001—($.00045) per share), and NYSE Arca ($0.0009—($0.0002) per share). The Exchange believes that the proposed rate is non-discriminatory in that it applies uniformly to all Members.

Currently, the Exchange has a taker/maker fee structure whereby the Exchange assesses a fee of $0.00025 per share to add liquidity and provides a rebate of $0.00015 per share to remove liquidity. By changing its fee structure to the proposed maker/taker model, the Exchange will make it less expensive for Members to post liquidity to EDGA. As a result, EDGA expects to gain market share and see its order volume increase. Such increased volume increases potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form a rebate. The increased liquidity also benefits all investors by deepening EDGA's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The elimination of the tier described in footnote 12 (posting 0.9% of the TCV in average daily volume to EDGA) results from discussions with the Exchange's customers whereby the Exchange has concluded that the tier is not effective at incenting liquidity.

The Exchange believes that the proposed decrease in rebate associated with the BY flag (from $0.0004 per share to $0.0002 per share) represents an equitable allocation of reasonable dues, fees, and other charges since it reflects a pass through of the BATS fee for removing liquidity. EDGA believes that it is reasonable and equitable to pass on these fees to its members. The Exchange believes that the proposed decrease in rebate is non-discriminatory in that it applies uniformly to all Members.

The Exchange believes that the proposed elimination of the INET tier in footnote 7 represents an equitable allocation of reasonable dues, fees, and other charges as the INET tier is not used by any Members and therefore, its elimination will not impact any Members. The proposed elimination of the tier also provides more simplicity to the fee schedule.

The Exchange also notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[6] and Rule 19b–4(f)(2)[7] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2011–23 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–EDGA–2011–23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2011–23 and should be submitted on or before August 25, 2011.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–19740 Filed 8–3–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64990; File No. SR–EDGX–2011–22]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

July 29, 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 July 27, 2011, the EDGX Exchange, Inc. (the ''Exchange'' or the ''EDGX'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the BY flag is yielded when an order is routed to BATS BYX Exchange and removes liquidity using order types ROUC and ROBY, as defined in Exchange Rules 11.9(b)(3)(a) and (g). The Exchange proposes to decrease the rebate from $0.0004 to $0.0002 when an order is routed to BATS BYX Exchange and removes liquidity.

The Exchange also proposes to eliminate the text in footnote 7, which describes the INET tier, and replace it with the words ''intentionally omitted.'' This tier provides that ''Members routing an average daily volume (''ADV''): (i) Less than 5,000,000 shares will be charged $0.0030 per share, as described in the schedule; (ii) equal to or greater than 5,000,000 shares but less than 20,000,000 shares will be charged Nasdaq's best removal tier rate per share; (iii) equal to or greater than 20,000,000 shares but less than 30,000,001 shares will be charged Nasdaq's best removal tier rate—$0.0001 per share; and (iv) equal to or greater than 30,000,001 shares will be charged Nasdaq's best removal tier rate—$0.0002 per share. The rates, in all cases, are calculated for shares removed from Nasdaq.'' Conforming changes have been made to eliminate the references to footnotes 7 and a on Flags 2 and L, as they are no longer applicable.

The Exchange proposes to implement these amendments to its fee schedule on August 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Exchange Act,[4] in general, and furthers the objectives of Section 6(b)(4),[5] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Exchange believes that the proposed decrease in rebate associated with the BY flag (from $0.0004 per share to $0.0002 per share) represents an equitable allocation of reasonable dues, fees, and other charges since it reflects a pass through of the BATS fee for removing liquidity. EDGA believes that it is reasonable and equitable to pass on these fees to its members. The Exchange believes that the proposed decrease in rebate is non-discriminatory in that it applies uniformly to all Members.

The Exchange believes that the proposed elimination of the INET tier in footnote 7 represents an equitable allocation of reasonable dues, fees, and other charges as the INET tier is not used by any Members and therefore, its elimination will not impact any Members. The proposed elimination of the tier also provides more simplicity to the fee schedule.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule changes reflect a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [6] and Rule 19b–4(f)(2) [7] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(f)(2).

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–EDGX–2011–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2011–22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2011–22 and should be submitted on or before August 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–19747 Filed 8–3–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12718 and #12719]

Minnesota Disaster #MN–00033

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Minnesota (FEMA–4009–DR), dated 07/28/2011.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 07/01/2011 through 07/11/2011.

Effective Date: 07/28/2011.

Physical Loan Application Deadline Date: 09/26/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 04/28/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/28/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Chisago, Isanti, Kandiyohi, Lincoln, Lyon, Mcleod, Meeker, Mille Lacs, Pine, Pipestone, Redwood, Renville, Stearns, Yellow Medicine, The Mille Lacs Band of Ojibwe.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere: ..	3.250
Non-Profit Organizations Without Credit Available Elsewhere:	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere:	3.000

The number assigned to this disaster for physical damage is 12718B and for economic injury is 12719B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–19788 Filed 8–3–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #12699 and #12700

Puerto Rico Disaster Number PR–00013

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of *Puerto Rico* (FEMA–4004–DR), dated 07/14/2011.

Incident: Severe Storms, Flooding, Mudslides, and Landslides.

Incident Period: 05/20/2011 through 06/08/2011.

DATES: *Effective Date:* 07/28/2011.

Physical Loan Application Deadline Date: 09/12/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 04/16/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of PUERTO RICO, dated 07/14/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Yabucoa.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–19789 Filed 8–3–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12651 and #12652]

Indiana Disaster Number IN–00037

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Indiana (FEMA–1997–DR), dated 06/23/2011.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 04/19/2011 through 06/06/2011.

Effective Date: 07/28/2011.

Physical Loan Application Deadline Date: 08/22/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 03/23/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Indiana, dated 06/23/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Vermillion, Wayne.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–19790 Filed 8–3–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Reinstated Approval of Information Collection: Survey of Airman Satisfaction With Aeromedical Certification Services

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to reinstate a previously discontinued information collection. The Survey of Airman Satisfaction with Aeromedical Certification Services assesses airman opinion of key dimensions of service quality.

DATES: Written comments should be submitted by October 3, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0707.

Title: Survey of Airman Satisfaction with Aeromedical Certification Services.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Reinstatement of an information collection.

Background: The FAA, through the Office of Aerospace Medicine (OAM), is responsible for the medical certification of pilots and certain other personnel under 14 CFR 67 to ensure they are medically qualified to operate aircraft and perform their duties safely. In the accomplishment of this responsibility, OAM provides a number of services to pilots, and has established goals for the performance of those services. This survey is designed to meet the requirement to survey stakeholder satisfaction under Executive Order No. 12862, ''Setting Customer Service Standards,'' and the Government Performance and Results Act of 1993 (GPRA).

Respondents: Approximately 2,333 pilots and certain other personnel who have applied for medical certification.

Frequency: Information is collected biennially.

Estimated Average Burden per Response: 15 minutes.

Estimated Total Annual Burden: 583.25 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES–300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on July 28, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–19745 Filed 8–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of a New Information Collection: Commercial Aviation Safety Team Safety Enhancements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The FAA intends to collect safety-related data regarding the voluntary implementation of Commercial Aviation Safety Team (CAST) safety enhancements (SEs) from certificate holders conducting operations under 14 CFR part 121 and parts 121/135.

DATES: Written comments should be submitted by October 3, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–XXXX.

Title: Commercial Aviation Safety Team Safety Enhancements.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Clearance of a new information collection.

Background: The FAA intends to collect safety-related data regarding the voluntary implementation of Commercial Aviation Safety Team safety enhancements from certificate holders conducting operations under 14 CFR part 121 and parts 121/135. The FAA is seeking a generic information collection request clearance because this collection will be composed of a series of individual collections using similar methods. Certificate-holder participation in this data collection will be voluntary and is not required by regulation. As CAST SEs are finalized, the FAA will determine the details of individual information collections in consultation with CAST and certificate holders.

Respondents: Approximately 100 certificate holders.

Frequency: Information will be collected on occasion.

Estimated Average Burden per Response: 40 minutes.

Estimated Total Annual Burden: 1333.33 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES–300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on July 28, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–19744 Filed 8–3–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project along State Route 15, San Diego, CA, PM: R3.8–R6.0 in the County of San Diego, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 31, 2012. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Jamie Le Dent, Associate Environmental Planner, Division of Environmental Analysis, Caltrans, District 11, 4050 Taylor St., San Diego, CA, 91942, Office: (619) 688–0157, *e-mail: jamie.ledent@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and Caltrans assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans, has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The addition of bus rapid transit stations and dedicated lanes along State Route 12 between Interstate 805 and Interstate 8, in the City of San Diego.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (EA) for the project, approved on June 28, 2011 in the FHWA Finding of No Significant Impacts (FONSI) issued on June 28, 2011, and in other documents in the FHWA project records. The Initial Study & EA/FONSI, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans Final EA and FONSI can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist11/.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality regulations;
2. National Environmental Policy Act (NEPA);
3. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU);
4. Department of Transportation Act of 1966;
5. Federal Aid Highway Act of 1970;
6. Clean Air Act Amendments of 1990;
7. Clean Water Act of 1977 and 1987;
8. Endangered Species Act of 1973;
9. Migratory Bird Treaty Act;
10. Title VI of the Civil Rights Act of 1964;
11. Uniform Relocation Assistance and Real Property Acquisition Act of 1970;
12. National Historic Preservation Act of 1966;
13. Historic Sites Act of 1935;
14. Executive Order 11990, Protection of Wetlands
15. Executive Order 13112, Invasive Species;
16. Executive Order 11988, Floodplain Management; and,
17. Executive Order 12898, Environmental Justice.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: July 28, 2011.

Shawn E. Oliver,

South Team Leader, Transportation Engineer, Federal Highway Administration, Sacramento, California.

[FR Doc. 2011–19737 Filed 8–3–11; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2011–0125]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Final Disposition.

SUMMARY: FMCSA announces its decision to exempt fifteen individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce.

The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective August 4, 2011. The exemptions expire on August 5, 2013.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., 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* and/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.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's 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, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (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 June 10, 2011, FMCSA published a notice of receipt of Federal diabetes exemption applications from fifteen individuals and requested comments from the public (76 FR 34127). The public comment period closed on July 11, 2011 and one comment was received.

FMCSA has evaluated the eligibility of the fifteen applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible.

The September 3, 2003 (68 FR 52441) **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These fifteen applicants have had ITDM over a range of 1 to 31 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the June 10, 2011, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comment

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

An Anonymous individual wanted to know why drivers who did not hold a CDL were not allowed to work for so long.

FMCSA is legislatively required to make a final determination 180 days from the date a complete application has been received and this is often accomplished in a shorter time frame. During this 180 day period, the Agency is legislatively required to publish all medical exemption requests in the Federal Register for a 30 day public comment period, evaluate and respond to all comments received, and publish a notice of final disposition to the public prior to mailing the exemption if granted.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) 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 (4) 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.

Conclusion

Based upon its evaluation of the fifteen exemption applications, FMCSA exempts, Richard A. Bosma, Ronnie E. Combs, Jr., Barbara A. Farrell, Tony D. Gayles, Dennis E. Hoffman, Joshua D. Kohl, Clayton K. Lichtenberger, Steven C. Mulder, Judah A. Nell, Ronald A. Sherwood, John A. Svedics, Vincent H. Thomas, Jr., Douglas E. Walter, Peter J. Wasko and Alfred S. Zaladana from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two 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(e) 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: July 28, 2011.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2011–19829 Filed 8–3–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2011–0144]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Final Disposition.

SUMMARY: FMCSA announces its decision to exempt twenty-three individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective August 4, 2011. The exemptions expire on August 5, 2013.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., 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* and/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.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's 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, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (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 June 10, 2011, FMCSA published a notice of receipt of Federal diabetes exemption applications from twenty-three individuals and requested comments from the public (76 FR 34130). The public comment period closed on July 11, 2011 and no comments were received.

FMCSA has evaluated the eligibility of the twenty-three applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible.

The September 3, 2003 (68 FR 52441) **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These twenty-three applicants have had ITDM over a range of 1 to 33 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the June 10, 2011, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comment

FMCSA did not receive any comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) 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 (4) 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.

Conclusion

Based upon its evaluation of the twenty-three exemption applications, FMCSA exempts, Edwin K. Anderson, Albert E. Bankier, Justin C. Brewer, Paul H. Burroughs, Roger W. Carr, Donald E. Flicek, Ronald J. Gasper, David M. Gastelum, Vernon A. Grimmett, Rodney T. Harper, Stanley Ingram, Rondal W. Kennedy, Jerry W. Miller, Richard G. Pellegrino, Gregg O. Price, Gary D. Pugliese, Jeffrey A. Radel, Ray J. Stein, Vladimir V. Tayts, Jady R. Tengs, Carl J. Thompson, Dennis M. Thorne and Hobert K. Tiller from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two 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(e) 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: July 28, 2011.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2011–19826 Filed 8–3–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0192]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the diabetes mellitus standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 33 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before September 6, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0192 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 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: Elaine M. Papp, Chief, 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.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 33 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Michael J. Alexander

Mr. Alexander, age 33, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Alexander understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a Commercial Motor Vehicle (CMV) safely. Mr. Alexander meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class E operator's license from Missouri.

Larry E. Baumgartner

Mr. Baumgartner, 59, has had ITDM since 2004. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Baumgartner understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Baumgartner meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from Colorado.

Stanley R. Boots

Mr. Boots, 56, has had ITDM since 2005. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Boots understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Boots meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Carl D. Braddock

Mr. Braddock, 57, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Braddock understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Braddock meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

Dean A. Chamberlin

Mr. Chamberlin, 37, has had ITDM since 1997. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Chamberlin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Chamberlin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class O operator's license from Nebraska.

Michael W. Conner

Mr. Conner, 56, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Conner understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Conner meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Edna R. Contreras

Ms. Contreras, 42, has had ITDM since 2011. Her endocrinologist examined her in 2011 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Contreras understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Contreras meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2011 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Indiana.

Craig E. Cusick

Mr. Cusick, 34, has had ITDM since 2008. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cusick understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cusick meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

Ronald D. Fatka

Mr. Fatka, 56, has had ITDM since approximately 10 years ago. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function

that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fatka understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fatka meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Robert M. Fleming

Mr. Fleming, 57, has had ITDM since 1974. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fleming understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fleming meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from South Dakota.

David W. Hammons

Mr. Hammons, 39, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hammons understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hammons meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D Chauffer's license from Louisiana.

Frank B. Hernandez

Mr. Hernandez, 58, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hernandez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hernandez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Jeffrey D. Horsey

Mr. Horsey, 53, has had ITDM since 2008. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Horsey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Horsey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Delaware.

Dale A. Iverson

Mr. Iverson, 55, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Iverson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Iverson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Utah.

John H. Krastel

Mr. Krastel, 66, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Krastel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Krastel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Iowa.

Joshua L. Kroetch

Mr. Kroetch, 30, has had ITDM since 1985. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kroetch understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kroetch meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Minnesota.

Larry D. Lilley

Mr. Lilley, 66, has had ITDM since 2005. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lilley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lilley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010

and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Texas.

Edward J. Linhart

Mr. Linhart, 52, has had ITDM since 2008. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Linhart understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Linhart meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Larry D. Matson

Mr. Matson, 38, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Matson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Matson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Montana.

Michael L. O'Clair

Mr. O'Clair, 52, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. O'Clair understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. O'Clair meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maine.

David W. Payne

Mr. Payne, 44, has had ITDM since 1973. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Payne understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Payne meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Kansas.

Matthew B. Rhodes

Mr. Rhodes, 23, has had ITDM since 2008. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rhodes understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rhodes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Connecticut.

Jim B. Robertson, II

Mr. Robertson, 59, has had ITDM since 1998. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Robertson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Robertson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Kentucky.

Donald M. Rush, Jr.

Mr. Rush, 35, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rush understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rush meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

Barry A. Sircy

Mr. Sircy, 52, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sircy understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sircy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kentucky.

Andre M. St. Pierre

Mr. St. Pierre, 28, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. St. Pierre understands diabetes management and monitoring,

has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. St. Pierre meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arizona.

John S. Starchevich

Mr. Starchevich, 71, has had ITDM since 2009. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Starchevich understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Starchevich meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Michael B. Tortora

Mr. Tortora, 22, has had ITDM since 2006. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Tortora understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tortora meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Connecticut.

Gregory J. Vigil

Mr. Vigil, 52, has had ITDM over 10 years. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Vigil understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Vigil meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from New Mexico.

Charlotte C. Watson

Ms. Watson, 57, has had ITDM since 2007. Her endocrinologist examined her in 2011 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Watson understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Watson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2011 and certified that she does not have diabetic retinopathy. She holds a Class C operator's license from California.

Wayne W. Wenzel

Mr. Wenzel, 67, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wenzel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wenzel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Shaun M. Wheeler

Mr. Wheeler, 40, has had ITDM since 1999. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wheeler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wheeler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Connecticut.

James J. Wolf, Jr.

Mr. Wolf, 56, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wolf understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wolf meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

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. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: July 28, 2011.

Larry W. Minor,

Associate Administrator Office, of Policy.

[FR Doc. 2011–19833 Filed 8–3–11; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Transit Asset Management (TAM) Pilot Program Funds

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Transit Asset Management Pilot Program Announcement of Project Selections.

SUMMARY: The U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) announces the selection of projects funded with Research funds and supplemented by Bus Discretionary funds in support of the Transit Asset Management (TAM) Pilot Program, which was announced in the TAM Program Notice of Funding Availability on November 19, 2010. The TAM program makes funds available for public transportation providers, State Departments of Transportation (DOT), and Metropolitan Planning Organizations (MPO)—individually or in partnership—to demonstrate effective Transit Asset Management (TAM) systems and ''best practices'' which can be replicated to improve transportation asset management at the nation's rail and bus public transportation agencies.

FOR FURTHER INFORMATION CONTACT: Successful applicants should contact the appropriate FTA Regional Office (Appendix) for specific information regarding applying for the funds. For general information on the TAM Pilot Program, contact Doris Lyons Office of Program Management, at (202) 366–1656 or *Doris.Lyons@dot.gov* e-mail, or Aaron C. James, Sr., Office of Program Management, at (202) 493–0107, e-mail: *Aaron.James@dot.gov*

SUPPLEMENTARY INFORMATION: A total of $4 million was available for FTA's SGR Initiative. A total of 15 applicants requested approximately $13 million, indicating significant demand for funds. Project proposals were evaluated based on the criteria detailed in the November 19, 2010, Notice of Funding Availability. The transit asset management pilot projects which are listed below will help improve transportation asset management at the rail and bus public transportation agencies.

TRANSIT ASSET MANAGEMENT SELECTIONS

State	Recipient	Allocation
CA	Peninsula Corridor Joint Powers Board (CALTRAIN)	$750,000
ID	Valley Regional Transit	300,000
IL	Regional Transportation Authority (Chicago)	800,000
MA	Massachusetts Bay Transportation Authority	950,000
UT	Utah Transit Authority (UTA)	500,000
VA	Virginia Department of Rail and Public Transportation	700,000
		4,000,000

Grantees selected for funding should work with their FTA Regional Office (Appendix) to finalize the application in FTA's Transportation Electronic Award Management (TEAM) system, so that funds can be obligated expeditiously. Funds must be used for projects detailed in the proposals received and for the purposes specified in the project descriptions in the table. Selected projects have pre-award authority as of the date of this notice. Post-award reporting requirements, include but are not limited to submission of the Federal Financial Report (FFR) and Milestone Report in TEAM as appropriate (see FTA.C.5010.1D).

The grantee must comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out the project supported by the FTA grant

Issued in Washington, DC, this 29th day of July 2011.

Peter Rogoff,

Administrator.

Appendix

FTA REGIONAL AND METROPOLITAN OFFICES

Mary E. Mello, Regional Administrator, Region 1—Boston, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Tel. 617–494–2055.	Robert C. Patrick, Regional Administrator, Region 6—Ft. Worth, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Tel. 817–978–0550.
States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.	States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas.

FTA REGIONAL AND METROPOLITAN OFFICES—Continued

Brigid Hynes-Cherin, Regional Administrator, Region 2—New York, One Bowling Green, Room 429, New York, NY 10004–1415, Tel. 212–668–2170. States served: New Jersey, New York. New York Metropolitan Office, Region 2—New York, One Bowling Green, Room 428, New York, NY 10004–1415, Tel. 212–668–2202.	Mokhtee Ahmad, Regional Administrator, Region 7—Kansas City, MO, 901 Locust Street, Room 404, Kansas City, MO 64106, Tel. 816–329–3920. States served: Iowa, Kansas, Missouri, and Nebraska.
Letitia Thompson, Regional Administrator, Region 3—Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7100. States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia. Brian Glenn, Washington, DC Metropolitan Office, 1990 K Street, NW., Room 510, Washington, DC 20006, Tel. 202–219–3562.	Terry Rosapep, Regional Administrator, Region 8—Denver, 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228–2583, Tel. 720–963–3300. States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
Yvette Taylor, Regional Administrator, Region 4—Atlanta, 230 Peachtreet Street, NW., Suite 800, Atlanta, GA 30303, Tel. 404–865–5600. *States served:* Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands.	Leslie T. Rogers, Regional Administrator, Region 9—San Francisco, 201 Mission Street, Room 1650, San Francisco, CA 94105–1926, Tel. 415–744–3133. States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands. Los Angeles Metropolitan Office, Region 9—Los Angeles, 888 S. Figueroa Street, Suite 1850, Los Angeles, CA 90017–1850, Tel. 213–202–3952.
Marisol Simon, Regional Administrator, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789. States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. Chicago Metropolitan Office, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789.	Rick Krochalis, Regional Administrator, Region 10—Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Tel. 206–220–7954. States served: Alaska, Idaho, Oregon, and Washington.

[FR Doc. 2011–19708 Filed 8–3–11; 8:45 am]
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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collections; Comment Request

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

ACTION: Correction to Notice and request for comments.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is correcting the proposed information collection notice it published in the **Federal Register** on June 9, 2011 at 76 FR 33811. Specifically, we are correcting the information in that notice regarding OMB No. 1513–0103. Presently, the information collection approved under OMB No. 1513–0103 covers two tobacco bond forms, which we are consolidating into a single form.

DATES: We must receive your written comments on or before October 3, 2011.

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–453–2686 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

In your comment, please reference the information collection's title, form, and OMB number. If you submit your comment via facsimile, please send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–453–1039, ext. 165.

SUPPLEMENTARY INFORMATION:

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is correcting the proposed information collection notice it published in the **Federal Register** on June 9, 2011 at 76 FR 33811. Specifically, we are correcting the information in that notice regarding OMB No. 1513–0103, which appeared at 76 FR 33813 in the third column. Presently, the information collection approved under OMB No. 1513–0103 covers two bond forms, TTB F 5200.25, Tobacco Bond—Collateral, and TTB F 5200.26, Tobacco Bond—Surety. TTB is consolidating these two bond forms into one single bond form, TTB F 5200.29, Tobacco Bond, and this consolidation should have been reflected in the June 9, 2011, notice.

Therefore, the Department of the Treasury and TTB, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the corrected information collection listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information

collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Corrected Information Collection

The text regarding the information collection approved under OMB No. 1513–0103, which appeared in the **Federal Register** on June 9, 2011, at 76 FR 33813, in the third column, beginning with the third paragraph, is corrected to read as follows:

Title: Tobacco Bond.

OMB Number: 1513–0103.

TTB Form Number: 5200.29.

Abstract: TTB requires a corporate surety bond or a collateral bond to ensure payment of the Federal excise tax on tobacco products and cigarette papers and tubes removed from the factory or warehouse. TTB F 5200.29 will satisfy all bond requirements for tobacco industry members. Manufacturers of tobacco products or cigarette papers and tubes and proprietors of export warehouses, along with corporate sureties, are the respondents for this form. This form reduces the number of bond forms submitted by tobacco industry members and makes the use of a single bond form consistent with all other commodities that TTB regulates.

Current Actions: We are submitting this information collection as a revision to consolidate our two current tobacco bond forms, TTB F 5200.25 and TTB F 5200.26, into one form, TTB F 5200.29. This single form will be available on our Web site, and, in early 2012, tobacco industry members will be able to file this form electronically via TTB's Permits Online (PONL) system.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 66.

Estimated Total Annual Burden Hours: 86.

Dated: July 27, 2011.

Gerald Isenberg,

Director, Regulations and Rulings Division.

[FR Doc. 2011–19738 Filed 8–3–11; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the ''CDFI Fund''), an office within the Department of the Treasury, is soliciting comments concerning the CDFI Program Healthy Food Financing Initiative—Financial Assistance (HFFI–FA) Supplemental Questionnaire.

DATES: Written comments should be received on or before October 3, 2011 to be assured of consideration.

ADDRESS: Direct all comments to Ruth Jaure, CDFI Program Manager, at the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, by e-mail to *cdfihelp@cdfi.treas.gov* or by facsimile to (202) 622–7754. Please note this is not a toll free number.

FOR FURTHER INFORMATION CONTACT: The HFFI–FA Supplemental Questionnaire may be obtained from the CDFI Program page of the CDFI Fund's Web site at *http://www.cdfifund.gov*. Requests for additional information should be directed to Ruth Jaure, CDFI Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or call (202) 622–9156. Please note this is not a toll free number.

SUPPLEMENTARY INFORMATION:

Title: Healthy Food Financing Initiative—Financial Assistance Program Supplemental Questionnaire.

OMB Number: 1559–0040.

Abstract: The Community Development Financial Institutions (CDFI) Program was established by the Community Development and Regulatory Improvement Act of 1994 to use federal resources to invest in and build the capacity of CDFIs to serve low-income people and communities lacking adequate access to affordable financial products and services. Through the CDFI Program, the CDFI Fund provides: (1) Financial Assistance (FA) awards to CDFIs that have Comprehensive Business Plans for creating demonstrable community development impact through the deployment of credit, capital, and financial services within their respective Target Markets or the expansion into new Investment Areas, Low-Income Targeted Populations, or Other Targeted Populations, and (ii) Technical Assistance (TA) grants to CDFIs and entities proposing to become CDFIs in order to build their capacity to better address the community development and capital access needs of their existing or proposed Target Markets and/or to become certified CDFIs.

In FY 2011, the CDFI Fund distributed a HFFI–FA Supplemental Questionnaire to FA applicants that met a minimum FA scoring threshold. The HFFI–FA Program is one component of the Federal government's Healthy Food Financing Initiative (HFFI). The HFFI represents the government's first coordinated step to eliminate food deserts—urban and rural areas in the United States with limited access to affordable and nutritious food, particularly areas composed of predominantly lower-income neighborhoods and communities—by promoting a wide range of interventions that expand the supply of and demand for nutritious foods, including increasing the distribution of agricultural products; developing and equipping grocery stores and strengthening the producer-to-consumer relationship.

The questions that the supplemental questionnaire contains, and the information generated thereby, will enable the Fund to evaluate applicants' activities and determine the extent of applicants' eligibility for a CDFI HFFI–FA award. Failure to collect this information could result in improper uses of Federal funds.

Current Actions: Reinstatement with change of a previously approved collection.

Type of Review: Regular Review.

Affected Public: Certified CDFIs and entities seeking CDFI Certification.

Estimated Number of Respondents: 50.

Estimated Annual Time per Respondent: 20 hours.

Estimated Total Annual Burden Hours: 1,000 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the

request for Office of Management and Budget approval. All comments will become a matter of public record and may be published on the CDFI Fund Web site at *http://www.cdfifund.gov.* Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CDFI Fund, including whether the information shall have practical utility; (b) the accuracy of the CDFI Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The CDFI Fund specifically requests comments concerning the following: (1) Whether the use of a different definition for ''food deserts'' would be more in line with CDFI activity in this area; (2) whether the use of a different definition for ''healthy foods'' is needed; (3) whether the CDFI Fund should allow for additional indicators to describe needs in an Applicant's Target Market; (4) whether the distinct business models followed by different types of CDFIs (such as loan funds, banks, credit unions, and venture capital funds) merit individualized applications; and (5) the merit of further reducing or increasing the narrative page limits in the application.

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713, 4717; 31 U.S.C. 321; 12 CFR part 1806.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–19749 Filed 8–3–11; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974: Computer Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Computer Match Program.

SUMMARY: Pursuant to 5 U.S.C. 552a, the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a computer matching program with the Internal Revenue Service (IRS). Data from the proposed match will be used to verify the earned income of nonservice-connected veterans, and those veterans who are zero percent service-connected (noncompensable), whose eligibility for VA medical care is based on their inability to defray the cost of medical care. These veterans supply household income information that includes their spouses and dependents at the time of application for VA health care benefits.

DATES: *Effective Date:* This match will start September 6, 2011, unless comments dictate otherwise.

ADDRESSES: Written comments may be submitted by mail or hand-delivery to Director, Regulations Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; e-mail through *http://www.Regulations.gov.* All 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 through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Tony A. Guagliardo, Director, Health Eligibility Center, (404) 848–5300 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs has statutory authorization under 38 U.S.C. 5317, 38 U.S.C. 5106, 26 U.S.C. 6103(l)(7)(D)(viii) and 5 U.S.C. 552a to establish matching agreements and request and use income information from other agencies for purposes of verification of income for determining eligibility for benefits. 38 U.S.C. 1710(a)(2)(G), 1720(a)(3), and 1710(b) identify those veterans whose basic eligibility for medical care benefits is dependent upon their financial status. Eligibility for nonservice-connected and zero percent noncompensable service-connected veterans is determined based on the veteran's inability to defray the expenses for necessary care as defined in 38 U.S.C. 1722. This determination can affect their responsibility to participate in the cost of their care through copayments and their assignment to an enrollment priority group.

The goal of this match is to obtain IRS unearned income information data needed for the income verification process. The VA records involved in the match are ''Enrollment and Eligibility Records—VA'' (147VA16). IRS will extract return information with respect to unearned income from the Information Return Master File (IRMF) Processing File, Treas/IRS 22.061, through the Disclosure of Information to Federal, State and Local Agencies (DIFSLA) program. A copy of this notice has been sent to both Houses of Congress and OMB.

This matching agreement expires 18 months after its effective date. This match will not continue past the legislative authorized date to obtain this information.

Approved. July 8, 2011.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2011–19774 Filed 8–3–11; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 418

Medicare Program; Hospice Wage Index for Fiscal Year 2012; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 418

[CMS–1355–F]

RIN 0938–AQ31

Medicare Program; Hospice Wage Index for Fiscal Year 2012

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule will set forth the hospice wage index for fiscal year (FY) 2012 and continue the phase-out of the wage index budget neutrality adjustment factor (BNAF), with an additional 15 percent BNAF reduction, for a total BNAF reduction in FY 2012 of 40 percent. The BNAF phase-out will continue with successive 15 percent reductions from FY 2013 through FY 2016. This final rule will change the hospice aggregate cap calculation methodology. This final rule will also revise the hospice requirement for a face-to-face encounter for recertification of a patient's terminal illness. Finally, this final rule will begin implementation of a hospice quality reporting program.

DATES: *Effective Date:* These regulations are effective on October 1, 2011.

FOR FURTHER INFORMATION CONTACT:

Robin Dowell, (410) 786–0060 for questions regarding quality reporting for hospices and collection of information requirements. Anjana Patel, (410) 786–2120 for questions regarding hospice wage index and hospice face-to-face requirement.

Katie Lucas, (410) 786–7723 for questions regarding all other sections.

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I. Background

A. General

1. Hospice Care

Hospice care is an approach to treatment that recognizes that the impending death of an individual warrants a change in the focus from curative to palliative care, for relief of pain and for symptom management. The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, nursing, social, psychological, emotional, and spiritual services through use of a broad spectrum of professional and other caregivers, with the goal of making the individual as physically and emotionally comfortable as possible. Counseling services and inpatient respite services are available to the family of the hospice patient. Hospice programs consider both the patient and the family as a unit of care.

Section 1861(dd) of the Social Security Act (the Act) provides for coverage of hospice care for terminally ill Medicare beneficiaries who elect to receive care from a participating hospice. Section 1814(i) of the Act provides payment for Medicare participating hospices.

2. Medicare Payment for Hospice Care

Sections 1812(d), 1813(a)(4), 1814(a)(7), 1814(i) and 1861(dd) of the Act, and our regulations at 42 CFR part 418, establish eligibility requirements, payment standards and procedures, define covered services, and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Part 418 subpart G provides for payment in one of four prospectively-determined rate categories (routine home care, continuous home care, inpatient respite care, and general inpatient care) to hospices, based on each day a qualified Medicare beneficiary is under a hospice election.

B. Hospice Wage Index

The hospice wage index is used to adjust payment rates for hospice agencies under the Medicare program to reflect local differences in area wage levels. Our regulations at § 418.306(c) require each hospice's labor market to be established using the most current hospital wage data available, including

any changes by the Office of Management and Budget (OMB) to the Metropolitan Statistical Areas (MSAs) definitions. OMB revised the MSA definitions beginning in 2003 with new designations called the Core Based Statistical Areas (CBSAs). For the purposes of the hospice benefit, the term ''MSA-based'' refers to wage index values and designations based on the previous MSA designations before 2003. Conversely, the term ''CBSA-based'' refers to wage index values and designations based on the OMB revised MSA designations in 2003, which now include CBSAs. In the August 11, 2004 Inpatient Prospective Payment System (IPPS) final rule (69 FR 48916, 49026), revised labor market area definitions were adopted at § 412.64(b), which were effective October 1, 2004 for acute care hospitals. We also revised the labor market areas for hospices using the new OMB standards that included CBSAs. In the FY 2006 hospice wage index final rule (70 FR 45130), we implemented a 1-year transition policy using a 50/50 blend of the CBSA-based wage index values and the Metropolitan Statistical Area (MSA)-based wage index values for FY 2006. The one-year transition policy ended on September 30, 2006. For fiscal years 2007 and beyond, we have used CBSAs exclusively to calculate wage index values.

The original hospice wage index was based on the 1981 Bureau of Labor Statistics hospital data and had not been updated since 1983. In 1994, because of disparity in wages from one geographical location to another, a committee was formulated to negotiate a wage index methodology that could be accepted by the industry and the government. This committee, functioning under a process established by the Negotiated Rulemaking Act of 1990, comprised representatives from national hospice associations; rural, urban, large and small hospices, and multi-site hospices; consumer groups; and a government representative. On April 13, 1995, the Hospice Wage Index Negotiated Rulemaking Committee (the Committee) signed an agreement for the methodology to be used for updating the hospice wage index.

In the August 8, 1997 **Federal Register** (62 FR 42860), we published a final rule implementing a new methodology for calculating the hospice wage index based on the recommendations of the negotiated rulemaking committee. The Committee's statement was included in the appendix of that final rule (62 FR 42883).

The reduction in overall Medicare payments if a new wage index were adopted was noted in the November 29, 1995 notice transmitting the recommendations of the Committee (60 FR 61264). The Committee also decided that for each year in updating the hospice wage index, aggregate Medicare payments to hospices would remain budget neutral to payments as if the 1983 wage index had been used.

As suggested by the Committee, ''budget neutrality'' would mean that, in a given year, estimated aggregate payments for Medicare hospice services using the updated hospice values would equal estimated payments that would have been made for these services if the 1983 hospice wage index values had remained in effect. Although payments to individual hospice programs would change each year, the total payments each year to hospices would not be affected by using the updated hospice wage index because total payments would be budget neutral as if the 1983 wage index had been used. To implement this policy, a Budget Neutrality Adjustment Factor (BNAF) would be computed and applied annually to the pre-floor, pre-reclassified hospital wage index when deriving the hospice wage index.

The BNAF is calculated by computing estimated payments using the most recent, completed year of hospice claims data. The units (days or hours) from those claims are multiplied by the updated hospice payment rates to calculate estimated payments. For the FY 2011 Hospice Wage Index Notice with Comment Period, that meant estimating payments for FY 2011 using FY 2009 hospice claims data, and applying the FY 2011 hospice payment rates (updating the FY 2010 rates by the FY 2011 inpatient hospital market basket update). The FY 2011 hospice wage index values are then applied to the labor portion of the payment rates only. The procedure is repeated using the same claims data and payment rates, but using the 1983 Bureau of Labor Statistics (BLS)-based wage index instead of the updated raw pre-floor, pre-reclassified hospital wage index (note that both wage indices include their respective floor adjustments). The total payments are then compared, and the adjustment required to make total payments equal is computed; that adjustment factor is the BNAF.

The FY 2010 Hospice Wage Index Final Rule (74 FR 39384) finalized a provision for a 7-year phase-out of the BNAF, which is applied to the wage index values. The BNAF was reduced by 10 percent in FY 2010, an additional 15 percent in FY 2011, and will be reduced by an additional 15 percent in each of the next 5 years, for complete phase out in 2016.

The hospice wage index is updated annually. Our most recent annual hospice wage index Notice with Comment Period, published in the **Federal Register** (75 FR 42944) on July 22, 2010, set forth updates to the hospice wage index for FY 2011. As noted previously, that update included the second year of a 7-year phase-out of the BNAF, which was applied to the wage index values. The BNAF was reduced by 10 percent in FY 2010 and by additional 15 percent in 2011, for a total FY 2011 reduction of 25 percent.

1. Raw Wage Index Values (Pre-Floor, Pre-Reclassified Hospital Wage Index)

As described in the August 8, 1997 hospice wage index final rule (62 FR 42860), the pre-floor and pre-reclassified hospital wage index is used as the raw wage index for the hospice benefit. These raw wage index values are then subject to either a budget neutrality adjustment or application of the hospice floor to compute the hospice wage index used to determine payments to hospices.

Pre-floor, pre-reclassified hospital wage index values of 0.8 or greater are currently adjusted by a reduced BNAF. As noted above, for FY 2011, the BNAF was reduced by a cumulative total of 25 percent. Pre-floor, pre-reclassified hospital wage index values below 0.8 are adjusted by the greater of: (1) The hospice BNAF, reduced by a total of 25 percent for FY 2011; or (2) the hospice floor (which is a 15 percent increase) subject to a maximum wage index value of 0.8. For example, if in FY 2011, County A had a pre-floor, pre-reclassified hospital wage index (raw wage index) value of 0.3994, we would perform the following calculations using the budget-neutrality factor (which for this example is an unreduced BNAF of 0.060562, less 25 percent, or 0.045422) and the hospice floor to determine County A's hospice wage index:

Pre-floor, pre-reclassified hospital wage index value below 0.8 multiplied by the 25 percent reduced BNAF: ($0.3994 \times 1.045422 = 0.4175$).

Pre-floor, pre-reclassified hospital wage index value below 0.8 multiplied by the hospice floor: ($0.3994 \times 1.15 = 0.4593$).

Based on these calculations, County A's hospice wage index would be 0.4593.

The BNAF has been computed and applied annually, in full or in reduced form, to the labor portion of the hospice payment. Currently, the labor portion of the payment rates is as follows: for Routine Home Care, 68.71 percent; for Continuous Home Care, 68.71 percent; for General Inpatient Care, 64.01

percent; and for Respite Care, 54.13 percent. The non-labor portion is equal to 100 percent minus the labor portion for each level of care. Therefore the non-labor portion of the payment rates is as follows: for Routine Home Care, 31.29 percent; for Continuous Home Care, 31.29 percent; for General Inpatient Care, 35.99 percent; and for Respite Care, 45.87 percent.

2. Changes to Core Based Statistical Area (CBSA) Designations

The annual update to the hospice wage index is published in the **Federal Register** and is based on the most current available hospital wage data, as well as any changes by the OMB to the definitions of MSAs, which now include CBSA designations. The August 4, 2005 final rule (70 FR 45130) set forth the adoption of the changes discussed in the OMB Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for Micropolitan Statistical Areas and the creation of MSAs and Combined Statistical Areas. In adopting the OMB CBSA geographic designations, we provided for a 1-year transition with a blended hospice wage index for all hospices for FY 2006. For FY 2006, the hospice wage index consisted of a blend of 50 percent of the FY 2006 MSA-based hospice wage index and 50 percent of the FY 2006 CBSA based hospice wage index. Subsequent fiscal years have used the full CBSA-based hospice wage index.

3. Definition of Rural and Urban Areas

Each hospice's labor market is determined based on definitions of MSAs issued by OMB. In general, an urban area is defined as an MSA or New England County Metropolitan Area (NECMA), as defined by OMB. Under § 412.64(b)(1)(ii)(C), a rural area is defined as any area outside of the urban area. The urban and rural area geographic classifications are defined in § 412.64(b)(1)(ii)(A) through (C), and have been used for the Medicare hospice benefit since implementation.

When the raw pre-floor, pre-reclassified hospital wage index was adopted for use in deriving the hospice wage index, it was decided not to take into account Inpatient Prospective Payment System (IPPS) geographic reclassifications. This policy of following OMB designations of rural or urban, rather than considering some Counties to be ''deemed'' urban, is consistent with our policy of not taking into account IPPS geographic reclassifications in determining payments under the hospice wage index.

4. Areas Without Hospital Wage Data

When adopting OMB's new labor market designations in FY 2006, we identified some geographic areas where there were no hospitals, and thus, no hospital wage index data on which to base the calculation of the hospice wage index. Beginning in FY 2006, we adopted a policy to use the FY 2005 pre-floor, pre-reclassified hospital wage index value for rural areas when no hospital wage data were available. We also adopted the policy that for urban labor markets without a hospital from which a hospital wage index data could be derived, all of the CBSAs within the State would be used to calculate a statewide urban average pre-floor, pre-reclassified hospital wage index value to use as a reasonable proxy for these areas. Consequently, in subsequent fiscal years, we applied the average pre-floor, pre-reclassified hospital wage index data from all urban areas in that state, to urban areas without a hospital. In FY 2011, the only such CBSA was 25980, Hinesville-Fort Stewart, Georgia.

Under the CBSA labor market areas, there are no hospitals in rural locations in Massachusetts and Puerto Rico. Since there was no rural proxy for more recent rural data within those areas, in the FY 2006 hospice wage index proposed rule (70 FR 22394, 22398), we proposed applying the FY 2005 pre-floor, pre-reclassified hospital wage index value to rural areas where no hospital wage data were available. In the FY 2006 final rule and in the FY 2007 update notice, we applied the FY 2005 pre-floor, pre-reclassified hospital wage index data for areas lacking hospital wage data in both FY 2006 and FY 2007 for rural Massachusetts and rural Puerto Rico.

In the FY 2008 final rule (72 FR 50214, 50217) we considered alternatives to our methodology to update the pre-floor, pre-reclassified hospital wage index for rural areas without hospital wage data. We indicated that we believed that the best imputed proxy for rural areas, would: (1) Use pre-floor, pre-reclassified hospital data; (2) use the most local data available to impute a rural pre-floor, pre-reclassified hospital wage index; (3) be easy to evaluate; and, (4) be easy to update from year to year.

Therefore, in FY 2008 through FY 2011, in cases where there was a rural area without rural hospital wage data, we used the average pre-floor, pre-reclassified hospital wage index data from all contiguous CBSAs to represent a reasonable proxy for the rural area. This approach does not use rural data; however, the approach, which uses pre-floor, pre-reclassified hospital wage data, is easy to evaluate, is easy to update from year to year, and uses the most local data available. In the FY 2008 rule (72 FR at 50217), we noted that in determining an imputed rural pre-floor, pre-reclassified hospital wage index, we interpret the term ''contiguous'' to mean sharing a border. For example, in the case of Massachusetts, the entire rural area consists of Dukes and Nantucket counties. We determined that the borders of Dukes and Nantucket counties are contiguous with Barnstable and Bristol counties. Under the adopted methodology, the pre-floor, pre-reclassified hospital wage index values for the counties of Barnstable (CBSA 12700, Barnstable Town, MA) and Bristol (CBSA 39300, Providence-New Bedford-Fall River, RI–MA) would be averaged resulting in an imputed pre-floor, pre-reclassified rural hospital wage index for FY 2008. We noted in the FY 2008 final hospice wage index rule that while we believe that this policy could be readily applied to other rural areas that lack hospital wage data (possibly due to hospitals converting to a different provider type, such as a Critical Access Hospital, that does not submit the appropriate wage data), if a similar situation arose in the future, we would re-examine this policy.

We also noted that we do not believe that this policy would be appropriate for Puerto Rico, as there are sufficient economic differences between hospitals in the United States and those in Puerto Rico, including the payment of hospitals in Puerto Rico using blended Federal/Commonwealth-specific rates. Therefore, we believe that a separate and distinct policy is necessary for Puerto Rico. Any alternative methodology for imputing a pre-floor, pre-reclassified hospital wage index for rural Puerto Rico would need to take into account the economic differences between hospitals in the United States and those in Puerto Rico. Our policy of imputing a rural pre-floor, pre-reclassified hospital wage index based on the pre-floor, pre-reclassified hospital wage index (or indices) of CBSAs contiguous to the rural area in question does not recognize the unique circumstances of Puerto Rico. While we have not yet identified an alternative methodology for imputing a pre-floor, pre-reclassified hospital wage index for rural Puerto Rico, we will continue to evaluate the feasibility of using existing hospital wage data and, possibly, wage data from other sources. For FY 2008 through FY 2011, we have used the most recent pre-floor, pre-reclassified hospital wage index available for Puerto Rico, which is 0.4047.

5. CBSA Nomenclature Changes

The OMB regularly publishes a bulletin that updates the titles of certain CBSAs. In the FY 2008 Final Rule (72 FR 50218), we noted that the FY 2008 rule and all subsequent hospice wage index rules and notices would incorporate CBSA changes from the most recent OMB bulletins. The OMB bulletins may be accessed at *http://www.whitehouse.gov/omb/bulletins/index.html.*

6. Wage Data From Multi-Campus Hospitals

Historically, under the Medicare hospice benefit, we have established hospice wage index values calculated from the raw pre-floor, pre-reclassified hospital wage data (also called the IPPS wage index) without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. The wage adjustment established under the Medicare hospice benefit is based on the location where services are furnished without any reclassification.

For FY 2011, the data collected from cost reports submitted by hospitals for cost reporting periods beginning during FY 2006 were used to compute the 2010 raw pre-floor, pre-reclassified hospital wage index data, without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. This 2010 raw pre-floor, pre-reclassified hospital wage index was used to derive the applicable wage index values for the hospice wage index because these data (FY 2006) were the most recent complete cost data.

Beginning in FY 2008, the IPPS apportioned the wage data for multi-campus hospitals located in different labor market areas (CBSAs) to each CBSA where the campuses were located (see the FY 2008 IPPS final rule with comment period (72 FR 47317 through 47320)). We are continuing to use the raw pre-floor, pre-reclassified hospital wage data as a basis to determine the hospice wage index values because hospitals and hospices both compete in the same labor markets, and therefore, experience similar wage-related costs. We note that the use of raw pre-floor, pre-reclassified hospital (IPPS) wage data used to derive the FY 2012 hospice wage index values reflects the application of our policy to use those data to establish the hospice wage index. The FY 2012 hospice wage index values presented in this final rule were computed consistent with our raw pre-floor, pre-reclassified hospital (IPPS) wage index policy (that is, our historical policy of not taking into account IPPS geographic reclassifications in determining payments for hospice). As implemented in the August 8, 2008 FY 2009 Hospice Wage Index final rule, for the FY 2009 Medicare hospice benefit, the hospice wage index was computed from IPPS wage data (submitted by hospitals for cost reporting periods beginning in FY 2004 (as was the FY 2008 IPPS wage index)), which allocated salaries and hours to the campuses of two multi-campus hospitals with campuses that are located in different labor areas, one in Massachusetts and another in Illinois. Thus, in FY 2009 and subsequent fiscal years, hospice wage index values for the following CBSAs have been affected by this policy: Boston-Quincy, MA (CBSA 14484), Providence-New Bedford-Falls River, RI-MA (CBSA 39300), Chicago-Naperville-Joliet, IL (CBSA 16974), and Lake County-Kenosha County, IL-WI (CBSA 29404).

7. Hospice Payment Rates

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) amended section 1814(i)(1)(C)(ii) of the Act to establish updates to hospice rates for FYs 1998 through 2002. Hospice rates were to be updated by a factor equal to the market basket index, minus 1 percentage point. Payment rates for FYs since 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent fiscal years will be the market basket percentage for the fiscal year. It has been longstanding practice to use the inpatient hospital market basket as a proxy for a hospice market basket.

Historically, the rate update has been published through a separate administrative instruction issued annually in the summer to provide adequate time to implement system change requirements. Hospices determine their payments by applying the hospice wage index in this final rule to the labor portion of the published hospice rates. Section 3401(g) of the Affordable Care Act of 2010 requires that, in FY 2013 (and in subsequent fiscal years), the market basket percentage update under the hospice payment system as described in section 1814(i)(1)(C)(ii)(VII) or section 1814(i)(1)(C)(iii) be annually reduced by changes in economy-wide productivity as set out at section 1886(b)(3)(B)(xi)(II) of the Act. Additionally, section 3401(g) of the Affordable Care Act requires that in FY 2013 through FY 2019, the market basket percentage update under the hospice payment system be reduced by an additional 0.3 percentage point (although the potential reduction is subject to suspension under conditions set out under new section 1814(i)(1)(C)(v) of the Act). Congress also required, in section 3004(c) of the Affordable Care Act, that hospices begin submitting quality data, based on measures to be specified by the Secretary, for FY 2014 and subsequent fiscal years. Beginning in FY 2014, hospices which fail to report quality data will have their market basket update reduced by 2 percentage points.

II. Provisions of the Proposed Rule and Analysis of and Response to Public Comments

A. FY 2012 Hospice Wage Index

1. Background

As previously noted, the hospice final rule published in the **Federal Register** on December 16, 1983 (48 FR 56008) provided for adjustment to hospice payment rates to reflect differences in area wage levels. We apply the appropriate hospice wage index value to the labor portion of the hospice payment rates based on the geographic area where hospice care was furnished. As noted earlier, each hospice's labor market area is based on definitions of MSAs issued by the OMB. In the proposed rule, and in this final rule, we are using the pre-floor, pre-reclassified hospital wage index, based solely on the CBSA designations, as the basis for determining wage index values for the FY 2012 hospice wage index.

As noted above, our hospice payment rules utilize the wage adjustment factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustments. In the proposed rule, and in this final rule, we are again using the pre-floor and pre-reclassified hospital wage index data as the basis to determine the hospice wage index, which is then used to adjust the labor portion of the hospice payment rates based on the geographic area where the beneficiary receives hospice care. We believe the use of the pre-floor, pre-reclassified hospital wage index data, as a basis for the hospice wage index, results in the appropriate adjustment to the labor portion of the costs. For the FY 2012 update to the hospice wage index, we are continuing to use the most recent pre-floor, pre-reclassified hospital wage index available at the time of publication.

We received three comments regarding the wage index.

Comment: A commenter was concerned that the wage index continues to provide a significantly lower wage index to rural counties and indicated that cuts affect rural areas more than urban areas. The commenter asked that we move to a more accurate

and fair index as recommended by the Medicare Payment Advisory Commission (MedPAC). In addition, the commenter felt that the pre-floor, pre-reclassified hospital wage index with only the hospice floor is not a good policy. The same commenter suggested that we maintain the BNAF until a more equitable wage index can be developed.

Two commenters wanted Montgomery County, Maryland to be moved from its current CBSA and placed into CBSA 47894 for number of reasons. One of the reasons a commenter described was that in FY 2012, hospices in CBSA 47894 will be paid at a rate 4.0 percent greater than the payment given to hospices in Montgomery County's current CBSA. The commenter indicated that this rate differential creates significant hardship and results in loss of revenue. The commenter also indicated that by not changing, CMS is discriminating against the Medicare beneficiaries living in Montgomery County because it is financially jeopardizing the hospices that serve them.

Response: We thank the commenters. The pre-floor, pre-reclassified hospital wage index was adopted in 1998 as the wage index from which the hospice wage index is derived by a committee of CMS (then Health Care Financing Administration) and industry representatives as part of a negotiated rulemaking effort. The Negotiated Rulemaking Committee considered several wage index options: (1) Continuing with Bureau of Labor Statistics data; (2) using updated hospital wage data; (3) using hospice-specific data; and (4) using data from the physician payment system. The Committee determined that the pre-floor, pre-reclassified hospital wage index was the best option for hospice. The pre-floor, pre-reclassified hospital wage index is updated annually, and reflects the wages of highly skilled hospital workers.

We also note that section 3137(b) of the Affordable Care Act requires us to submit to Congress a report that includes a plan to reform the hospital wage index system. This provision was enacted in response to MedPAC's suggestions, which included a suggestion that the hospital wage index minimize wage index adjustments between and within metropolitan statistical areas and statewide rural areas. The latest information on hospital wage index reform is discussed in the ''Proposed Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2012 Rates'' proposed rule, published May 5, 2011 in the **Federal Register** (76 FR 25788).

In the future, when reforming the hospice payment system, we will consider wage index alternatives if alternatives are available.

Each hospice's labor market area is based on definitions of MSAs issued by the Office of Management and Budget (OMB), not CMS. For this final rule, we are using the pre-floor, pre-reclassified hospital wage index, based solely on the CBSA designations, as the basis for determining wage index values for the FY 2012 hospice wage index. In summary, we continue to believe that the pre-floor, pre-reclassified hospital wage index, which is updated yearly and is used by many other CMS payment systems, is the most appropriate method available to account for geographic variances in labor costs for hospices for FY 2012.

2. Areas Without Hospital Wage Data

In adopting the CBSA designations, we identified some geographic areas where there are no hospitals, and no hospital wage data on which to base the calculation of the hospice wage index. These areas are described in section I.B.4 of this final rule. Beginning in FY 2006, we adopted a policy that, for urban labor markets without an urban hospital from which a pre-floor, pre-reclassified hospital wage index can be derived, all of the urban CBSA pre-floor, pre-reclassified hospital wage index values within the State would be used to calculate a statewide urban average pre-floor, pre-reclassified hospital wage index to use as a reasonable proxy for these areas. Currently, the only CBSA that would be affected by this policy is CBSA 25980, Hinesville-Fort Stewart, Georgia. We proposed to continue this policy for FY 2012 and have applied this policy in this final rule.

Currently, the only rural areas where there are no hospitals from which to calculate a pre-floor, pre-reclassified hospital wage index are Massachusetts and Puerto Rico. In August 2007 (72 FR 50217), we adopted a methodology for imputing rural pre-floor, pre-reclassified hospital wage index values for areas where no hospital wage data are available as an acceptable proxy; that methodology is also described in section I.B.4 of this final rule. In FY 2012, Dukes and Nantucket Counties are the only areas for rural Massachusetts which are affected. We again proposed to apply this methodology for imputing a rural pre-floor, pre-reclassified hospital wage index for those rural areas without rural hospital wage data in FY 2012, and we are implementing this policy in this final rule.

However, as we noted section I.B.4 of this final rule, we do not believe that this policy is appropriate for Puerto Rico. For FY 2012, we again proposed to continue to use the most recent pre-floor, pre-reclassified hospital wage index value available for Puerto Rico, which is 0.4047. This pre-floor, pre-reclassified hospital wage index value was then adjusted upward by the hospice 15 percent floor adjustment in the computing of the proposed FY 2012 hospice wage index. We are continuing to follow this policy in this final rule. We received no comments regarding continuing this policy for areas without hospital wage data.

3. FY 2012 Wage Index With an Additional 15 Percent Reduced Budget Neutrality Adjustment Factor (BNAF)

The hospice wage index set forth in this final rule would be effective October 1, 2011 through September 30, 2012. We did not propose and are not finalizing any modifications to the hospice wage index methodology. For this final rule, the FY 2011 hospital wage index was the most current hospital wage data available for calculating the FY 2012 hospice wage index values. We used the FY 2011 pre-floor, pre-reclassified hospital wage index data for this calculation.

As noted above, for this FY 2012 wage index final rule, the hospice wage index values are based solely on the adoption of the CBSA-based labor market definitions and the hospital wage index. We continue to use the most recent pre-floor and pre-reclassified hospital wage index data available (based on FY 2007 hospital cost report wage data). A detailed description of the methodology used to compute the hospice wage index is contained in the September 4, 1996 hospice wage index proposed rule (61 FR 46579), the August 8, 1997 hospice wage index final rule (62 FR 42860), and the August 6, 2009 FY 2010 Hospice Wage Index final rule (74 FR 39384).

The August 6, 2009 FY 2010 Hospice Wage Index final rule finalized a provision to phase out the BNAF over seven years, with a 10 percent reduction in the BNAF in FY 2010, and an additional 15 percent reduction in FY 2011, and additional 15 percent reductions in each of the next five years, with complete phase out in FY 2016. Therefore, in accordance with the August 6, 2009, FY 2010 Hospice Wage Index final rule, the BNAF for FY 2012 was reduced by an additional 15 percent for a total BNAF reduction of 40 percent (10 percent from FY 2010, additional 15

percent from FY 2011, and additional 15 percent for FY 2012).

For this final rule, an unreduced BNAF for FY 2012 is computed to be 0.058593 (or 5.8593 percent). A 40 percent reduced BNAF, which is subsequently applied to the pre-floor, pre-reclassified hospital wage index values greater than or equal to 0.8, is computed to be 0.035156 (or 3.5156 percent). Pre-floor, pre-reclassified hospital wage index values which are less than 0.8 are subject to the hospice floor calculation; that calculation is described in section I.B.1. The BNAF is updated compared to the proposed rule based on availability of more complete data.

The final hospice wage index for FY 2012 is shown in Addenda A and B; the wage index values shown already have the BNAF reduction applied. Specifically, Addendum A reflects the final FY 2012 wage index values for urban areas under the CBSA designations. Addendum B reflects the final FY 2012 wage index values for rural areas under the CBSA designations.

We received five comments regarding the BNAF.

Comment: A few commenters were pleased with overall increase in the hospice payments for fiscal year 2012. Some commenters continued to voice opposition to the BNAF reduction; several were concerned about the impact of the BNAF phase-out, coupled with the productivity adjustment which begins in FY 2013. One commenter provided analysis which suggested that estimated mean hospice profit margins would decrease, and noted that many hospices can't absorb these reductions. Commenters were concerned that hospices would be forced to close, which could create access issues for patients, put at risk the quality of care, and ultimately increase Medicare costs. Several commenters noted that rate reductions disproportionately affect rural providers. One wrote that rural providers have higher costs of care than urban hospices, and yet also have a payment reduction due to lower rural wage index values. This commenter asked for a rural add-on, or at least parity. Another commenter asked that we create ''critical access'' hospices in rural areas to protect rural providers.

Response: We thank the commenters. The BNAF phase-out was finalized in the August 6, 2009 final rule. Comments opposing the BNAF reductions are outside the scope of this rule because we finalized this policy in FY 2010. Comments surrounding the productivity adjustment, which the Affordable Care Act mandates be applied beginning in fiscal year 2013, are also outside the scope of this rule. We acknowledge that there was a single erroneous reference to the BNAF reduction as a proposal; however, as noted on page 26808 of the proposed rule, and in multiple other locations throughout the proposed rule, the BNAF phase-out was already settled for the remaining years of the phase-out, as described in the FY 2010 Hospice Wage Index final rule (74 FR 39384).

However, we are sensitive to the issues raised by commenters, and to the possible effects of the BNAF reduction on access to care. We continue to monitor for unintended consequences associated with the BNAF phase-out. Our analysis reveals an overall growth in number of hospices since the start of the phase-out. Additionally, we see no data which would indicate that hospices in rural areas are closing.

We also note that the hospice wage index includes a floor calculation which benefits many rural providers. We are sensitive to concerns from rural hospices that the additional time and distance required to visit a rural patient adds significantly to their costs. We do not have the authority to change the hospice rates beyond the limits set out in the statute. We will consider the situation of rural providers in the context of broader hospice payment system reform. We appreciate the analyses shared by the commenter.

4. Effects of Phasing Out the BNAF

The full (unreduced) BNAF calculated for the FY 2012 final rule is 5.8593 percent. As implemented in the August 6, 2009 FY 2010 Hospice Wage Index final rule (74 FR 39384), for FY 2012 we are reducing the BNAF by an additional 15 percent, for a total BNAF reduction of 40 percent (a 10 percent reduction in FY 2010 plus a 15 percent reduction in FY 2011 plus a 15 percent reduction in FY 2012), with additional reductions of 15 percent per year in each of the next 4 years until the BNAF is phased out in FY 2016.

For FY 2012, this is mathematically equivalent to taking 60 percent of the full BNAF value, or multiplying 0.58593 by 0.60, which equals 0.035156 (3.5156 percent). The BNAF of 3.5156 percent reflects a 40 percent reduction in the BNAF. The 40 percent reduced BNAF (3.5156 percent) was applied to the pre-floor, pre-reclassified hospital wage index values of 0.8 or greater in the final FY 2012 hospice wage index.

The hospice floor calculation still applies to any pre-floor, pre-reclassified hospital wage index values less than 0.8. The hospice floor calculation is described in section I.B.1 of this final rule. We examined the effects of an additional 15 percent reduction in the BNAF, for a total BNAF reduction of 40 percent, on the final FY 2012 hospice wage index compared to remaining with the total 25 percent reduced BNAF which was used for the FY 2011 hospice wage index. The additional 15 percent BNAF reduction applied to the final FY 2012 wage index resulted in a (rounded) 0.9 percent reduction in wage index values in 39.7 percent of CBSAs, a 0.8 percent reduction in wage index values in 53.0 percent of CBSAs, a 0.6 or 0.7 percent reduction in wage index values in 0.7 percent of CBSAs, and no reduction in wage index values in 6.5 percent of CBSAs. Note that these are reductions in wage index values, not in payments. Please see Table 1 in section VI of this rule for the effects on payments. The wage index values in Addenda A and B already reflect the additional 15 percent BNAF reduction.

Those CBSAs whose pre-floor, pre-reclassified hospital wage index values had the hospice 15 percent floor adjustment applied before the BNAF reduction would not be affected by this ongoing phase out of the BNAF. These CBSAs, which typically include rural areas, are protected by the hospice 15 percent floor adjustment. We estimate that 29 CBSAs are already protected by the hospice 15 percent floor adjustment, and are therefore completely unaffected by the BNAF reduction. There are 325 hospices in these 29 CBSAs.

Additionally, some CBSAs with pre-floor, pre-reclassified wage index values less than 0.8 will become newly eligible for the hospice 15 percent floor adjustment as a result of the additional 15 percent reduction in the BNAF applied in FY 2012. Areas where the hospice floor calculation would have yielded a wage index value greater than 0.8 if the 25 percent reduction in BNAF were maintained, but which will have a final wage index value less than 0.8 after the additional 15 percent reduction in the BNAF (for a total BNAF reduction of 40 percent) is applied, will now be eligible for the hospice 15 percent floor adjustment. These CBSAs will see a smaller reduction in their hospice wage index values since the hospice 15 percent floor adjustment will apply. We estimate that 3 CBSAs will have their pre-floor, pre-reclassified hospital wage index value become newly protected by the hospice 15 percent floor adjustment due to the additional 15 percent reduction in the BNAF applied in the final FY 2012 hospice wage index. Because of the protection given by the hospice 15 percent floor adjustment, these CBSAs will see smaller percentage decreases in their hospice wage index values than those CBSAs that are not

eligible for the hospice 15 percent floor adjustment. This will affect those hospices with lower hospice wage index values, which are typically in rural areas. There are 44 hospices located in these 3 CBSAs.

Finally, the hospice wage index values only apply to the labor portion of the payment rates; the labor portion is described in section I.B.1 of this final rule. Therefore, the projected reduction in payments due solely to the additional 15 percent reduction of the BNAF applied in FY 2012 is estimated to be 0.6 percent, as calculated from the difference in column 3 and column 4 of Table 1 in section VI of this final rule. In addition, the estimated effects of the phase-out of the BNAF will be mitigated by any inpatient hospital market basket updates in payments. The final inpatient hospital market basket update for FY 2012 is 3.0 percent; this 3.0 percent does not reflect the provision in the Affordable Care Act which reduces the inpatient hospital market basket update for FY 2012 by 0.1 percentage point, since that reduction does not apply to hospices. The final update is communicated through an administrative instruction.

The combined estimated effects of the updated wage data, an additional 15 percent reduction of the BNAF, and the final inpatient hospital market basket update are shown in Table 1 in section VI of this final rule. The updated wage data are estimated to increase payments by 0.1 percent (column 3 of Table 1). The additional 15 percent reduction in the BNAF, which has already been applied to the wage index values shown in this final rule, is estimated to reduce payments by 0.6 percent. Therefore, the changes in the wage data and the additional 15 percent BNAF reduction reduce estimated hospice payments by 0.5 percent, when compared to FY 2011 payments (column 4 of Table 1). However, so that hospices can fully understand the total estimated effects on their revenue, we have also accounted for the 3.0 percent final market basket update for FY 2012. The net effect of that 3.0 percent increase and the 0.5 percent reduction due the updated wage data and the additional 15 percent BNAF reduction, is an estimated increase in payments to hospices in FY 2012 of 2.5 percent (column 5 of Table 1).

We received two comments regarding the combined effect of the expected market basket update, BNAF reduction and wage data updates.

Comment: Some commenters were confused about the language in the proposed rule concerning the market basket increase and the BNAF adjustment. They suggested revising the description of the BNAF reduction and the market basket increase to further describe the effect of each of the components which affect hospice rates in section II.A.4 of the final rule.

Response: We have clarified the language about the BNAF reduction and the market basket increase in this section.

B. Aggregate Cap Calculation Methodology

The existing methodology for counting Medicare beneficiaries in 42 CFR 418.309 has been the subject of substantial litigation. Specifically, the lawsuits challenge the way CMS apportions hospice patients with care spanning more than one year when calculating the cap.

A number of district courts and two appellate courts have concluded that CMS' current methodology used to determine the number of Medicare beneficiaries used in the aggregate cap calculation is not consistent with the statute. We continue to believe that the methodology set forth in § 418.309(b)(1) is consistent with the Medicare statute. Nonetheless, we have determined that it is in the best interest of CMS and the Medicare program to take action to prevent future litigation, and alleviate the litigation burden on providers, CMS, and the courts. On April 14, 2011, we issued a Ruling entitled ''Medicare Program; Hospice Appeals for Review of an Overpayment Determination'' (CMS–1355–R), and also published in the **Federal Register** as CMS–1355–NR (76 FR 26731, May 9, 2011), related to the aggregate cap calculation for hospices which provided for application of a patient-by-patient proportional methodology, as defined in the Ruling, to hospices that have challenged the current methodology. Specifically, the Ruling provides that, for any hospice which has a timely-filed administrative appeal of the methodology set forth at § 418.309(b)(1) used to determine the number of Medicare beneficiaries used in the aggregate cap calculation for a cap year ending on or before October 31, 2011, the Medicare contractors will recalculate that year's cap determination using the patient-by-patient proportional methodology as set forth in the Ruling.

In the proposed rule, we also made several proposals regarding cap determinations from two time periods:

- Cap determinations for cap years ending on or before October 31, 2011; and
- Cap determinations for cap years ending on or after October 31, 2012.

1. Cap Determinations for Cap Years Ending on or Before October 31, 2011

By its terms, the relief provided in Ruling CMS–1355–R applies only to those cap years for which a hospice has received an overpayment determination and filed a timely qualifying appeal. For any hospice that receives relief pursuant to Ruling CMS–1355–R in the form of a recalculation of one or more of its cap determinations, or for any hospice that receives relief from a court after challenging the validity of the cap regulation, we proposed that the hospice's cap determination for any subsequent cap year also be calculated using a patient-by-patient proportional methodology as opposed to the methodology set forth in 42 CFR 418.309(b)(1). The patient-by-patient proportional methodology is defined below in section II.B.3.

Additionally, there are hospices that have not filed an appeal of an overpayment determination challenging the validity of 42 CFR 418.309(b)(1) and which are awaiting for CMS to make a cap determination for cap years ending on or before October 31, 2011. We proposed to allow any such hospice provider, as of October 1, 2011, to elect to have its final cap determination for such cap year(s), and all subsequent cap years, calculated using the patient-by-patient proportional methodology.

Finally, we recognize that most hospices have not challenged the methodology used for determining the number of beneficiaries used in the cap calculation. Therefore, we proposed that those hospices which would like to continue to have the existing methodology (hereafter called the streamlined methodology) used to determine the number of beneficiaries in a given cap year would not need to take any action, and would have their cap calculated using the streamlined methodology for cap years ending on or before October 31, 2011. The streamlined methodology is defined in section II.B.4 below.

2. Cap Determinations for Cap Years Ending on or After October 31, 2012

We continue to believe that the methodology set forth in § 418.309(b)(1) is consistent with the Medicare statute. We emphasized that nothing in our proposals in this section constitutes an admission as to any issue of law or fact. In light of the court decisions, however, we proposed to change the hospice aggregate cap calculation methodology policy for cap determinations ending on or after October 31, 2012 (the 2012 cap year). Specifically, for the cap year ending October 31, 2012 (the 2012 cap

year) and subsequent cap years, we proposed to revise the methodology set forth at § 418.309(b)(1) to adopt a patient-by-patient proportional methodology when computing hospices' aggregate caps. We also proposed to ''grandfather'' in the current streamlined methodology set forth in § 418.309(b)(1) for those hospices that elect to continue to have the current streamlined methodology used to determine the number of Medicare beneficiaries in a given cap year, for the following reasons.

As described in section II of the proposed rule, we solicited comments on modernizing the cap calculation in our FY 2011 Hospice Wage Index Notice with Comment Period. We summarized those comments in section II of that proposed rule, and noted that many commenters, including the major hospice associations, were concerned about the burden to hospices of changing the cap calculation methodology, and urged us to defer across-the-board changes to the cap methodology until we analyzed the cap in the context of broader payment reform. Specifically, commenters urged us to retain the current methodology, as it resulted in a more streamlined and timely cap determination for providers, as compared to other options. In addition, commenters noted that once made, cap determinations usually remain final. Commenters were concerned that a proportional methodology could result in prior year cap determination revisions to account for situations in which the percentage of time a beneficiary received services in a prior cap year declined as his or her overall hospice stay continued into subsequent cap years, and these revisions could result in new overpayments for some providers. Commenters noted that the vast majority of providers don't exceed the cap, so burdening these providers with an across-the-board change would not be justified. We also noted that on January 18, 2011, President Obama issued an Executive Order (EO) entitled ''Improving Regulation and Regulatory Review'' (EO 13563), which instructed federal agencies to consider regulatory approaches that reduced burdens and maintained flexibility and freedom of choice for the public. We believe that offering hospices the option to elect to continue to have the streamlined methodology used in calculating their caps is in keeping with this EO.

For these reasons, for the cap year ending October 31, 2012 (the 2012 cap year) and subsequent cap years, we proposed that the hospice aggregate cap be calculated using the patient-by-patient proportional methodology, but also proposed to allow hospices the option of having their cap calculated via the current streamlined methodology, as discussed below. We stated in the proposed rule that we believe this two-pronged approach is responsive to the commenters who do not want to be burdened with a change in the cap calculation methodology at this time, while also conforming with decisional law and meeting the needs of hospices that would prefer the patient-by-patient proportional methodology of counting beneficiaries. This grandfathering proposal to allow hospices the option of having their caps calculated based on application of the current streamlined methodology would apply only to currently existing hospices that have, or will have, had a cap determination calculated under the streamlined methodology. New hospices that have not had their cap determination calculated using the streamlined methodology did not fall under the proposed ''grandfather'' policy. Therefore, all new hospices that are Medicare-certified after the effective date of this final rule would have their cap determinations calculated using the patient-by-patient proportional methodology.

3. Patient-by-Patient Proportional Methodology

For the cap year ending October 31, 2012 (the 2012 cap year), and for all subsequent cap years (unless changed by future rulemaking), we proposed that the Medicare contractors would apply the patient-by-patient proportional methodology (defined below) to a hospice's aggregate cap calculations unless the hospice elected to have its cap determination for cap years 2012 and beyond calculated using the current, streamlined methodology set forth in § 418.309(b)(1).

Under the proposed patient-by-patient proportional methodology, for each hospice, CMS would include in its number of Medicare beneficiaries only that fraction which represents the portion of a patient's total days of care in all hospices and all years that was spent in that hospice in that cap year, using the best data available at the time of the calculation. We proposed that the whole and fractional shares of Medicare beneficiaries' time in a given cap year would then be summed to compute the total number of Medicare beneficiaries served by that hospice in that cap year.

When a hospice's cap is calculated using the patient-by-patient proportional methodology, and a beneficiary included in that calculation survives into another cap year, the contractor may need to make adjustments to prior cap determinations, subject to existing reopening regulations.

4. Streamlined Methodology

As we described above and in the proposed rule, comments received from hospices and the major hospice associations in previous years urged us to defer across-the-board changes to the cap calculation methodology until we reform hospice payments. Several of these commenters feared that an across-the-board change in methodology now could disadvantage them by potentially placing them at risk for incurring new cap overpayments. Additionally, approximately 90 percent of hospices do not exceed the cap and have not objected to the current methodology, and commenters expressed concern that adapting to a process change would be costly and burdensome. In response to these concerns, we proposed that a hospice could exercise a one-time election to have its cap determination for cap years 2012 and beyond calculated using the current, streamlined methodology set forth in § 418.309(b). We proposed that the option to elect the continued use of the streamlined methodology for cap years 2012 and beyond would be available only to hospices that have had their cap determinations calculated using the streamlined methodology for all cap years prior to cap year 2012. In section II.B.5 (''Changing Methodologies'') below, we described our detailed rationale for limiting the election. Allowing hospices which, prior to cap year 2012, have their cap determination(s) calculated pursuant to a patient-by-patient proportional methodology to elect the streamlined methodology for cap years 2012 and beyond could result in over-counting patients and introduce a program vulnerability.

Our current policy set forth in the existing § 418.309(b)(2) states that when a beneficiary receives care from more than one hospice during a cap year or years, each hospice includes in its number of Medicare beneficiaries only that fraction which represents the portion of a patient's total stay in all hospices that was spent in that hospice. We proposed to revise the regulatory text at § 418.309(b)(2) to clarify that for each hospice, CMS includes in its number of Medicare beneficiaries only that fraction which represents the portion of a patient's total days of care in all hospices and all years that was spent in that hospice in that cap year, using the best data available at the time of the calculation. We also proposed to

add language to make clear that cap determinations are subject to reopening/adjustment to account for updated data.

5. Changing Methodologies

We believe our proposed policies, described above, provide hospices with a reasonable amount of flexibility with regard to their cap calculation. However, we believe that if we allowed hospices to switch back and forth between methodologies, it would greatly complicate the cap determination calculation, would be difficult to administer, and might lead to inappropriate switching by hospices seeking merely to maximize Medicare payments. Additionally, in the year of a change in the calculation methodology, there is a potential for over-counting some beneficiaries. Allowing hospices to switch back and forth between methodologies would perpetuate the risk of over-counting beneficiaries. Therefore, we proposed that:

(1) Those hospices that have their cap determination calculated using the patient-by-patient proportional methodology for any cap year prior to the 2012 cap year would continue to have their cap calculated using the patient-by-patient proportional methodology for the 2012 cap year and all subsequent cap years; and,

(2) All other hospices would have their cap determinations for the 2012 cap year and all subsequent cap years calculated using the patient-by-patient proportional methodology unless they make a one-time election to have their cap determinations for cap year 2012 and beyond calculated using the streamlined methodology.

(3) A hospice would be able to elect the streamlined methodology no later than 60 days following the receipt of its 2012 cap determination.

(4) Hospices which elected to have their cap determination calculated using the streamlined methodology could later elect to have their cap determinations calculated pursuant to the patient-by-patient proportional methodology by either:

a. Electing to change to the patient-by-patient proportional methodology; or

b. Appealing a cap determination calculated using the streamlined methodology to determine the number of Medicare beneficiaries.

(5) If a hospice elected the streamlined methodology, and changed to the patient-by-patient proportional methodology for a subsequent cap year, the hospice's aggregate cap determination for that cap year (*i.e.,* the cap year of the change) and all subsequent cap years would be calculated using the patient-by-patient proportional methodology. As such, past cap year determinations could be adjusted to prevent the over-counting of beneficiaries, notwithstanding the ordinary limitations on reopening.

6. Other Issues

Contractors will provide hospices with instructions regarding the cap determination methodology election process. Regardless of which methodology is used, the contractor will continue to demand any additional overpayment amounts due to CMS at the time of the hospice cap determination. The contractor will continue to include the hospice cap determination in a letter which serves as a notice of program reimbursement under 42 CFR 405.1803(a)(3). Cap determinations are subject to the existing CMS reopening regulations.

In that FY 2011 Hospice Wage Index Notice with Comment Period, we also discussed the timeframe used for counting beneficiaries under the streamlined methodology, which is September 28th to September 27th. This timeframe for counting beneficiaries was implemented because it allows those beneficiaries who elected hospice near the end of the cap year to be counted in the year when most of the services were provided. However, for those hospices whose cap determinations are calculated using a patient-by-patient proportional methodology for counting the number of beneficiaries, we proposed to count beneficiaries and their associated days of care from November 1st through October 31st, to match that of the cap year. This would ensure that the proportional share of each beneficiary's days in that hospice during the cap year is accurately computed.

Finally, we noted that the existing regulatory text at § 418.308(b)(1) refers to the timeframe for counting beneficiaries as ''(1) * * * the period beginning on September 28 (35 days before the beginning of the cap period) and ending on September 27 (35 days before the end of the cap period).'' The period beginning September 28 is actually 34 days before November 1 (the beginning of the cap year), rather than 35 days. We proposed to correct this in the regulatory text, and to change references to the ''cap period'' to that of the ''cap year'' to correctly reference the time frame for cap determinations. We also proposed technical corrections to the regulatory text.

The above summarizes the proposals made in our proposed rule. We are finalizing all the policies above as proposed, except as described in the following responses to comments. We received six comments related to these proposed changes.

Comment: Most commenters were supportive of our providing hospices with options regarding their cap calculation methodology; however, one suggested that we abandon the patient-by-patient proportional methodology due to the burden created by the need for adjustments to prior year cap determinations. This commenter was also concerned about the potential for increased confusion and complexity. Several commenters asked for details on how to elect a particular calculation methodology, with one commenter asking that we incorporate consistent, specific timeframes for making such an election. Another commenter suggested we send providers a form to use in making the choice. A number of commenters asked that CMS and its contractors educate providers about the election process and the cap calculation methodology options. Several also asked that all contractors use the same methodology when calculating the cap.

A commenter asked that we align the cap year and the beneficiary counting year with the federal fiscal year, to simplify the cap calculation process. A few commenters asked that contractors mail cap determination letters in a more timely and consistent fashion, with one asking that we specify timelines for contractors to follow. One commenter suggested that timely notification of cap determination letters be a performance measure for the contractors. Several commenters asked for longer, more flexible repayment timeframes, suggesting three to five years for repayment of overpayments, or longer. One commenter wrote that the cap was an outdated cost containment provision, and was concerned that it would limit access. This commenter asked that we increase the cap amount to reflect a full six months of care and wage adjust it. The commenter added that this would require study to determine the relevant methodology that would support providers in caring for all hospice patients.

Response: We appreciate commenters' support of our proposal and of the options provided to hospices regarding their aggregate cap calculations. Having two cap calculation methodologies addresses the concerns of commenters who did not want to be burdened with a change given future payment reform; those comments were described in section II of our proposed rule. Earlier in this section we also noted that there had been substantial litigation challenging the way we apportion hospice patients with care spanning more than one year when calculating

the aggregate cap. We believe it is in the best interest of CMS and the Medicare program to take action to prevent future cap litigation, and to alleviate the litigation burden on providers, CMS, and the courts. Therefore, we do not believe that we should abandon the patient-by-patient proportional methodology.

Regarding the timeframes for elections, our proposed rule addressed the issue based on two time periods:

1. *For cap years ending on or before October 31, 2011:*

We proposed that hospices that have not filed an appeal of an overpayment determination challenging the validity of 42 CFR 418.309(b)(1) and which are waiting for us to make a cap determination in a cap year ending on or before October 31, 2011 may, as of October 1, 2011, elect to have their final cap determinations for such cap year(s), and all subsequent cap years, calculated using the patient-by-patient proportional methodology. In other words, in this circumstance, the election must occur in the period beginning October 1, 2011 (the effective date of this final rule) but *before* receipt of the 2011 (or prior) cap year determination. We are finalizing this policy as proposed.

2. *For cap years ending on or after October 31, 2012:*

(a) Electing to continue using the streamlined methodology: We proposed that for cap years ending on or after October 31, 2012, hospices would have their aggregate caps calculated using the patient-by-patient proportional methodology, unless a hospice exercises a one-time election to have its aggregate cap for cap years 2012 and beyond calculated using the streamlined methodology. Those hospices that make such an election will have their cap determinations for the 2012 cap year and subsequent cap years calculated using the streamlined methodology unless they subsequently elect to have the patient-by-patient proportional methodology used, appeal the streamlined methodology (please see section II.B.5, entitled ''Changing Methodologies,'' for more details), or we implement changes through future rulemaking. This option to elect to continue with the streamlined methodology only applies to existing hospices that have had, or will have had, a cap determination calculated under the streamlined methodology. Additionally, this option to elect to continue with the streamlined methodology is not available to a hospice when its 2011 or prior cap determination(s) was calculated using the patient-by-patient proportional methodology.

The timeframe for electing to continue to have the aggregate cap calculated using the streamlined methodology is specified in the regulatory text at 42 CFR 418.309(d)(2)(ii), and requires that the election be made no later than 60 days after receipt of the 2012 cap determination. Therefore, the hospice could elect for CMS to continue using the streamlined methodology at any time between October 1, 2011 (the effective date of this final rule) and up to 60 days after receipt of its 2012 cap determination. This election to use the streamlined methodology would remain in effect unless the hospice subsequently submitted an election to change to the patient-by-patient proportional methodology or appealed the streamlined methodology used to determine the number of Medicare beneficiaries used in the aggregate cap calculation. We allow this 60 days *after* receipt of the 2012 cap determination because we are concerned that a hospice that intended to continue using the streamlined methodology might fail to elect it due to an oversight, and we do not want any provider to be forced to change methodologies due to such an error. We are finalizing this policy as proposed.

(b) *Electing to change from the streamlined methodology to the patient-by-patient proportional methodology:* We proposed that if a hospice elected to have its 2012 cap determination calculated using the streamlined methodology, it could later submit a written election to change to the patient-by-patient proportional methodology. This election to change methodologies from streamlined to patient-by-patient proportional for a given cap year and all subsequent cap years must be submitted before receipt of the cap determination for that cap year. If the hospice has already received the cap determination for that cap year, and then decides it would like to change from the streamlined methodology to the patient-by-patient proportional methodology, it must file an appeal of the methodology used to determine the number of Medicare beneficiaries used in the aggregate cap calculation. We are finalizing this policy as proposed.

Contractors will provide hospices with instructions on how to elect a methodology in the coming months. In addition, we will revise the cap section of the hospice claims processing manual (Internet-only manual (IOM) 100–04, chapter 11, section 80) to reflect the policies implemented in this final rule. We will include examples to make sure the details of the calculation are clear to providers and to the contractors. There will also be a MedLearn Matters article, discussion on Open Door forums, and information on the hospice center webpage (*http://www.cms.gov/center/hospice.asp*) to further educate the industry. Additional education will come from industry associations and from contractor Web sites, reminding hospices of the procedures for electing a methodology.

In case a provider misses these educational efforts, we will also ask contractors to include language on the 2012 cap determinations which explains that the provider has up to 60 days from the date of receipt of the determination to elect to continue using the streamlined methodology. Given these efforts, we do not believe it is necessary for us to create a form and send it to all providers for choosing to continue using the streamlined methodology. To address comments related to contractor consistency in applying the cap methodologies, we also believe that clearly written manual instructions which include examples will ensure consistent application of the cap calculation procedures by all contractors.

As we noted in the proposed rule, we agree with commenters on our 2010 Hospice Wage Index Notice with Comment who asked us not to change the cap year timeframe now, but to consider that change when we undertake broader payment reform. In the proposed rule, we also stated that for purposes of applying the patient-by-patient proportional methodology, we proposed to count beneficiaries and their associated days of care from November 1 to October 31, to match the cap year timeframe. We are finalizing this policy as proposed.

Finally, several comments were outside the scope of this rule, including those related to requiring more timely and consistent mailing of cap determination letters, to extending repayment timeframes, to increasing the cap amount, and wage adjusting the cap amount. We will consider these issues, such as the wage adjustment of the cap and changing the cap amount, as we continue with hospice payment reform, to the extent that we have such authority. In its March 2010 Report to Congress (*http://www.medpac.gov/chapters/Mar10_Ch02E.pdf*), MedPAC investigated claims that the cap was creating an access problem for non-cancer patients or for racial or ethnic minorities. MedPAC found no evidence to support these claims.

Comment: A majority of commenters asked that we define the reopening time period for making adjustments to prior

year cap determinations, citing a need for hospices to manage their finances with some certainty and administrative burden. Suggested reopening timeframes ranged from 3 to 5 years. One commenter asked that we provide a manual reference for ''existing reopening regulations.'' Another commenter wrote that hospices should be afforded parallel rights, at least on a one-time basis, to request reopening of demands issued not more than 3 years ago for recalculation under the proportional methodology.

Response: Our regulations at 42 CFR 405.1803 equate the hospice cap determination letter with a Notice of Program Reimbursement (NPR). The regulations governing NPRs, which are found at 42 CFR 405.1885, have a 3-year timeframe for reopening, except in instances of fraud, where reopening is unlimited. The regulations related to reopening are described in our Paper-Based Manual 15–1, chapter 29, entitled ''Provider Payment Determination and Appeals'', available on our Web site at *http://www.cms.gov/Manuals/PBM/list.asp*. In response to concerns from multiple commenters, we are revising our proposal to make it clear that there is a 3-year timeframe for reopening, as described in 42 CFR 405.1885. We are also revising the regulatory text we proposed at 42 CFR 418.309(d)(3) to remove the language that reads ''notwithstanding the ordinary limitations on reopening'' and replacing it with ''subject to existing reopening requirements.'' These changes should satisfy commenters' concerns, and provide hospices with more certainty in managing their finances.

We do not believe that allowing us to reopen prior year cap determinations in light of a provider's decision to switch methodologies and allowing providers to request reopening of prior year cap determinations that were not timely appealed are parallel situations. If a hospice elects one methodology for determining the cap and then subsequently elects a different methodology, we believe that it might be appropriate to recalculate earlier payment/cap determinations (after the change in methodologies) in order to prevent providers from switching methodologies to gain an inappropriate benefit. This consideration does not apply in the situation where a provider did not timely appeal an earlier determination. Providers may appeal payment determinations, and we believe that, if a provider did not exercise its appeal rights in a timely manner, then subsequent developments do not warrant effectively extending the time period for appeal (unlike providers, the agency cannot ''appeal'' a payment determination for a provider reflecting that provider's election of a cap methodology within 180 days after the date of the relevant determination).

Comment: One commenter, who is counsel for a number of hospices that have brought litigation challenging the streamlined methodology, suggested that we advise hospices that ''multiple spreadsheets offered in litigation by hospices (and HHS) tend to show'' that there are ''material reductions in hospice cap liability under the proportional method.'' The commenter stated that, based on their experience, they strongly recommend that hospices opt for the proportional methodology and suggested that HHS should make the same recommendation to hospices.

Response: We note the statements and recommendations of the commenter for providers to consider, but we do not believe it is appropriate for us to make a general recommendation to hospices as to which method hospices should choose. The commenter states that ''multiple spreadsheets offered in litigation by hospices (and HHS) tend to show'' that there are ''material reductions in hospice cap liability under the proportional method.'' To the extent the commenter suggests that, as a general matter, hospices are generally likely to receive material reductions in hospice cap liability under the proportional method (relative to the streamlined method), we do not draw the same conclusions as the commenter from the spreadsheets offered in litigation by some plaintiff hospices. We acknowledge that a number of spreadsheets offered in litigation indicate that certain plaintiff hospices would likely experience a reduction (perhaps significant) in cap liability for a given year. At the same time, we believe that it is important to consider that numerous plaintiff hospices did not offer any spreadsheets in litigation indicating whether those plaintiff hospices would receive a significant reduction or any reduction in cap liability in a given year. Plaintiff hospices that did offer spreadsheets in litigation might be more likely to benefit from application of a patient-by-patient proportional methodology in a given year than other plaintiff hospices that did not offer such spreadsheets. Moreover, hospices that have brought litigation challenging the streamlined method might be more likely than other hospices to benefit from application of a patient-by-patient proportional methodology. We also note that spreadsheets offered by plaintiff hospices in litigation might have reflected incomplete data or reflected calculations that had not been verified by HHS.

It is true that a given hospice for a given year might benefit (perhaps significantly) from application of a patient-by-patient proportional methodology (resulting in a higher cap and a lower cap liability), but that same hospice might have a higher cap liability (perhaps significantly) from application of the patient-by-patient proportional methodology in a different year. In fact, some evidence offered in litigation indicated that even some plaintiff hospices were likely to have a greater cap liability using the patient-by-patient proportional methodology in a given year. The effect on a particular hospice (in a given year or in the aggregate over all years) depends on a number of factors (for example, the flow of patients in and out of the hospice, the mix of patients' lengths of stay). Therefore, while a reduction in cap liability for a hospice is certainly possible, it is not a given. Hospices that have brought litigation challenging the streamlined method and offered spreadsheets are not necessarily representative of the majority of hospices and their experience would not be generalizable to all hospices.

In any event, we do not believe it is appropriate for us to make a general recommendation to hospices regarding which method hospices should choose. Nevertheless, we note the commenter's statements and recommendations for providers to consider.

Comment: A commenter was concerned that the proposed regulatory text at 42 CFR 418.309(b) needed to be clarified. The commenter asked that we clarify the differences in the streamlined methodology calculation when a beneficiary has been in only 1 hospice versus when a beneficiary has received care from more than one hospice. The commenter also asked that we clarify 42 CFR 418.309(b)(2), which deals with applying the streamlined methodology when a beneficiary receives care from more than one hospice. The commenter wasn't clear whether the calculation of the fraction of the total days of care applies to all years of hospice care, or just to the year of initial election.

Response: The streamlined methodology requires that beneficiaries who have only been in one hospice be counted as 1 in their initial year of election, with the timeframe for counting beneficiaries running from September 28 to September 27. The beneficiary is not included in the count of beneficiaries ever again, even if he/she survives past September 27th into another beneficiary counting year. This

calculation has not changed since the hospice benefit's inception.

Under the streamlined methodology, when a beneficiary has been served by more than 1 hospice, the current regulation at 42 CFR 418.309(b)(2) says that ''In the case in which a beneficiary has elected to receive care from more than one hospice, each hospice includes in its number of Medicare beneficiaries only that fraction which represents the portion of a patient's total stay in all hospices that was spent in that hospice.'' The streamlined methodology used when a beneficiary has been served by more than one hospice is actually a patient-by-patient proportional allocation of the beneficiary's time.

In our proposed rule, we proposed changes to the regulatory text describing how the streamlined methodology accounts for beneficiaries who are served by more than one hospice. We are finalizing those proposed changes to the regulatory text, as it makes it clear that the calculation is to occur across all years of hospice care, and not just the initial year of election. It also matches the language describing the patient-by-patient proportional methodology, and ''requires each hospice include in its count of Medicare beneficiaries only that fraction which represents the portion of a patient's total days of care in all hospices and all years that was spent in that hospice in that cap year, using the best data available at the time of the calculation.'' When a beneficiary is served by more than one hospice, the calculation is a proportional one, even under the streamlined methodology.

Because the regulation refers to counting days spent in a given hospice ''in that cap year'', it also follows the same beneficiary counting timeframe that the patient-by-patient proportional methodology uses, which is the cap year timeframe (November 1 to October 31). In our proposed rule we explained that the September timeframe for counting beneficiaries was implemented in 1983 because it allows those beneficiaries who elected hospice near the end of the cap year to be counted in the year when most of the services were expected to be provided. However, for a patient-by-patient proportional calculation, there is no need to make such an adjustment, and therefore we are using the cap year timeframe when counting beneficiaries.

In other words, the streamlined methodology is identical to the patient-by-patient proportional methodology when counting beneficiaries who have been served by more than one hospice. As such, the difference between the streamlined methodology and the patient-by-patient proportional methodology is only evident when a beneficiary receives hospice care from a single hospice. We are finalizing the regulatory text at 42 CFR 418.309(b) as proposed.

Comment: Several commenters suggested that we allow calculation of a total cap across all provider numbers belonging to a common owner. One commenter suggested that in the situation where one hospice acquires another hospice, hospices operating under the proportional methodology should have the option of switching to the streamlined methodology for consistency.

Response: There are several issues we must address to fully respond to this comment: (1) Whether the aggregate cap calculation can be consolidated for all providers of a common owner, such as for hospices that are part of a chain; (2) which calculation methodology to allow when there is a change of ownership with assignment of provider agreements; and (3) which calculation methodology to allow when there is an acquisition with rejection of assignment of provider agreements. All three issues hinge on the Medicare provider agreement for each participating hospice and its unique provider number. The unique provider number is the administrative method used by Medicare to track each Medicare provider agreement. A unique provider number is assigned to a hospice program which is certified as meeting the conditions to participate in the Medicare program defined in section 1861(dd) of the Act.

To address the first issue, longstanding policy has not permitted consolidation of separate Medicare certified hospice providers with a common owner when computing the aggregate cap; instead, a separate cap calculation occurs for each Medicare certified hospice program defined by its unique provider number. Our regulations at 42 CFR 418.308 and 42 CFR 418.309 describe the aggregate cap calculation in terms of an individual hospice, rather than in terms of a hospice chain or a common owner.

To address the second issue, when one hospice acquires another, one needs to consider the unique provider number of the hospice(s) which provided care to each patient. For example, hospice A, which has opted for CMS to use the streamlined methodology in its cap calculation, acquires hospice B, which has its cap calculated using the patient-by-patient proportional methodology. When a change of ownership occurs with assignment of provider agreements, and the acquiring hospice chooses to consolidate the operations, the unique provider number of hospice B is retired, and hospice B comes under hospice A's Medicare provider agreement and unique provider number. Hospice B is consolidated into hospice A. In this case the beneficiaries who were in hospice B are now in hospice A. From the standpoint of the cap, those beneficiaries are considered to have been served by more than one hospice. As noted previously in this section, the streamlined and patient-by-patient proportional methodologies are identical when a beneficiary is served by more than one hospice, following the patient-by-patient proportional methodology. Therefore hospice A's use of the streamlined methodology does not create any inconsistency when accounting for hospice B's beneficiaries in its aggregate cap.

In another example, if hospice A acquires hospice B with rejection of assignment of provider agreements, but wants to operate hospice B as a separate entity, hospice B's existing Medicare provider agreement and unique provider number would be terminated. Hospice B would have to meet all requirements to be certified to participate in the Medicare program, and would be given a new provider agreement and unique provider number upon approval. Therefore, hospice A and B continue to have separate unique provider numbers. As such, separate cap calculations are performed for hospice A and hospice B, since our longstanding policy is to calculate the cap by provider (defined as having a unique provider number), rather than by owner or by chain.

Because hospice B has a new Medicare provider agreement (with a new unique provider number), it is considered a new provider for purposes of applying the aggregate cap. As such, all its cap calculations would be made using the patient-by-patient proportional methodology; new providers are not eligible for the grandfathering described in the proposed rule, which allows hospices to elect to continue using the streamlined methodology.

We continue to believe that there would be a program vulnerability if we allowed providers to switch back and forth between cap calculation methodologies. As such, we proposed that a provider whose cap is calculated using the proportional methodology may not later decide to have its cap calculated using the streamlined methodology. We proposed an exception to this policy for the 2012 cap year, when all aggregate caps will be computed using the proportional methodology, unless an eligible provider makes a one-time election to continue using the streamlined

methodology. The exception allows eligible providers that intended to continue using the streamlined methodology but which failed to elect the streamlined methodology to make that one-time election during the 60-day period following receipt of the 2012 cap determination notice.

The above examples regarding changes in ownership are consistent with our policy of defining hospices by their unique provider numbers and consistent with our proposal to preclude switching calculation methodologies.

In summary, we are finalizing the proposals related to the aggregate cap as proposed, except to clarify that the timeframe for reopening cap determinations is 3 years (except in the case of fraud).

C. Hospice Face-to-Face Requirement

Section 3132(b) of the Affordable Care Act of 2010 (Pub. L. 111–148, enacted March 23, 2010) amended section 1814(a)(7) of the Act by adding an additional certification requirement that beginning January 1, 2011, a hospice physician or nurse practitioner (NP) must have a face-to-face encounter with every hospice patient prior to the 180-day recertification of the patient's terminal illness to determine continued eligibility. The statute also requires that the hospice physician or NP who performs the encounter attest that such a visit took place in accordance with procedures established by the Secretary. Although the provision allows an NP to perform the face-to-face encounter and attest to it, section 1814(a)(7)(A) of the Act continues to require that a hospice physician must certify and recertify the terminal illness.

We implemented section 1814(a)(7), as amended by section 3132(b) of the Affordable Care Act in the November 17, 2010 final rule (75 FR 70372), published in the **Federal Register**, entitled ''Home Health Prospective Payment System Rate Update for CY 2011; Changes in Certification Requirements for Home Health Agencies and Hospices'', hereinafter referred to as the CY 2011 HH PPS Final Rule. The statute requires that for hospice recertifications occurring on or after January 1, 2011, a face-to-face encounter take place before the 180th-day recertification. We decided that the 180th-day recertification and subsequent benefit periods corresponded to the recertification for a patient's third or subsequent benefit period.

These provisions at § 418.22(a) and (b), as set out in the CY 2011 HH PPS final rule (75 FR 70463) include the following requirements:

- The encounter must occur no more than 30 calendar days prior to the start of the third benefit period and no more than 30 calendar days prior to every subsequent benefit period thereafter.
- The hospice physician or NP who performs the encounter attests in writing that he or she had a face-to-face encounter with the patient and includes the date of the encounter. The attestation, which includes the physician's signature and the date of the signature, must be a separate and distinct section of, or an addendum to, the recertification form, and must be clearly titled.
- The physician narrative associated with recertifications for the third and subsequent benefit period recertifications includes an explanation of why the clinical findings of the face-to-face encounter support a prognosis that the patient has a life expectancy of 6 months or less.
- When an NP performs the encounter, the NP's attestation must state that the clinical findings of that visit were provided to the certifying physician, for use in determining whether the patient continues to have a life expectancy of 6 months or less, should the illness run its normal course.
- The hospice physician or the hospice NP can perform the encounter. We define a hospice physician as a physician who is employed by the hospice or working under contract with the hospice, and a hospice NP as an NP who is employed by the hospice.
- The hospice physician who performs the face-to-face encounter and attests to it must be the same physician who certifies the patient's terminal illness and composes the recertification narrative (75 FR 70445).

As a result of stakeholders' concerns regarding access risks resulting from the final rule policy, we proposed that any hospice physician can perform the face-to-face encounter regardless of whether that physician recertifies the patient's terminal illness and composes the recertification narrative. Additionally, we also proposed to change the regulatory text at 42 CFR 418.22(b)(4) to state that the attestation of the nurse practitioner or a non-certifying hospice physician shall state that the clinical findings of that encounter were provided to the certifying physician, for use in determining continued eligibility for hospice. This proposal reflects the our commitment to the general principles of the President's EO released January 18, 2011 entitled ''Improving Regulation and Regulatory Review'', as it would reduce burden to hospices and hospice physicians and increase flexibility in areas of physician shortages.

We received 15 comments related to these proposed changes.

Comment: Commenters expressed appreciation of CMS' efforts to address concerns regarding implementation of the face-to-face encounter for hospice eligibility certification and recertification, including the three-month enforcement delay provided for in early 2011.

All 15 commenters supported the proposal to allow any hospice physician to perform the face-to-face encounter regardless of whether the physician recertifies the patient's terminal illness and composes the recertification narrative. While commenters supported the less restrictive policy, they made suggestions to add additional practitioners such as Physician Assistants (PA) and Clinical Nurse Specialists (CNS) to the list of healthcare professionals that would be allowed to conduct the face-to-face encounter. These commenters described the shortage of nurse practitioners and physicians in some areas of the country, especially small and rural areas. Another commenter, also citing physician and NP shortages in rural areas, suggested that community physicians and nurse practitioners should be able to conduct the face-to-face encounter and report their findings to a physician employed by the hospice. Another commenter strongly encouraged CMS to allow any physician to certify and recertify a patient for hospice. The commenter described the situation when caring for the imminently dying patient at an emergency department; a non-hospice physician cannot certify the patient for hospice services without a hospice physician certification. The commenter indicated that the patient should not have to wait for the hospice physician to certify the patient in a situation when the patient is imminently dying. The commenter supported efforts in Congress to change the statute about this change.

Commenters were concerned that hospices are facing a large increase in administrative costs to provide care to hospice patients without getting additional reimbursement as a result of the new face-to-face requirement. Commenters indicated that unreimbursed face-to-face visits are costly in terms of time, travel and salaries, and the visits cause patients and families to be anxious that the patient may be discharged.

Response: We thank the commenters for their support of our clarification in allowing any hospice physician to

perform face-to-face encounters regardless of whether that same physician recertifies the patient's terminal illness and composes the recertification narrative and of the three-month delay provided early in 2011. We are finalizing the policy to allow any hospice physician to perform the face-to-face encounter regardless of whether that same physician recertifies the patient's terminal illness and composes the recertification narrative.

The statutory language in section 1814(a)(7) of the Act limits the disciplines of those who can provide a hospice face-to-face encounter. PAs and CNSs are not authorized by the Affordable Care Act to perform the face-to-face visit. Therefore, without a change in the law, we cannot adopt a policy to allow PAs and CNSs to perform the face-to-face encounter. In addition, a statutory change to section 1814(a)(7) of the Act would also be required to change the requirements regarding the physicians who must certify and recertify a patient's terminal illness.

Similarly, allowing community physicians and NPs to conduct the face-to-face encounter and report their findings to a physician employed by the hospice would also require a statutory change. The Act requires that the physician or NP conducting the face-to-face encounter must be a hospice physician or NP. A ''hospice physician'' is a physician either employed by or working under arrangement with a hospice (*i.e.,* contracted). The complete definition of a hospice employee at 42 CFR 418.3 is as follows: ''Employee means a person who: (1) Works for the hospice and for whom the hospice is required to issue a W–2 form on his or her behalf; (2) if the hospice is a subdivision of an agency or organization, an employee of the agency or organization who is assigned to the hospice; or (3) is a volunteer under the jurisdiction of the hospice.''

We appreciate the commenters concerns about the financial effects of the face-to-face requirements. We expect most face-to-face encounters would be satisfied in conjunction with a medically reasonable and necessary physician service. Hospices can bill for that portion of the visit where medically reasonable and necessary physician services were provided to the patient by the hospice physician or hospice attending NP in conjunction with a face-to-face encounter. We will continue to monitor for any unintended consequences associated with this provision.

Comment: A commenter asked us to consider the concept of ''advanced disease management.'' A commenter noted that many patients are legitimately certified at admission but their condition actually improves with hospice care. The commenter also suggested that Medicare benefit be modified in ways that will encourage more comprehensive, continuing care management for those in the advanced stages of incurable illnesses.

Response: We appreciate the comment; however, it is outside the scope of this rule. We may consider such suggestions in the future in the context of broader analysis surrounding palliative care.

Comment: A commenter supported the change in regulatory text that states an NP or a non-certifying hospice physician may convey their clinical findings from the face-to-face visit to the certifying physician.

Response: We thank the commenter for his or her support.

Comment: A commenter requested that we make every effort to ensure that the clarification provided in the proposed rule about the face-to-face requirement is applied as if incorporated in the final rule issued November 17, 2010.

Response: Thank you for your comment. We note that the effective date of the provisions in this final rule is October 1, 2011. We direct providers to the Hospice Benefit Policy Manual (IOM 100–02, chapter 9), section 20.1 for up-to-date and comprehensive guidance on our face-to-face encounter policy. In summary, we are finalizing the proposed policy to allow any hospice physician to perform the face-to-face encounter regardless of whether that same physician recertifies the patient's terminal illness and composes the recertification narrative.

D. Technical Proposals and Clarification

1. Hospice Local Coverage Determinations

In section II.H of the November 17, 2010 CY 2011 HH PPS Final Rule, we implemented new requirements for a hospice face-to-face encounter which were mandated by the Affordable Care Act of 2010. A commenter asked how the face-to-face encounter related to Local Coverage Determinations (LCDs), and if the expectation was that the physician would verify the patient's condition based on the LCDs. Other commenters asked for guidance regarding what the encounter should include (that is, elements that make up an encounter) for purposes of satisfying the requirement. When describing how to assess patients for recertification, our response cited the LCDs of several contractors (see 75 FR 70447–70448). The response also included common text from those LCDs related to clinical findings to use in making the assessment and determining whether a patient was terminally ill. We stated that the clinical findings should include evidence from the three following categories: (1) Decline in clinical status guidelines (for example, decline in systolic blood pressure to below 90 or progressive postural hypotension); (2) Non disease-specific base guidelines (that is, decline in functional status) as demonstrated by Karnofsky Performance Status or Palliative Performance Score and dependence in two or more activities of daily living; and (3) Co-morbidities. We noted that because the language was not mandatory, there was never any intention that this response have a legally binding effect on hospices. These are suggestions as to elements considered during certification or recertification which could be deemed to be indicative of a terminal condition. However, this was not meant to be an exhaustive or exclusive list. Because there has been some confusion about the extent to which these items exclude other possible scenarios, we proposed to clarify that the clinical findings included in the comment response were provided as an example of findings that can be used in determining continued medical eligibility for hospice care. The illustrative clinical findings mentioned above are not mandatory national policy. In this final rule we are clarifying that the clinical findings included in the comment response discussed above were provided as an example, and are not national policy. We reiterate that certification or recertification is based upon a physician's clinical judgment, and is not an exact science. Congress made this clear in section 322 of the Benefits Improvement and Protection Act of 2000, which says that the hospice certification of terminal illness ''shall be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness.'' We received four comments about this clarification.

Comment: Commenters appreciated the clarification and our reiterating existing policy that the certification and recertification are based upon the clinical judgment of the physician. One commenter wrote that their hospice physician occasionally discharges a patient who is not longer eligible for the benefit, and asked how the hospice should handle a situation in which the

Quality Improvement Organization (QIO) later overrules the physician.

Response: We appreciate the commenters' support for our clarification and for the existing policy that certification and recertification are based upon the clinical judgment of the physician. We again note the response we gave to the same question in the CY 2011 HH PPS final rule. We wrote ''If a patient appeals a pending discharge to the QIO, the QIO decision is binding; a hospice could not discharge a patient as ineligible if the QIO deems that patient to be eligible. The provider is required to continue to provide services for the patient. In the QIO response, the QIO should advise the provider as to why it disagrees with the hospice, which should help the provider to re-evaluate the discharge decision. If at another point in time the hospice feels that the patient is no longer hospice eligible, the provider should give timely notice to the patient of its decision to discharge. The patient could again appeal to the QIO, and the hospice and patient would await a new determination from the QIO based on the situation at that time'' (75 FR 70448).

2. Definition of Hospice Employee

As noted above, in section II.H of the November 17, 2010 CY 2011 HH PPS Final Rule, we implemented new requirements for a hospice face-to-face encounter, which were mandated by the Affordable Care Act. As part of that implementation, we required that a hospice physician or nurse practitioner must perform the face-to-face encounters. Several commenters asked us to clarify who is considered a ''hospice physician or nurse practitioner'' (see 75 FR 70443–70445). We stated that a hospice physician or nurse practitioner must be employed by the hospice, and that hospice physicians could also be working under arrangement with the hospice (*i.e.,* contracted). We added that section 42 CFR 418.3 defines a hospice employee as someone who is receiving a W–2 form from the hospice or who is a volunteer. The complete definition of a hospice employee at 42 CFR § 418.3 is as follows: ''Employee means a person who: (1) Works for the hospice and for whom the hospice is required to issue a W–2 form on his or her behalf; (2) if the hospice is a subdivision of an agency or organization, an employee of the agency or organization who is assigned to the hospice; or (3) is a volunteer under the jurisdiction of the hospice.'' We received a number of questions from the industry about the definition of an employee and whether it included personnel who were employed by an agency or organization that has a hospice subdivision and who were assigned to that hospice. In the proposed rule, we clarified that entire definition of employee given at 42 CFR 418.3 (shown above) applies. In this final rule, we continue to clarify that the entire definition of employee given at 42 CFR 418.3 applies. Therefore, if the hospice is a subdivision of an agency or organization, an employee of the agency or organization who is assigned to the hospice is a hospice employee. We received seven comments on this section.

Comment: Several commenters wrote that they appreciated our clarifying that the entire definition of employee given in the existing regulation at 42 CFR 418.3 applies when considering who is a hospice employee. Two commenters sought further clarification. One asked if a hospice that issues W–2s for its direct employees is also part of a commonly controlled health system, could it use NPs employed by that health system and assigned to the hospice to perform face-to-face encounters. Another asked that we clarify further what it means to be ''assigned to a hospice.'' A third commenter felt that the clarification gives a competitive advantage to hospices that are part of a larger system, and noted the shortage of NPs. This commenter added that in rural areas, NPs are often working under contracts with exclusivity rights, which do not permit them to work for others.

Response: We thank commenters for their support of our clarification. An NP employed by a health care system and assigned to the hospice would be considered a direct employee and could perform face-to-face encounters. ''Assigned to the hospice'' means that the health care system has allotted a position for a specific employee to work at that specific hospice. This would be the employee's regular place of employment. An NP can be assigned to more than one hospice, in which case the NP would have more than one regular place of employment.

Our clarification did not change or add to existing policy regarding the definition of an employee, but simply noted the complete definition of employee given at 42 CFR 418.3. Hospices face different operational challenges depending on the specific business model their operators have chosen. We appreciate the difficulties created by a shortage of NPs in some areas; however, we do not have the authority to regulate the contractual provisions of an employer and an employee, and such contractual relationships are, therefore, not within the scope of this rule.

3. Timeframe for Face-to-Face Encounters

In section II.H of the November 17, 2010 CY 2011 HH PPS Final Rule, we also implemented policies related to the timeframe for performing a hospice face-to-face encounter. We cited the statutory language from section 3132 of the Affordable Care Act, which says that on and after January 1, 2011, a hospice physician or nurse practitioner must have a face-to-face encounter with the beneficiary to determine continued eligibility of the beneficiary for hospice care prior to the 180th-day recertification and each subsequent recertification (see 75 FR 70435). We also defined the 180th-day recertification to be the recertification which occurs at the 3rd benefit period (see 75 FR 70436–70437). We implemented a requirement that the face-to-face encounter occur no more than 30 calendar days prior to the 3rd or later benefit periods, to allow hospices flexibility in scheduling the encounter (see 75 FR 70437–70439). We emphasized throughout the final rule that the encounter must occur ''prior to'' the 3rd benefit period recertification, and each subsequent recertification. The regulatory text associated with these changes is found at 42 CFR 418.22(a)(4), and reads, ''As of January 1, 2011, a hospice physician or hospice nurse practitioner must have a face-to-face encounter with each hospice patient, whose total stay across all hospices is anticipated to reach the 3rd benefit period, no more than 30 calendar days prior to the 3rd benefit period recertification, and must have a face-to-face encounter with that patient no more than 30 calendar days prior to every recertification thereafter, to gather clinical findings to determine continued eligibility for hospice care.'' We believe our final policy states clearly that the face-to-face encounter must occur prior to, but no more than 30 calendar days prior to, the 3rd benefit period recertification and each subsequent recertification. However, we are concerned that our regulation text could lead a hospice to believe that the face-to-face encounter could occur in an open-ended fashion after the start of a benefit period in which it is required, and that the limitation on the time-frame was only on how far in advance of the start of the benefit period that the encounter could occur. Our policy, as stated in the final rule, is that a face-to-face encounter is required prior to the 3rd benefit period recertification and each recertification thereafter (75 FR 70454). Therefore, we proposed to revise the regulation text to more clearly

state that the encounter is required ''prior to'' the 3rd benefit period recertification, and each subsequent recertification. As such, we proposed to change the regulatory text to read ''(4) *Face-to-face encounter.* As of January 1, 2011, a hospice physician or hospice nurse practitioner must have a face-to-face encounter with each hospice patient whose total stay across all hospices is anticipated to reach the 3rd benefit period. The face-to-face encounter must occur prior to but no more than 30 calendar days prior to the 3rd benefit period recertification, and every benefit period recertification thereafter, to gather clinical findings to determine continued eligibility for hospice care.'' Based on the comments received, we are implementing this change as proposed. We received 10 comments related to these proposed changes.

Comment: Commenters supported clarification regarding the timing of the face-to-face encounter; however, they asked for more flexibility in the timeframe that CMS mandated. A few commenters urged CMS to consider alternatives to discharging and readmitting patients when a face-to-face encounter is not timely.

Commenters appreciated our effort to incorporate ''exceptional circumstances'' as part of the manual instructions governing the hospice face-to-face requirement. While commenters found these instructions helpful, they urged that we expand the current two-day grace period to seven days for all new 3rd benefit period and later readmissions and include transfer patients. Commenters believed that allowance of only two days is not sufficient and may still result in delayed delivery of needed services. A commenter also said that allowing seven days will avoid delays in admissions without creating staffing burdens where there is a shortage in MD/NPs. Commenters indicated that hospice physicians may have unavoidable circumstances such as becoming ill, taking vacations, and resigning suddenly, which the commenter indicated could potentially leave the hospice in the unforeseeable position of having to discharge a patient because the face-to-face encounter was not completed prior to the start of the benefit period. A commenter believed a seven-day window would allow for emergency patient admissions and address potential staffing issues.

Another commenter recommended that we allow the encounter to occur up to five days after the start of the 3rd or later benefit period in exceptional circumstances, such as in a situation in which a transfer occurs immediately prior to a three-day weekend. Moreover, commenters requested that we include additional circumstances under which the grace period may be allowed, such as for providers in rural and large service areas and those in medically underserved areas. In addition, a commenter indicated that contractors should be instructed to use reasonable discretion when implementing application of ''exceptional circumstances.''

A commenter suggested a statutory change to require that the face-to-face encounter occur every six months instead of every new benefit period. A commenter stated that we should not require a hospice to discharge and readmit the patient if a face-to-face encounter does not occur prior to the 3rd benefit period recertification as it imposes a needless complication on the process, and it is an unnecessary burden on the patient and family for a mistake made by the hospice. The same commenter suggested other alternatives to penalize the hospice for its mistake without causing any problems to the patient. The commenter indicated that prior to the face-to-face requirement, hospices could use occurrence code 77 to represent the non-billable days if certification criteria were not documented in a timely fashion. The commenter asked to allow the use of the billing code subsequent to implementation of the face-to-face requirement. The commenter also suggested that hospices should not be able to submit claims until the certification is complete.

The same commenter stated that the main goal of the face-to-face encounter requirement was to increase hospice accountability; this commenter felt that a financial consequence to the hospice for an untimely face-to-face encounter is a logical and justified way to meet this goal. The commenter stated that in stark contrast, there is no justifiable purpose for an overly strict implementation requirement when actively dying patients need to go through a formal discharge process and re-complete admission paperwork and assessments because of a technical error made by hospice. A commenter suggested that we act to prevent a negative impact on hospice patients and families by recognizing that human error can occur. In addition, the commenter suggested that we limit consequences such that they impact the hospice alone, rather than patients and their families.

A commenter indicated that the existing regulations allow two days after the beginning of the certification period to get a Certification of Terminal Illness signed; therefore, this commenter urged us to permit this two-day extended period for the face-to-face encounter for all 3rd and later benefit periods, not just new admissions.

A commenter suggested that we ''hold harmless'' those who miscalculate the correct date for the recertification when they demonstrate compliance in terms of submitting information.

Response: We thank the commenters for their support of the clarification of the regulation text regarding the timing of the face-to-face encounter. Based on the comments we received, we are finalizing the policy as clarified in the proposed rule.

The remaining comments described in the comment summary are beyond the scope of the clarification which we proposed, including the comment that suggested that we ''hold harmless'' those who miscalculate the correct date for the recertification when they demonstrate compliance in terms of submitting information. However, we will briefly address some of them to ensure that the policy is clear. We appreciate commenters support regarding the manual instructions. We note that the flexibility adopted in the manual instructions applies only to new admissions which occur at the 3rd or later benefit period. We allow this flexibility because we are convinced that in cases where a hospice newly admits a patient who is in the third or later benefit period, a face-to-face encounter prior to the start of the benefit period may not be possible. The manual provides some examples, but these examples are not intended to be all-inclusive. We believe that any additional flexibility would require a statutory change.

We also note that if the face-to-face encounter requirements are not met, the beneficiary is no longer certified as terminally ill, and consequently is not eligible for the Medicare hospice benefit. Therefore, the hospice must discharge the patient from the Medicare hospice benefit because he or she is not considered terminally ill for Medicare purposes. The hospice can re-admit the patient to the Medicare hospice benefit once the required encounter occurs, provided the patient signs a new election form and all other new election criteria are met. If they choose to do so, hospices can provide care to these patients in the interim at the hospice's own expense until eligibility is re-established, but that care must occur outside of the Medicare hospice benefit.

4. Hospice Aide and Homemaker Services

The hospice Conditions of Participation (CoPs) were updated in 2008, after being finalized on June 5, 2008 in the Hospice Conditions of Participation Final Rule (73 FR 32088). Those revised CoPs included changing the term ''home health aide'' to ''hospice aide''. In our FY 2010 Hospice Wage Index Final Rule (74 FR 39384), we updated language in several areas of our regulatory text to use this new terminology, including at 42 CFR 418.202(g). The regulatory text at 42 CFR 418.202(g) describes hospice aide and homemaker services. The last sentence of the regulatory text that was finalized is about homemaker services; however the word ''homemaker'' was inadvertently replaced with ''aide.'' The revised regulatory text also inadvertently deleted the sentence which read ''Aide services must be provided under the supervision of a registered nurse.'' Finally, the title of this section of the regulatory text continues to refer to 42 CFR 418.94 of the CoPs. However, 42 CFR 418.94 no longer exists, and it was updated in the 2008 Hospice CoP Final Rule to 42 CFR 418.76. We propose to correct the regulatory text at 42 CFR 418.202(g) to update the CoP reference to show 42 CFR § 418.76, to add back the sentence about supervision which was deleted, and to correct the last sentence to refer to ''homemakers'' rather than ''aides.'' We received one comment on this section, and are implementing this change as proposed.

Comment: A commenter wrote in support of this change.

Response: We appreciate the commenter's support.

Comment: A commenter had concerns that hospice patients could not fully access occupational therapy services. The commenter asked us to provide education to providers, especially physicians, about the benefits and improved quality of life that occupational therapy services can provide to hospice patients.

Response: We appreciate this comment, but it is outside the scope of this rule.

E. Quality Reporting for Hospices

1. Background and Statutory Authority

The CMS seeks to promote higher quality and more efficient health care for Medicare beneficiaries. Our efforts are furthered by the quality reporting programs coupled with public reporting of that information. Such quality reporting programs exist for various settings such as the Hospital Inpatient Quality Reporting (Hospital IQR) Program. In addition, CMS has implemented quality reporting programs for hospital outpatient services, the Hospital Outpatient Quality Reporting Program (OQR), and for physicians and other eligible professionals, the Physician Quality Reporting System (PQRS). CMS has also implemented quality reporting programs for home health agencies and skilled nursing facilities that are based on conditions of participation, and an end stage renal disease quality improvement program that links payment to performance based on requirements in section 153(c) of the Medicare Improvement for Patients and Providers Act of 2008.

Section 3004 of the Affordable Care Act amends the Act to authorize additional quality reporting programs, including one for hospices. Section 1814(i)(5)(A)(i) of the Act requires that beginning with FY 2014 and each subsequent FY, the Secretary shall reduce the market basket update by two percentage points for any hospice that does not comply with the quality data submission requirements with respect to that fiscal year. Depending on the amount of annual update for a particular year, a reduction of two percentage points may result in the annual market basket update being less than 0.0 percent for a FY and may result in payment rates that are less than payment rates for the preceding FY. Any reduction based on failure to comply with the reporting requirements, as required by section 1814(i)(5)(B) of the Act, would apply only with respect to the particular fiscal year involved. Any such reduction will not be cumulative and will not be taken into account in computing the payment amount for subsequent FYs.

Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. Such data must be submitted in a form and manner, and at a time specified by the Secretary. Any measures selected by the Secretary must have been endorsed by the consensus-based entity which holds a contract regarding performance measurement with the Secretary under section 1890(a) of the Act. This contract is currently held by the National Quality Forum (NQF). However, section 1814(i)(5)(D)(ii) of the Act provides that in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the consensus-based entity, the Secretary may specify a measure(s) that is (are) not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus-based organization identified by the Secretary. Under section 1814(i)(5)(D)(iii) of the Act, the Secretary must not later than October 1, 2012 publish selected measures that will be applicable with respect to FY 2014.

Section 1814(i)(5)(E) of the Act requires the Secretary to establish procedures for making data submitted under the hospice quality reporting program available to the public. The Secretary must ensure that a hospice has the opportunity to review the data that are to be made public with respect to the hospice program prior to such data being made public. The Secretary must report quality measures that relate to hospice care provided by hospices on the CMS Internet Web site.

2. Quality Measures for Hospice Quality Reporting Program for Payment Year FY 2014

a. Considerations in the Selection of the Proposed Quality Measures

In implementing these quality reporting programs, we envision the comprehensive availability and widespread use of health care quality information for informed decision making and quality improvement. We seek to collect data in a manner that balances the need for information related to the full spectrum of quality performance and the need to minimize the burden of data collection and reporting. Our purpose is to help achieve better health care and improve health through the widespread dissemination and use of performance information. We seek to efficiently collect data using valid, reliable and relevant measures of quality and to share the information with organizations that use such performance information as well as with the public.

We also seek to align new Affordable Care Act reporting requirements with current HHS high priority conditions, topics and National Quality Strategy (NQS) goals and to ultimately provide a comprehensive assessment of the quality of health care delivered. The hospice quality reporting program will align with the HHS National Quality Strategy, particularly with the goals of ensuring person and family centered care and promoting effective communication and coordination of care. One fundamental element of hospice care is adherence to patient choice regarding issues such as the desired level of treatment and the location of care. This closely aligns with the HHS NQS goal of ensuring person and family centered care. Another

fundamental element of hospice care is the use of a closely coordinated interdisciplinary team to provide the desired care. This characteristic is closely aligned with the goal of promoting effective communication and coordination of care. Patient/family preferences and coordination of care will be foci of future hospice quality measure selection. Arriving at such a comprehensive set of quality measures that reflect high priority conditions and goals of the HHS NQS will be a multi-year effort.

Other considerations in selecting measures include: alignment with other Medicare and Medicaid quality reporting programs as well as other private sector initiatives; suggestions and input received on measures including, for example, those received during the Listening Session on the Hospice Quality Reporting Program held on November 15, 2010; seeking measures that have a low probability of causing unintended adverse consequences; and considering measures that are feasible (that is, measures that can be technically implemented within the capacity of our infrastructure for data collection, analyses, and calculation of reporting and performance rates as applicable). We also considered the burden to hospices when selecting measures to propose. We considered the January 18, 2011 EO entitled ''Improving Regulation and Regulatory Review'' (E.O. 13563), which instructs federal agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

In our search for measures appropriate for the first year of the Hospice Quality Reporting Program, we considered the results of our environmental scan, literature search, technical expert panel and stakeholder listening sessions that detailed measures developed by multiple stewards. Of particular interest were measures from the National Hospice and Palliative Care Organization (NHPCO), the PEACE (Prepare. Embrace. Attend. Communicate. Empower.) Project conducted by The Carolinas Center for Medical Excellence 2006–2008 and the Assessment Intervention and Measurement (AIM) Project conducted by the New York QIO, IPRO 2009–2010. Measures from these three sources can be viewed at the following Web sites: *http://www.nhpco.org/files/public/Statistics_Research/NHPCO_research_flier.pdf, http://www.thecarolinascenter.org/default.aspx?pageid=46* and *http://www.ipro.org/index/cms-filesystem-action/hospice/1_6.pdf.*

We are investigating expanding our proposed measures to adopt some of these measures in the future. However, evaluation of these measures revealed unique measurement concerns for hospice services generally. Two major issues were identified. First, all of the measures currently available for use in measuring hospice quality of care are retrospective and have to be collected using a chart abstraction approach. This creates a burden for hospice providers. Secondly, there is no standardized vehicle for data collection or centralized structure for hospice quality reporting. We believe these issues limit our options for measure reporting in the first year of the Hospice Quality Reporting Program. Our plans to require additional measure reporting are described below under section 4. ''Additional Measures Under Consideration.''

We considered measures currently endorsed by the NQF that are applicable to hospice care. Of the nine measures listed by the NQF as applicable to care provided at this stage of life, seven address patients who specifically died of cancer and various situations experienced by those patients in their last days of life regardless of whether they were cared for by a hospice. These seven measures do not address the provision of hospice care or the breadth of the hospice patient population. The remaining two NQF endorsed hospice-related measures address the quality of care actually provided by hospices. One of the two hospice appropriate measures relates to pain control and is discussed below under section b. The other hospice appropriate measure, #0208: ''Percentage of family members of all patients enrolled in a hospice program who give satisfactory answers to the survey instrument,'' requires the hospice to administer the Family Evaluation of Hospice Care (FEHC) survey to families of deceased hospice patients. The FEHC survey itself is available to all hospices and contains 54 questions to be returned to the hospice and analyzed/scored in order to produce ratings for the measure. A composite score derived from 17 items on the survey and a global score based on the overall rating question on the survey are included in the measure. Although in the proposed rule we stated that we were uncertain of the number of hospices that currently use this survey or the number that analyze the responses to determine scoring for this NQF endorsed measure, we estimate that one-third of hospices participate in the NHPCO data collection effort (the NHPCO is the developer of the FEHC survey measure). Although we did not propose to include the FEHC survey measure in the 2014 hospice quality reporting program, we are now considering whether to propose to adopt this measure in next year's rule. We are not aware of any other measures applicable to hospice care that have been endorsed or adopted by a consensus organization other than the NQF.

The current Hospice CoPs at 42 CFR 418.58 require that hospices develop, implement, and maintain an effective, ongoing, hospice-wide data-driven quality assessment and performance improvement (QAPI) program and that the hospice maintain documentary evidence of its quality assessment and performance improvement program and be able to demonstrate its operation to us. In addition, hospices must measure, analyze, and track quality indicators, including adverse patient events, and other aspects of performance that enable the hospice to assess processes of care, hospice services, and operations as part of their QAPI Program.

Hospices have been required to have QAPI programs in place since December 2008 in order to comply with the CoPs. As a part of the QAPI regulations, since February 2, 2009, hospices have been required to develop, implement, and evaluate performance improvement projects. The regulations require that:

(1) The number and scope of distinct performance improvement projects conducted annually, based on the needs of the hospice's population and internal organizational needs, reflect the scope, complexity, and past performance of the hospice's services and operations; and

(2) The hospice document what performance improvement projects are being conducted, the reasons for conducting these projects, and the measurable progress achieved on these projects.

Comment: CMS appreciates comments received about the potential use of measures calculated using data from the Family Evaluation of Hospice Care (FEHC) Survey. The FEHC was recognized by commenters as a well-known and widely used instrument and received support from some commenters. However, other commenters raised concerns about the use of the FEHC survey including the burden on providers and the potential for bias during data entry and analysis if the survey is not administered by a third party (rather than hospices themselves).

Response: Measurement of patient/family experience of hospice care is a high priority for CMS. The NQF Web site now contains updated information regarding the endorsed FEHC measure

#0208, which includes a composite score and a global score. Details on the measure can be found at: *http://www.qualityforum.org/MeasureDetails.aspx?actid=0&SubmissionId=456#k=0208&e=1&st=&sd=&s=n&so=a&p=1&mt=&cs=.* We recognize that many (approximately one-third) of all hospices do participate in the NHPCO sponsored data collection and analysis of the FEHC survey. We are also aware of limitations of the FEHC survey, some of which may be addressed in the near future through updates to the survey. Ensuring patient and family centered care continues to be a priority for CMS. Therefore, we are considering this measure for inclusion in next year's rule for data collection beginning October 2012 for the FY 2014 program, or for data collection beginning in January 2013 for the FY 2015 program. We will also consider the comments received in making decisions about future measure development.

b. Quality Measures for the Quality Reporting Program for Hospices

To meet the quality reporting requirements for hospices for the FY 2014 payment determination as set forth in section 1814(i)(5) of the Act, we proposed that hospices report the NQF-endorsed measure that is related to pain management, NQF #0209: The percentage of patients who were uncomfortable because of pain on admission to hospice whose pain was brought to a comfortable level within 48 hours. A primary goal of hospice care is to enable patients to be comfortable and free of pain, so that they may live each day as fully as possible. The provision of pain control to hospice patients is an essential function, a fundamental element of hospice care; therefore, we believe the pain control measure, NQF #0209, is an important and appropriate measure for the hospice quality reporting program.

Additionally, to meet the quality reporting requirements for hospices for the FY 2014 payment determination as set forth in section 1814(i)(5) of the Act, we proposed that hospices also report one structural measure that is not endorsed by NQF. Structural measures assess the characteristics and capacity of the provider to deliver quality health care. The proposed structural measure is: Participation in a Quality Assessment and Performance Improvement (QAPI) Program that Includes at Least Three Quality Indicators Related to Patient Care. We believe that participation in QAPI programs that address at least three indicators related to patient care reflects a commitment not only to assessing the quality of care provided to patients but also to identifying opportunities for improvement that pertain to the care of patients. Examples of domains of indicators related to patient care include providing care in accordance with documented patient and family goals, effective and timely symptom management, care coordination, and patient safety.

Section 1814(i)(5)(D)(ii) of the Act provides that ''[i]n the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible measure has not been endorsed by an entity with a contract under section 1890(a), the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.'' We proposed to adopt this structural measure because we believe it is appropriate for use in evaluating the quality of care provided by hospices. As discussed above, a majority of the NQF-endorsed measures in this category are not hospice-specific or, in the case of the FEHC survey instrument, that measure may be too burdensome for hospices to implement for the FY 2014 payment determination. We are also not aware of any other measures applicable to the hospice setting that have been adopted by another consensus organization. Accordingly, we proposed to adopt the structural measure under the authority in section 1814(i)(5)(D)(ii) of the Act.

We proposed that each hospice submit data on the proposed structural measure, including the description of each of its patient-care focused quality indicators (if applicable) to us by January 31, 2013 on a spreadsheet template to be prepared by us. Specifically, hospice programs would be required to report whether or not they have a QAPI program that addresses at least three indicators related to patient care. In addition, hospices would be required to list all of their patient care indicators. Hospice programs would be evaluated for purposes of the quality reporting program based on whether or not they respond, not on how they respond.

In addition, we proposed a voluntary submission of the proposed structural measure (not for purposes of a payment determination or public reporting), including the description of each of their patient-care focused quality indicators to us by January 31, 2012 on a spreadsheet template to be prepared by us. Voluntary reporting of the structural measure data with specific quality indicators related to patient care to us would allow us to learn what the important patient care quality issues are for hospices and would serve to provide useful information in the design and structure of the quality reporting program. Our intent is to require additional standardized and specific quality measures to be reported by hospices in subsequent years.

The proposed collection and submission of data on the proposed NQF-endorsed measure will be a new requirement for hospices. However, since the development, implementation and maintenance of an effective, ongoing, hospice-wide data driven quality assessment and performance improvement program have been requirements in the Medicare CoPs since 2008, we do not believe that the collection of the proposed structural measure on QAPI indicators would be considered new work. There are numerous data collection tools and quality indicators that are available to hospices through hospice industry associations and private companies. In addition to these options, hospices may choose to use the CMS-sponsored Hospice Assessment Intervention and Measurement (AIM) Project data elements, data dictionary, data collection tool, and quality indicator formulas that are freely available to all hospices, found at *http://www.ipro.org/index/hospice-aim.*

We proposed that hospices report the structural measure by January 2013 and the NQF measure #0209 by April 2013 in order to be used in the FY 2014 payment determination. We are requiring two different reporting dates in order for details on the QAPI data to be useful in rulemaking that would impact FY 2014 and to allow hospices sufficient time to extract, calculate and report the pain measure data collected through December 31, 2012. In addition, we proposed that hospices voluntarily report the structural measure by January 2012 for purposes of program development and design. It is important to note that the Affordable Care Act allows the Secretary until October 1, 2012 to publish the measures required to meet the FY 2014 reporting requirement. As such, we have the opportunity to also consider commenters' suggestions associated with this final rule in FY 2013 hospice rulemaking.

Comment: Most commenters supported use of the NQF#0209 measure overall, and pointed out that many hospices already track this measure, and that it is practical. However, some expressed concerns about complexities with respect to pain management in hospice, about the exclusion of non-verbal patients, and

about whether this measure would require risk adjustment. The commenters stated the need for a quality measure that would take these challenges into consideration, and provides very specific definitions and specifications in how to collect the data needed to calculate the measure. One commenter expressed concern that it is premature to collect an outcome pain management measure and suggested a process measure instead.

Response: We appreciate the positive feedback. We are finalizing our proposal to require that hospices report the NQF-endorsed measure that is related to pain management, NQF #0209: the percentage of patients who were uncomfortable because of pain on admission to hospice whose pain was brought to a comfortable level within 48 hours. The data for this measure are collected at the patient level, but are reported in the aggregate for all patients cared for within the reporting period. The patient's definition of ''comfort'' is used in this measure; there is no set numeric value on a standardized assessment that's used to quantify ''comfort.'' The measure is designed to capture information on each patient's overall experience of pain. The measure is not limited to asking the patient about one specific pain site; rather it is a reflection of the patient's overall experience of pain. There is no assumption that every patient's pain will be managed to a ''comfortable'' level within 48 hours. The measure reflects the opinions of experienced hospice professionals that, in the aggregate, most patients admitted in pain can and should be more comfortable within 48 hours of admission. The measure allows for the fact that some patients will not achieve a comfortable level because of complications like those suggested by commenters. This measure was tested in two studies during its initial development, and it has been collected on a voluntary basis by hospices for many years. We will consider the use of process measures related to pain management and will consider all comments we receive as we continue to evaluate additional measures for use in the hospice quality reporting program.

Comment: We received several comments in support of the requirement that hospices report the structural measure: Participation in a Quality Assessment and Performance Improvement (QAPI) Program that Includes at Least Three Quality Indicators Related to Patient Care. We also received a few comments indicating a need for clarification about this measure for both the voluntary and mandatory reporting periods.

Response: We appreciate the supportive comments. In response to requests for clarification, we note that the description of the proposed measure was accurately described in section II.E.2.b. ''Proposed Quality Measures'' and that the proposed measure was subsequently inaccurately summarized in section II.E.2.d ''Data Submission Requirements.'' We are clarifying that the structural measure is designed to obtain two pieces of information from hospices during both the voluntary reporting period and the mandatory period. Hospices will indicate whether their QAPI program includes at least three patient care related indicators, and will also list all their patient related indicators along with specific information about those indicators. Information requested includes: name and description of indicator, domain of care the indicator addresses, description (not the numeric values) of the numerator and denominator if available, and data source (for example, electronic medical record, paper medical record, adverse events log). Hospices will *not* be asked to report their level of performance on these patient care related indicators at this time. The information being gathered will be used by CMS to ascertain the breadth and content of existing hospice QAPI programs. This stakeholder input will help inform future measure development. Based on the comments we received, we are therefore finalizing our adoption of the structural measure: Participation in a Quality Assessment and Performance Improvement (QAPI) Program that Includes at Least Three Quality Indicators Related to Patient Care. Hospices will be required to submit data on the structural measure, including the description of each of their patient-care focused quality indicators.

Comment: Commenters expressed support of and pledged participation in the voluntary data reporting period. Some commenters questioned how the voluntary data collected about hospices' QAPI programs would be used by CMS, and cautioned that the data would likely not be comprehensive or generalizable. In addition, commenters expressed concerns regarding the need for standardization of patient outcome definitions when soliciting data. Finally, a few commenters urged CMS to make available as soon as possible the standardized voluntary data collection form along with training and education to ensure a smooth process for the voluntary data submission period.

Response: We are finalizing our proposed voluntary submission of the structural measure (not for purposes of a payment determination or public reporting), including the description of each hospice's patient-care focused quality indicators to CMS by January 31, 2012. We acknowledge and appreciate commenters' support of, and their pledging participation in, the voluntary data reporting period. The voluntary data reporting we proposed is designed to obtain specific information about hospice organizations' existing QAPI programs, including specifics about patient care related indicators the hospices monitor as part of their QAPI program. Hospices will be invited to provide us a list of their QAPI indicators along with specific information about each indicator. The information being gathered will be used by us to ascertain the breadth and content of existing hospice QAPI programs. This will help inform future measure development. We recognize that not all hospices will choose to participate in the voluntary data submission, and that information obtained will not necessarily be generalizable. We also recognize that information obtained during the voluntary period will not necessarily be representative of all hospices' QAPI programs.

The data collection form will be made available, along with education in the form of webinars, data dictionary, and other supporting documents, before the voluntary data submission date.

Comment: Commenters supported the use of an electronic spreadsheet as a temporary approach to data submission for the voluntary and mandatory data reporting period, but urged the creation of a more user friendly and less labor intensive approach in the future, including approaches that use data from Electronic Health Records. Commenters also expressed an eagerness to see the data collection template as soon as possible.

Response: We are finalizing our proposal to provide a spreadsheet template to hospices as a temporary means of data submission. To maximize the security of transmission of data from hospices to us, and to reduce data errors and streamline analysis, we are investigating the feasibility of a Web interface for the data collection. The spreadsheet template will be part of this web interface for the data entry. Hospices will be asked to provide identifying information, and then complete a Web based data entry that contains four questions. Hospices would report whether they have a QAPI program that includes at least three patient care related indicators and

hospices would be asked to enter information about all of their patient care related indicators including name of indicator, domain of care, description (not the numeric values) of the numerator and denominator if available, and data source (for example, electronic medical record, paper medical record, adverse events log) using a spreadsheet format. Training for use of this Web based data submission tool will be provided to hospices through webinars and other downloadable materials. A call-in help line will also be established and staffed, should hospices have specific questions requiring immediate assistance. For hospices that cannot complete the Web based data entry, a downloadable data entry form will be available.

c. Proposed Timeline for Data Collection Under the Quality Reporting Program for Hospices

To meet the quality reporting requirements for hospices for the FY 2014 payment determination as set forth in section 1814(i)(5) of the Act, we proposed that the first hospice quality reporting cycle for the proposed NQF-endorsed measure and the proposed structural measure would consist of data collected from October 1, 2012 through December 31, 2012. This timeframe would permit us to determine whether each hospice was eligible to receive the full market basket update for FY 2014 based on a full quarter of data. This also provides sufficient time after the end of the data collection period to accurately determine each hospice's market basket update for FY 2014. We proposed that all subsequent hospice quality reporting cycles be based on the calendar-year basis (for example, January 1, 2013 through December 31, 2013 for determination of the hospice market basket update for each hospice in FY 2015, etc.).

To voluntarily submit the structural measure, we proposed that the hospice voluntary quality reporting cycle would consist of data collected from October 1, 2011 through December 31, 2011. This timeframe would permit us to analyze the data to learn what the important patient care quality issues were for hospices as we enhance the quality reporting program design to require more standardized and specific quality measures to be reported by hospices in subsequent years.

Comment: We received minimal yet supportive comments on the proposed data collection timeframes. One commenter questioned why data would be required so early for the FY 2014 payment determination and requested further clarification.

Response: We are finalizing our proposal that the first hospice quality mandatory reporting cycle for the proposed NQF-endorsed measure and the proposed structural measure consist of data collected from October 1, 2012 through December 31, 2012. We are also finalizing our proposal that all subsequent hospice quality reporting cycles be based on a calendar-year (for example, January 1, 2013 through December 31, 2013 for determination of the hospice market basket update for each hospice in FY 2015, *etc.*). Hospices will report their data for the structural measure by January 2013 and data for NQF #0209 by April 2013 to allow ample time for analysis of data and subsequent impact on hospices' annual payment updates in advance of the start of FY 2014 (10/1/2013–9/30/2014). This timeframe will also be necessary in future years where analysis will be required in advance of any public reporting of data.

We are also finalizing our proposal that the hospice voluntary quality reporting cycle consist of data collected from October 1, 2011 through December 31, 2011.

d. Data Submission Requirements

We generally proposed that hospices submit data in the fiscal year prior to the payment determination. For the fiscal year 2014 payment determination, we proposed that hospices submit data for the proposed NQF-endorsed measure based on the measure specifications for that measure, which can be found at *http://www.qualityforum.org,* no later than April 1, 2013. Data submission for the structural measure would include the hospices' report of (1) Whether they have a QAPI program that addresses at least three indicators related to patient care, and (2) the subject matter of all of their patient care indicators for the period October 1, 2012 through December 31, 2012. Submission of these reports would be required by January 31, 2013.

We proposed that both measures' data be submitted to us on a spreadsheet template to be prepared by us. We would announce operational details with respect to the data submission methods and format for the hospice quality data reporting program using this CMS Web site *http://www.cms.gov/LTCH-IRF-Hospice-Quality-Reporting* by no later than December 31, 2011.

For the voluntary submission, we proposed that hospices submit data for the proposed structural measure based on the spreadsheet template to be prepared by us, no later than January 31, 2012. Voluntary data submission for the structural measure would include the hospices' report of (1) Whether they have a QAPI program that addresses at least three indicators related to patient care, and (2) the subject matter of all of their patient care indicators for the period October 1, 2011 through December 31, 2011. Submission of these reports would be required by January 31, 2012.

Comment: Commenters supported the use of an electronic spreadsheet as a temporary approach to data submission for the voluntary and mandatory data reporting period, but urged the creation of a more user friendly and less labor intensive approach in the future, including approaches that use data from EHRs. Commenters also expressed an eagerness to see the data collection template as soon as possible.

Response: We are finalizing our proposal that hospices submit data in the FY prior to the payment determination. For the FY 2014 payment determination, hospices will be required to submit data for the NQF-endorsed measure no later than April 1, 2013. Data submission for the structural measure will include the hospices' report of (1) Whether they have a QAPI program that addresses at least three indicators related to patient care, and (2) the subject matter of all of their patient care indicators for the period October 1, 2012 through December 31, 2012. Submission of these reports will be required by January 31, 2013.

The proposed rule stated that we would provide a spreadsheet template to hospices as a temporary means of data submission. To maximize the security of transmission of data from hospices to us, and to reduce data errors and streamline analysis, we are investigating the feasibility of a Web interface for the data collection. The spreadsheet template will be part of this Web interface for the data entry. Hospices will be asked to provide identifying information, and then complete a Web based data entry that contains four questions. Hospices would report they have a QAPI program that includes at least three patient care-related indicators and all hospices would be asked to enter information about all of their patient care indicators including name of indicator, domain of care, description (not the numeric values) of the numerator and denominator if available, and data source (for example, electronic medical record, paper medical record, adverse events log) using a spreadsheet format. Training for use of this Web based data submission tool would be provided to hospices through webinars and other downloadable materials. A call-in help line would also be established and

staffed, should hospices have specific questions requiring immediate assistance. For hospices that cannot complete the Web based data entry, a downloadable data entry form would be available. We are finalizing all of these proposals. We would announce further operational details with respect to the data submission methods and format for the mandatory hospice quality data reporting program using the CMS Web site *http://www.cms.gov/LTCH-IRF-Hospice-Quality-Reporting* no later than December 31, 2011 and for the voluntary reporting cycle by November 2011.

3. Public Availability of Data Submitted

Under section 1814(i)(5)(E)of the Act, the Secretary is required to establish procedures for making any quality data submitted by hospices available to the public. Such procedures will ensure that a hospice will have the opportunity to review the data regarding its program before it is made public. In addition, under section 1814(i)(5)(E) of the Act, the Secretary is authorized to report quality measures that relate to services furnished by a hospice on the CMS internet Web site. At the time of the publication of this final rule, no date has been set for public reporting of data. We recognize that public reporting of quality data is a vital component of a robust quality reporting program and are fully committed to developing the necessary systems for public reporting of hospice quality data.

Comment: Commenters supported our development of systems for future public reporting and provided input on that process. Commenters suggested we gain a clear understanding of what is important to consumers when discriminating between providers. A few commenters also urged us to involve broad representation from stakeholders in development of future public reporting. Commenters also indicated that some states already have public reporting, and that where possible, CMS-required reporting should not result in duplication of efforts.

Response: We appreciate comments received indicating support for the development of systems for future public reporting, and willingness to provide input. We are taking into consideration the body of literature related to consumer perceptions of what is important to them during the measure development process. In addition, we are aware of state-based quality reporting initiatives, and plan to take these into consideration as well. Finally, the measure development process used includes a variety of ways in which we obtain stakeholder input, including Listening Sessions, Technical Expert Panels, and public comment periods. Stakeholder input is critical to the process, and we value it highly.

4. Additional Measures Under Consideration

As described above, we are considering expanding the proposed measures to include measures from the National Hospice and Palliative Care Organization (NHPCO), the PEACE Project and the AIM Project. While in this first year, we will build a foundation for quality reporting by requiring hospices to report one NQF-endorsed measure and one structural measure, we seek to achieve a comprehensive set of quality measures to be available for widespread use for informed decision making and quality improvement. We expect to explore and expand the measures in various ways. Future topics under consideration for quality data reporting include patient safety, effective symptom management, patient and family experience of care, and alignment of care with patient preferences. For quality data reporting in FY2014 or FY2015, we are also particularly interested in the development of new measures related to these topics and in the further development of existing measures that can be found on the following Web sites: *http://www.nhpco.org/files/public/Statistics_Research/NHPCO_research_flier.pdf, http://www.thecarolinascenter.org/default.aspx?pageid=46* and *http://www.ipro.org/index/cms-filesystem-action/hospice/1_6.pdf.*

We welcomed comments on whether all, some, any, or none of these measures should be considered for future rulemaking. We also solicited comments on ways by which we can adopt these measures in a standardized way that is not overly burdensome to hospice providers and reflects hospice patient input.

To support the standardized collection and calculation of quality measures specifically focused on hospice services, we believe the required data elements would potentially require a standardized assessment instrument.

We have developed an assessment instrument for the ''Post-Acute Care Payment Reform Demonstration Program,'' as required by section 5008 of the 2005 Deficit Reduction Act. This is a standardized assessment instrument that could be used across all post-acute care sites to measure functional status and other factors during treatment and at discharge from each provider and to test the usefulness of this standardized assessment instrument (now referred to as the Continuity Assessment Record & Evaluation, CARE). We believe such an assessment instrument would be beneficial in supporting the submission of data on quality measures by requiring standardized data with regard to hospice patients, similar to the current MDS 3.0 and OASIS–C that support a variety of quality measures for nursing homes and home health agencies, respectively. The CARE data set used by hospices would require editing to address the unique and specific assessment needs of the hospice patient population. We invited comments on the implementation of a standardized assessment instrument for hospices that would similarly support the calculation of quality measures.

We invited public comment on considering modifications to the CARE data set to capture information specifically relevant to measuring the quality of care and services delivered by hospices such as patient/family preferences and the degree to which those preferences were met for care delivery, symptom management, spiritual needs and other aspects of care pertinent to the hospice patient population. The current version of the CARE data set can be found at *http://www.pacdemo.rti.org.*

Finally, we also solicited comments on ways which we could expand the structural reporting measure to also include hospice performance on each QAPI indicator reported in the performance period.

Comment: We received many comments about the need for future measures to reflect the full range of hospice practice and approach to care. Commenters pointed out that measures need to include domains of care including psychosocial and spiritual to fully reflect hospice quality of care. In addition, commenters indicated that measures needed to reflect patient preference and refusal of treatment. Finally, commenters pointed out that measures needed to be very specific with regard to definitions, and easy to extract from medical records (paper or electronic). We received numerous and detailed comments related to the PEACE, AIM and NHPCO measures, including measures calculated from the collection of data using the Family Evaluation of Hospice Care (FEHC). While commenters were supportive of future measure development, a few commenters cautioned against implementing future measures for which evidence of validity is not fully established.

Response: We appreciate the specific and insightful analyses provided and will carefully consider this input as we continue to develop the hospice quality reporting program. Future measures will be proposed after being selected through our measure development process. This process is designed to prevent implementation of measures without sufficient evidence for use in care settings. We will consider the comments received in making decisions about future measure development.

Comment: Comments were also received about the development of a standardized tool, such as the CARE tool, as an instrument to gather standardized data items. Commenters voiced general support of the idea of developing a data tool specifically for hospice and offered specific ideas on domains of hospice patient care that are missing from the current tool. Some commenters advised against adopting existing tools that were developed for other settings and other commenters offered suggestions for additions to the tool that would make it appropriate for hospice patients.

Response: We appreciate the comments submitted about a future standardized data set for use in hospice. We recognize the tension between the desire for a tool to standardize data elements collected that would enable comparison of hospices ''apples to apples'' and the need for development of evidence for quality measures in certain domains of care. We also recognize that the CARE in its current form would not meet the needs of hospice patients or providers, and that revisions including the addition of care domains and items would be required to make CARE hospice-appropriate.

Comment: We received one comment in response to our request for input about future expansion of the structural measure to include hospice performance on each QAPI indicator. The commenter did not support the expansion of the structural measure in the future, stating that the data would not be usable unless we know the definitions, specifications, and data dictionaries used by each hospice, or would have to standardize the measure. The commenter also was unsure what use the measure would be.

Response: We appreciate the comment received, and understand the limitations of the QAPI program structural measure. We will consider this comment, along with data from the voluntary data collection period to inform future decisions.

III. Provisions of the Final Regulations

For the most part, this final rule incorporates the provisions of the proposed rule without changes. Those provisions of this final rule that differ from the proposed rule are as follows:

- In section II.B, Aggregate Cap Calculation Methodology, we are clarifying that the reopening period is three years (except in cases of fraud, where it is unlimited), in accordance with existing regulations. We are changing proposed regulatory text at 418.309(d)(3) to indicate that adjustment of prior year cap determinations is subject to existing reopening regulations.
- In section II.E, Quality Reporting for Hospices, the proposed rule stated that CMS would provide a spreadsheet template to hospices as a temporary means of data submission. To maximize the security of transmission of data from hospices to CMS, and to reduce data errors and streamline analysis, CMS is investigating the feasibility of a Web interface for the data collection. The spreadsheet template will be part of this Web interface for the data entry. In response to comments, we have also clarified the description of the structural measure which is designed to obtain two pieces of information from hospices during both the voluntary reporting period and the mandatory period. Hospices will indicate whether their QAPI program includes at least three patient care related measures, and will also list all their patient related indicators along with specific information about those indicators. We are finalizing our adoption of this measure.

We are implementing all other provisions in the proposed rule as proposed.

IV. Updates on Issues Not Proposed for FY 2012 Rulemaking

A. Update on Hospice Payment Reform and Value Based Purchasing

Section 3132 of the Affordable Care Act of 2010 (Pub. L. 111–148) authorized the Secretary to collect additional data and information determined appropriate to revise payments for hospice care and for other purposes. The types of data and information described in the Affordable Care Act attempt to capture resource utilization, which can be collected on claims, cost reports, and possibly other mechanisms as we determine to be appropriate. The data collected would be used to revise hospice payment methodology for routine home care rates (in a budget-neutral manner in the first year), no earlier than October 1, 2013. In order to determine the revised hospice payment methodology, we will consult with hospice programs and MedPAC.

According to MedPAC's March 2011 ''Report to Congress: Medicare Payment Policy'' (available at *http://www.medpac.gov/chapters/Mar11_Ch11.pdf*), Medicare expenditures for hospice services exceeded $12 billion in 2009 and the aggregate Medicare margin in 2008 was 5.1 percent. In addition, MedPAC found a 50-percent growth in the number of hospices from 2000 to 2009, of which a majority were for-profit hospices. Finally, MedPAC noted a change in patient case-mix from predominantly cancer diagnoses to non-cancer diagnoses. The growth in Medicare expenditures, margins, and number of new hospices, and the change in patient case-mix, raise concern that the current hospice payment methodology may have created unintended incentives and may not reflect the resource usage associated with the current mix of hospice patients. Over the past several years, MedPAC, the Government Accounting Office, and the Office of Inspector General all recommended that we collect more comprehensive data in order to better assess the utilization of the Medicare hospice benefit. MedPAC has also suggested an alternative payment model that they believe will address the vulnerabilities in the current payment system.

We are in the early stages of reform analysis. We have conducted a literature review, are in the process of conducting initial data analysis, and our contractor convened a technical advisory panel in June of 2011. We are also working in collaboration with the Assistant Secretary of Planning and Evaluation to develop analysis that may be used to inform our reform efforts. We will continue to update stakeholders on our progress.

Section 10326 of the Affordable Care Act directs the Secretary to conduct a pilot program to test a value-based purchasing program for hospices no later than January 1, 2016. As described in section II.E. ''Quality Reporting for Hospices'' above, we finalized two measures for hospices to report to us, with one measure (the QAPI measure) to be reported no later than January 2013 and the other measure (the pain measure) to be reported by April 2013. We believe that these measures are a quality reporting foundation upon which we will expand. Over the course of the next few years, no later than beginning in FY 2015, we expect to require hospices to report an expanded and comprehensive set of quality measures from which we can select for pilot testing a value-based purchasing program. During the FY 2013, FY 2014 and FY 2015 hospice rulemaking, we

plan to iteratively implement the expanded measures, and solicit industry comments regarding analysis and design options for a hospice value-based purchasing pilot which would improve the quality of care while reducing spending. We will also consult with stakeholders in developing the implementation plan, as well as considering the outcomes of any recent demonstration projects related to value based purchasing which we believe might be relevant to the hospice setting. We will provide further information on the progress of our efforts in future rulemaking.

We did not solicit comments on this section, but we received three comments.

Comment: Some commenters noted that the hospice payment system is based upon the benefit as it was in the early 1980's, and that the benefit has changed considerably. While they agree that the payment system needs to be updated, they suggested that we not make piecemeal changes, and that we accumulate the necessary data to overhaul the system. A few commenters wrote that payment reform should not be undertaken without compelling reasons, and that the changes made must reflect the cost of services provided. One commenter urged us to work with a national industry association in reforming the payment system. Commenters suggested that we pilot any payment system changes through a demonstration project, which would help overcome a lack of reliable data to evaluate payment methodologies, would allow for testing to assess the impact of the reformed model on beneficiary access, and would help ensure a smoother transition.

Response: We appreciate the commenters' input, and will consider these suggestions as we move forward with payment reform. We reiterate that the Affordable Care Act calls for us to work with MedPAC and the industry in reforming the payment system.

B. Update on the Redesigned Provider Statistical & Reimbursement Report (PS&R)

In our FY 2011 Hospice Wage Index Notice with Comment Period, we solicited comments on a redesigned PS&R system, which would allow hospices easy access to national hospice utilization data on their Medicare hospice beneficiaries. As described in section II of the proposed rule, some commenters were supportive of the idea, and said they needed access to each beneficiary's full utilization history to better manage their caps and to meet the new face-to-face requirements.

We are moving forward with this project, and expect the redesigned PS&R system to be able to provide complete utilization data needed for calculating hospice caps. We believe that the redesigned PS&R system will provide hospices with a greater ability to monitor their caps by providing readily accessible information on beneficiary utilization. We expect it to be available to hospices before year's end. We encourage all hospices to become familiar with the redesigned PS&R and to use the information it will make available in managing their respective caps. In the future, we may consider requiring hospices to self-report their caps, using PS&R data.

While we did not solicit comments on this section, we received 1 comment.

Comment: A commenter looks forward to the redesigned PS&R, and asked to give input before the newly designed PS&R report is finalized.

Response: We appreciate the commenter's support for the PS&R redesign; the PS&R redesign was undertaken in consultation with contractors, and with input previously solicited from the industry in prior rulemaking (see our FY 2011 Hospice Wage Index Notice with Comment, 75 FR 42950, dated July 22, 2010). We expect more information on the PS&R redesign to be forthcoming, and will keep the industry up-to-date through Open Door Forums, list-serves, and the hospice center webpage (*http://www.cms.gov/center/hospice.asp*).

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995(PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We solicited public comment on each of these issues in the proposed rule.

Quality Measures for the Quality Reporting Program for Hospices

Section 1814(i)(5)(C) of the Act requires that each hospice must submit data to the Secretary on quality measures specified by the Secretary. Such data must be submitted in a form and manner, and at a time specified by the Secretary. Under section 1814(i)(5)(D)(iii) of the Act, the Secretary must not later than October 1, 2012 publish selected measures that will be applicable with respect to FY 2014.

In implementing the Hospice quality reporting program, we seek to collect measure information with as little burden to the providers as possible and which reflects the full spectrum of quality performance. Our purpose in collecting these data is to help achieve better health care and improve health through the widespread dissemination and use of performance information.

A. Structural Measure: Participation in a Quality Assessment Performance Improvement Program That Includes at Least Three Indicators Related to Patient Care

Consistent with this final rule, hospices will voluntarily report to us by January 31, 2012 their participation in a QAPI program that includes the hospices' report of whether they have a QAPI program that addresses at least three indicators related to patient care, and if so, the subject matter of all of their patient care indicators during the time frame October 1 through December 31, 2011. Data submitted for the last quarter of calendar year 2011 shall be voluntary on the part of hospice providers and shall not impact their fiscal year 2014 payment determination.

The information that hospices will be required to report, in both the voluntary and mandatory phases of reporting, consists of stating (1) Whether or not they participate in a QAPI program that includes at least three indicators related to patient care and (2) the subject matter of all of their patient care indicators. Expectations of the QAPI programs are set forth in the Hospice Conditions of Participation (CoPs) at 42 CFR 418.58(a) through 418.58(e). These conditions of participation require that hospices must develop, implement, and maintain an effective, ongoing, hospice-wide, data-driven QAPI program and that the hospice must maintain documentary evidence of its QAPI programs. Hospices have been required to meet all of the standards set forth in 42 CFR 418.58(a) through 418.58(e) as a condition of participation in the Medicare and Medicaid programs since

2008. Therefore, the identification of quality indicators related to patient care will not be considered new or additional work.

Under the quality reporting program, hospices will voluntarily report to us by no later than January 31, 2012, data that would include (1) Whether they have a QAPI program that addresses at least three indicators related to patient care, and (2) the subject matter of all of their patient care indicators during the time frame via a CMS-prepared spreadsheet template. We anticipate that this reporting will take no more than 15 minutes of time to prepare the structural measure report.

Thereafter, each of the 3,531 hospices in the United States will be required to submit this structural measure information to us one time per year. We estimate that it will take approximately 15 minutes to prepare and complete the submission of this structural measure report. Therefore, the estimated number of hours spent by all hospices in the U.S. preparing and submitting such data totals 883 hours. We believe that the compilation and transmission of the data can be completed by data entry personnel. We have estimated a total cost impact of $18,163 to all hospices for the implementation of the hospice structural measure quality reporting program, based on 883 total hours for a billing clerk at $20.57/hour (which includes 30 percent overhead and fringe benefits, using most recent BLS wage data). We have developed an information collection request for OMB review and approval.

B. Outcome Measure: NQF Measure #0209, Percentage of Patients Who Were Uncomfortable Because of Pain on Admission to Hospice Whose Pain Was Brought Under Control Within 48 Hours

At this time, we have not completed development of the information collection instrument that hospices would have to submit in order to comply with the NQF measure #0209 reporting requirements as discussed earlier in this final rule. Because the instrument for the reporting of this measure is still under development, we cannot assign a complete burden estimate at this time. Once the instrument is available, we will publish the required 60-day and 30-day **Federal Register** notices to solicit public comments on the data submission form and to announce the submission of the information collection request to OMB for its review and approval. The data collection of the NQF measure #0209 for the FY 2014 payment determination is for the time period from October 1, 2012 to December 31, 2012.

We did not receive any public comments on this collection of information section.

VI. Economic Analyses

A. Regulatory Impact Analysis

1. Introduction

We have examined the impacts of this proposed rule as required by EO 12866 (September 30, 1993, Regulatory Planning and Review), EO 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (September 19, 1980; Pub. L. 96–354) (RFA), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), EO 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated an ''economically'' significant rule, under section 3(f)(1) of EO 12866. However, we have voluntarily prepared a Regulatory Impact Analysis that to the best of our ability presents the costs and benefits of this proposed rule.

2. Statement of Need

This final rule follows 42 CFR 418.306(c) which requires annual publication, in the **Federal Register,** of the hospice wage index based on the most current available CMS hospital wage data, including any changes to the definitions of MSAs. In addition, it implements section 3004 of the Affordable Care Act of 2010, which directs the Secretary to specify quality measures for the hospice program. Lastly, this final rule implements changes to the aggregate cap calculation, to requirements related to physicians who perform face-to-face encounters, and offers several clarifying technical corrections.

3. Overall Impacts

The overall impact of this final rule is an estimated net decrease in Federal payments to hospices of $80 million for FY 2012. We estimated the impact on hospices, as a result of the changes to the FY 2012 hospice wage index and of reducing the BNAF by an additional 15 percent, for a total BNAF reduction of 40 percent (10 percent in FY 2010, 15 percent in FY 2011, and 15 percent in FY 2012). The BNAF reduction is part of a 7-year BNAF phase-out that was finalized in previous rulemaking (74 FR 39384 (August 6, 2009)), and is not a policy change.

As discussed previously, the methodology for computing the hospice wage index was determined through a negotiated rulemaking committee and promulgated in the August 8, 1997 hospice wage index final rule (62 FR 42860). The BNAF, which was promulgated in the August 8, 1997 rule, is being phased out. This rule updates the hospice wage index in accordance with the 2010 Hospice Wage Index final rule, which finalized a 10 percent reduced BNAF for FY 2010 as the first year of a 7-year phase-out of the BNAF, to be followed by an additional 15 percent per year reduction in the BNAF in each of the next six years. Total phase-out will be complete by FY 2016.

4. Detailed Economic Analysis

Column 4 of Table 1 shows the combined effects of the updated wage data (the 2011 pre-floor, pre-reclassified hospital wage index) and of the additional 15 percent reduction in the BNAF (for a total BNAF reduction of 40 percent), comparing estimated payments for FY 2012 to estimated payments for FY 2011. The FY 2011 payments used for comparison have a 25 percent reduced BNAF applied. We estimate that the total hospice payments for FY 2012 will decrease by $80 million as a result of the application of the updated wage data ($+10 million) and the additional 15 percent reduction in the BNAF ($ − 90 million). This estimate does not take into account any inpatient hospital market basket update, which is 3.0 percent for FY 2012. This 3.0 percent does not reflect the provision in the Affordable Care Act which reduces the inpatient hospital market basket update for FY 2012 by 0.1 percentage point, since that reduction does not apply to hospices. The final inpatient hospital market basket update and associated payment rates are communicated through an administrative instruction in the summer. The estimated effect of 3.0 percent inpatient hospital market basket update on payments to hospices is approximately $420 million. Taking into account 3.0 percent inpatient hospital market basket update (+$420 million), in addition to the updated wage data ($+10 million) and the additional 15 percent reduction in the BNAF ($ − 90

million), it is estimated that hospice payments would increase by $340 million in FY 2012 ($420 million + $10 million −$90 million = $340 million). The percent change in estimated payments to hospices due to the combined effects of the updated wage data, the additional 15 percent reduction in the BNAF (for a total BNAF reduction of 40 percent), and the inpatient hospital market basket update of 3.0 percent is reflected in column 5 of the impact table (Table 1).

a. Effects on Hospices

This section discusses the impact of the projected effects of the hospice wage index, including the effects of a 3.0 percent inpatient hospital market basket update for FY 2012 that is communicated separately through an administrative instruction. This final rule continues to use the CBSA-based pre-floor, pre-reclassified hospital wage index as a basis for the hospice wage index and continues to use the same policies for treatment of areas (rural and urban) without hospital wage data. The final FY 2012 hospice wage index is based upon the 2011 pre-floor, pre-reclassified hospital wage index and the most complete claims data available (FY 2010) with an additional 15 percent reduction in the BNAF (combined with the 10 percent reduction in the BNAF taken in FY 2010, and the additional 15 percent taken in 2011, for a total BNAF reduction of 40 percent in FY 2012). The BNAF reduction is part of a 7-year BNAF phase-out that was finalized in previous rulemaking, and is not a policy change.

For the purposes of our impacts, our baseline is estimated FY 2011 payments with a 25 percent BNAF reduction, using the 2010 pre-floor, pre-reclassified hospital wage index. Our first comparison (column 3, Table 1) compares our baseline to estimated FY 2012 payments (holding payment rates constant) using the updated wage data (2011 pre-floor, pre-reclassified hospital wage index). Consequently, the estimated effects illustrated in column 3 of Table 1 show the distributional effects of the updated wage data only. The effects of using the updated wage data combined with the additional 15 percent reduction in the BNAF are illustrated in column 4 of Table 1.

We have included a comparison of the combined effects of the additional 15 percent BNAF reduction, the updated wage data, and a 3.0 percent inpatient hospital market basket update for FY 2012 (Table 1, column 5). Presenting these data gives the hospice industry a more complete picture of the effects on their total revenue of the hospice wage index discussed in this proposed rule, the BNAF phase-out, and the final FY 2012 inpatient hospital market basket update. Certain events may limit the scope or accuracy of our impact analysis, because such an analysis is susceptible to forecasting errors due to other changes in the forecasted impact time period. The nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon hospices.

TABLE 1—ANTICIPATED IMPACT ON MEDICARE HOSPICE PAYMENTS OF UPDATING THE PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX DATA, REDUCING THE BUDGET NEUTRALITY ADJUSTMENT FACTOR (BNAF) BY AN ADDITIONAL 15 PERCENT (FOR A TOTAL BNAF REDUCTION OF 40 PERCENT) AND APPLYING A 3.0 PERCENT† INPATIENT HOSPITAL MARKET BASKET UPDATE TO THE FY 2012 HOSPICE WAGE INDEX, COMPARED TO THE FY 2011 HOSPICE WAGE INDEX WITH A 25 PERCENT BNAF REDUCTION

	Number of hospices*	Number of routine home care days in thousands	Percent change in hospice payments due to FY 2012 wage index change	Percent change in hospice payments due to wage index change, additional 15% reduction in BNAF	Percent change in hospice payments due to wage index change, additional 15% reduction in BNAF, and market basket update†
	(1)	(2)	(3)	(4)	(5)
ALL HOSPICES	3,552	79,509	0.1%	(0.5%)	2.5%
URBAN HOSPICES	2,494	69,238	0.1%	(0.5%)	2.5%
RURAL HOSPICES	1,058	10,272	(0.2%)	(0.6%)	2.3%
BY REGION—URBAN:					
NEW ENGLAND	134	2,527	(0.7%)	(1.3%)	1.7%
MIDDLE ATLANTIC	244	7,488	(0.4%)	(0.9%)	2.0%
SOUTH ATLANTIC	359	15,713	0.3%	(0.3%)	2.7%
EAST NORTH CENTRAL	336	10,058	0.2%	(0.4%)	2.6%
EAST SOUTH CENTRAL	177	4,456	(0.1%)	(0.6%)	2.4%
WEST NORTH CENTRAL	189	4,482	(0.3%)	(0.9%)	2.1%
WEST SOUTH CENTRAL	485	9,249	0.1%	(0.4%)	2.6%
MOUNTAIN	234	5,818	(0.0%)	(0.6%)	2.4%
PACIFIC	299	8,070	0.6%	(0.0%)	3.0%
OUTLYING	37	1,377	(0.4%)	(0.4%)	2.6%
BY REGION—RURAL:					
NEW ENGLAND	26	200	(0.1%)	(0.7%)	2.3%
MIDDLE ATLANTIC	45	517	0.4%	(0.2%)	2.8%
SOUTH ATLANTIC	139	2,176	(0.8%)	(1.2%)	1.8%
EAST NORTH CENTRAL	147	1,779	(0.6%)	(1.1%)	1.8%
EAST SOUTH CENTRAL	154	1,794	0.1%	(0.1%)	2.9%
WEST NORTH CENTRAL	196	1,122	(0.5%)	(0.9%)	2.0%
WEST SOUTH CENTRAL	189	1,574	0.8%	0.3%	3.3%
MOUNTAIN	109	648	0.3%	(0.1%)	2.9%
PACIFIC	52	450	(0.7%)	(1.3%)	1.6%
OUTLYING	1	13	0.0%	0.0%	3.0%

TABLE 1—ANTICIPATED IMPACT ON MEDICARE HOSPICE PAYMENTS OF UPDATING THE PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX DATA, REDUCING THE BUDGET NEUTRALITY ADJUSTMENT FACTOR (BNAF) BY AN ADDITIONAL 15 PERCENT (FOR A TOTAL BNAF REDUCTION OF 40 PERCENT) AND APPLYING A 3.0 PERCENT† INPATIENT HOSPITAL MARKET BASKET UPDATE TO THE FY 2012 HOSPICE WAGE INDEX, COMPARED TO THE FY 2011 HOSPICE WAGE INDEX WITH A 25 PERCENT BNAF REDUCTION—Continued

	Number of hospices * (1)	Number of routine home care days in thousands (2)	Percent change in hospice payments due to FY 2012 wage index change (3)	Percent change in hospice payments due to wage index change, additional 15% reduction in BNAF (4)	Percent change in hospice payments due to wage index change, additional 15% reduction in BNAF, and market basket update† (5)
BY SIZE/DAYS:					
0–3,499 DAYS (small)	649	1,083	(0.0%)	(0.5%)	2.4%
3,500–19,999 DAYS (medium)	1,767	17,897	(0.1%)	(0.6%)	2.4%
20,000+ DAYS (large)	1,136	60,530	0.1%	(0.5%)	2.5%
TYPE OF OWNERSHIP:					
VOLUNTARY	1,170	31,470	0.0%	(0.5%)	2.5%
PROPRIETARY	1,895	40,587	0.1%	(0.4%)	2.6%
GOVERNMENT **	487	7,452	(0.1%)	(0.7%)	2.3%
HOSPICE BASE:					
FREESTANDING HOME HEALTH	2,448	62,588	0.1%	(0.5%)	2.5%
AGENCY	571	10,441	0.1%	(0.5%)	2.5%
HOSPITAL	513	6,274	(0.1%)	(0.6%)	2.3%
SKILLED NURSING FACILITY	20	206	0.3%	(0.3%)	2.7%

BNAF = Budget Neutrality Adjustment Factor. Comparison is to FY 2011 data with a 25 percent BNAF reduction.

* OSCAR data as of January 6, 2011 for hospices with claims filed in FY 2010.

** In previous years, there was also a category labeled ''Other''; these were Other Government hospices, and have been combined with the ''Government'' category.

† The 3.0 percent inpatient hospital market basket update for FY 2012 does not reflect the provision in the Affordable Care Act which reduces the inpatient hospital market basket update by 0.1 percentage point since that reduction does not apply to hospices.

Region Key:

New England = Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont; Middle Atlantic = Pennsylvania, New Jersey, New York; South Atlantic = Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia; East North Central = Illinois, Indiana, Michigan, Ohio, Wisconsin; East South Central = Alabama, Kentucky, Mississippi, Tennessee; West North Central = Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota; West South Central = Arkansas, Louisiana, Oklahoma, Texas; Mountain = Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming; Pacific = Alaska, California, Hawaii, Oregon, Washington; Outlying = Guam, Puerto Rico, Virgin Islands.

Table 1 shows the results of our analysis. In column 1, we indicate the number of hospices included in our analysis as of January 6, 2011 which had also filed claims in FY 2010. In column 2, we indicate the number of routine home care days that were included in our analysis, although the analysis was performed on all types of hospice care. Columns 3, 4, and 5 compare FY 2012 estimated payments with those estimated for FY 2011. The estimated FY 2011 payments incorporate a BNAF which has been reduced by 25 percent. Column 3 shows the percentage change in estimated Medicare payments for FY 2012 due to the effects of the updated wage data only, compared with estimated FY 2011 payments. The effect of the updated wage data can vary from region to region depending on the fluctuations in the wage index values of the pre-floor, pre-reclassified hospital wage index. Column 4 shows the percentage change in estimated hospice payments from FY 2011 to FY 2012 due to the combined effects of using the updated wage data and reducing the BNAF by an additional 15 percent. Column 5 shows the percentage change in estimated hospice payments from FY 2011 to FY 2012 due to the combined effects of using updated wage data, an additional 15 percent BNAF reduction, and a 3.0 percent inpatient hospital market basket update.

Table 1 also categorizes hospices by various geographic and hospice characteristics. The first row of data displays the aggregate result of the impact for all Medicare-certified hospices. The second and third rows of the table categorize hospices according to their geographic location (urban and rural). Our analysis indicated that there are 2,494 hospices located in urban areas and 1,058 hospices located in rural areas. The next two row groupings in the table indicate the number of hospices by census region, also broken down by urban and rural hospices. The next grouping shows the impact on hospices based on the size of the hospice's program. We determined that the majority of hospice payments are made at the routine home care rate. Therefore, we based the size of each individual hospice's program on the number of routine home care days provided in FY 2009. The next grouping shows the impact on hospices by type of ownership. The final grouping shows the impact on hospices defined by whether they are provider-based or freestanding.

As indicated in Table 1, there are 3,552 hospices. Approximately 47 percent of Medicare-certified hospices are identified as voluntary (non-profit) or government agencies. Because the National Hospice and Palliative Care Organization estimates that approximately 83 percent of hospice patients in 2009 were Medicare beneficiaries, we have not considered

other sources of revenue in this analysis.

As stated previously, the following discussions are limited to demonstrating trends rather than projected dollars. We used the pre-floor, pre-reclassified hospital wage indexes as well as the most complete claims data available (FY 2010) in developing the impact analysis. The FY 2012 payment rates will be adjusted to reflect the full inpatient hospital market basket update, as required by section 1814(i)(1)(C)(ii)(VII) of the Act. As previously noted, we publish these rates through administrative instructions rather than in a proposed rule. The FY 2012 final inpatient hospital market basket update is 3.0 percent. This 3.0 percent does not reflect the provision in the Affordable Care Act which reduces the inpatient hospital market basket update by 0.1 percentage point since that reduction does not apply to hospices. Since the inclusion of the effect of an inpatient hospital market basket increase provides a more complete picture of projected total hospice payments for FY 2012, the last column of Table 1 shows the combined impacts of the updated wage data, the additional 15 percent BNAF reduction, and the 3.0 percent inpatient hospital market basket update. As discussed in the FY 2006 hospice wage index final rule (70 FR 45129), hospice agencies may use multiple hospice wage index values to compute their payments based on potentially different geographic locations. Before January 1, 2008, the location of the beneficiary was used to determine the CBSA for routine and continuous home care, and the location of the hospice agency was used to determine the CBSA for respite and general inpatient care. Beginning January 1, 2008, the hospice wage index CBSA utilized is based on the location of the site of service. As the location of the beneficiary's home and the location of the hospice may vary, there will still be variability in geographic location for an individual hospice. We anticipate that the CBSA of the various sites of service will usually correspond with the CBSA of the geographic location of the hospice, and thus we will continue to use the location of the hospice for our analyses of the impact of the changes to the hospice wage index in this rule. For this analysis, we use payments to the hospice in the aggregate based on the location of the hospice.

The impact of hospice wage index changes has been analyzed according to the type of hospice, geographic location, type of ownership, hospice base, and size. Our analysis shows that most hospices are in urban areas and provide the vast majority of routine home care days. Most hospices are medium-sized followed by large hospices. Hospices are almost equal in numbers by ownership with 1,657 designated as non-profit or government hospices and 1,895 as proprietary. The vast majority of hospices are freestanding.

b. Hospice Size

Under the Medicare hospice benefit, hospices can provide four different levels of care days. The majority of the days provided by a hospice are routine home care (RHC) days, representing about 97 percent of the services provided by a hospice. Therefore, the number of RHC days can be used as a proxy for the size of the hospice, that is, the more days of care provided, the larger the hospice. As discussed in the August 4, 2005 final rule, we currently use three size designations to present the impact analyses. The three categories are: (1) Small agencies having 0 to 3,499 RHC days; (2) medium agencies having 3,500 to 19,999 RHC days; and (3) large agencies having 20,000 or more RHC days. The FY 2012 updated wage data without any BNAF reduction are anticipated to decrease payments to medium hospices by 0.1 percent and increase payments to large hospices by 0.1 percent; small hospices are anticipated to be unchanged (column 3); the updated wage data and the additional 15 percent BNAF reduction (for a total BNAF reduction of 40 percent) are anticipated to decrease estimated payments to small and large hospices by 0.5 percent, and to medium hospices by 0.6 percent (column 4); and finally, the updated wage data, the additional 15 percent BNAF reduction (for a total BNAF reduction of 40 percent), and the final 3.0 percent inpatient hospital market basket update are projected to increase estimated payments by 2.4 percent for small and medium hospices, and by 2.5 percent for large hospices (column 5).

c. Geographic Location

Column 3 of Table 1 shows updated wage data without the BNAF reduction. Urban hospices are anticipated to experience an increase of 0.1 percent, while rural hospices are anticipated to experience a decrease of 0.2 percent. Urban hospices can anticipate a decrease in payments in five regions; ranging from 0.7 percent in the New England region to 0.1 percent in the East South Central region. Payments in the Mountain region are estimated to stay stable. Urban hospices are anticipated to see an increase in payments in four regions, ranging from 0.1 percent in the West South Central region to 0.6 percent in the Pacific region.

Column 3 shows estimated percentages for rural hospices. Rural hospices are estimated to see a decrease in payments in five regions, ranging from 0.8 percent in the South Atlantic to 0.1 percent in the New England region. Rural hospices can anticipate an increase in payments in four regions, ranging from 0.1 percent in the East South Central region to 0.8 percent in the West South Central region. There is no anticipated change in payments for Outlying regions due to FY 2012 Wage Index change.

Column 4 shows the combined effect of the updated wage data and the additional 15 percent BNAF reduction on estimated payments, as compared to the FY 2011 estimated payments using a BNAF with a 25 percent reduction. Overall, urban hospices are anticipated to experience a 0.5 percent decrease in payments while rural hospices are anticipated to experience a 0.6 percent decrease in payments. Nine regions in urban areas are estimated to see decreases in payments, ranging from 1.3 percent in the New England region to 0.3 percent in the South Atlantic region. Payments for the Pacific region are estimated to be relatively stable.

Rural hospices are estimated to experience a decrease in payments in eight regions, ranging from 1.3 percent in the Pacific region to 0.1 percent in the East South Central and Mountain regions. While the estimated effect of the additional 15 percent BNAF reduction decreased payments to rural hospices in the West South Central region, hospices in this region are still anticipated to experience an estimated increase in payments of 0.3 percent due to the net effect of the reduced BNAF and the updated wage index data. Payments to rural outlying regions are anticipated to remain relatively stable.

Column 5 shows the combined effects of the updated wage data, the additional 15 percent BNAF reduction, and the final 3.0 percent inpatient hospital market basket update on estimated FY 2012 payments as compared to the estimated FY 2011 payments. Note that the FY 2011 payments had a 25 percent BNAF reduction applied to them. Overall, urban hospices are anticipated to experience a 2.5 percent increase in payments and rural hospices are anticipated to experience a 2.3 percent increase in payments. Urban hospices are anticipated to experience an increase in estimated payments in every region, ranging from 1.7 percent in the New England region to 3.0 percent in the Pacific region. Rural hospices in every region are estimated to see an increase in payments, ranging from 1.6 percent in the Pacific region to 3.3

percent in the West South Central region.

d. Type of Ownership

Column 3 demonstrates the effect of the updated wage data on FY 2012 estimated payments, versus FY 2011 estimated payments. We anticipate that using the updated wage data would decrease estimated payments to government hospices by 0.1 percent and payments to voluntary (non-profit) hospices would remain relatively unchanged. We estimate an increase in payments for proprietary (for-profit) hospices of 0.1 percent.

Column 4 demonstrates the combined effects of the updated wage data and of the additional 15 percent BNAF reduction. Estimated payments to voluntary (non-profit) hospices are anticipated to decrease by 0.5 percent, while government hospices are anticipated to experience a decrease of 0.7 percent. Estimated payments to proprietary (for-profit) hospices are anticipated to decrease by 0.4 percent.

Column 5 shows the combined effects of the updated wage data, the additional 15 percent BNAF reduction (for a total BNAF reduction of 40 percent), and a final 3.0 percent inpatient hospital market basket update on estimated payments, comparing FY 2012 to FY 2011 (using a BNAF with a 25 percent reduction). Estimated FY 2012 payments are anticipated to increase 2.5 percent for voluntary (non-profit), 2.3 percent for government hospices, and 2.6 percent for proprietary (for-profit) hospices.

e. Hospice Base

Column 3 demonstrates the effect of using the updated wage data, comparing estimated payments for FY 2012 to FY 2011. Estimated payments are anticipated to increase by 0.1 percent for freestanding hospices and home health agency based hospices, and 0.3 percent for hospices based out of a skilled nursing facility. Payments to hospital based hospices are estimated to decrease by 0.1 percent.

Column 4 shows the combined effects of the updated wage data and reducing the BNAF by an additional 15 percent, comparing estimated payments for FY 2012 to FY 2011. All hospice facilities are anticipated to experience decrease in payments ranging from 0.3 percent for skilled nursing facility based hospices, to 0.6 percent for hospital based hospices.

Column 5 shows the combined effects of the updated wage data, the additional 15 percent BNAF reduction, and a final 3.0 percent inpatient hospital market basket update on estimated payments, comparing FY 2012 to FY 2011. Estimated payments are anticipated to increase for all hospices, ranging from 2.3 percent for hospital based hospices to 2.7 percent for skilled nursing facility based hospices.

f. Effects on Other Providers

This proposed rule only affects Medicare hospices, and therefore has no effect on other provider types.

g. Effects on the Medicare and Medicaid Programs

This proposed rule only affects Medicare hospices, and therefore has no effect on Medicaid programs. As described previously, estimated Medicare payments to hospices in FY 2012 are anticipated to increase by $10 million due to the update in the wage index data, and to decrease by $90 million due to the additional 15 percent reduction in the BNAF (for a of total 40 percent reduction in the BNAF). However, the final market basket update of 3.0 percent is anticipated to increase Medicare payments by $420 million. Therefore, the total effect on Medicare hospice payments is estimated to be a $340 million increase. Note that the final market basket update and associated FY 2012 payment rates is officially communicated this summer through an administrative instruction.

h. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 2 below, we have prepared an accounting statement showing the classification of the expenditures associated with this final rule. This table provides our best estimate of the decrease in Medicare payments under the hospice benefit as a result of the changes presented in this proposed rule using data for 3,552 hospices in our database.

TABLE 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM FY 2011 TO FY 2012

[In $millions]

Category	Transfers
Annualized Monetized Transfers.	$ − 80.*
From Whom to Whom	Federal Government to Hospices.

*The $80 million estimated reduction in transfers includes the additional 15 percent reduction in the BNAF and the updated wage data. It does not include the final hospital market basket update, which is 3.0 percent for FY 2012. This final 3.0 percent does not reflect the provision in the Affordable Care Act which reduced the hospital market basket update by 0.1 percentage point since that reduction does not apply to hospices.

i. Conclusion

In conclusion, the overall effect of this final rule is estimated to be the $80 million reduction in Federal payments due to the wage index changes (including the additional 15 percent reduction in the BNAF). Furthermore, the Secretary has determined that this will not have a significant impact on a substantial number of small entities, or have a significant effect relative to section 1102(b) of the Act.

B. Regulatory Flexibility Act Analysis

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimate that almost all hospices are small entities as that term is used in the RFA. The great majority of hospitals and most other health care providers and suppliers are small entities by meeting the Small Business Administration (SBA) definition of a small business (having revenues of less than $7.0 million to $34.5 million in any 1 year). While the SBA does not define a size threshold in terms of annual revenues for hospices, it does define one for home health agencies ($13.5 million; see *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=2465b064ba6965cc1fbd2eae60854b11&rgn=div8&view=text&node=13:1.0.1.1.16.1.266.9&idno=13*). For the purposes of this final rule, because the hospice benefit is a home-based benefit, we are applying the SBA definition of ''small'' for home health agencies to hospices; we will use this definition of ''small'' in determining if this final rule has a significant impact on a substantial number of small entities (for example, hospices). Using CY 2009 Medicare hospice data from the Health Care Information System (HCIS), we estimate that 96 percent of hospices

have Medicare revenues below $13.5 million and therefore are considered small entities.

The effects of this rule on hospices are shown in Table 1. Overall, Medicare payments to all hospices would decrease by an estimated 0.5 percent over last year's payments in response to the policies that we are finalizing in this final rule, reflecting the combined effects of the updated wage data and the additional 15 percent reduction in the BNAF. The combined effects of the updated wage data and additional 15 percent reduction in the BNAF on small and large sized hospices (as defined by routine home care days rather than by the SBA definition), is an estimated reduction of 0.5 percent. Medium sized hospices are anticipated to experience an estimated reduction in payments of 0.6 percent as a result of the updated wage data and the additional 15 percent reduction in the BNAF. Furthermore, when examining the distributional effects of the updated wage data combined with the additional 15 percent BNAF reduction, the highest estimated reductions in payments are experienced by the urban New England and rural Pacific areas with each reflecting a 1.3 percent reduction.

HHS's practice in interpreting the RFA is to consider effects economically ''significant'' only if they reach a threshold of 3 to 5 percent or more of total revenue or total costs. As noted above, the combined effect of only the updated wage data and the additional 15 percent reduced BNAF (for a total BNAF reduction of 40 percent) for all hospices is an estimated reduction of 0.5 percent. Furthermore, since HHS's practice in determining ''significant economic impact'' considers either total revenue or total costs, it is necessary for total hospice revenues to include the effect of the market basket update of 3.0 percent. As a result, we consider the combined effect of the updated wage data, the additional 15 percent BNAF reduction, and the final 3.0 percent FY 2012 inpatient hospital market basket update inclusive of the overall impact, thereby reflecting an aggregate increase in estimated hospice payments of 2.5 percent for FY 2012. For small and medium hospices (as defined by routine home care days), the estimated effects on revenue when accounting for the updated wage data, the additional 15 percent BNAF reduction, and the final inpatient hospital market basket update reflect increases in payments of 2.4 percent. Overall average hospice revenue effects will be slightly less than these estimates since according the National Hospice and Palliative Care Organization, about 17 percent of hospice patients are non-Medicare. Therefore, the Secretary has determined that this final rule would not create a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This final rule only affects hospices. Therefore, the Secretary has determined that this final rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

C. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately $136 million. This final rule is not anticipated to have an effect on State, local, or tribal governments, in the aggregate, or on the private sector of $136 million or more.

VII. Federalism Analysis

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of EO 13132, Federalism, and have determined that it would not have an impact on the rights, roles, and responsibilities of State, local, or tribal governments.

List of Subjects in 42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 418—HOSPICE CARE

■ 1. The authority citation for part 418 continues to read as follows:

Authority: Secs 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Eligibility, Election and Duration of Benefits

■ 2. In § 418.22, paragraphs (a)(4) and (b)(4) are revised to read as follows:

§ 418.22 Certification of terminal illness.

(a) * * *

(4) *Face-to-face encounter.* As of January 1, 2011, a hospice physician or hospice nurse practitioner must have a face-to-face encounter with each hospice patient whose total stay across all hospices is anticipated to reach the 3rd benefit period. The face-to-face encounter must occur prior to, but no more than 30 calendar days prior to, the 3rd benefit period recertification, and every benefit period recertification thereafter, to gather clinical findings to determine continued eligibility for hospice care.

(b) * * *

(4) The physician or nurse practitioner who performs the face-to-face encounter with the patient described in paragraph (a)(4) of this section must attest in writing that he or she had a face-to-face encounter with the patient, including the date of that visit. The attestation of the nurse practitioner or a non-certifying hospice physician shall state that the clinical findings of that visit were provided to the certifying physician for use in determining continued eligibility for hospice care.

* * * * *

Subpart F—Covered Services

■ 3. Section 418.202 (g) is revised to read:

§ 418.202 Covered services.

* * * * *

(g) *Home health or hospice aide services furnished by qualified aides as designated in § 418.76 and homemaker services.* Home health aides (also known as hospice aides) may provide personal care services as defined in § 409.45(b) of this chapter. Aides may perform household services to maintain a safe and sanitary environment in areas of the home used by the patient, such as changing bed linens or light cleaning and laundering essential to the comfort and cleanliness of the patient. Aide services must be provided under the general supervision of a registered nurse. Homemaker services may include assistance in maintenance of a safe and healthy environment and services to

enable the individual to carry out the treatment plan.

* * * * *

Subpart G—Payment for Hospice Care

■ 4. In § 418.309, the section heading, introductory text and paragraph (b) are revised, and new paragraphs (c) and (d) are added, to read:

§ 418.309 Hospice aggregate cap.

A hospice's aggregate cap is calculated by multiplying the adjusted cap amount (determined in paragraph (a) of this section) by the number of Medicare beneficiaries, as determined by one of two methodologies for determining the number of Medicare beneficiaries for a given cap year described in paragraphs (b) and (c) of this section:

* * * * *

(b) *Streamlined methodology defined.* A hospice's aggregate cap is calculated by multiplying the adjusted cap amount determined in paragraph (a) of this section by the number of Medicare beneficiaries as determined in paragraphs (b)(1) and (2) of this section. For purposes of the streamlined methodology calculation—

(1) In the case in which a beneficiary received care from only one hospice, the hospice includes in its number of Medicare beneficiaries those Medicare beneficiaries who have not previously been included in the calculation of any hospice cap, and who have filed an election to receive hospice care in accordance with § 418.24 during the period beginning on September 28 (34 days before the beginning of the cap year) and ending on September 27 (35 days before the end of the cap year), using the best data available at the time of the calculation.

(2) In the case in which a beneficiary received care from more than one hospice, each hospice includes in its number of Medicare beneficiaries only that fraction which represents the portion of a patient's total days of care in all hospices and all years that was spent in that hospice in that cap year, using the best data available at the time of the calculation. The aggregate cap calculation for a given cap year may be adjusted after the calculation for that year based on updated data.

(c) *Patient-by-patient proportional methodology defined.* A hospice's aggregate cap is calculated by multiplying the adjusted cap amount determined in paragraph (a) of this section by the number of Medicare beneficiaries as described in paragraphs (c)(1) and (2) of this section. For the purposes of the patient-by-patient proportional methodology—

(1) A hospice includes in its number of Medicare beneficiaries only that fraction which represents the portion of a patient's total days of care in all hospices and all years that was spent in that hospice in that cap year, using the best data available at the time of the calculation. The total number of Medicare beneficiaries for a given hospice's cap year is determined by summing the whole or fractional share of each Medicare beneficiary that received hospice care during the cap year, from that hospice.

(2) The aggregate cap calculation for a given cap year may be adjusted after the calculation for that year based on updated data.

(d) *Application of methodologies.* (1) For cap years ending October 31, 2011 and for prior cap years, a hospice's aggregate cap is calculated using the streamlined methodology described in paragraph (b) of this section, subject to the following:

(i) A hospice that has not received a cap determination for a cap year ending on or before October 31, 2011 as of October 1, 2011, may elect to have its final cap determination for such cap years calculated using the patient-by-patient proportional methodology described in paragraph (c) of this section; or

(ii) A hospice that has filed a timely appeal regarding the methodology used for determining the number of Medicare beneficiaries in its cap calculation for any cap year is deemed to have elected that its cap determination for the challenged year, and all subsequent cap years, be calculated using the patient-by-patient proportional methodology described in paragraph (c) of this section.

(2) For cap years ending October 31, 2012, and all subsequent cap years, a hospice's aggregate cap is calculated using the patient-by-patient proportional methodology described in paragraph (c) of this section, subject to the following:

(i) A hospice that has had its cap calculated using the patient-by-patient proportional methodology for any cap year(s) prior to the 2012 cap year is not eligible to elect the streamlined methodology, and must continue to have the patient-by-patient proportional methodology used to determine the number of Medicare beneficiaries in a given cap year.

(ii) A hospice that is eligible to make a one-time election to have its cap calculated using the streamlined methodology must make that election no later than 60 days after receipt of its 2012 cap determination. A hospice's election to have its cap calculated using the streamlined methodology would remain in effect unless:

(A) The hospice subsequently submits a written election to change the methodology used in its cap determination to the patient-by-patient proportional methodology; or

(B) The hospice appeals the streamlined methodology used to determine the number of Medicare beneficiaries used in the aggregate cap calculation.

(3) If a hospice that elected to have its aggregate cap calculated using the streamlined methodology under paragraph (d)(2)(ii) of this section subsequently elects the patient-by-patient proportional methodology or appeals the streamlined methodology, under paragraph (d)(2)(ii)(A) or (B) of this section, the hospice's aggregate cap determination for that cap year and all subsequent cap years is to be calculated using the patient-by-patient proportional methodology. As such, past cap year determinations may be adjusted to prevent the over-counting of beneficiaries, subject to existing reopening regulations.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 21, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: July 27, 2011.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

Note: The following Addendums will not be published in the Code of Federal Regulations.

ADDENDUM A: FY 2012 Final Wage Index for Urban Areas

CBSA Code	Urban Area[1] (Constituent Counties)	Wage Index[2]
10180	Abilene, TX Callahan County, TX Jones County, TX Taylor County, TX	0.8284
10380	Aguadilla-Isabela-San Sebastián, PR Aguada Municipio, PR Aguadilla Municipio, PR Añasco Municipio, PR Isabela Municipio, PR Lares Municipio, PR Moca Municipio, PR Rincón Municipio, PR San Sebastián Municipio, PR	0.3992
10420	Akron, OH Portage County, OH Summit County, OH	0.9154
10500	Albany, GA Baker County, GA Dougherty County, GA Lee County, GA Terrell County, GA Worth County, GA	0.9354
10580	Albany-Schenectady-Troy, NY Albany County, NY Rensselaer County, NY Saratoga County, NY Schenectady County, NY Schoharie County, NY	0.8957
10740	Albuquerque, NM Bernalillo County, NM Sandoval County, NM Torrance County, NM Valencia County, NM	0.9788
10780	Alexandria, LA Grant Parish, LA Rapides Parish, LA	0.8276
10900	Allentown-Bethlehem-Easton, PA-NJ Warren County, NJ Carbon County, PA Lehigh County, PA Northampton County, PA	0.9517
11020	Altoona, PA Blair County, PA	0.8923
11100	Amarillo, TX Armstrong County, TX Carson County, TX Potter County, TX Randall County, TX	0.8948
11180	Ames, IA Story County, IA	1.0321
11260	Anchorage, AK Anchorage Municipality, AK Matanuska-Susitna Borough, AK	1.2385
11300	Anderson, IN Madison County, IN	0.9515
11340	Anderson, SC Anderson County, SC	0.8997
11460	Ann Arbor, MI Washtenaw County, MI	1.0480
11500	Anniston-Oxford, AL Calhoun County, AL	0.8196
11540	Appleton, WI Calumet County, WI Outagamie County, WI	0.9690
11700	Asheville, NC Buncombe County, NC Haywood County, NC Henderson County, NC Madison County, NC	0.9317
12020	Athens-Clarke County, GA Clarke County, GA Madison County, GA Oconee County, GA Oglethorpe County, GA	0.9999

12060	Atlanta-Sandy Springs-Marietta, GA Barrow County, GA Bartow County, GA Butts County, GA Carroll County, GA Cherokee County, GA Clayton County, GA Cobb County, GA Coweta County, GA Dawson County, GA DeKalb County, GA Douglas County, GA Fayette County, GA Forsyth County, GA Fulton County, GA Gwinnett County, GA Haralson County, GA Heard County, GA Henry County, GA Jasper County, GA Lamar County, GA Meriwether County, GA Newton County, GA Paulding County, GA Pickens County, GA Pike County, GA Rockdale County, GA Spalding County, GA Walton County, GA	0.9885
12100	Atlantic City-Hammonton, NJ Atlantic County, NJ	1.1520
12220	Auburn-Opelika, AL Lee County, AL	0.8000
12260	Augusta-Richmond County, GA-SC Burke County, GA Columbia County, GA McDuffie County, GA Richmond County, GA Aiken County, SC Edgefield County, SC	0.9873
12420	Austin-Round Rock-San Marcos, TX Bastrop County, TX Caldwell County, TX Hays County, TX Travis County, TX Williamson County, TX	0.9848
12540	Bakersfield-Delano, CA Kern County, CA	1.2119
12580	Baltimore-Towson, MD Anne Arundel County, MD Baltimore County, MD Carroll County, MD Harford County, MD Howard County, MD Queen Anne's County, MD Baltimore City, MD	1.0616
12620	Bangor, ME Penobscot County, ME	1.0121
12700	Barnstable Town, MA Barnstable County, MA	1.3274
12940	Baton Rouge, LA Ascension Parish, LA East Baton Rouge Parish, LA East Feliciana Parish, LA Iberville Parish, LA Livingston Parish, LA Pointe Coupee Parish, LA St. Helena Parish, LA West Baton Rouge Parish, LA West Feliciana Parish, LA	0.8885
12980	Battle Creek, MI Calhoun County, MI	0.9995
13020	Bay City, MI Bay County, MI	0.9545
13140	Beaumont-Port Arthur, TX Hardin County, TX Jefferson County, TX Orange County, TX	0.8786
13380	Bellingham, WA Whatcom County, WA	1.1790
13460	Bend, OR Deschutes County, OR	1.1772

13644	Bethesda-Rockville-Frederick, MD Frederick County, MD Montgomery County, MD	1.0895
13740	Billings, MT Carbon County, MT Yellowstone County, MT	0.8979
13780	Binghamton, NY Broome County, NY Tioga County, NY	0.9026
13820	Birmingham-Hoover, AL Bibb County, AL Blount County, AL Chilton County, AL Jefferson County, AL St. Clair County, AL Shelby County, AL Walker County, AL	0.8914
13900	Bismarck, ND Burleigh County, ND Morton County, ND	0.8000
13980	Blacksburg-Christiansburg-Radford, VA Giles County, VA Montgomery County, VA Pulaski County, VA Radford City, VA	0.8606
14020	Bloomington, IN Greene County, IN Monroe County, IN Owen County, IN	0.9305
14060	Bloomington-Normal, IL McLean County, IL	0.9771
14260	Boise City-Nampa, ID Ada County, ID Boise County, ID Canyon County, ID Gem County, ID Owyhee County, ID	0.9599
14484	Boston-Quincy, MA Norfolk County, MA Plymouth County, MA Suffolk County, MA	1.2606
14500	Boulder, CO Boulder County, CO	1.0419
14540	Bowling Green, KY Edmonson County, KY Warren County, KY	0.8971
14740	Bremerton-Silverdale, WA Kitsap County, WA	1.1042
14860	Bridgeport-Stamford-Norwalk, CT Fairfield County, CT	1.2988
15180	Brownsville-Harlingen, TX Cameron County, TX	0.9495
15260	Brunswick, GA Brantley County, GA Glynn County, GA McIntosh County, GA	0.9533
15380	Buffalo-Niagara Falls, NY Erie County, NY Niagara County, NY	0.9865
15500	Burlington, NC Alamance County, NC	0.9175
15540	Burlington-South Burlington, VT Chittenden County, VT Franklin County, VT Grand Isle County, VT	1.0297
15764	Cambridge-Newton-Framingham, MA Middlesex County, MA	1.1646
15804	Camden, NJ Burlington County, NJ Camden County, NJ Gloucester County, NJ	1.0751
15940	Canton-Massillon, OH Carroll County, OH Stark County, OH	0.9057
15980	Cape Coral-Fort Myers, FL Lee County, FL	0.9518
16020	Cape Girardeau-Jackson, MO-IL Alexander County, IL Bollinger County, MO Cape Girardeau County, MO	0.9299
16180	Carson City, NV Carson City, NV	1.0833
16220	Casper, WY Natrona County, WY	0.9994

16300	Cedar Rapids, IA Benton County, IA Jones County, IA Linn County, IA	0.9155
16580	Champaign-Urbana, IL Champaign County, IL Ford County, IL Piatt County, IL	1.0595
16620	Charleston, WV Boone County, WV Clay County, WV Kanawha County, WV Lincoln County, WV Putnam County, WV	0.8173
16700	Charleston-North Charleston-Summerville, SC Berkeley County, SC Charleston County, SC Dorchester County, SC	0.9683
16740	Charlotte-Gastonia-Rock Hill, NC-SC Anson County, NC Cabarrus County, NC Gaston County, NC Mecklenburg County, NC Union County, NC York County, SC	0.9751
16820	Charlottesville, VA Albemarle County, VA Fluvanna County, VA Greene County, VA Nelson County, VA Charlottesville City, VA	0.9670
16860	Chattanooga, TN-GA Catoosa County, GA Dade County, GA Walker County, GA Hamilton County, TN Marion County, TN Sequatchie County, TN	0.9139
16940	Cheyenne, WY Laramie County, WY	0.9722
16974	Chicago-Joliet-Naperville, IL Cook County, IL DeKalb County, IL DuPage County, IL Grundy County, IL Kane County, IL Kendall County, IL McHenry County, IL Will County, IL	1.0965
17020	Chico, CA Butte County, CA	1.1938
17140	Cincinnati-Middletown, OH-KY-IN Dearborn County, IN Franklin County, IN Ohio County, IN Boone County, KY Bracken County, KY Campbell County, KY Gallatin County, KY Grant County, KY Kenton County, KY Pendleton County, KY Brown County, OH Butler County, OH Clermont County, OH Hamilton County, OH Warren County, OH	1.0040
17300	Clarksville, TN-KY Christian County, KY Trigg County, KY Montgomery County, TN Stewart County, TN	0.8165
17420	Cleveland, TN Bradley County, TN Polk County, TN	0.8003
17460	Cleveland-Elyria-Mentor, OH Cuyahoga County, OH Geauga County, OH Lake County, OH Lorain County, OH Medina County, OH	0.9368
17660	Coeur d'Alene, ID Kootenai County, ID	0.9693

17780	College Station-Bryan, TX Brazos County, TX Burleson County, TX Robertson County, TX	0.9925
17820	Colorado Springs, CO El Paso County, CO Teller County, CO	0.9814
17860	Columbia, MO Boone County, MO Howard County, MO	0.8573
17900	Columbia, SC Calhoun County, SC Fairfield County, SC Kershaw County, SC Lexington County, SC Richland County, SC Saluda County, SC	0.9040
17980	Columbus, GA-AL Russell County, AL Chattahoochee County, GA Harris County, GA Marion County, GA Muscogee County, GA	0.9344
18020	Columbus, IN Bartholomew County, IN	0.9766
18140	Columbus, OH Delaware County, OH Fairfield County, OH Franklin County, OH Licking County, OH Madison County, OH Morrow County, OH Pickaway County, OH Union County, OH	1.0498
18580	Corpus Christi, TX Aransas County, TX Nueces County, TX San Patricio County, TX	0.8887
18700	Corvallis, OR Benton County, OR	1.0823
18880	Crestview-Fort Walton Beach-Destin, FL Okaloosa County, FL	0.9153
19060	Cumberland, MD-WV Allegany County, MD Mineral County, WV	0.8474
19124	Dallas-Plano-Irving, TX Collin County, TX Dallas County, TX Delta County, TX Denton County, TX Ellis County, TX Hunt County, TX Kaufman County, TX Rockwall County, TX	1.0207
19140	Dalton, GA Murray County, GA Whitfield County, GA	0.8925
19180	Danville, IL Vermilion County, IL	1.0034
19260	Danville, VA Pittsylvania County, VA Danville City, VA	0.8455
19340	Davenport-Moline-Rock Island, IA-IL Henry County, IL Mercer County, IL Rock Island County, IL Scott County, IA	0.8695
19380	Dayton, OH Greene County, OH Miami County, OH Montgomery County, OH Preble County, OH	0.9461
19460	Decatur, AL Lawrence County, AL Morgan County, AL	0.8000
19500	Decatur, IL Macon County, IL	0.8194
19660	Deltona-Daytona Beach-Ormond Beach, FL Volusia County, FL	0.9043

19740	Denver-Aurora-Broomfield, CO Adams County, CO Arapahoe County, CO Broomfield County, CO Clear Creek County, CO Denver County, CO Douglas County, CO Elbert County, CO Gilpin County, CO Jefferson County, CO Park County, CO	1.1095
19780	Des Moines-West Des Moines, IA Dallas County, IA Guthrie County, IA Madison County, IA Polk County, IA Warren County, IA	0.9959
19804	Detroit-Livonia-Dearborn, MI Wayne County, MI	1.0040
20020	Dothan, AL Geneva County, AL Henry County, AL Houston County, AL	0.8000
20100	Dover, DE Kent County, DE	1.0270
20220	Dubuque, IA Dubuque County, IA	0.9082
20260	Duluth, MN-WI Carlton County, MN St. Louis County, MN Douglas County, WI	1.0936
20500	Durham-Chapel Hill, NC Chatham County, NC Durham County, NC Orange County, NC Person County, NC	1.0004
20740	Eau Claire, WI Chippewa County, WI Eau Claire County, WI	0.9978
20764	Edison-New Brunswick, NJ Middlesex County, NJ Monmouth County, NJ Ocean County, NJ Somerset County, NJ	1.1393
20940	El Centro, CA Imperial County, CA	0.9583
21060	Elizabethtown, KY Hardin County, KY Larue County, KY	0.8746
21140	Elkhart-Goshen, IN Elkhart County, IN	0.9798
21300	Elmira, NY Chemung County, NY	0.8742
21340	El Paso, TX El Paso County, TX	0.8773
21500	Erie, PA Erie County, PA	0.8654
21660	Eugene-Springfield, OR Lane County, OR	1.1784
21780	Evansville, IN-KY Gibson County, IN Posey County, IN Vanderburgh County, IN Warrick County, IN Henderson County, KY Webster County, KY	0.8729
21820	Fairbanks, AK Fairbanks North Star Borough, AK	1.1470
21940	Fajardo, PR Ceiba Municipio, PR Fajardo Municipio, PR Luquillo Municipio, PR	0.4465
22020	Fargo, ND-MN Cass County, ND Clay County, MN	0.8347
22140	Farmington, NM San Juan County, NM	0.9667
22180	Fayetteville, NC Cumberland County, NC Hoke County, NC	0.9651
22220	Fayetteville-Springdale-Rogers, AR-MO Benton County, AR Madison County, AR Washington County, AR McDonald County, MO	0.8919

22380	Flagstaff, AZ Coconino County, AZ	1.2880
22420	Flint, MI Genesee County, MI	1.1900
22500	Florence, SC Darlington County, SC Florence County, SC	0.8542
22520	Florence-Muscle Shoals, AL Colbert County, AL Lauderdale County, AL	0.8430
22540	Fond du Lac, WI Fond du Lac County, WI	0.9547
22660	Fort Collins-Loveland, CO Larimer County, CO	1.0240
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach,FL Broward County, FL	1.0517
22900	Fort Smith, AR-OK Crawford County, AR Franklin County, AR Sebastian County, AR Le Flore County, OK Sequoyah County, OK	0.8000
23060	Fort Wayne, IN Allen County, IN Wells County, IN Whitley County, IN	0.9691
23104	Fort Worth-Arlington, TX Johnson County, TX Parker County, TX Tarrant County, TX Wise County, TX	0.9807
23420	Fresno, CA Fresno County, CA	1.1824
23460	Gadsden, AL Etowah County, AL	0.8000
23540	Gainesville, FL Alachua County, FL Gilchrist County, FL	0.9482
23580	Gainesville, GA Hall County, GA	0.9547
23844	Gary, IN Jasper County, IN Lake County, IN Newton County, IN Porter County, IN	0.9403
24020	Glens Falls, NY Warren County, NY Washington County, NY	0.8806
24140	Goldsboro, NC Wayne County, NC	0.9386
24220	Grand Forks, ND-MN Polk County, MN Grand Forks County, ND	0.8000
24300	Grand Junction, CO Mesa County, CO	1.0196
24340	Grand Rapids-Wyoming, MI Barry County, MI Ionia County, MI Kent County, MI Newaygo County, MI	0.9491
24500	Great Falls, MT Cascade County, MT	0.8580
24540	Greeley, CO Weld County, CO	0.9830
24580	Green Bay, WI Brown County, WI Kewaunee County, WI Oconto County, WI	0.9923
24660	Greensboro-High Point, NC Guilford County, NC Randolph County, NC Rockingham County, NC	0.9194
24780	Greenville, NC Greene County, NC Pitt County, NC	0.9699
24860	Greenville-Mauldin-Easley, SC Greenville County, SC Laurens County, SC Pickens County, SC	0.9983
25020	Guayama, PR Arroyo Municipio, PR Guayama Municipio, PR Patillas Municipio, PR	0.4239

25060	Gulfport-Biloxi, MS Hancock County, MS Harrison County, MS Stone County, MS	0.9189
25180	Hagerstown-Martinsburg, MD-WV Washington County, MD Berkeley County, WV Morgan County, WV	0.9579
25260	Hanford-Corcoran, CA Kings County, CA	1.1599
25420	Harrisburg-Carlisle, PA Cumberland County, PA Dauphin County, PA Perry County, PA	0.9623
25500	Harrisonburg, VA Rockingham County, VA Harrisonburg City, VA	0.9480
25540	Hartford-West Hartford-East Hartford, CT Hartford County, CT Middlesex County, CT Tolland County, CT	1.1311
25620	Hattiesburg, MS Forrest County, MS Lamar County, MS Perry County, MS	0.8000
25860	Hickory-Lenoir-Morganton, NC Alexander County, NC Burke County, NC Caldwell County, NC Catawba County, NC	0.8999
25980	Hinesville-Fort Stewart, GA[3] Liberty County, GA Long County, GA	0.9273
26100	Holland-Grand Haven, MI Ottawa County, MI	0.8935
26180	Honolulu, HI Honolulu County, HI	1.2222
26300	Hot Springs, AR Garland County, AR	0.9473
26380	Houma-Bayou Cane-Thibodaux, LA Lafourche Parish, LA Terrebonne Parish, LA	0.8128
26420	Houston-Sugar Land-Baytown, TX Austin County, TX Brazoria County, TX Chambers County, TX Fort Bend County, TX Galveston County, TX Harris County, TX Liberty County, TX Montgomery County, TX San Jacinto County, TX Waller County, TX	1.0169
26580	Huntington-Ashland, WV-KY-OH Boyd County, KY Greenup County, KY Lawrence County, OH Cabell County, WV Wayne County, WV	0.9268
26620	Huntsville, AL Limestone County, AL Madison County, AL	0.9514
26820	Idaho Falls, ID Bonneville County, ID Jefferson County, ID	1.0003
26900	Indianapolis-Carmel, IN Boone County, IN Brown County, IN Hamilton County, IN Hancock County, IN Hendricks County, IN Johnson County, IN Marion County, IN Morgan County, IN Putnam County, IN Shelby County, IN	1.0012
26980	Iowa City, IA Johnson County, IA Washington County, IA	0.9997
27060	Ithaca, NY Tompkins County, NY	1.0188
27100	Jackson, MI Jackson County, MI	0.9477

27140	Jackson, MS Copiah County, MS Hinds County, MS Madison County, MS Rankin County, MS Simpson County, MS	0.8325
27180	Jackson, TN Chester County, TN Madison County, TN	0.8699
27260	Jacksonville, FL Baker County, FL Clay County, FL Duval County, FL Nassau County, FL St. Johns County, FL	0.9196
27340	Jacksonville, NC Onslow County, NC	0.8081
27500	Janesville, WI Rock County, WI	0.9746
27620	Jefferson City, MO Callaway County, MO Cole County, MO Moniteau County, MO Osage County, MO	0.8731
27740	Johnson City, TN Carter County, TN Unicoi County, TN Washington County, TN	0.8390
27780	Johnstown, PA Cambria County, PA	0.8374
27860	Jonesboro, AR Craighead County, AR Poinsett County, AR	0.8030
27900	Joplin, MO Jasper County, MO Newton County, MO	0.8503
28020	Kalamazoo-Portage, MI Kalamazoo County, MI Van Buren County, MI	1.0654
28100	Kankakee-Bradley, IL Kankakee County, IL	1.0992
28140	Kansas City, MO-KS Franklin County, KS Johnson County, KS Leavenworth County, KS Linn County, KS Miami County, KS Wyandotte County, KS Bates County, MO Caldwell County, MO Cass County, MO Clay County, MO Clinton County, MO Jackson County, MO Lafayette County, MO Platte County, MO Ray County, MO	0.9991
28420	Kennewick-Pasco-Richland, WA Benton County, WA Franklin County, WA	1.0327
28660	Killeen-Temple-Fort Hood, TX Bell County, TX Coryell County, TX Lampasas County, TX	0.9107
28700	Kingsport-Bristol-Bristol, TN-VA Hawkins County, TN Sullivan County, TN Bristol City, VA Scott County, VA Washington County, VA	0.8000
28740	Kingston, NY Ulster County, NY	0.9394
28940	Knoxville, TN Anderson County, TN Blount County, TN Knox County, TN Loudon County, TN Union County, TN	0.8118
29020	Kokomo, IN Howard County, IN Tipton County, IN	0.9451
29100	La Crosse, WI-MN Houston County, MN La Crosse County, WI	1.0148

29140	Lafayette, IN Benton County, IN Carroll County, IN Tippecanoe County, IN	0.9616
29180	Lafayette, LA Lafayette Parish, LA St. Martin Parish, LA	0.8787
29340	Lake Charles, LA Calcasieu Parish, LA Cameron Parish, LA	0.8484
29404	Lake County-Kenosha County, IL-WI Lake County, IL Kenosha County, WI	1.1160
29420	Lake Havasu City - Kingman, AZ Mohave County, AZ	1.0595
29460	Lakeland-Winter Haven, FL Polk County, FL	0.8744
29540	Lancaster, PA Lancaster County, PA	0.9672
29620	Lansing-East Lansing, MI Clinton County, MI Eaton County, MI Ingham County, MI	1.0660
29700	Laredo, TX Webb County, TX	0.8192
29740	Las Cruces, NM Dona Ana County, NM	0.9623
29820	Las Vegas-Paradise, NV Clark County, NV	1.2524
29940	Lawrence, KS Douglas County, KS	0.8833
30020	Lawton, OK Comanche County, OK	0.8576
30140	Lebanon, PA Lebanon County, PA	0.8081
30300	Lewiston, ID-WA Nez Perce County, ID Asotin County, WA	0.9687
30340	Lewiston-Auburn, ME Androscoggin County, ME	0.9216
30460	Lexington-Fayette, KY Bourbon County, KY Clark County, KY Fayette County, KY Jessamine County, KY Scott County, KY Woodford County, KY	0.9127
30620	Lima, OH Allen County, OH	0.9597
30700	Lincoln, NE Lancaster County, NE Seward County, NE	0.9955
30780	Little Rock-North Little Rock-Conway AR Faulkner County, AR Grant County, AR Lonoke County, AR Perry County, AR Pulaski County, AR Saline County, AR	0.8846
30860	Logan, UT-ID Franklin County, ID Cache County, UT	0.9103
30980	Longview, TX Gregg County, TX Rusk County, TX Upshur County, TX	0.8864
31020	Longview, WA Cowlitz County, WA	1.0658
31084	Los Angeles-Long Beach-Glendale, CA Los Angeles County, CA	1.2556
31140	Louisville-Jefferson County, KY-IN Clark County, IN Floyd County, IN Harrison County, IN Washington County, IN Bullitt County, KY Henry County, KY Jefferson County, KY Meade County, KY Nelson County, KY Oldham County, KY Shelby County, KY Spencer County, KY	0.9209

	Trimble County, KY	
31180	Lubbock, TX Crosby County, TX Lubbock County, TX	0.9158
31340	Lynchburg, VA Amherst County, VA Appomattox County, VA Bedford County, VA Campbell County, VA Bedford City, VA Lynchburg City, VA	0.9000
31420	Macon, GA Bibb County, GA Crawford County, GA Jones County, GA Monroe County, GA Twiggs County, GA	0.9526
31460	Madera-Chowchilla, CA Madera County, CA	0.8267
31540	Madison, WI Columbia County, WI Dane County, WI Iowa County, WI	1.1691
31700	Manchester-Nashua, NH Hillsborough County, NH	1.0216
31740	Manhattan, KS Geary County, KS Pottawatomie County, KS Riley County, KS	0.8123
31860	Mankato-North Mankato, MN Blue Earth County, MN Nicollet County, MN	0.9402
31900	Mansfield, OH Richland County, OH	0.9232
32420	Mayagüez, PR Hormigueros Municipio, PR Mayagüez Municipio, PR	0.4186
32580	McAllen-Edinburg-Mission, TX Hidalgo County, TX	0.9148
32780	Medford, OR Jackson County, OR	1.0415
32820	Memphis, TN-MS-AR Crittenden County, AR DeSoto County, MS Marshall County, MS Tate County, MS Tunica County, MS Fayette County, TN Shelby County, TN Tipton County, TN	0.9594
32900	Merced, CA Merced County, CA	1.2793
33124	Miami-Miami Beach-Kendall, FL Miami-Dade County, FL	1.0484
33140	Michigan City-La Porte, IN LaPorte County, IN	0.9803
33260	Midland, TX Midland County, TX	1.0052
33340	Milwaukee-Waukesha-West Allis, WI Milwaukee County, WI Ozaukee County, WI Washington County, WI Waukesha County, WI	1.0541
33460	Minneapolis-St. Paul-Bloomington, MN-WI Anoka County, MN Carver County, MN Chisago County, MN Dakota County, MN Hennepin County, MN Isanti County, MN Ramsey County, MN Scott County, MN Sherburne County, MN Washington County, MN Wright County, MN Pierce County, WI St. Croix County, WI	1.1535
33540	Missoula, MT Missoula County, MT	0.9235
33660	Mobile, AL Mobile County, AL	0.8240
33700	Modesto, CA Stanislaus County, CA	1.2530

33740	Monroe, LA Ouachita Parish, LA Union Parish, LA	0.8274
33780	Monroe, MI Monroe County, MI	0.8989
33860	Montgomery, AL Autauga County, AL Elmore County, AL Lowndes County, AL Montgomery County, AL	0.8739
34060	Morgantown, WV Monongalia County, WV Preston County, WV	0.8423
34100	Morristown, TN Grainger County, TN Hamblen County, TN Jefferson County, TN	0.8000
34580	Mount Vernon-Anacortes, WA Skagit County, WA	1.0727
34620	Muncie, IN Delaware County, IN	0.8494
34740	Muskegon-Norton Shores, MI Muskegon County, MI	1.0154
34820	Myrtle Beach-North Myrtle Beach-Conway, SC Horry County, SC	0.9045
34900	Napa, CA Napa County, CA	1.5117
34940	Naples-Marco Island, FL Collier County, FL	1.0039
34980	Nashville-Davidson--Murfreesboro-Franklin, TN Cannon County, TN Cheatham County, TN Davidson County, TN Dickson County, TN Hickman County, TN Macon County, TN Robertson County, TN Rutherford County, TN Smith County, TN Sumner County, TN Trousdale County, TN Williamson County, TN Wilson County, TN	0.9789
35004	Nassau-Suffolk, NY Nassau County, NY Suffolk County, NY	1.2748
35084	Newark-Union, NJ-PA Essex County, NJ Hunterdon County, NJ Morris County, NJ Sussex County, NJ Union County, NJ Pike County, PA	1.1863
35300	New Haven-Milford, CT New Haven County, CT	1.1920
35380	New Orleans-Metairie-Kenner, LA Jefferson Parish, LA Orleans Parish, LA Plaquemines Parish, LA St. Bernard Parish, LA St. Charles Parish, LA St. John the Baptist Parish, LA St. Tammany Parish, LA	0.9389
35644	New York-White Plains-Wayne, NY-NJ Bergen County, NJ Hudson County, NJ Passaic County, NJ Bronx County, NY Kings County, NY New York County, NY Putnam County, NY Queens County, NY Richmond County, NY Rockland County, NY Westchester County, NY	1.3410
35660	Niles-Benton Harbor, MI Berrien County, MI	0.9184
35840	North Port-Bradenton-Sarasota,FL Manatee County, FL Sarasota County, FL	0.9814
35980	Norwich-New London, CT New London County, CT	1.1609
36084	Oakland-Fremont-Hayward, CA Alameda County, CA Contra Costa County, CA	1.6929
36100	Ocala, FL	0.8766

	Marion County, FL	
36140	Ocean City, NJ Cape May County, NJ	1.1261
36220	Odessa, TX Ector County, TX	0.9768
36260	Ogden-Clearfield, UT Davis County, UT Morgan County, UT Weber County, UT	0.9593
36420	Oklahoma City, OK Canadian County, OK Cleveland County, OK Grady County, OK Lincoln County, OK Logan County, OK McClain County, OK Oklahoma County, OK	0.9189
36500	Olympia, WA Thurston County, WA	1.1665
36540	Omaha-Council Bluffs, NE-IA Harrison County, IA Mills County, IA Pottawattamie County, IA Cass County, NE Douglas County, NE Sarpy County, NE Saunders County, NE Washington County, NE	0.9920
36740	Orlando-Kissimmee-Sanford, FL Lake County, FL Orange County, FL Osceola County, FL Seminole County, FL	0.9485
36780	Oshkosh-Neenah, WI Winnebago County, WI	0.9902
36980	Owensboro, KY Daviess County, KY Hancock County, KY McLean County, KY	0.8664
37100	Oxnard-Thousand Oaks-Ventura, CA Ventura County, CA	1.2812
37340	Palm Bay-Melbourne-Titusville, FL Brevard County, FL	0.9535
37380	Palm Coast, FL Flagler County, FL	0.8700
37460	Panama City-Lynn Haven-Panama City Beach, FL Bay County, FL	0.8234
37620	Parkersburg-Marietta-Vienna, WV-OH Washington County, OH Pleasants County, WV Wirt County, WV Wood County, WV	0.8000
37700	Pascagoula, MS George County, MS Jackson County, MS	0.8591
37764	Peabody, MA Essex County, MA	1.1365
37860	Pensacola-Ferry Pass-Brent, FL Escambia County, FL Santa Rosa County, FL	0.8544
37900	Peoria, IL Marshall County, IL Peoria County, IL Stark County, IL Tazewell County, IL Woodford County, IL	0.9471
37964	Philadelphia, PA Bucks County, PA Chester County, PA Delaware County, PA Montgomery County, PA Philadelphia County, PA	1.1183
38060	Phoenix-Mesa-Glendale, AZ Maricopa County, AZ Pinal County, AZ	1.1016
38220	Pine Bluff, AR Cleveland County, AR Jefferson County, AR Lincoln County, AR	0.8294
38300	Pittsburgh, PA Allegheny County, PA Armstrong County, PA Beaver County, PA Butler County, PA Fayette County, PA Washington County, PA	0.8908

	Westmoreland County, PA	
38340	Pittsfield, MA Berkshire County, MA	1.0736
38540	Pocatello, ID Bannock County, ID Power County, ID	0.9841
38660	Ponce, PR Juana Díaz Municipio, PR Ponce Municipio, PR Villalba Municipio, PR	0.4975
38860	Portland-South Portland-Biddeford, ME Cumberland County, ME Sagadahoc County, ME York County, ME	1.0247
38900	Portland-Vancouver-Hillsboro, OR-WA Clackamas County, OR Columbia County, OR Multnomah County, OR Washington County, OR Yamhill County, OR Clark County, WA Skamania County, WA	1.1879
38940	Port St. Lucie, FL Martin County, FL St. Lucie County, FL	1.1100
39100	Poughkeepsie-Newburgh-Middletown, NY Dutchess County, NY Orange County, NY	1.1753
39140	Prescott, AZ Yavapai County, AZ	1.2664
39300	Providence-New Bedford-Fall River, RI-MA Bristol County, MA Bristol County, RI Kent County, RI Newport County, RI Providence County, RI Washington County, RI	1.1091
39340	Provo-Orem, UT Juab County, UT Utah County, UT	0.9649
39380	Pueblo, CO Pueblo County, CO	0.9028
39460	Punta Gorda, FL Charlotte County, FL	0.9067
39540	Racine, WI Racine County, WI	1.0952
39580	Raleigh-Cary, NC Franklin County, NC Johnston County, NC Wake County, NC	1.0156
39660	Rapid City, SD Meade County, SD Pennington County, SD	1.0809
39740	Reading, PA Berks County, PA	0.9217
39820	Redding, CA Shasta County, CA	1.4631
39900	Reno-Sparks, NV Storey County, NV Washoe County, NV	1.0785
40060	Richmond, VA Amelia County, VA Caroline County, VA Charles City County, VA Chesterfield County, VA Cumberland County, VA Dinwiddie County, VA Goochland County, VA Hanover County, VA Henrico County, VA King and Queen County, VA King William County, VA Louisa County, VA New Kent County, VA Powhatan County, VA Prince George County, VA Sussex County, VA Colonial Heights City, VA Hopewell City, VA Petersburg City, VA Richmond City, VA	1.0001
40140	Riverside-San Bernardino-Ontario, CA Riverside County, CA San Bernardino County, CA	1.1977

40220	Roanoke, VA Botetourt County, VA Craig County, VA Franklin County, VA Roanoke County, VA Roanoke City, VA Salem City, VA	0.9137
40340	Rochester, MN Dodge County, MN Olmsted County, MN Wabasha County, MN	1.1327
40380	Rochester, NY Livingston County, NY Monroe County, NY Ontario County, NY Orleans County, NY Wayne County, NY	0.8897
40420	Rockford, IL Boone County, IL Winnebago County, IL	1.0386
40484	Rockingham County-Strafford County, NH Rockingham County, NH Strafford County, NH	1.0378
40580	Rocky Mount, NC Edgecombe County, NC Nash County, NC	0.9352
40660	Rome, GA Floyd County, GA	0.8939
40900	Sacramento--Arden-Arcade--Roseville, CA El Dorado County, CA Placer County, CA Sacramento County, CA Yolo County, CA	1.4547
40980	Saginaw-Saginaw Township North, MI Saginaw County, MI	0.9035
41060	St. Cloud, MN Benton County, MN Stearns County, MN	1.1430
41100	St. George, UT Washington County, UT	0.9454
41140	St. Joseph, MO-KS Doniphan County, KS Andrew County, MO Buchanan County, MO DeKalb County, MO	1.0664
41180	St. Louis, MO-IL Bond County, IL Calhoun County, IL Clinton County, IL Jersey County, IL Macoupin County, IL Madison County, IL Monroe County, IL St. Clair County, IL Crawford County, MO Franklin County, MO Jefferson County, MO Lincoln County, MO St. Charles County, MO St. Louis County, MO Warren County, MO Washington County, MO St. Louis City, MO	0.9410
41420	Salem, OR Marion County, OR Polk County, OR	1.1524
41500	Salinas, CA Monterey County, CA	1.6237
41540	Salisbury, MD Somerset County, MD Wicomico County, MD	0.9322
41620	Salt Lake City, UT Salt Lake County, UT Summit County, UT Tooele County, UT	0.9592
41660	San Angelo, TX Irion County, TX Tom Green County, TX	0.8595

41700	San Antonio- New Braunfels, TX Atascosa County, TX Bandera County, TX Bexar County, TX Comal County, TX Guadalupe County, TX Kendall County, TX Medina County, TX Wilson County, TX	0.9314
41740	San Diego-Carlsbad-San Marcos, CA San Diego County, CA	1.2400
41780	Sandusky, OH Erie County, OH	0.8991
41884	San Francisco-San Mateo-Redwood City, CA Marin County, CA San Francisco County, CA San Mateo County, CA	1.6286
41900	San Germán-Cabo Rojo, PR Cabo Rojo Municipio, PR Lajas Municipio, PR Sabana Grande Municipio, PR San Germán Municipio, PR	0.5244
41940	San Jose-Sunnyvale-Santa Clara, CA San Benito County, CA Santa Clara County, CA	1.7290
41980	San Juan-Caguas-Guaynabo, PR Aguas Buenas Municipio, PR Aibonito Municipio, PR Arecibo Municipio, PR Barceloneta Municipio, PR Barranquitas Municipio, PR Bayamón Municipio, PR Caguas Municipio, PR Camuy Municipio, PR Canóvanas Municipio, PR Carolina Municipio, PR Cataño Municipio, PR Cayey Municipio, PR Ciales Municipio, PR Cidra Municipio, PR Comerío Municipio, PR Corozal Municipio, PR Dorado Municipio, PR Florida Municipio, PR Guaynabo Municipio, PR Gurabo Municipio, PR Hatillo Municipio, PR Humacao Municipio, PR Juncos Municipio, PR Las Piedras Municipio, PR Loíza Municipio, PR Manatí Municipio, PR Maunabo Municipio, PR Morovis Municipio, PR Naguabo Municipio, PR Naranjito Municipio, PR Orocovis Municipio, PR Quebradillas Municipio, PR Río Grande Municipio, PR San Juan Municipio, PR San Lorenzo Municipio, PR Toa Alta Municipio, PR Toa Baja Municipio, PR Trujillo Alto Municipio, PR Vega Alta Municipio, PR Vega Baja Municipio, PR Yabucoa Municipio, PR	0.4940
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA	1.3369
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA	1.2590
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara County, CA	1.2328
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA	1.7329
42140	Santa Fe, NM Santa Fe County, NM	1.1228
42220	Santa Rosa-Petaluma, CA Sonoma County, CA	1.6711
42340	Savannah, GA Bryan County, GA Chatham County, GA Effingham County, GA	0.9220
42540	Scranton--Wilkes-Barre, PA Lackawanna County, PA Luzerne County, PA	0.8528

	Wyoming County, PA	
42644	Seattle-Bellevue-Everett, WA King County, WA Snohomish County, WA	1.1962
42680	Sebastian-Vero Beach, FL Indian River County, FL	0.9417
43100	Sheboygan, WI Sheboygan County, WI	0.9558
43300	Sherman-Denison, TX Grayson County, TX	0.8570
43340	Shreveport-Bossier City, LA Bossier Parish, LA Caddo Parish, LA De Soto Parish, LA	0.8836
43580	Sioux City, IA-NE-SD Woodbury County, IA Dakota County, NE Dixon County, NE Union County, SD	0.9411
43620	Sioux Falls, SD Lincoln County, SD McCook County, SD Minnehaha County, SD Turner County, SD	0.9626
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN Cass County, MI	1.0298
43900	Spartanburg, SC Spartanburg County, SC	0.9713
44060	Spokane, WA Spokane County, WA	1.0943
44100	Springfield, IL Menard County, IL Sangamon County, IL	0.9451
44140	Springfield, MA Franklin County, MA Hampden County, MA Hampshire County, MA	1.0611
44180	Springfield, MO Christian County, MO Dallas County, MO Greene County, MO Polk County, MO Webster County, MO	0.8665
44220	Springfield, OH Clark County, OH	0.9559
44300	State College, PA Centre County, PA	0.9088
44600	Steubenville-Weirton, OH-WV Jefferson County, OH Brooke County, WV Hancock County, WV	0.8000
44700	Stockton, CA San Joaquin County, CA	1.3089
44940	Sumter, SC Sumter County, SC	0.8136
45060	Syracuse, NY Madison County, NY Onondaga County, NY Oswego County, NY	1.0253
45104	Tacoma, WA Pierce County, WA	1.1742
45220	Tallahassee, FL Gadsden County, FL Jefferson County, FL Leon County, FL Wakulla County, FL	0.9116
45300	Tampa-St. Petersburg-Clearwater, FL Hernando County, FL Hillsborough County, FL Pasco County, FL Pinellas County, FL	0.9372
45460	Terre Haute, IN Clay County, IN Sullivan County, IN Vermillion County, IN Vigo County, IN	0.9529
45500	Texarkana, TX-Texarkana, AR Miller County, AR Bowie County, TX	0.8020

45780	Toledo, OH Fulton County, OH Lucas County, OH Ottawa County, OH Wood County, OH	0.9764
45820	Topeka, KS Jackson County, KS Jefferson County, KS Osage County, KS Shawnee County, KS Wabaunsee County, KS	0.9267
45940	Trenton-Ewing, NJ Mercer County, NJ	1.0507
46060	Tucson, AZ Pima County, AZ	0.9813
46140	Tulsa, OK Creek County, OK Okmulgee County, OK Osage County, OK Pawnee County, OK Rogers County, OK Tulsa County, OK Wagoner County, OK	0.9102
46220	Tuscaloosa, AL Greene County, AL Hale County, AL Tuscaloosa County, AL	0.9154
46340	Tyler, TX Smith County, TX	0.8349
46540	Utica-Rome, NY Herkimer County, NY Oneida County, NY	0.8769
46660	Valdosta, GA Brooks County, GA Echols County, GA Lanier County, GA Lowndes County, GA	0.8220
46700	Vallejo-Fairfield, CA Solano County, CA	1.5456
47020	Victoria, TX Calhoun County, TX Goliad County, TX Victoria County, TX	0.8508
47220	Vineland-Millville-Bridgeton, NJ Cumberland County, NJ	1.0904
47260	Virginia Beach-Norfolk-Newport News, VA-NC Currituck County, NC Gloucester County, VA Isle of Wight County, VA James City County, VA Mathews County, VA Surry County, VA York County, VA Chesapeake City, VA Hampton City, VA Newport News City, VA Norfolk City, VA Poquoson City, VA Portsmouth City, VA Suffolk City, VA Virginia Beach City, VA Williamsburg City, VA	0.9276
47300	Visalia-Porterville, CA Tulare County, CA	1.1116
47380	Waco, TX McLennan County, TX	0.8698
47580	Warner Robins, GA Houston County, GA	0.8310
47644	Warren-Troy-Farmington Hills, MI Lapeer County, MI Livingston County, MI Macomb County, MI Oakland County, MI St. Clair County, MI	0.9987

47894	Washington-Arlington-Alexandria, DC-VA-MD-WV District of Columbia, DC Calvert County, MD Charles County, MD Prince George's County, MD Arlington County, VA Clarke County, VA Fairfax County, VA Fauquier County, VA Loudoun County, VA Prince William County, VA Spotsylvania County, VA Stafford County, VA Warren County, VA Alexandria City, VA Fairfax City, VA Falls Church City, VA Fredericksburg City, VA Manassas City, VA Manassas Park City, VA Jefferson County, WV	1.1100
47940	Waterloo-Cedar Falls, IA Black Hawk County, IA Bremer County, IA Grundy County, IA	0.8759
48140	Wausau, WI Marathon County, WI	0.9899
48300	Wenatchee-East Wenatchee, WA Chelan County, WA Douglas County, WA	0.9953
48424	West Palm Beach-Boca Raton-Boynton Beach, FL Palm Beach County, FL	1.0283
48540	Wheeling, WV-OH Belmont County, OH Marshall County, WV Ohio County, WV	0.7676
48620	Wichita, KS Butler County, KS Harvey County, KS Sedgwick County, KS Sumner County, KS	0.9211
48660	Wichita Falls, TX Archer County, TX Clay County, TX Wichita County, TX	0.9902
48700	Williamsport, PA Lycoming County, PA	0.8000
48864	Wilmington, DE-MD-NJ New Castle County, DE Cecil County, MD Salem County, NJ	1.0952
48900	Wilmington, NC Brunswick County, NC New Hanover County, NC Pender County, NC	0.9526
49020	Winchester, VA-WV Frederick County, VA Winchester City, VA Hampshire County, WV	1.0354
49180	Winston-Salem, NC Davie County, NC Forsyth County, NC Stokes County, NC Yadkin County, NC	0.9253
49340	Worcester, MA Worcester County, MA	1.1399
49420	Yakima, WA Yakima County, WA	1.0421
49500	Yauco, PR Guánica Municipio, PR Guayanilla Municipio, PR Peñuelas Municipio, PR Yauco Municipio, PR	0.4066
49620	York-Hanover, PA York County, PA	1.0334
49660	Youngstown-Warren-Boardman, OH-PA Mahoning County, OH Trumbull County, OH Mercer County, PA	0.8928
49700	Yuba City, CA Sutter County, CA Yuba County, CA	1.1431
49740	Yuma, AZ Yuma County, AZ	0.9609

[1]This column lists each CBSA area name and each county or county equivalent, in the CBSA area. Counties not listed in this Table are considered to be rural areas. Wage index values for rural areas are found in Addendum (B).

[2]Wage index values are based on FY 2007 hospital cost report data before reclassification. These data form the basis for the pre-floor, pre-reclassified hospital wage index. The budget neutrality adjustment factor (BNAF) or the hospital floor is then applied to the pre-floor, pre-reclassified hospital wage index to derive the hospice wage index. Wage index values greater than or equal to 0.8 are subject to a BNAF. The hospice floor calculation is as follows: wage index values below 0.8 are adjusted by the greater of a) the 40 percent reduced BNAF, OR b) 15 percent, subject to a maximum adjusted wage index value of 0.8000.

For the FY 2012 hospice wage index, the BNAF was reduced by a total of 40 percent.

[3]Because there are no hospitals in this CBSA, the wage index value is calculated by taking the average of all other urban CBSAs in Georgia.

ADDENDUM B: FY 2012 Final Wage Index for Rural Areas

State Code	Nonurban Area	Wage Index
1	Alabama	0.8000
2	Alaska	1.3070
3	Arizona	0.9415
4	Arkansas	0.8000
5	California	1.2480
6	Colorado	1.0282
7	Connecticut	1.1519
8	Delaware	1.0100
9	District of Columbia[1]	------
10	Florida	0.8705
11	Georgia	0.8000
12	Hawaii	1.1582
13	Idaho	0.8000
14	Illinois	0.8636
15	Indiana	0.8686
16	Iowa	0.8845
17	Kansas	0.8262
18	Kentucky	0.8105
19	Louisiana	0.8000
20	Maine	0.8890
21	Maryland	0.9498
22	Massachusetts[2]	1.2183
23	Michigan	0.8856
24	Minnesota	0.9356
25	Mississippi	0.8000
26	Missouri	0.8000
27	Montana	0.8816
28	Nebraska	0.9224
29	Nevada	0.9679
30	New Hampshire	1.0566
31	New Jersey[1]	------
32	New Mexico	0.9224
33	New York	0.8473
34	North Carolina	0.8653
35	North Dakota	0.7856
36	Ohio	0.8862
37	Oklahoma	0.8136
38	Oregon	1.0382
39	Pennsylvania	0.8778
40	Puerto Rico[3]	0.4654
41	Rhode Island[1]	------
42	South Carolina	0.8709
43	South Dakota	0.8836
44	Tennessee	0.8163
45	Texas	0.8080
46	Utah	0.8953
47	Vermont	0.9928
48	Virgin Islands	0.8274
49	Virginia	0.8117
50	Washington	1.0542
51	West Virginia	0.8000
52	Wisconsin	0.9509
53	Wyoming	0.9863
65	Guam	0.9949

[1]There are no rural areas in this State or District.

[2]There are no hospitals in the rural areas of Massachusetts, so the wage index value used is the average of the contiguous Counties.

[3]Wage index values are obtained using the methodology described in this final rule.

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Part III

Department of Agriculture

Forest Service

Final Directives for Forest Service Wind Energy Special Use Authorizations, Forest Service Manual 2720, Forest Service Handbooks 2609.13 and 2709.11; Notice

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AC61

Final Directives for Forest Service Wind Energy Special Use Authorizations, Forest Service Manual 2720, Forest Service Handbooks 2609.13 and 2709.11

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of final directives; response to public comment.

SUMMARY: The Forest Service is amending its internal directives for special use authorizations and wildlife monitoring. The amendments provide direction and guidance specific to wind energy projects on National Forest System (NFS) lands. These amendments supplement, rather than supplant or duplicate, existing special use and wildlife directives to address issues specifically associated with siting, processing proposals and applications, and issuing special use permits for wind energy uses. The directives ensure consistent and adequate analyses for evaluating wind energy proposals and applications and issuing wind energy permits. Public comment was considered in development of the final directives, and a response to comments is included in this notice.

DATES: *Effective Date:* These final directives are effective August 4, 2011.

ADDRESSES: The record for these final directives is available for inspection at the office of the Director, Lands Staff, USDA, Forest Service, 4th Floor South, Sidney R. Yates Federal Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (8:30 a.m. to 4 p.m.), Monday through Friday, except holidays. Those wishing to inspect these documents are encouraged to call ahead at (202) 205–1256 to facilitate access to the building.

FOR FURTHER INFORMATION CONTACT: Paul Johnson, Minerals and Geology Management, (703) 605–4793, or Julett Denton, Lands Staff, (202) 205–1256.

SUPPLEMENTARY INFORMATION:

1. Background and Need for the Final Directives

Background

The Forest Service is responsible for managing approximately 193 million acres of NFS lands. To date, the Forest Service has issued over 74,000 special use authorizations on NFS lands covering more than 180 types of uses. Wind energy uses are governed by the Forest Service's special use regulations at 36 CFR part 251, subpart B. Wind energy proposals and applications are currently processed in accordance with 36 CFR 251.54 and direction in Forest Service Manual (FSM) 2726 and Forest Service Handbook (FSH) 2709.11, governing administration of special uses.

The final directives add a new chapter 70, ''Wind Energy Uses,'' to the Special Uses Handbook, FSH 2709.11, and a new chapter 80, ''Monitoring at Wind Energy Sites,'' to the Wildlife Monitoring Handbook, FSH 2609.13. These new chapters supplement, rather than supplant or duplicate, existing special use and wildlife directives. In particular, new chapter 70 provides direction on siting, processing proposals and applications, and issuing permits for wind energy uses. New chapter 80 provides specific guidance on wildlife monitoring at wind energy sites before, during, and after construction. The direction in chapter 70 is similar to the procedures established by the U.S. Department of the Interior, Bureau of Land Management (BLM), for managing wind energy uses on public lands. In addition, the directives make corresponding revisions to FSM 2726, ''Energy Generation and Transmission,'' and FSH 2709.11, chapter 40, ''Special Uses Administration.''

Need for Wind Energy Directives

The emphasis on development of alternative energy sources in the Energy Policy Act of 2005 and increasing industry interest in development of wind energy facilities on NFS lands have prompted the Forest Service to issue directives that address issues specifically associated with siting wind energy uses, processing wind energy proposals and applications, and issuing wind energy permits.

The final wind energy directives provide a consistent framework and terminology for making decisions regarding proposals and applications for wind energy uses. Specifically, the directives provide guidance on siting wind energy turbines, evaluating a variety of resource interests, and addressing issues specifically associated with wind energy in the special use permitting process. These issues include potential effects on scenery, national security, significant cultural resources, and wildlife, especially migratory birds and bats.

2. Public Comments on the Proposed Directives and Agency Responses

The proposed directives were published in the **Federal Register** on September 24, 2007, (72 FR 54233), with a 60-day public comment period. The comment period was extended an additional 60 days to January 23, 2008. The Forest Service received 5,630 comments on the proposed directives. Approximately 5,500 of the comments were form letters, while the remaining letters consisted of original comments or form letters with additional comments. Close to 50 comments were received which could not be specifically tied to any particular topic or section of the proposed directives, but rather expressed general opposition or general support for the proposed directives. The Agency considered all timely received comments in development of the final directives.

Response to General Comments

Comment. One respondent stated that the proposed directives fail to consider the requirements of the Federal Land Policy and Management Act (FLPMA); National Forest Management Act (NFMA); Executive Order (E.O.) 13212, which states increased production and transmission of energy in a safe and environmentally sound manner is essential; and E.O. 13123, which charges each agency to strive to expand the use of renewable energy in its facilities. Another respondent stated that wind energy projects should be treated the same as any other proposed use of Federal lands, that is, they should be subject to applicable law, including FLPMA, NFMA, the Endangered Species Act (ESA), the Migratory Bird Treaty Act (MBTA), the National Historic Preservation Act (NHPA), and thorough programmatic and site-specific analysis and public participation under the National Environmental Policy Act (NEPA).

Response. Wind energy proposals, applications, and authorizations are subject to all applicable Federal law, including NEPA, the ESA, the MBTA, and the NHPA. Wind energy authorizations will be issued under FLPMA, consistent with the applicable land management plan, which is developed pursuant to NFMA. The Agency believes that the proposed and final directives are consistent with E.O. 13212, as they facilitate authorization of wind energy projects in a safe and environmentally sound manner. The Agency does not believe that E.O. 13123 applies to these directives, as it addresses the use of energy in federally owned facilities.

Comment. Several respondents believed that the proposed directives failed to take into account the requirements of the NHPA.

Response. The Agency agrees and has corrected this omission in the final directives by adding direction regarding

the NHPA to sections 70.5, ''Definitions,'' and 72.21e, ''Historic Properties and Cultural Considerations.''

Comment. One respondent stated that the impacts of the proposed directives on treaty rights and trust resources must be considered and analyzed under both NEPA and the NHPA.

Response. Each analysis conducted for a wind energy facility will adhere to applicable Agency NEPA procedures and applicable law, including treaty and reserved rights and the NHPA.

Comment. Several respondents suggested that the Agency revise the phrase ''minimize damage to scenic and aesthetic values'' in 36 CFR part 254, Subpart B, to state that projects must be designed to meet established scenic integrity objectives.

Response. The Agency has not proposed any revisions to the regulations at 36 CFR part 254, subpart B. Therefore, this comment is beyond the scope of these directives and was not considered in development of the final directives.

Decisionmaking Process and Methods

Comment. Several respondents recommended that the Forest Service prepare a programmatic environmental impact statement (PEIS) for wind energy development on NFS lands. These respondents noted that pending completion of the PEIS, individual projects could proceed based on project-specific environmental analysis, such as an environmental assessment (EA) or Environmental Impact Statement (EIS). These respondents further stated that once the PEIS is completed, an EA would be appropriate for most wind energy projects on NFS lands. These respondents believed that in not preparing a PEIS, the Forest Service has not complied with NEPA because the Agency has not analyzed or disclosed the cumulative effects of current Forest Service wind energy proposals.

Response. The Forest Service has chosen not to prepare a PEIS for wind energy development on NFS lands. Given the diversity of NFS lands and their uses, the Forest Service believes it will be more efficient and effective to look at each proposed wind energy site and assess the potential effects of the proposed use as it relates to that site. The Agency does not believe the preparation of a programmatic NEPA document will save time or inform decisionmakers, since it will still be necessary to analyze the site-specific environmental effects at each project site.

NEPA does not require preparation of a PEIS for the Forest Service's wind energy program. Rather, NEPA requires assessment of an agency's proposed actions and the Forest Service believes that wind energy projects should be decided on a site-specific basis for the reasons stated above. The level of analysis required will vary depending on site-specific circumstances. After a wind energy proposal passes screening and is accepted as an application, the Agency will analyze its effects consistent with NEPA. In preparing an EA or EIS, the Agency examines the cumulative effects of the proposal (including past, present, and reasonably foreseeable future actions) on the affected environment, per 36 CFR 220.4(f).

Comment. Multiple respondents noted that the proposed directives minimally reference best management practices (BMPs) and recommended that the Forest Service develop BMPs and standards as part of developing a PEIS on wind energy development. These respondents recommended that the Forest Service review BLM's Wind Energy Development Program and Associated Land Use Plan Amendments, which established policies and BMPs for administration of wind energy projects and minimum requirements for mitigation measures. These respondents stated that Forest Service review of this document would foster a uniform approach to renewable energy production on Federal lands. This respondent further stated that additional stipulations could be developed as needed to address site-specific concerns on the basis of the relevant land management plan, other mitigation guidance, and mitigation measures identified in the PEIS.

One respondent stated that the proposed directives have little in common with BLM's wind energy policy, despite assertions that the Forest Service's directives would closely track BLM's policy, and that BLM's policy should be included in the list of references in FSH 2709.11, section 70.6.

Another respondent stated that the proposed directives, like BLM's PEIS, should require development of detailed BMPs for monitoring and site selection on a State or regional level as soon as possible. Another respondent suggested Forest Service-wide standards and review for all wind energy projects, including meteorological towers (METs) and wind energy facilities, on NFS lands. This respondent further stated that the national standards should be fine-tuned to site-specific conditions, such as wildlife habitat, topography, and climate.

Response. The Agency is familiar with BLM's 2005 wind energy policy and the BMPs and mitigation measures contained in the policy. BLM's wind energy policy was one of the sources used to develop the Forest Service's wind energy directives.

The Forest Service's wind energy directives closely track BLM's wind energy policy. Some provisions in the Forest Service's directives are worded differently to be consistent with Forest Service procedures. Some provisions, such as section 75.12 regarding the need to ascertain the existence of competitive interest, are required by Forest Service regulations (36 CFR 51.58(c)(3)(ii)).

Nothing in the final directives precludes the authorized officer from using additional information contained in BLM's wind energy policy. To clarify this intent, the Agency has added BLM's 2005 wind energy policy to the list of references in section 70.6 in the final directives.

The Forest Service does not believe that it would be efficient or effective for wind energy development on NFS lands to develop programmatic BMPs and standards that would require amendments to Forest Service land management plans.

Comment. Several respondents stated that a programmatic EIS for wind energy development is essential to assess economic effects on community tourism considerations alone.

Response. The Forest Service has chosen a different approach. The Forest Service recognizes the potential value of a programmatic approach for planning purposes, however the opportunity for utility scale renewable energy development projects on the national forest system lands is fairly limited. The Agency believes it is more cost efficient and effective to look at each proposed site individually and assess the potential effects at that particular site and, if appropriate, address the socioeconomic impacts as part of the NEPA process. Once a wind energy application has been accepted, the Agency will analyze the effects of the proposed use in accordance with the Agency's NEPA procedures at 36 CFR part 220 and FSH 1909.15.

To be useful, the NEPA document would need to provide a level of detail that would be the equivalent of a site-specific NEPA document. A programmatic EIS does not provide this level of site specific detail.

Comment. Several respondents noted that significant benefits from a coordinated permit process would be realized if each Regional Forester would appoint a single person or small team to coordinate wind energy projects for all regions and process all wind energy project applications. These respondents

stated that having a single point of contact between the Forest Service and the wind industry would help ensure that best practices are used and applied consistently across the NFS.

Response. For large wind energy projects, the Agency will designate a single point of contact to facilitate coordination. The Agency does not believe it is appropriate to commit to regional processing of wind energy applications, since the regional offices may not have sufficient staff for that purpose. In addition, since the supporting environmental analysis for wind energy applications must be site-specific, it may not make sense to consolidate processing of proposals and applications for wind energy projects.

Comment. One respondent stated that the approach to wind energy projects in the proposed directives was reactive, rather than proactive, in that the Agency would be merely responding case-by-case to each application submitted by commercial wind energy developers. This respondent recommended that the Agency develop national siting criteria for wind energy projects and an inventory of areas in the NFS that may be suitable for wind energy projects. This respondent believed that this approach would eliminate analysis in the permitting process and allow the Agency to direct wind energy proponents to areas most suitable for wind energy projects.

Response. The proposed and final directives establish a comprehensive, orderly approach to siting wind energy facilities, evaluating resource interests, and addressing specific issues associated with wind energy permits. Moreover, the Agency does not believe it is necessary to establish an inventory of areas on NFS lands that may be suitable for wind energy projects because sufficient wind energy information regarding the NFS generally is available from the U.S. Department of Energy's National Renewable Energy Laboratory. This coordination with the U. S. Department of Energy's National Renewable Laboratory simplifies the process in not duplicating efforts and providing consistency in innovation and technologies for setting renewable energy development opportunities.''

Comment. Several respondents suggested that the Agency incorporate into the proposed directives the wind power guidelines produced by the Wind Energy Turbines Guidelines Advisory Committee, which consists of representatives from State and Federal agencies and the wind energy industry.

Response. The Forest Service recognizes that recommendations from the Wind Energy Turbines Guidelines Advisory Committee will be used to revise the 2003 U.S. Fish and Wildlife Service (FWS)'s Interim Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines. However, the Forest Service believes it would not be appropriate to limit the siting of wind turbines to one set of guidelines which specifically address only wildlife impacts from wind turbines. In addition, the final directives do not preclude the Forest Service from using any newly developed Federal guidelines, recommendations, or other relevant scientific publications regarding wind energy projects as they become available.

Comment. One respondent commented that under the ESA and E.O. 13186, the Forest Service has an obligation to consult with FWS and the National Marine Fisheries Service (NMFS) and prepare a biological assessment prior to issuance of any wind energy permits.

Another respondent commented that under Section 7 of the ESA, special use authorizations must be consistent with the applicable land management plan and must be issued only after the Forest Service has consulted with FWS. In those cases where issuance of the authorization may affect a federally listed threatened or endangered species, a comprehensive analysis under NEPA must be completed.

Response. Forest Service policy at FSM 2670 requires the Agency to consult with FWS or NMFS, as applicable, regarding any Forest Service action that may affect any federally listed threatened or endangered species or their critical habitats. Section 72.1 in the final directives directs the authorized officer to clarify expectations for coordination and consultation with FWS and NMFS with a wind energy proponent at the pre-proposal meeting. Consultation and coordination under Section 7 of the ESA should occur concurrently with environmental analysis pursuant to NEPA and should be completed by the time the authorized officer is prepared to issue a NEPA decision document. Sections 73.31, paragraph 2, and 73.4a, paragraph 1, in the final directives address biological evaluations and assessments for purposes of consultation under Section 7 of the ESA. The Forest Service's special use regulations at 36 CFR 251.54(e)(1)(ii) require all proposals, including wind energy proposals, to be consistent with standards and guidelines in the applicable land management plan.

Decisionmaking Philosophy

Comment. One respondent suggested that the Forest Service identify wind energy corridors or zones during development of land management plans. This respondent believed that this approach would allow for public participation in wind energy development on NFS lands at the forest-wide rather than only at the project level, as well as for assessment of the cumulative impacts of multiple wind energy projects on a given national forest.

Response. Land management plans may be amended or revised as appropriate to address opportunities for wind energy development. In addition, the authorized officer may utilize the energy right-of-way corridors on Federal lands in 11 western states identified under Section 368 of the Energy Policy Act of 2005.

The Agency does not believe it is appropriate to require identification of wind energy corridors in land management plans, as it may be more efficient and effective to assess potential effects only at the project level, given the variety of uses of NFS lands.

Comment. One respondent stated that since wind energy technology is rapidly evolving, land management plans may not be sufficient for purposes of evaluating wind energy projects. As an example, this respondent cited the Cherokee National Forest Plan, which was most recently updated in 2004, and noted that there have been significant changes in wind energy technology in the intervening years.

Response. The authorized officer may, but is not required to, amend a land management plan at any time to address opportunities for wind energy development and the best available science regarding wind energy development on NFS lands. Land management plans tend to provide general guidance on siting decisions. However, land management plans need not address wind energy development specifically in order for it to occur on NFS lands. Adequate environmental analysis may be conducted at the site-specific level, consistent with the final directives.

Public Involvement

Comment. Multiple respondents stated that the Forest Service did not adequately include input from various industry organizations and State agencies in development of the proposed directives.

Response. The Agency believes that the appropriate way to obtain input from industry organizations and State

agencies in the development of wind energy directives is through the public notice and comment process and has done so in the development of these directives.

Comment. Another respondent stated that the proposed directives failed to involve the various State agencies in assessing the impact of industrial wind power.

Response. Wind energy applications will undergo project-specific environmental analysis, as appropriate. In accordance with FSM 1501.2, section 72.1 in the final directives provides for consultation and coordination early in the NEPA process with appropriate State and local agencies and Indian tribes. This early consultation and coordination will help ensure that the requisite environmental analysis for wind energy projects is consistent with State fish and wildlife laws, wildlife plans, and wind energy project guidelines.

Comment. One respondent suggested that the Agency consider formation of a citizen's advisory board, consisting of representatives from communities potentially impacted by wind energy projects, to advise the Agency regarding development of wind energy directives.

Response. The public input obtained through the notice and comment process combined with Agency's own knowledge, expertise and research have resulted in development of final directives that can effectively guide the Agency employees who will be reviewing wind energy proposals and applications and issuing wind energy authorizations. The chartering of a citizen advisory board under the Federal Advisory Committee Act would not be cost effective and would prolong the development of wind energy directives and therefore, is unwarranted in this case.

Use of Science

Comment. One respondent stated that Forest Service regulations require the Agency to consider the best available science when implementing a land management plan, yet the proposed directives fail to use the best available science in prescribing direction to Forest Service decisionmakers.

Response. The Forest Service used the best available science in developing the proposed and final directives. The proposed and final directives were reviewed by numerous Forest Service specialists Agencywide with substantial expertise in natural resource management and research and development. The Forest Service sought advice from FWS and BLM staff experienced in wind energy facility development and management and from scientists with expertise on bird and bat migration ecology.

The directives were derived from a number of sources, including several peer-reviewed publications, such as FWS's ''Interim Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines;'' BLM's ''Best Management Practices and Mitigation for Wind Power Development;'' and the American Wind Energy Association's Wind Energy Siting Handbook. These sources and others listed in section 70.6 of the final directives contain useful information regarding wind energy facilities. Section 72.21 of the final directives enumerates sources that may be consulted in connection with siting of wind energy facilities. The authorized officer may also use any applicable existing or newly developed Federal, State, or non-governmental guidelines, recommendations, and relevant scientific publications in implementing the final directives.

Comment. One respondent recommended using recognized site assessment protocols that are based on the best available science and that include ecological attractiveness evaluations, *i.e.,* that assess ecological magnets and other conditions that draw birds and bats to specific sites. This respondent noted that this information is available from the closest FWS Ecological Services field office, as well as from State fish and wildlife or natural resource agencies.

Response. The Agency agrees that the authorized officer should use the best available science and information in assessing suitability of sites proposed for wind energy development, including effects on habitat and landscape features and conditions that attract birds and bats. This approach is reflected in sections 73.31 and 73.4a in the final directives. In addition to Forest Service records, the authorized officer may gather information for site evaluations and other environmental analysis from the local FWS Ecological Services field office; State fish and wildlife or natural resource agencies; non-governmental entities; and sources such as Natureserve's Vista Support System, State Heritage databases, State Comprehensive Wildlife Plans, and the Audubon Society's list of important bird areas.

Comment. Several respondents recommended that the Agency carefully consider infrastructure and carbon audits in reviewing wind energy applications.

Response. The Agency will address all relevant issues in the NEPA process. Infrastructure (transmission lines and ancillary facilities) and carbon audits (carbon footprint) are two examples of issues that may be applicable and appropriate during site-specific environmental analysis.

Comment. One respondent cited a report issued by the British Government stating that roughly 20 percent of wind farms generate noise complaints. This respondent advocated minimizing noise impacts by utilizing important design principles, such as installation of blades that turn on the upwind side of the towers to avoid the pressure differential that causes rhythmic thumping as the blades pass the tower. The respondent cautioned against inaccurate assessment of noise and recommended using proper microphone shielding techniques so that existing ambient noise is properly measured, as well as referring to a 2006 study addressing the impact of atmospheric conditions on night-time noise levels so that those levels are properly measured.

Response. Section 73.4c in the final directives requires the authorized officer to ensure that wind energy applicants minimize noise where possible and practical and, if possible and practical, minimize the amplitude of wind turbine and associated generator noise using available noise dampening technologies. In particular, section 73.4c, paragraph 2a, requires the authorized officer to ensure that wherever possible, applicants restrict noise to 10 decibels above the background noise level at nearby residences and campsites, in or near habitats of wildlife known to be sensitive to noise during reproduction, roosting, or hibernation, or where habitat abandonment may be an issue. Section 73.4c, paragraph 2b, requires the authorized officer to ensure that applicants provide for comparison of noise measurements of proposed equipment during wind turbine operation with the background noise level in the project area over a 24-hour period.

Purpose and Need

Comment. Several respondents commented that under NEPA a clear and compelling purpose and need must be identified for any project and that the Agency should require that a compelling case be made for the use of NFS lands versus non-NFS lands for wind energy projects. These respondents asked the Agency to explain the apparent change in this long-standing special uses policy, which they believed was reflected in the proposed directives.

Response. Under NEPA, it is up to the Agency to determine the purpose and need of a project. Current directives

require authorized officers to analyze the need to use NFS lands in evaluating a special use proposal (FSM 2703.1, para. 3), as well as the appropriateness of the use on NFS lands (FSM 2703.1, para. 4). In addition, current directives provide for denial of proposals that can reasonably be accommodated on non-NFS lands (FSM 2703.2, para. 3). Current directives at FSM 2703.2 also direct the authorized officer not to authorize the use of NFS lands simply because it affords the applicant a lower cost and less restrictive location than non-NFS lands. These directives apply to all special uses, including wind energy development.

The preceding directives need to be read in conjunction with the final directives, which direct authorized officers to authorize wind energy facilities on NFS lands to help meet America's energy needs (FSM 2726.02a, para. 1) and to facilitate wind energy development when it is consistent with managing NFS lands to sustain the multiple uses of its renewable resources while maintaining the long-term productivity of the land (FSM 2726.02a, para. 3).

Comment. One respondent noted that the January 2005 assessment of renewable energy potential on NFS lands conducted by the Forest Service and the U.S. Department of Energy's National Renewable Energy Laboratory shows that other renewable energy sources offer better potential than wind energy.

Response. Wind energy is an important potential source of renewable energy on NFS lands. The Agency recognizes that other potential sources of renewable energy on NFS lands are also important and is developing directives on hydrological, geothermal, and solar energy facilities on NFS lands. Each project will be decided on its own merits.

Need for Environmental Analysis

Comment. One respondent believed that the proposed directives should link implementation of wind energy projects to NEPA requirements for environmental analysis, including assessment of cumulative effects.

Response. Sections 74 and 74.1 require the Agency to comply with NEPA and Forest Service NEPA procedures in processing applications for wind energy permits. Agency NEPA procedures are enumerated in 36 CFR part 220, with additional guidance in FSM 1950 and FSH 1909.15. These procedures describe requirements for analysis and documentation, as well as implementation of decisions and monitoring of direct, indirect, and cumulative effects.

Comment. One respondent commented that the proposed directives do not clearly articulate that a site-specific environmental analysis will be required for all projects; that the proposed directives should require an EIS for all large-scale wind energy projects; that the proposed directives should clarify when, where, and how NEPA requirements and all natural resource objectives in the applicable land management plan will be met; and that NEPA should be strictly adhered to before any wind turbine construction proceeds.

One respondent requested that environmental analysis be conducted at every level of a wind energy project, including prior to erection of METs. This respondent recommended review of guidelines for construction of METs issued by the State of Washington's Department of Fish and Wildlife, which this respondent believed were more comprehensive than those in the proposed directives.

Some respondents believed an EIS with a 90-day public comment period was warranted for every proposed wind energy facility on NFS lands.

Response. Section 74.1 of the final directives expressly provides that each wind energy application, including applications for installation of METs (site testing and feasibility permits), is subject to NEPA. Section 74.1 of the final directives states: ''Environmental analysis for wind energy applications must comply with Agency NEPA procedures at 36 CFR part 220 and FSH 1909.15 and should be commensurate with the activities proposed and potential effects anticipated.''

The appropriate level of environmental documentation—EIS, EA, or categorical exclusion (CE) from documentation in an EA or EIS — depends on the anticipated significance of the environmental effects of the proposed action and is therefore site-specific. Therefore, it is not appropriate for the final directives to require an EIS for all wind energy projects or to specify when, where, and how NEPA requirements and all natural resource objectives in the applicable land management plan will be met. As wind energy proposals are analyzed, resource specialists will utilize a wide range of information, including the variety of State guidelines that are available. If an EIS is required, the Agency would provide at least 45 days for public comment. The responsible official has the discretion to extend the public comment period.

Comment. Multiple respondents objected to 36 CFR 220.6(e)(3), which authorizes a CE for approval, modification, and continuation of minor special uses, including METs, using less than 5 contiguous acres of land. These respondents stated that wind energy development on NFS lands does not warrant this low level of environmental analysis and public disclosure and that no wind energy activities should be subject to a CE.

Response. The Agency has not proposed revising 36 CFR 220.6(e)(3) in connection with these directives. Therefore, these comments are beyond the scope of these directives. The Agency's experience with installation of METs in many locations on NFS lands has shown that reliance on a CE for this activity is often warranted. The analysis conducted to comply with the Agency's NEPA regulations will be based on site-specific information and anticipated environmental effects. Provided that extraordinary circumstances are not an issue under 36 CFR 220.6(b), the CE in 36 CFR 220.6(e)(3)(i) may apply to applications for minimum area site testing and feasibility permits, which involve up to 5 acres. Per section 75.11, paragraph 2, in the final directives, issuance of a site testing and feasibility permit does not ensure issuance of a permit for construction and operation of a wind energy facility. Applications for construction and operation of a wind energy permit are subject to further environmental analysis, as appropriate.

Comment. One respondent stated that permit applications that are limited to road or transmission line access across NFS lands should not require the same level of environmental analysis as wind energy projects and that an EA should be sufficient for most roads and transmission lines.

Response. The environmental analysis required for a wind energy application must consider connected actions, *i.e.,* actions that (1) automatically trigger other actions which may require an EIS, (2) cannot or will not proceed unless other actions are taken previously or simultaneously, or (3) are interdependent parts of a larger action and depend on the larger action for their justification (40 CFR 1508.25(a)(1)(i)–(iii)). In the case of a wind energy application, access roads and transmission lines likely would be connected actions and likely would be analyzed in connection with the proposed wind energy use. Accordingly, section 71 in the final directives states that environmental analyses for each wind energy permit should address the connected actions essential to enabling the proposed wind energy use and that

connected actions for a permit for the construction and operation of a wind energy facility might include reconstruction of an NFS road to accommodate oversized vehicles needed to move wind turbine components and construction of a power line to connect the proposed site with the existing energy grid.

Comment. One respondent noted that some of these projects will be influenced by the renewable portfolio standards (RPS) initiatives, which distribute costs and concentrate environmental damage.

Response. The Agency is aware of State RPS initiatives. State RPS initiatives in part would require energy providers to produce a percentage of electricity from renewable resources. State RPS initiatives are consistent with the Federal focus on renewable energy sources, which prompted development of these directives.

Comment. One respondent stated that E.O. 13212 sets a national policy for Federal agencies to expedite review of new energy projects on Federal lands and that the proposed directives would hamper review and authorization of new wind energy projects.

Response. Establishing a standard framework for reviewing considerations that affect wind energy development and review of proposals and applications for wind energy projects will enhance Agency efficiency. In addition, these final directives do not impose any new requirements on wind energy projects. While E.O. 13212 encourages expediting new energy projects, it does not exempt agencies from compliance with applicable law, such as NEPA and the ESA. NEPA, the ESA, and other Federal laws impose requirements regardless of whether these directives are promulgated. The complexity of proposals and applications will influence the time frame for their review.

Comment. Citing *Citizen for Better Forestry* v. *United States Department of Agriculture.* 481 F. Supp. 2d 1059, 1097 (N.D. Cal. 2007), one respondent stated that under the ESA, the Forest Service must formally consult with FWS or the NMFS when developing regulations that may affect Federally listed threatened or endangered species.

Response. Citizens for Better Forestry v. *United States Department of Agriculture.* 481 F. Supp.2d 1059. 1097 (N.D. Cal. 2007). involved a regulation that revised species viability and diversity requirements for national forest management. The court held the rule could have indirectly affected listed species in the NFS. In contrast, the final directives provide additional guidance to Agency employees on siting wind energy facilities and addressing issues specifically associated with proposals and applications for wind energy uses on NFS lands. The final directives do not have the effect of a rule. Rather, they merely overlay an existing regulatory and policy framework for authorizing special uses on NFS lands. Thus, issuance of the final directives does not require formal or informal consultation with FWS or NMFS. In addition, the directives remind authorized officers and others of their responsibilities under the ESA to consult on wind energy projects as applicable.

Issues That Should Be Addressed

Comment. One respondent stated that the Forest Service should be cautious in providing for mitigation of adverse effects. This respondent believed that offsite and compensatory mitigation should be provided for through environmental analysis and utilized to help restore other portions of the landscape, so as to minimize the cumulative impact on the visual environment.

Response. Section 74.1 in the final directives provides that all wind energy applications are subject to NEPA and the Forest Service's NEPA regulations at 36 CFR part 220 and NEPA procedures at FSH 1909.15. Pursuant to these authorities, each wind energy application will be subject to scoping to determine the appropriate level of environmental analysis and documentation. In addition, per section 73.4b in the final directives, visual impacts associated with wind energy applications will be evaluated using the SMS.

Comment. One respondent suggested providing for additional public comment on the proposed directives.

Response. The Agency believes that the 60-day initial comment period, followed by a 60-day extension, was sufficient to provide for adequate public input on development of the final directives and is therefore issuing these final directives.

Comment. One respondent commented that the siting of wind energy facilities and associated infrastructure should take into consideration the need to protect the ability of species to adapt to climate change.

Response. The Agency is developing a strategic framework for climate change. Once completed, the strategic framework for climate change will be used as a guide when climate change is identified as an issue during environmental analysis.

Comment. One respondent expressed a concern that exercise of the power of eminent domain would be necessary to route power lines for wind energy facilities beyond the boundaries of the NFS.

Response. The Agency believes the exercise of the power of eminent domain to route power lines for wind energy facilities across private lands is beyond the scope of these directives.

Comment. One respondent commented that holders of ski area permits should have the exclusive right to develop wind energy resources on the NFS lands covered by their ski area permits, given their long-term capital investments, the potential for interference with their operations, and safety and access concerns. This respondent analogized the exclusive right that ski area permit holders should have in this context to the withdrawal of ski areas on NFS lands from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral and geothermal leasing under the National Forest Ski Area Permit Fee Act. This respondent noted that ski area permit holders may choose to collaborate with other entities in wind energy development, but that the permit holders must remain in control.

Response. Pursuant to 36 CFR 251.54(e)(1)(iv) and 251.55, Forest Service special use permits do not grant exclusive use. The Agency may use or allow others to use any part of a permit area for any purpose that is not inconsistent with the holder's existing rights and privileges, after consultation with all affected parties and agencies (36 CFR 251.55(b)). If wind energy development is proposed within a ski area, the Agency would consult with all affected parties and agencies. If it is determined that both uses can coexist, it would be important to plan, design, and operate both uses to be compatible. Additionally, the Agency could modify a ski area boundary to exclude land suitable for wind energy development.

Technical and Editorial Comments

Comment. One respondent suggested that the Agency strengthen key provisions in the proposed directives by the substituting ''shall'' for ''should'' and that not doing so would allow authorized officers to set up monitoring programs that might not appropriately measure the environmental impacts of wind energy proposals.

Response. In the final directives, the Agency has substituted the word ''must'' for ''should'' in sections 72.21d governing species of management concern; 73.1 governing application

requirements for all wind energy permits; and 73.31 governing study plans. Elsewhere, imposing a mandatory duty on the Forest Service is inappropriate, given the need for the Agency to retain discretion in exercising its authorities.

Natural Resource Management

Comment. Several respondents expressed opposition to the proposed directives because they believed wind energy development on NFS lands would disrupt geological and hydrological conditions and cause deforestation, erosion, and pollution, resulting in adverse impacts on wildlife and humans.

Response. The proposed and final directives at FSH 2709.11, section 72.1, reference a number of items the authorized officer must clarify with proponents at a pre-proposal meeting. In addition, the proposed and final directives at FSH 2709.11, section 72.2, describe the screening process and criteria for evaluating a wind energy proposal. Potential infrastructure effects, deforestation, and erosion and the other issues identified by the respondent may be addressed at these stages. In addition, wind energy proposals that are accepted as applications will be analyzed as appropriate pursuant to NEPA. If any unique site-specific factors are present, they will be considered as part of the analysis of environmental effects in the NEPA process. Where applicable, the scoping process will provide another opportunity for public involvement.

Comment. One respondent suggested that the Agency conduct an analysis of the impacts of wind energy projects on fire control and firefighting and that the Agency require mitigation measures to minimize these impacts.

Response. For the reasons given in an earlier response, the Agency chose not to conduct a PEIS for wind energy projects. Any site-specific analyses conducted on wind energy projects will take into consideration environmental effects of the proposed action, including potential impacts on fire control, as applicable, in accordance with the Agency's NEPA procedures.

Socioeconomic Concerns

Comment. Several respondents commented that output from wind energy facilities on NFS lands would address local energy needs and would result in a cost savings to consumers. Other respondents stated that there is absolutely no guarantee that the output from wind energy facilities on NFS lands would be available to local communities or that wind energy produced from these facilities would provide cost savings or tax revenue for State or local residents. Some respondents believed that wind energy projects would produce insufficient energy to warrant the sacrifice of acres of NFS lands. One respondent stated that Federal lands should not be destroyed to satisfy the energy demands of population centers in other parts of the country. One respondent stated that wind turbines cannot generate sufficient power and must rely on backup generation from conventional power plants and therefore will do nothing to help meet America's energy needs.

One respondent stated that wind turbines must be placed where they will have the least impact on beautiful areas in the NFS, so as to protect local economies that rely on tourism and to preserve the psychological benefit these areas confer on those who cherish the national forests. Another respondent questioned the Forest Service's determination that the proposed directives would not have an economic impact on small businesses, given the likely effect of wind energy development on numerous businesses, such as tourism and real estate, that rely on access to or pristine views of NFS lands. This respondent believed that it would be highly unlikely that the benefit of wind power would compensate for even the most minimal environmental and economic costs. One respondent believed that wind energy projects would not produce enough jobs to offset their negative effects, such as diminished property values and decreased recreational use due to disturbance of pristine national forests and wildlife habitats. One respondent believed that electrical power derived from wind energy would be most effective from a cost and reliability perspective along coastlines and near population centers, rather than on NFS lands. Another respondent was concerned about the large size of wind turbines, the number required for wind energy facilities, and their distant location from population centers. This respondent stated that small wind turbines and solar panels should be located along highways near population centers, not in national forests. One respondent believed that in assessing each wind energy proposal, authorized officers should consider its potential psychological, physical, and spiritual impacts on the next seven generations, as well as its impacts on natural resources. One respondent was concerned that wind energy development would result in further industrialization of the eastern United States.

Response. Consistent with the Energy Policy Act of 2005, the Agency has determined that renewable energy projects are appropriate uses of NFS lands and will help meet America's energy needs. These final directives provide Agency employees with guidance and a consistent framework for consideration of relevant factors for siting wind energy projects and consideration of wind energy proposals.

FSH 2709.11, section 72.21, addresses siting considerations for initial screening of wind energy proposals and review of wind energy applications. FSH 2709.11, section 73.4b, in the final directives requires authorized officers to ensure that applicants integrate wind turbine strings and design into the surrounding landscape, based on the scenic integrity objectives in the applicable land management plan. FSH 2709.11, section 73.32, paragraph 12, in the final directives requires authorized officers to ensure that applicants produce a visual simulation depicting the scale, scope, and visual effects of all components of their proposed wind energy project.

Consistent with applicable law, authorized officers will address the potential effects of wind energy projects, including effects on recreational values, cultural resources, scenery, public access, and public safety, in environmental analysis conducted on wind energy applications. Authorized officers will consider the number of acres proposed for use at pre-proposal meetings, during screening of proposals, and during review of applications, including environmental analysis. Impacts for the next seven generations may not be reasonably foreseeable. NEPA and its implementing regulations require analysis of reasonably foreseeable impacts, and the Agency will comply with that requirement in its site-specific NEPA analysis.

Response to Comments on FSM 2726

Comment. One respondent recommended adding recreation and scenic impacts to the list of detrimental impacts to be minimized, so that FSM 2726 would provide for minimizing detrimental social, recreational, scenic, and environmental impacts, including direct, indirect and cumulative impacts.

Response. Proposed and final FSM 2726 do not provide a list of detrimental impacts to be minimized. Nevertheless, impacts on recreation and scenery will be analyzed at the site-specific project level as appropriate.

Comment. One respondent suggested that the authorized officer delegate

determination of the appropriate environmental analysis for wind energy projects to resource specialists to prevent delays in initiating studies.

Response. The basic principles for delegation of authority are in FSM 1230 and are further enumerated throughout the Forest Service Directive System. Unless specifically delegated, the authority to make decisions rests with Regional Foresters, Forest or Grassland Supervisors, and District Rangers, not resource specialists. FSM 2726.04b, paragraph 4, provides for delegation of wind energy authorities from the Regional Forester to the Forest Supervisor as provided in FSM 2704.33. The authorized officer utilizes the expertise of resource specialists, as needed, to inform decisions, including decisions regarding appropriate environmental analysis and documentation.

Comment. One respondent recommended mentioning species that are listed or are candidates for listing as endangered in FSM 2726.02a, paragraph 5, and adding FWS to the list of Federal agencies with a coordination role in FSM 2726.21a, paragraph 1.

Response. FSM 2726.02a, paragraph 5, already directs authorized officers to consider species of management concern, which includes threatened and endangered species and their critical habitats in siting wind energy facilities.

The Agency agrees with the second recommendation and has added FWS and NMFS to the list of agencies in FSM 2726.21a, paragraph 1. The list is not comprehensive; there are other Federal agencies that may be contacted regarding protected species, including NMFS.

Response to Comments on FSH 2709.11, Chapter 70

70.1—Authority

Comment. One respondent suggested adding to the list of authorities the Bald and Golden Eagle Protection Act, the ESA, E.O. 13186, the MBTA, and NEPA.

Response. This section addresses the Forest Service's authority to issue permits for wind energy uses on NFS lands, which is in section 501(a)(4) of FLPMA, 43 U.S.C. 1761(a)(4), and to recover costs in connection with processing wind energy applications and monitoring wind energy permits, which is in section 504(g) of FLPMA (43 U.S.C. 1764(g)). FSH 2709.11, sections 73.4 and 74.1, in the final directives addresses compliance with NEPA, the ESA, and other environmental laws in connection with authorizing wind energy uses.

70.2—Objectives

Comment. Several respondents disagreed that wind energy development would reduce the United States' dependence on foreign energy sources and thus believed that wind energy development was inappropriate on NFS lands. These respondents noted that wind energy components produced outside the United States would require more fossil fuel for their manufacture and transport than would be saved from the generation of wind energy. These respondents further noted that wind energy facilities in Europe have not replaced or caused the closing of any fossil fuel plants.

Response. In response to this comment, the Agency believes wind energy would help reduce net fossil fuel consumption and promote clean air. In addition has revised section 70.2 to read:

> The Energy Policy Act of 2005 recognizes the Forest Service's role in meeting the renewable energy goals of the United States. Consistent with Agency policies and procedures, the use and occupancy of NFS lands for alternative energy production, such as wind energy development, are appropriate and will help meet the energy needs of the United States. For additional objectives regarding wind energy facilities see FSM 2726.02a.

70.5—Definitions

Comment. Some respondents indicated that a better definition for ''adaptive management'' was needed.

Response. The Agency has removed the definition for ''adaptive management'' because that term is not used in chapter 70.

Comment. One respondent suggested replacing all references to ''significant cultural resources'' with ''historic properties'' because historic properties are listed or eligible for listing in the National Register for Historic Places, and their significance is presumed.

Response. The Forest Service agrees that historic properties are a type of cultural resource and that the significance of cultural resources as defined in the final directives is presumed. Accordingly, the Agency has revised the definition for ''cultural resource'' and added a definition for ''historic property,'' to read as follows:

> *Cultural Resource.* A product or location of human activity, occupation, or use identifiable through field survey, historical documentation, or oral evidence, including prehistoric, archaeological, or architectural sites and structures, historic properties, sacred sites and objects, and traditional cultural properties.
>
> *Historic Property.* Any prehistoric or historic district, site, building, structure, or object included or eligible for inclusion in the National Register of Historic Places, including artifacts, records, and remains that are related to and located within these properties.

Comment. One respondent believed the proposed definition for the phrase ''reasonably foreseeable future actions'' as ''those activities not yet undertaken, for which there are existing decisions, funding, or identified proposals,'' was too narrow. Specifically, this respondent believed that the phrase ''not yet undertaken'' would eliminate from evaluation those effects that have taken place and will continue; that there were reasonably foreseeable future actions that would occur even in the absence of ''existing decisions, funding, or identified proposals;'' and that these actions would have effects and must be evaluated.

Response. The phrase ''reasonably foreseeable future actions'' is defined in the Forest Service's NEPA regulations at 36 CFR 220.3. The definition for this phrase was vetted by the public, other Federal agencies, and the Council on Environmental Quality (CEQ) prior to its adoption. The Forest Service's NEPA regulations are beyond the scope of the wind energy directives.

Comment. One respondent objected to the definition for ''site plan'' on the grounds that it would require siting individual wind turbines, rather than turbine corridors. This respondent stated that it is impossible to identify specific turbine locations at the application stage when the turbine model to be used and overall project capacity are still unknown. The respondent further noted that most State and county agencies require applicants to site turbine corridors, rather than individual turbines, for this reason.

Response. In response to this comment, the Agency has modified the definition for ''site plan'' in the final directives to read:

> A scaled, two-dimensional graphic representation of the location of all proposed wind turbines, buildings, service areas, roads, structures, and other elements of a wind energy facility that are displayed in relationship to existing site features, such as topography, major vegetation, water bodies, and constructed elements.

Comment. One respondent suggested that the Agency remove the word ''generally'' from the definition of ''species of management concern,'' so that migratory bird and bat species are included.

Some respondents suggested expanding the definition for species of management concern to include species that are listed or that are candidates for listing by States as endangered or threatened. One respondent

recommended that the definition for species of management concern be limited to species protected under Federal law.

Other respondents suggested including a wide variety of species without regard to Federal or State status, such as raptors, grassland gallinaceous bird species, ground-nesting bird species that exhibit significant avoidance or other behavioral modifications and habitat fragmentation in response to vertical structures, and big game, such as elk and deer. Additionally, respondents cautioned that care must be taken to avoid placement of wind energy facilities in big game migration corridors, critical fawning or calving grounds, or winter habitat.

Response. In the final directives, the Agency has removed the word ''generally'' from the definition for ''species of management concern.''

The Agency does not believe it is appropriate to limit species of management concern to those protected by Federal law. Therefore, the Agency has added State-protected species to the definition for clarity. Species of management concern may be any single species or group of species (*e.g.,* big-game, small game, upland game birds, amphibians, reptiles, and butterflies) and their corresponding habitats that may be affected by the proposed project and that therefore should be included in the site-specific environmental analysis.

Project-specific species of management concern may be identified by reviewing the applicable land management plan; Regional Forester sensitive species list; interagency species recovery or management plans; and State wildlife action plans. Species or groups of species may also be identified through consultation with other Federal agencies, State agencies, and tribal and local governments; public scoping and involvement; site testing and feasibility evaluations; and pre-construction survey and inventory.

Comment. Some respondents wanted the proposed directives to include definitions for ''blade-swept area,'' ''turbine array,'' ''wind farm or park,'' and ''wind resource area.''

Response. The Forest Service has not included definitions for these terms because they do not appear in the final directives.

70.6—References

Comment. One respondent suggested referencing FWS's Interim Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines; the Government Accountability Office's 2005 Wind Audit Recommendations; and any FWS public documents available on wind and wildlife interactions.

Response. The Forest Service used the FWS's Interim Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines in developing the Forest Service's proposed and final wind energy directives. These guidelines are cited in section 70.6, along with all other sources used to develop the directives.

The authorized officer may use any applicable Federal, State, and non-governmental guidelines, recommendations, and scientific publications in connection with NEPA compliance and review of proposals and applications and issuance of permits for wind energy uses.

Comment. Several respondents suggested additional references for inclusion in the proposed directives.

Response. After careful review, the Agency has added two references cited by these respondents, including Assessing Impacts of Wind Energy Development on Nocturnally Active Birds and Bats: A Guidance Document and the FWS's Interim Guidelines to Avoid and Minimize Wildlife Impacts From Wind Turbines to section 70.6 in the final directives.

71—Types of Wind Energy Permits

Comment. One respondent stated that if the proposed regulation at 36 CFR 220.6(d)(10)(ii) allowing for conversion of an existing special use authorization, such as a permit, to a new type of special use authorization, such as a lease or easement, without creation of a project or case file or decision memo is promulgated, the Forest Service should preclude its application to wind energy permits. This respondent reasoned that special use permits, leases, and easements are very different legal instruments and are not interchangeable. The respondent believed if this regulation applied to wind energy permits, it would allow conversion of a 30-year wind energy facility permit to an easement or a lease, which often has a longer term or may be granted in perpetuity. This respondent believed that an authorization with this type of term could set a dangerous precedent in permanently removing public access to NFS lands without public notice.

Another respondent stated that unless METs require new road construction, they should be eligible for a CE from documentation in an EA or EIS or less detailed environmental analysis. This respondent was concerned that the provisions regarding site testing and feasibility permits in the proposed directives appeared to require a wildlife monitoring plan for installation of METs, as well as all the studies needed to process an application for a permit to construct and operate a wind energy facility. This respondent stated that since METs are temporary structures with minimal impact, no environmental or cultural resources studies should be required for applications for site testing and feasibility permits. This respondent also stated that studies needed to process an application for a wind energy permit should be required only if the application is filed.

Response. The proposed and final directives provide for issuance of a permit, rather than a lease or an easement, for wind energy uses. Regardless, the Forest Service's NEPA regulations at 36 CFR part 220 are beyond the scope of these directives.

Provided that extraordinary circumstances are not an issue under 36 CFR 220.6(b), installation of METs under a minimum area site testing and feasibility permit, which involves up to 5 acres of land, may qualify for a CE under 36 CFR 220.6(e)(3)(i). This CE applies to approval of construction of a meteorological sampling site requiring less than 5 contiguous acres of land.

The Agency agrees that a monitoring plan should be required for permits for construction and operation of a wind energy facility, not for site testing and feasibility permits. Therefore, in the final directives, the Agency has removed the requirement for a monitoring plan from the provisions in section 75 governing site testing and feasibility permits.

Section 75.1, paragraph 3a, of the proposed directives stated that if equipment is not installed and operational within 2 years after issuance of a site testing and feasibility permit, the permit shall terminate. In the final directives, the Agency has added the phrase, ''unless a written justification for the delay is submitted and accepted by the authorized officer prior to the end of the 2-year period,'' to address situations where the delay is caused by circumstances that are beyond the holder's control.

Section 75.1, paragraph 3b, of the final directives states that if test results from METs or other instruments are not reported to the Forest Service within 3 years after issuance of either type of site testing and feasibility permit, the permit shall terminate, unless a request for an extension is submitted at least 6 months before termination and is approved by the authorized officer. In addition, section 75.11, paragraph 1, of the final directives provides that studies on the feasibility of a wind energy project and its environmental compatibility are

required for processing an application for a permit to construct and operate a wind energy facility and must accompany the study plan (sec. 73.31).

Consistent with section 75.1, paragraph 3b, the Agency has clarified section 71, paragraph 1, in the final directives to state that site testing and feasibility permits are issued for a term of up to 3 years, with the option to extend the permit for up to 2 years, pursuant to section 75.1, paragraph 3b.

Comment. One respondent questioned whether a special use permit was the appropriate mechanism for dealing with wind energy development and suggested that the Forest Service explore other approaches because of the permanent or quasi-permanent aspect of these developments. In particular, this respondent believed that the provisions in the proposed directives concerning wildlife monitoring and adaptive management were weak and questioned whether, once a special use permit was issued, the Forest Service would have sufficient authority to impose new requirements on the permit holder in response to new information that might require substantial and costly modifications to the project.

Response. Section 501(a)(4) of FLPMA, (43 U.S.C. 1761(a)(4)) authorizes the Forest Service to grant rights-of-way for the use and occupancy of NFS lands for generation, transmission, and distribution of electric energy. Forest Service regulations at 36 CFR part 251, Subpart B, provide for issuance of permits for rights-of-way granted under FLPMA. Both FLPMA (43 U.S.C. 1765(a)(ii)) and Forest Service regulations (36 CFR 251.56(a)(1)(i)(B)) allow the Agency to include terms and conditions that minimize damage to fish and wildlife habitat and otherwise protect the environment.

In addition, the standard forms that will be used to authorize wind energy uses contain a provision that allows the authorized officer to amend the permit in whole or in part at the discretion of the authorized officer, when deemed necessary or desirable to incorporate new terms, conditions, and stipulations that are required by law, regulation, the applicable land management plan, or other management decisions.

Comment. One respondent believed that the guidance in proposed section 71, paragraph 3, ''environmental analysis for each type of wind energy permit should address only the proposed use for that type of permit,'' would ensure that environmental analysis for site testing and feasibility permits would be conducted on the larger project area being secured by the site testing and feasibility permit.

Response. The environmental analysis for each type of wind energy permit should address only the use proposed for that type of permit. For example, environmental analysis for a site testing and feasibility permit should address the proposed use of NFS lands for site testing and feasibility, as opposed to construction and operation of a wind energy facility, which may be proposed at a later time.

Comment. One respondent suggested increasing the term of a permit for construction and operation of a wind energy facility from 30 to 40 years or more on the grounds that wind energy development is costly and the return on the investment may not be realized in a 30-year period, and financing may be difficult to obtain if the certainty of the project is unknown after 30 years.

Another respondent noted that the 30-year term for a permit for construction and operation of a wind energy facility was misleading, since once wind turbines, which have a typical life of more than 60 years, are installed, they are essentially permanent because of the cost of removing them.

Response. The Agency believes that a 30-year term, which is one of the longer terms for Forest Service special use authorizations, is sufficient for purposes of recouping the investment in a wind energy facility and for purposes of obtaining financing. In addition, the use covered by a permit for construction and operation of a wind energy facility may be reauthorized under 36 CFR 251.64, provided that the facility is still being used for wind energy purposes, is being operated and maintained in accordance with all the provisions of the permit, and is consistent with the decision that approved the facility. In reauthorizing the use, the authorized officer may modify the terms and conditions of the permit to reflect new requirements imposed by current Federal and State land use plans, laws, regulations, or other management decisions.

Forest Service regulations at 36 CFR 251.54(e)(1)(iv) preclude authorization of permanent facilities. A wind energy permit will terminate upon expiration, and the use will be discontinued, unless a new permit is issued for the use. In addition, section 77.5 in the final directives provides for restoration of wind energy facility sites upon discontinuation of the use.

72.1—Pre-Proposal Meetings

Comment. One respondent suggested that a public meeting be held before a wind energy proposal is submitted, so that the public can be involved early in the process. Another respondent stated that the Forest Service should ensure that wind energy proponents provide for adequate public awareness through public meetings and coordination with affected local and State agencies, and that any concerns raised during these efforts should be documented and presented to the Forest Service. One respondent stated that siting and design criteria should be discussed at the beginning of the process, rather than relying on mitigation measures imposed at the end of the process. Another respondent suggested that Forest Service personnel trained in scenery management be included in pre-proposal meetings. One respondent noted that BLM's best management practices for fluid minerals might serve as a model for improving on-site reviews.

Response. The Agency believes it is not necessary or appropriate to conduct a public meeting before a wind energy proposal is submitted. A pre-proposal meeting between the proponent and the Forest Service is required by 36 CFR 251.54(a) and section 72.1 of the final directives. Under these provisions, a wind energy proponent must contact the Forest Service as early as possible to ensure that the proponent fully understands the implications and requirements associated with a wind energy proposal. The anticipated level of public interest, environmental concerns, siting, and potential effects on the visual resource are included in this exchange. The Forest Service normally utilizes a broad range of resource specialists, including those trained in scenery management, in the proposal development phase. Because a pre-proposal meeting is conducted early in the process, a proposal may not be fully developed at that time. Therefore, public involvement initiated by the Forest Service is not appropriate or required at that point. Per 36 CFR 251.54(e)(6), (g)(1), and (g)(2)(i), public involvement initiated by the Agency is required after a proposal is accepted as an application.

However, a proponent may wish to seek public input in developing a wind energy proposal. The Agency supports public outreach efforts by a proponent in developing a wind energy proposal. Section 73.5 in the final directives directs authorized officers to ensure that wind energy applicants consider conducting meetings to inform the public regarding wind energy development, including the design, operation, and public benefit of a proposed facility.

Comment. One respondent stated that the Forest Service should require consultation and coordination with State fish and game agencies throughout the process for wind energy development, including pre-screening and pre- and post-development monitoring plans, in addition to the opportunity to comment through the NEPA process. Another respondent suggested specifying a minimum period for development of a wind energy proposal to ensure adequate pre-proposal coordination with appropriate local and State agencies and other stakeholders.

Response. Section 72.1, paragraph 2g, in the final directives addresses discussion at pre-proposal meetings of consultation and coordination with appropriate State and local agencies and Indian tribes. Section 73.1, paragraph 1, in the final directives provides for coordination and consultation with tribal governments and with regulatory agencies such as FWS regarding wind energy applications. These provisions will help ensure that project reviews and NEPA analyses are coordinated with State, local, and tribal governments and are consistent with State wildlife laws, wildlife plans, and wind energy development guidelines. The Forest Service does not believe it is necessary or appropriate to specify a minimum period for development of a wind energy proposal to ensure adequate pre-proposal coordination with interested parties. Applicable regulations and directives provide sufficient opportunity for coordination by requiring proponents to contact the Forest Service as early as possible.

Comment. One respondent stated that where federally listed species or their habitat are likely to be impacted by wind energy development, the Forest Service should clarify the Agency's roles and responsibilities with the FWS, including designating a wind energy applicant as a non-Federal representative for purposes of informal consultations under Section 7 of the ESA.

Response. The authorized officer may choose to designate a wind energy applicant as a non-federal representative pursuant to 50 CFR 502.08 for purposes of informal consultation under Section 7 of the ESA. The Forest Service will furnish guidance and supervision and will independently review the scope and contents of the biological assessment. When formal consultation is necessary, it will be conducted by the Forest Service in accordance with Section 7 of the ESA.

72.2—Federal Interagency Coordination

Comment. One respondent stated that the obligation to obtain clearance for obstructions in airspace rests with the FAA, not the Department of Defense (DoD) or the Department of Homeland Security (DHS), and that the FAA does not require obstruction evaluations for most new construction less than 200 feet above ground. Consequently, this respondent recommended notifying proponents of the need for an obstruction evaluation only when their proposal includes project components that would be taller than 200 feet. The respondent also noted that separate FAA environmental analysis of proposed wind energy development should not be necessary because of the environmental analysis of wind energy applications conducted by the Forest Service.

Response. The Agency agrees that an FAA obstruction evaluation is generally needed only for wind energy construction 200 feet above ground level or within close proximity of an airport, in which case wind energy turbines may interfere with radar. The Agency believes that sections 72.1, paragraph g, and 73.1, paragraph 1, in the final directives adequately address coordination with the FAA in connection with proposed wind energy projects on NFS lands. The Agency believes that it is more appropriate for the FAA, rather than the Forest Service, to provide any additional necessary detail regarding compliance with FAA radar and electronic security requirements in this context. The Agency also agrees that separate FAA environmental analysis of proposed wind energy development is not necessary because of the environmental analysis of wind energy applications that will be conducted by the Forest Service.

Comment. One respondent stated that the proposed directives need to provide for coordination with the Federal Energy Regulatory Commission (FERC).

Response. The Agency does not believe it is necessary to provide for coordination with FERC in connection with wind energy proposals. Proponents are responsible for inter-connection agreements and other aspects of the project that may fall within FERC's preview. FWS, DoD, DHS, the FAA, and the National Weather Service all have an interest in wind energy development because these agencies' activities involve airspace and could be adversely affected by interference with instrumentation.

Comment. One respondent stated that the proposed directives should provide for coordination with FWS and NMFS as required under the Bald and Golden Eagle Protection Act, the ESA, the MBTA, and similar requirements under other Federal and State wildlife laws. This respondent also stated that the proposed directives need to provide for consideration of sensitive species and management indicator species in each region in any analysis, assessment, and evaluation related to wind energy development and protection of those species through mitigation measures included in wind energy permits.

One respondent recommended that State fish and wildlife agencies and FWS be consulted regarding the suitability of a proposed site and known wildlife resources in the vicinity. Another respondent stated that the proposed directives circumvent environmental analysis and consultation with FWS and give too much discretion to local Forest Service officials and wind energy permit holders. Another respondent recommended establishing an interagency committee of State and Federal wildlife experts, including representatives from FWS, to assist in review of wind energy applications.

One respondent noted that all federally listed threatened and endangered species and State-protected species and their habitat should be considered in long-term management decisions concerning wind power development. Another respondent stated that wind energy proposals should not be accepted if they destroy or degrade critical habitats for listed threatened and endangered species. This respondent believed that because wind turbines tower high above ridges, the turbines would kill thousands of eagles and hawks soaring on updrafts and would pose an increasing risk to eastern populations of peregrine falcons.

Response. Section 7 of the ESA and FSM 2670 require the Forest Service to consult with FWS or NMFS regarding any Forest Service action that may affect a threatened or endangered species or its critical habitat. FSM 2670 addresses sensitive species, management indicator species, and other species of management concern. Section 7 consultation occurs concurrently with NEPA analysis and is completed by the time the authorized officer is prepared to issue a NEPA decision document. All consultation, coordination, and project review required under the Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d), MBTA (16 U.S.C. 703–712), and E.O. 13186, regarding the responsibilities of Federal agencies to protect migratory birds, are also conducted concurrently with NEPA

analysis and completed before a NEPA decision document is released.

With respect to wind energy development, section 72.1, paragraph g, of the final directives requires the authorized officer at pre-proposal meetings to clarify expectations for coordination and consultation with FWS, NMFS, and State agencies. Additionally, as part of NEPA compliance for wind energy applications, the Forest Service will ask State agencies and Federal wildlife experts for input through the public scoping process. Therefore, the Forest Service does not believe it is necessary to establish an interagency committee of State and Federal wildlife experts to assist in review of wind energy applications.

The final directives contain numerous provisions addressing protection of wildlife. Section 70.5 of the final directives defines ''species of management concern'' broadly to include federally listed threatened and endangered species; species that are candidates for listing as threatened or endangered; Forest Service species of concern, species of interest, species of high public interest, and management indicator species; and State-protected species. Section 72.1, paragraph 2g, provides for clarification at pre-proposal meetings of expectations for coordination and consultation with FWS. Section 72.21d addresses siting considerations for species of management concern. To protect birds and bats, section 73.2 provides for avoiding the use of guy wires on METs. Section 73.31, paragraph 1, requires applicants for a permit for construction and operation of a wind energy facility to submit a study plan that includes a review of existing information regarding species of management concern. Section 73.31, paragraph 2, requires applicants to identify information and methods by which to gather information for the development of biological assessments and evaluations of project-specific species of management concern and their habitats.

Section 73.4a addresses in detail species of management concern in the context of construction and operation of wind energy facilities. Section 75.11, paragraph 1d, provides for evaluation of site feasibility for wind energy development relative to bat and bird migration routes and installation of bat detection equipment on METs. Section 75.21, paragraph 6, requires a wildlife monitoring plan for permits for construction and operation of a wind energy facility.

72.31a—General Considerations

This section in the proposed directives addressed general considerations associated with siting wind energy facilities on NFS lands.

Comment. One respondent stated that before considering wind energy projects for a particular administrative unit, the Forest Service should amend the applicable land management plan to identify those areas that are inappropriate, appropriate, or designated for wind energy development and, with regard to the latter two, those areas that are subject to a higher standard of review before any wind energy project is approved.

Response. The Agency does not believe it is necessary or appropriate to require programmatic analysis and amendment of land management plans for siting wind energy facilities on NFS lands. The Agency believes that the appropriateness of siting a wind energy facility on a particular administrative unit of the NFS is best addressed in a site-specific manner. However, when land management plans are revised, they should address renewable energy development as needed or appropriate.

Several sections of the final directives address siting of wind energy facilities. For example, siting of wind energy facilities will be discussed at pre-proposal meetings per section 72.1. Section 72.2 addresses siting considerations in the context of screening wind energy proposals. Section 72.2 precludes issuance of permits for wind energy facilities in wilderness areas and wilderness study areas, in wild and scenic river corridors, at national historic sites, on National Historic or National Scenic Trails, in other special areas where Federal law precludes land use for wind energy production, in areas authorized for use by the DoD or one of its agencies, and in areas where DoD, DHS, FAA, or National Weather Service express concern that a proposed wind energy facility would diminish national security, military readiness or suitability of training areas, radar and electronic security, or safety of military or civilian airspace. Sections 72.21 through 72.21e address specific siting considerations in the context of screening wind energy proposals. Section 73.32 states that a wind energy plan of development, which must be submitted by an applicant for a permit for construction and operation of a wind energy facility, is used to determine if a wind energy project is consistent with the applicable land management plan and facilitates the safe and orderly use of land for wind energy production.

Comment. One respondent stated that the Forest Service should adhere to FWS regulations and NEPA with regard to siting wind turbines.

Response. FWS's Interim Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines were used to develop the proposed and final directives. However, the Forest Service believes it would not be appropriate to limit the siting of wind turbines to one set of guidelines. The Forest Service must be able to use the most applicable and best information throughout the wind energy permitting process. Sections 71, 72.1, and 74 of the final directives address NEPA compliance in the context of wind energy development on NFS lands.

Comment. One respondent noted that maps are available which display areas on NFS lands with strong wind resources and recommended that the proposed directives facilitate maximization of wind energy production for those NFS lands that are suitable for that purpose.

Response. The Agency has determined that renewable energy projects are appropriate uses of NFS lands and will help meet America's energy needs. Pursuant to the Multiple Use-Sustained Yield Act (16 U.S.C. 528–531), the Forest Service manages NFS lands for multiple uses, without favoring one use over another. The NFS is not reserved for any particular use, nor must every use be accommodated on every acre of NFS lands. Suitability of the proposed location for wind energy facilities will be considered as part of the application process.

Comment. One respondent commented that the proposed directives should encourage buffer zones around wilderness areas to protect wildlife, viewsheds, and other values protected by wilderness areas. Some respondents provided a list of scenarios where wind energy development should be discouraged. These respondents further recommended that the proposed directives provide for denial of wind energy permits if a finding is made that their impacts cannot be mitigated or that the proposed use would conflict with existing uses or plans for multiple-use areas.

One respondent commented that NEPA allows for unavoidable adverse impacts and that the proposed directives hold wind energy projects to a higher standard than other projects, since section 72.31a, paragraph 7a, states that a wind energy project may be inappropriate if the authorized officer makes a finding that ''resource impacts cannot be mitigated.'' This respondent recommended stating that a wind

energy project may be inappropriate if the authorized officer makes a finding that adverse resource impacts outweigh the positive impact derived from generating renewable energy.

Two respondents stated that if another Federal agency raised a concern about a wind energy project, even without any basis, it would be enough to stop the project. These respondents believed that if an unacceptable impact is demonstrated, mitigation measures should be explored before a proposal is rejected. One of these respondents recommended requiring other Federal agencies to demonstrate that anticipated project impacts would be unacceptable based on a technical review conducted through a process that would allow for consideration of concerns raised by all sides.

Response. The Agency does not believe that buffer zones around wilderness and other special areas are necessary. The proposed actions in the viewshed from designated wilderness areas would include an analysis of the effects on the scenic values for protecting sensitive wilderness areas during the environmental analysis process. It is the viewshed rather than a buffer zone that's more relevant to protecting wilderness values.

In addition, sections 72.31b through 72.31e in the proposed directives and sections 72.21a through 72.21e in the final directives iterate several categories of siting considerations, *e.g.,* impacts on recreation and scenery and wildlife, which must be taken into account in screening wind energy proposals.

Wind energy projects are subject to the same environmental standards as other proposed projects on NFS lands. The Agency has not retained the provision in section 72.31a, paragraph 7a, in the proposed directives because it is duplicative. Sections 72.21a through 72.21e in the final directives adequately address consideration of resource impacts in screening wind energy proposals. In addition, under the initial screening criteria in the special use regulations at 36 CFR 251.54(e)(1)(v), proposed uses may not unreasonably conflict or interfere with other scheduled or authorized uses of the NFS or use of adjacent non-NFS lands. The Agency agrees that if a proposed wind energy facility would cause unacceptable impacts, mitigation measures may be explored to eliminate the impacts or reduce them to an acceptable level.

Proposals for wind energy facilities may be denied, rather than must be denied, in areas where the DoD, DHS, FAA, the National Weather Service expresses concern that a proposed wind energy facility would diminish national security, military readiness or suitability of training areas, radar and electronic security, or safety of military or civilian airspace. Per section 72.1, paragraph g, the likelihood of these types of concerns will be addressed at the pre-proposal meeting. The Agency does not believe it would be appropriate to require other Federal agencies to document concerns they have regarding the effects of a proposed wind energy facility on national security, military readiness or suitability of training areas, radar and electronic security, or safety of military or civilian airspace.

Comment. One respondent noted that while the proposed directives list various resources to be considered, avoided, and protected, the proposed directives should include species protected under the ESA, State-listed species (including species of ''greatest conservation need''), State trust wildlife resources, and Audubon Watchlist species.

Response. Section 70.5 in the final directives broadly defines species of management concern to include federally listed threatened and endangered species; species that are candidates for listing as threatened or endangered; Forest Service species of concern, species of interest, species of high public interest, and management indicator species; and State-protected species. Section 72.21d provides for consideration of all species of management concern in screening wind energy proposals, with an emphasis primarily on birds and bats because of their particular vulnerability to METs and wind turbines during flight.

Comment. One respondent noted that wind power would provide a measure of security and resilience to the tourism industry, since it would diminish the reliance on foreign sources of energy. This respondent also commented that wind power facilities would be an additional tourist attraction that could offer educational opportunities for visitors. Another respondent stated that siting considerations should include educational and demonstration opportunities that wind energy facilities may offer and location and infrastructure requirements necessary to transport power from wind energy facilities to users.

Response. The Agency supports education and demonstration opportunities that may be offered by wind energy facilities, which could be discussed at the pre-proposal meeting with the authorized officer. However, the Agency does not believe it is necessary to require consideration of education and demonstration opportunities that may be afforded by wind energy facilities. Infrastructure requirements are addressed in sections 73.32 and 75.21, paragraph 3, of the final directives, which address a plan of development for wind energy facilities.

Comment. One respondent commented that in authorizing long-term wind energy projects, the Forest Service should consider State renewable energy portfolio standards for wind energy development.

Response. Compliance with applicable State renewable energy portfolio standards for wind energy development is beyond the scope of these directives. The Forest Service's special use regulations at 36 CFR 251.54(d)(5) allow the authorized officer to require any other information and data necessary to determine compliance with requirements for associated clearances, certificates, permits, or licenses and to require suitable terms and conditions to be included in special use authorizations. Standard special use authorization forms require the holder to comply with all applicable laws, regulations, and standards, as well as laws relating to the siting, construction, operation, and maintenance of any authorized facility, improvement, or equipment.

Comment. One respondent stated that processing of wind energy proposals and applications should be an objective process and that siting and suitability of wind energy facilities is appropriately addressed in the environmental review section of BLM's Instruction Memorandum No. 2005–069, ''Interim Offsite Compensatory Mitigation for Oil, Gas, Geothermal and Energy Right-of-Way Permits.''

Response. The Agency agrees that processing of wind energy proposals and applications should be an objective process. The Agency used BLM's Instruction Memorandum No. 2005–069 in developing the final directives and referenced it in section 70.6, paragraph 4, of the final directives.

Comment. One respondent believed that the proposed directives represented another attempt to privatize Federal lands. This respondent stated that locating wind turbines in areas that could also support solar energy development might minimize environmental impacts while reducing costs. The respondent also noted that far fewer impacts would result from wind energy development on national grasslands or other uninhabited lands than from wind energy development in national forests.

Response. Issuance of special use authorizations for wind energy facilities or any other uses does not result in

privatization of Federal lands. The Forest Service's special use regulations at 36 CFR 251.55(b) state that all rights not expressly granted by a special use authorization are retained by the United States, including continuing rights of access to all NFS lands; a continuing right of physical entry to any part of the authorized facilities for inspection, monitoring, or any other purposes or reason consistent with any right or obligation of the United States under any laws or regulation; and the right to require common use of the land or to authorize use by others in any way that is not inconsistent with the holder's rights and privileges, after consultation with all affected parties and agencies. The final directives, including the siting considerations, apply to all NFS lands. The Agency believes it would not be appropriate to create a preference for one type of NFS lands over another with respect to wind energy development.

Comment. One respondent noted that all facilities associated with a wind energy project on NFS lands should be covered by the proposed directives and suggested clarifying the second sentence of the section 72.31a, paragraph 2, which states, ''Other facilities may be required for access, construction, operation, and maintenance,'' to make that point explicit.

Response. The Agency agrees that this sentence needs to be revised to clarify that it applies to wind energy projects. Accordingly, the Agency has revised this sentence, which appears in section 72.21 of the final directives, to read: ''Other facilities may be required for access, construction, operation, and maintenance of a wind energy facility.'' It is possible that not all facilities required for access, construction, operation, and maintenance of a wind energy facility will be authorized under a wind energy permit. For example, access to a wind energy facility may be authorized under a separate special use authorization granting a right-of-way, and use of NFS roads may be authorized under a road use permit. See sections 73.32, paragraph 8, and 75.22, paragraph 3, in the final directives.

Comment. One respondent suggested including a statement in the general considerations section that the direct, indirect, and cumulative effects of construction of or additions to facilities associated with a wind energy project, including roads, must be considered in evaluating wind energy proposals, regardless of whether these actions will occur on NFS lands.

Response. The Agency does not believe it is necessary to include the statement suggested by the respondent. Section 74.1 in the final directives provides for compliance with the Forest Service's NEPA procedures at 36 CFR part 220 and FSH 1909.15 in reviewing applications for wind energy facilities. In conducting environmental analysis of these applications, the Agency will take into consideration the cumulative effects associated with the proposed use. In many cases, construction of roads, facilities, and power lines may be connected actions and will be analyzed accordingly, where appropriate, under applicable law.

Comment. One respondent suggested including in the general considerations section statements from an otherwise unspecified letter dated May 13, 2003. In addition, this respondent recommended (a) revising proposed section 72.31a, paragraph 2, to state that electricity produced by wind turbines ''may,'' rather than ''will likely,'' require a generation substation and transmission lines to carry it to a power grid; (b) revising proposed section 72.31a, paragraph 4a, to provide for consideration in assessing site suitability of ''other environmental, recreational, or other human resource considerations,'' rather than ''other environmental or human resource considerations''; (c) revising proposed section 72.31a, paragraph 4c, to provide for consideration in wind energy planning of ''the proximity of proposed wind turbines to transmission lines and the need to construct new transmission lines,'' rather than ''the proximity of proposed wind turbines to transmission lines''; and (d) revising proposed section 72.31a, paragraph 4d, to provide for consideration in wind energy planning of ''project area resources and uses sensitive to noise from wind turbines,'' rather than ''noise from wind turbines.''

A second respondent recommended the following additional suitability factor to proposed 72.31a, paragraph 4a: ''the potential impacts, including fragmentation and habitat abandonment, on important wildlife corridors, large contiguous habitat areas, or any globally unique, rare, or threatened ecosystem or habitat type.''

A third respondent recommended revising proposed section 72.31a, paragraph 4a, to provide for consideration in assessing site suitability of ''the presence of or habitat for federally or State listed protected species, candidates for such protection, and other species of management concern, as defined in section 70.5,'' rather than ''the presence of federally listed fish, wildlife, or rare plant habitat.''

Response. Without more information, the Agency was unable to locate the letter referenced by the first respondent and was unable to address the comment concerning that letter. The Agency has not made the revision suggested by this respondent to proposed section 72.31a, paragraph 2 (sec. 72.21 in the final directives), because the Agency believes that electricity produced by wind turbines will require a generation substation and transmission lines to carry it to a power grid.

The Agency has included the introductory text of proposed section 72.31a, paragraph 4, in section 72.21 in the final directives. However, the Agency has not retained proposed section 72.31a, paragraphs 4a through 4d, in the final directives or added the suitability factor suggested by the second respondent because they are duplicative. Sections 72.21, 73.3, 73.4, and 75.11, paragraph 1, in the final directives adequately address consideration of resource impacts, the wind resource, proximity of proposed wind turbines to transmission lines, and noise from wind turbines in evaluating wind energy proposals and applications.

The Agency agrees with the third respondent that the definition of species of management concern should include State-protected species and has accordingly revised that definition in section 70.5 of the final directives.

Comment. One respondent suggested revising section 72.31a, paragraph 6, to state that authorizations for wind energy development will not be issued for development incompatible with specific resource values, including areas of critical environmental concern, wilderness areas, wilderness study areas, Wild and Scenic Rivers, National Historic and National Scenic Trails, and areas where resource impacts cannot be mitigated.

Response. The Agency has addressed this concern in section 72.2, paragraphs 2 and 3, of the final directives by providing for denial of proposals for wind energy facilities in wilderness areas and wilderness study areas and in areas authorized for use by the DoD.

72.31b—Recreation and Scenery Considerations

Comment. Some respondents doubted that 400-foot wind turbines could meet partial retention standards under the Recreation Opportunity Spectrum (ROS) and Scenery Management System (SMS). These respondents were unsure about the criteria, timing, and process for taking into account these visual and recreation standards in making decisions regarding wind energy facilities.

Response. ''Partial retention'' is an obsolete term that was used under the Visual Management System (VMS),

which predated the SMS. In contrast to the SMS, the categories in the VMS described visual goals. For partial retention, the goal was to retain in part the visual character of the landscape. The Agency shifted from the VMS to the SMS (FSM 2380), which is based on scenic integrity, *i.e.,* the current condition of the landscape, rather than visual goals. The Agency found that establishment of visual goals under the VMS tended to predetermine the outcome of the planning process.

Section 72.21a, paragraphs 1 through 4, in the final directives address the use of the ROS in screening wind energy proposals. Section 72.21a, paragraph 5, in the final directives addresses the use of the SMS in screening wind energy proposals.

Comment. One respondent recommended revising proposed section 72.31b, paragraph 2b, which stated, ''Consider how recreational settings could be affected by dust or air quality impacts,'' by adding ''during construction or maintenance.''

Response. The Agency agrees with this comment and has added this phrase to the corresponding provision, section 72.21a, paragraph 2b, in the final directives.

Comment. One respondent recommended including a standard set of restrictions for wind energy development for areas that fall into the most restricted category of visual resource management.

Response. The SMS does not establish categories for visual resource management. Rather, the SMS employs scenic integrity objectives, which define the degree of deviation from the landscape character that may occur at any given time (FSM 2380.5). Consistent with the SMS, section 72.21a, paragraph 5, in the final directives directs the authorized officer in screening wind energy proposals to assess the value of scenery in the project area, the experience it provides relative to competing resource demands, and the impacts on scenery from project construction and operation.

72.31c—Community Tourism Considerations

Comment. One respondent stated that community tourism values must be protected and that inclusion of the phrase, ''where possible and to the extent practicable'' in proposed section 72.31c, paragraph 1, and the word ''consider'' in proposed section 72.31c, paragraph 2, make these criteria more like guidelines than standards. This respondent also expressed concern that the direction on siting considerations applies only to screening of wind energy proposals and not to processing of wind energy applications.

Response. Both paragraphs 1 and 2 referenced by the respondent contain guidelines, rather than standards. The qualification ''where possible and to the extent practicable'' in paragraph 1 is appropriate because it may not always be possible or practicable to manage wind energy uses to protect community tourism values associated with natural scenery, recreation settings, wildlife viewing, fishing, and cultural resources. Paragraph 2 appropriately directs the authorized officer to consider the effects of wind energy uses on tourism values and communities because this section of the directives enumerates siting considerations that need to be taken into account in screening wind energy proposals. Therefore, the Agency has not made the changes suggested by the respondent in the final directives.

Community tourism considerations apply only to screening wind energy proposals, rather than to evaluation of wind energy applications, because community tourism considerations need to be addressed in connection with siting wind energy facilities in the context of a proposal. This approach is reflected in the heading, ''Siting Considerations'' in section 72.31 in the proposed directives and section 72.21 in the final directives, both of which encompass the section on community tourism considerations. Once a wind energy proposal is accepted as an application, a site has already been determined, and the siting considerations as reflected in a site plan (sec. 73.33 in the final directives) are much more specific.

72.31d—Public Access Considerations

Comment. One respondent noted that while security and safety should be a priority for protecting wind energy facilities, public access to those facilities should be guaranteed for monitoring adverse impacts of the facilities on wildlife, either residing at or migrating past the site, and their habitat. One respondent stated that the proposed directives should provide additional guidance on avoiding, minimizing, and mitigating habitat abandonment and other impacts of wind energy facilities, including post-construction monitoring of those impacts.

Another respondent commented that security and safety at wind energy facilities would not be benefited by open public access, and that access to those facilities should be controlled by the permit holder and should be limited to authorized staff or approved guided tours.

Response. The Agency agrees that security and safety should be a priority at wind energy facilities. However, the Agency does not believe that it is appropriate or necessary to guarantee public access to wind energy facilities for purposes of monitoring impacts on wildlife. The Forest Service's special use regulations at 36 CFR 251.55(b)(2) confer on the United States, rather than members of the public, a continuing right of physical entry to authorized facilities for monitoring purposes.

The Agency believes that the final directives provide adequate guidance on avoiding, minimizing, and mitigating impacts on wildlife from wind energy facilities. Specifically, section 75.21, paragraph 6, of the final directives requires applicants for a permit for construction and operation of a wind energy facility to submit a detailed monitoring plan that will become an appendix to the permit. Section 73.32, paragraph 9, in the final directives requires the plan of development that must be submitted by applicants for a permit for construction and operation of a wind energy facility to address potential impacts on existing land uses, including necessary restrictions on public use, which should address effects on Federal and State species of management concern and their habitats. Section 75.21, paragraph 6, of the final directives provides for wildlife monitoring before and after construction of a wind energy facility. Per 36 CFR 251.55(b)(3), the Agency may require common use of NFS lands authorized for wind energy facilities or allow their use by others in any way that is not inconsistent with the holder's rights and privileges, after consultation with all affected parties.

Comment. One respondent noted that the Forest Service should not allow its hiking trails to be used as service roads for wind energy facilities. This respondent stated that the proposed directives should address road density in critical habitat areas.

Another respondent stated that construction of roads for wind energy projects causes more ground disturbance than construction of typical two-track, unpaved Forest Service roads and thus has a greater impact on fish and wildlife.

Response. Numerous provisions in the final directives address access to wind energy facilities, including the need for and effects and management of access roads. Section 72.21c in the final directives directs the authorized officer to review road management objectives for NFS roads and trail management objectives for NFS trails (FSM 7714); consider the effect of traffic on NFS

roads and NFS trails needed for construction, operation, and maintenance of wind energy facilities on the ability of those roads and trails to meet their management objectives; and consider the effects of extending the availability of NFS roads that are open seasonally to year-round use for purposes of maintaining wind energy facilities.

Section 73.31, paragraph 6, in the final directives requires applicants for a permit for construction and operation of a wind energy facility to submit a study plan that includes an inventory of existing infrastructure and resource investments such as access roads under the jurisdiction of the Forest Service or a public road authority.

Section 73.32, paragraph 2, in the final directives requires these applicants to submit a plan of development that describes the proposed location and number of ancillary structures and facilities, including access roads. Section 73.32, paragraph 5, in the final directives requires the plan of development to address needed road or trail access and provides for existing roads to be utilized to the maximum extent feasible. Section 73.32, paragraph 8, in the final directives requires the plan of development to describe management requirements necessary for safe and reliable operation and maintenance, including rights-of-way for access.

NFS trails may be actively managed for more than one mode of travel. However, under 36 CFR 212.51, Forest Service administrative units and ranger districts are designating those NFS trails that are open to motor vehicle use. Therefore, whether an NFS trail managed for hiker/pedestrian use is used as an access road for a wind energy facility would depend at least in part on the trail's management intent and whether the trail has been designated for motor vehicle use. When a trail or segments of a trail encumbering a proposed wind energy facility, this is a connected action for consideration during the environmental analysis process and trail would be re-routed out of the proposed project area for the safety of hikers/pedestrians.

Comment. A number of respondents were concerned that the proposed language, ''Consider the effects of wind energy uses on public access via roads, trails, and waterways,'' in proposed section 72.31d sets too low a bar for compliance. These respondents believed that a standard should be established for assessing effects of wind energy uses on public access.

Response. Given the variety of situations on NFS lands, the Agency does not believe it is appropriate to establish a standard for assessing effects of wind energy facilities on public access to NFS lands. However, the Agency agrees that more guidance is needed in this provision with respect to management of NFS roads and NFS trails. Consequently, in section 72.21c of the final directives, the Agency has added the following:

> Review road management objectives for NFS roads and trail management objectives for NFS trails (FSM 7714). Consider the effect of traffic on NFS roads and NFS trails needed for construction, operation, and maintenance of wind energy facilities on the ability of those roads and trails to meet their management objectives. Consider the effects of extending the availability of NFS roads that are open seasonally to year-round use for purposes of maintaining wind energy facilities.

72.31e—Wildlife, Fish, and Rare Plant Considerations

Comment. One respondent stated that the proposed directives should be as precise as possible in identifying which plant and animal species should be considered for each particular investigation or analytical or monitoring activity associated with wind energy uses. Other respondents expressed concern about harmful effects of wind energy development on butterflies and big game migration routes.

Response. Since the wind energy directives are national in scope, the species that could be impacted by wind energy uses will vary by geographic region. The proposed and final directives specifically address bats, birds, and species of management concern, which is broadly defined in the final directives to include federally listed threatened and endangered species; species that are candidates for listing as threatened or endangered; Forest Service species of concern, species of interest, species of high public interest, and management indicator species; and State-protected species. More specific lists of species and species groups will be made at the local level during the scoping process for each proposed wind energy facility.

Comment. One respondent stated that wind turbines in migratory areas do not necessarily pose a risk to avian species and that migration corridors need to be delineated by the Forest Service based on scientific studies or evaluated in project-level avian surveys. This respondent recommended using ''minimize'' throughout proposed section 72.31e or qualifying the entire section with the phrase, ''to the extent commercially practicable.''

Numerous respondents expressed concerns regarding the effect of wind energy facilities on bats, particularly during their migration and hibernation periods. These respondents cited studies that indicate a high risk of bat mortality, especially along Appalachian ridges, from wind energy uses and stated that hibernating bats could be susceptible to detonations during wind energy facility construction. One respondent noted that wind energy structures can alter movement patterns of birds and wildlife and shift their distribution. This respondent stated that grassland and shrubland birds in particular avoid tall structures and can be significantly displaced by wind energy structures.

Another respondent recommended enumerating in the proposed directives those areas where there are large numbers of one or more bird species of management concern. This respondent noted that micrositing decisions on wind energy development would minimize impacts on birds.

One respondent stated that decisions regarding turbine placement should take into account species' foraging strategies and flight patterns, as well as topography, wind patterns, prey density, and all seasons of a species' habitat, including migratory as well as wintering areas.

Another respondent recommended not just avoiding placement of METs in sensitive habitats, but avoiding placement of METs in locations where they would adversely impact sensitive habitats, including buffer zones.

One respondent wanted the general considerations in proposed section 72.31a, paragraphs 4, 6, and 7, to apply to proposed section 72.31e.

Response. The Forest Service is aware of potential effects on wildlife from wind power development, especially the susceptibility of bats and birds to collision with wind energy facilities. Numerous studies, including those cited in section 70.6 in the final directives, document known and potential risks to birds and bats from wind energy facilities. The Agency is also aware of the important role that bats and bird play in the health of the human environment.

Accordingly, the Agency has expanded the provisions in the final directives regarding the need for careful evaluation of environmental conditions, landscape features, and habitats that attract concentrations of birds, bats, and other species of management concern. See sections 72.21; 72.21d; 73.31, paragraphs 1 and 2; 73.4a; and 75.21, paragraph 6. In particular, section 72.21d, paragraph 1, in the final directives lists examples of protected and ecologically sensitive areas,

including critical habitat of wildlife protected under Federal or State law; nests of hawks, eagle, falcons, and owls; and prairie or shrub-steppe grouse breeding grounds. Given the diversity of protected and ecologically sensitive areas on NFS lands, the Agency believes it is more appropriate to provide examples than to list specific areas. Site evaluations and all other relevant information needed to evaluate the potential effects of wind energy development on species of management concern and their habitats will be analyzed through the NEPA process.

The final directives are not intended to provide a comprehensive list of all the potential effects of wind energy development on species of management concern and their habitats, nor are the final directives intended to identify all measures that may be taken to avoid or mitigate those effects. The intent of the final directives is to highlight some of the more widely known wildlife issues associated with wind energy development and recommendations for addressing them, primarily regarding susceptibility of birds and bats to aerial collisions with wind power facilities such as METs, guy wires, and turbine towers and blades.

The Agency believes that section 72.21d, paragraph 1, in the final directives adequately addresses sensitive habitats. This provision directs authorized officers to locate METs, roads, wind turbines, and other necessary facilities away from protected areas or where ecological resources are known to be sensitive to human activities and lists specific examples of these areas.

Proposed section 72.31a (sec. 72.21 in the final directives) addresses general considerations associated with siting wind energy uses at the proposal stage. Proposed sections 72.31b through 72.31e (sec. 72.21a through 72.21e in the final directives) address specific considerations associated with siting wind energy uses at the proposal stage.

Comment. One respondent stated that there are no known bat migration corridors. Another respondent commented that ''migration corridor'' is too broad a term for purposes of proposed section 72.31e, which this respondent believed appears to provide for blanket avoidance of birds and bats. This respondent noted that bird and bat collisions with wind turbines are more likely where birds and bats are within the height range of the turbines or funneled along geographical features in the vicinity of the turbines.

Another respondent objected to the statement in the proposed directives to avoid locating METs and wind energy facilities in bird or bat migration corridors, on the grounds that there is insufficient information to indicate that wind energy projects have significant impacts on areas with migratory birds and bats. This respondent believed that these areas should not be off-limits to wind energy development. Rather, this respondent believed that wind energy projects in these areas should be monitored to determine if they pose a significant risk to migratory species.

One respondent stated that many documented bird migration corridors are so broad as to be regional or State-wide, rather than site-specific, which makes the reference to ''documented bird or bat migration corridors'' in the proposed directives less meaningful.

Response. Daily or seasonal bat flight pathways may be discovered through pre-construction surveys. The Agency agrees that ''migration corridor'' is too imprecise a term and has removed it from section 72.21d, paragraph 1, in the final directives. In addition, for clarity, the Agency has included examples of protected and ecologically sensitive areas. As a siting consideration for species of management concern, this paragraph now states:

> Locate METs, roads, wind turbines, and other necessary facilities away from protected areas or where ecological resources are known to be sensitive to human activities. Examples of such areas include wetlands, riparian zones, streams, lakes, bogs, or fens; globally unique, rare or threatened ecosystems; critical habitat of wildlife protected under Federal or State law; nests of hawks, eagle, falcons, and owls; and prairie or shrub-steppe grouse breeding grounds.

As currently written, this provision does not provide for blanket avoidance of birds and bats. Rather, this provision states that METs, roads, wind turbines, and other necessary wind energy facilities should not be installed in protected areas or where ecological resources are known to be sensitive to human activities. To address the problem of funneling migrants, the Agency has added the following to section 72.21d in the final directives:

> Avoid or minimize the placement of wind turbines in areas where topography and landscape features may funnel nocturnal migrants, such as over mountain passes, along river corridors, or ridge tops.

Comment. One respondent commented that it was inappropriate to recommend categorically that areas of fog and mist be avoided, given the lack of scientific evidence that wind energy development in those areas results in higher avian or bat mortality or that bat navigation is disrupted by mist and fog or guy wires on METs.

Response. The Agency believes that fog and mist can increase avian and bat mortality. However, the Agency agrees that the statement in proposed section 72.31e, paragraph 2, was too broad. Consequently, the Agency has qualified the statement in corresponding section 72.21d, paragraph 2, in the final directives to read:

> Avoid or minimize the placement of wind turbines in areas with a high incidence of frontal weather events that lead to frequent fog or mist if existing information indicates a high risk to migratory birds or bats during these weather events.

73.11a—Wildlife, Fish and Rare Plant Considerations

Comment. One respondent suggested that since the guidance in this section was similar to FWS voluntary guidelines, they should be referenced.

Response. FWS's Interim Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines was one of the sources used to develop the final directives. This source is cited in sections 70.6 and 73.4 in the final directives.

Comment. Some respondents stated that applications for wind energy uses that would have unacceptable impacts on wildlife should be denied and that analysis of cumulative impacts should be emphasized where regional trends for wind energy development have the potential to impact migratory populations.

Other respondents suggested speed limits for motor vehicles to minimize wildlife mortality; addressing migratory patterns of all species that may be impacted, including big game; addressing the impacts on entire populations, not just individual animals; and providing barriers or adding humanly inaudible sirens or whistles to divert wildlife from rotor blades.

Response. Several provisions in the final directives address potential effects on wildlife, including cumulative effects, at the application stage. Section 73.4a, paragraph 7, directs authorized officers to ensure that applicants assess effects on wildlife, as applicable, and lists specific items that at a minimum should be considered in assessing these effects. Section 73.4a, paragraph 8, directs authorized officers to ensure that applicants consider the effects of proposed wind energy uses on bats and birds that are continental migrants, semi- or regional migrants, or year-round residents; habitat use and requirements; seasonal use; and migration activity. Section 73.4a, paragraph 9, directs authorized officers to ensure that applicants include in

their assessment of direct, indirect, and cumulative effects on migrant birds and bats all factors routinely assessed for resident species, including susceptibility to mortality from collision with or electrocution from proposed project facilities and seasonal variation in the effects that construction or operation of wind energy facilities may have on these species.

The Agency does not believe it is necessary or appropriate for the final directives to establish a speed limit for motor vehicles accessing wind energy uses; to address migratory patterns of all species that may be impacted; to address potential impacts on entire wildlife populations; or to require applicants to provide barriers or add humanly inaudible sirens or whistles to divert wildlife from rotor blades. These issues are more appropriately handled generally in the final directives (see sec. 73.32, para. 8, governing road management objectives, and sec. 73.4a, paras. 4, 5, 8, and 9, governing avoidance of bird and bat collisions and other effects on wildlife) and addressed as needed in greater specificity case by case.

Comment. Several respondents stated that the direction in proposed section 73.11a, paragraph 1, to avoid use of guy wires on METs would result in greater resource impacts due to the need to construct a larger concrete foundation for METs. These respondents also stated that the direction to avoid guy wires on METs ''to the maximum extent possible'' was too qualified to permit assessment of resource impacts associated with the use of a larger concrete foundation for METs.

Several respondents suggested revisions to the provision requiring avoidance of guy wires on METs to the maximum extent possible. One respondent suggested requiring the use of bird flight diverters or markers on taller METs when guy wires are necessary. Another respondent stated that minimizing the height of METs would reduce the necessity for guy wires and lights and the potential for bird and bat collisions. One respondent recommended the use of monopole over lattice towers to reduce the potential for collisions and perching. One respondent noted that tower height seems to have a direct effect on bat mortality and suggested encouraging the use of shorter turbine towers, consistent with rotor size.

Response. In response to these comments, the Agency has replaced the phrase ''to the maximum extent possible'' with the phrase ''if feasible'' in the final directives. The Agency has made other revisions to this provision to address the potential for bird and bat collisions. Section 73.2 in the final directives states:

> To reduce bat and bird mortality, require applicants to avoid the use of guy wires on METs, if feasible. If applicants propose to use guy wires, require applicants to mark them with bird-deterrent devices when possible (see ''Suggested Practices for Raptor Protection on Powerlines: The State of the Art in 1996,'' as updated in 2000). To reduce potential effects on scenery, require applicants to limit the height of METs to a functional minimum.

With respect to the type and height of turbine towers, section 73.4a, paragraph 5, in the final directives directs authorized officers to ensure that applicants design wind energy structures, including utility poles and wires, to discourage perching or nesting by birds.

Comment. Some respondents noted that the direction in proposed section 73.11a, paragraph 2, to locate placement of wind turbines, roads, and ancillary facilities in the least environmentally sensitive areas does not take into account where the wind resource is located and other engineering realities. These respondents also expressed concern regarding the lack of a definition for the term ''the least environmentally sensitive areas.''

Other respondents suggested that ''environmentally sensitive areas'' should include grassland habitats, shrublands, prairies, shorelines, cliffs, estuaries, old growth forests, aspen stands, talus, and wildlife breeding, brooding, and roosting areas and that habitat fragmentation, climate change adaptability, and avoidance and other behavioral impacts on species sensitive from the presence of vertical structures should be considered.

Response. In response to these comments, in the final directives, the Agency has replaced ''locate wind turbines, roads, and ancillary facilities in the least environmentally sensitive areas, such as away from'' with ''locate wind turbines, roads, and ancillary facilities away from protected and sensitive areas such as.'' In addition, the Agency has added more examples of protected and sensitive habitats.

Comment. One respondent stated that guidance in proposed section 73.11a, paragraph 3, to avoid areas with a high incidence of fog and mist should not be limited to protecting birds and bats during migration, but should also include resident birds and bats. Another respondent suggested removing the phrase ''to the maximum extent possible'' with regard to avoiding placement of wind turbines in areas with a high incidence of fog and mist.

Several respondents suggested strengthening direction in section 73.11a, paragraph 4, in the proposed directives to avoid, minimize, or mitigate the potential for bird and bat collisions by configuring wind turbines to avoid landscape features known to attract migrating wildlife. Several respondents suggested adding the word ''fully'' prior to ''mitigate'' so that it is clear that mitigation will be comprehensive and complete. With respect to the qualification to avoid, minimize, or mitigate the potential for bird and bat collisions if site studies show that placing wind turbines in that location would have adverse impacts, one respondent stated that the proposed directives must specify how these studies would be utilized in site design, evaluating wind energy applications, wind energy operations, wildlife monitoring, and mitigation of adverse effects on wildlife.

Another respondent recommended that the Forest Service adopt the published, updated Avian Power Line Interaction Committee (APLIC) guidelines to minimize electrocutions and collisions by avian species.

Response. Resident species are included in the definition of species of management concern in section 70.6 in the final directives. In addition, section 73.4a, paragraph 8, in the final directives directs the authorized officer to consider the effects of proposed wind energy uses on bats and birds that are year-round residents and their habitat use and requirements.

The Agency agrees that the statement in proposed section 73.11a, paragraph 3, was too broad. Consequently, the Agency has removed the phrase ''to the maximum extent possible'' from corresponding section 72.21d, paragraph 2, in the final directives.

The Agency has revised the final directives to remove site studies as a precondition for avoiding, minimizing, and mitigating the potential for bird and bat collisions with wind turbines. Specifically, section 73.4a, paragraph 3, in the final directives states:

> Avoid, minimize, or mitigate the potential for bird and bat collisions by configuring wind turbines to avoid natural and man-made landscape features and habitats known to attract or concentrate wildlife, particularly if site surveys demonstrate that such placement would create adverse impacts.

Section 73.4a, paragraphs 3a and 3b, enumerate factors relevant to the consideration of the potential for bird and bat collisions. The Agency has declined to add the word ''fully'' before ''mitigate'' because it would be difficult to show full mitigation of the potential for bird and bat collisions.

In addition, in assessing effects of proposed wind energy uses on species of management concern, paragraphs 6a and 6b direct the authorized officer to consider site climate and weather patterns, facility footprint, configuration of the facility within the landscape, and potential impacts on species migrating to or dwelling in the proposed project area, as well as the presence or proximity of natural and man-made landscape features and habitats that attract, congregate or concentrate wildlife.

The Agency used the APLIC guidelines in developing the guidance in section 73.4a, paragraph 3, in the final directives regarding avoidance of bird and bat collisions. Section 73.4a, paragraph 4, directs authorized officers to ensure that applicants use the 2006 APLIC recommendations for design of above-ground lines, transformers, and conductors. All applicable APLIC guidelines may be used during project-specific environmental analysis. In addition, the Agency has included the APLIC guidelines as a reference in section 70.6 in the final directives.

Comment. One respondent suggested changing ''to discourage use as perching or nesting substrates'' to ''discourage use as roosting or nesting substrates'' in paragraph 6, since bats roost, rather than perch.

Response. The Agency has not made this change, since there is no indication that bats roost on wind energy substrates.

Comment. Respondents generally supported burial of utility lines provided for in proposed section 73.11a, paragraph 7. Some respondents suggested removing the phrase ''where possible'' in connection with burial of utility and distribution lines to minimize visual disturbance and impacts on wildlife. Other respondents noted the need for aerial distribution lines over sensitive or rare habitat, where the effects on wildlife from ground disturbance would be greater than the effects on wildlife from use of aerial distribution lines.

One respondent recommended replacing the phrase ''to lessen impacts and disturbance to wildlife'' with ''when such action would reduce rather that increase ecological impacts.'' This respondent also recommended adding the following sentence: ''Ensure that original soils and native vegetation are restored to their original condition following any burial of utility and transmission lines and that adequate measures are taken to preclude the colonization and/or spread of invasive species.''

Response. There may be situations where it is not possible to bury utility and distribution lines. Therefore, the Agency has retained the phrase ''where possible'' in section 73.4a, paragraph 6, in the final directives. In these situations, aerial distribution lines may be appropriate. Both the proposed and final directives direct the authorized officer to use existing utility corridors and structures to the extent practical and to avoid development of new infrastructure.

Section 73.32, paragraph 7, in the final directives addresses control of invasive species in the plan of development. Section 77.3, paragraphs 1 and 2, in the final directives address control of invasive species during construction and site restoration after construction of a wind energy facility.

73.11b—Scenery Management

Comment. One respondent stated that although it is impossible to mitigate all of the visual impact of wind energy projects, thoughtful siting and use of best practices can greatly reduce the impact. This respondent suggested referencing BLM's Instruction Memorandum No. 2005–069, ''Interim Offsite Compensatory Mitigation for Oil, Gas, Geothermal and Energy Right-of-Way Permits,'' regarding micrositing and suitability of wind energy projects.

Response. The Agency agrees and has included this reference in section 70.6 in the final directives.

Comment. Several respondents objected to the requirement in proposed section 73.11b, paragraph 2, for applicants to integrate wind turbine arrays and design into the surrounding landscape. These respondents believed that scenery management decisions regarding wind energy projects should be based on professional judgment regarding whether a particular facility will (a) Result in undue harm to valuable aesthetic resources in a particular setting; (b) significantly degrade scenic resources; (c) visually degrade an area valued for its wildness and remoteness; and/or (d) be at a scale, in terms of wind turbine height or number of turbines, that overwhelms the landscape.

One respondent suggested that the Forest Service balance any potential aesthetic impacts with the environmental benefits of a wind power project in terms of reducing global warming and emissions.

One respondent asked whether proposed section 73.11b, paragraph 5, provides for meeting scenic integrity objectives or merely enumerates sources that may be consulted in connection with that goal.

One respondent recommended using a 10-mile radius for non-sensitive landscapes and a 20-mile radius for mountain ridgelines and other sensitive landscapes in analyzing visual impacts of wind energy facilities. This respondent also wanted the visual impact of wind energy projects on wilderness and other restricted areas to be taken into account and to meet the scenic integrity objectives for those areas. In addition, this respondent recommended requiring visual simulations prior to approval of wind energy uses.

Response. Section 73.4b, paragraph 2, of the final directives requires authorized officers to ensure that applicants consult a variety of sources in planning, designing, and siting wind energy structures and facilities, including USDA Handbook #701 (Landscape Aesthetics), FS–710 (The Built Environment Image Guide for the National Forests and Grasslands), and FSM 2380, which contains the SMS.

The SMS establishes 3 levels of observer distance zones: the foreground, middle ground, and background. The background includes areas seen from 4 miles to the horizon. Consistent with the SMS, section 73.4b, paragraph 1, in the final directives requires authorized officers to ensure that applicants integrate wind turbine strings and design into the surrounding landscape, considering the scenic integrity objectives of the applicable land management plan, and where the scenic integrity objectives may not be met, to ensure that applicants consider offsite mitigation opportunities. When scenic integrity objectives are established, wilderness and other special areas are considered. The final directives provide for visual simulations in sections 73.32, paragraph 12, and 73.4b, paragraph 1b.

Comment. With regard to the provision regarding limiting the height of METs in proposed 73.11b, paragraph 1, one respondent suggested defining the phrase ''proper functioning'' or replacing it with ''for accurate measurement of wind speed and direction.''

Response. The Agency has not included this provision in the final directives.

Comment. With respect to proposed section 73.11b, paragraph 2, one respondent questioned whether ensuring that applicants consider turbine clustering would undermine wind energy projects from an engineering and financial standpoint. Another respondent suggested removing the phrase ''where appropriate'' in connection with this direction.

The second respondent also suggested specifying key design elements, including visual uniformity, use of tubular towers, the proportion and color of wind turbines, and the prohibition of commercial messages; using rigorous viewshed mapping, photographic and virtual simulations, computer simulations, and field inventory techniques that illustrate sensitive and scenic viewpoints and that show with reasonable accuracy the visibility of proposed wind energy facilities; prioritizing elimination or reduction of lighting, consistent with FAA requirements, *e.g.,* through use of light-colored wind turbine generators; designing and configuring wind turbines to provide visual order among clusters of turbines; designing and configuring rotor blades, nacelles, and turbine towers to create visual uniformity in their shape, color, and size; and properly maintaining wind turbine generators.

Response. In section 73.4b, paragraph 1, in the final directives, the Agency replaced the sentence, ''Where appropriate, consider turbine clustering,'' with the sentence, ''Where SIOs may not be met, consider off-site mitigation opportunities.''

The Agency agrees with the other changes suggested by the second respondent and has incorporated them in section 73.4b, paragraph 1, in the final directives.

Comment. One respondent suggested that the environmental analysis for wind energy facilities should address visual impacts resulting from air pollution and additional transmission lines from fossil fuel power plants. This respondent stated that the proposed directives should provide for consideration of the views of a representative sample, rather than a vocal minority, of people visually impacted by wind energy projects.

Response. NEPA requires assessment of site-specific effects. The level of analysis required will vary depending on site-specific circumstances. After a wind energy proposal passes screening and is accepted as an application, the Agency will analyze its effects consistent with NEPA. In preparing an EA or EIS, the Agency examines the cumulative effects of the proposal (including past, present, and reasonably foreseeable future actions) on the affected environment, per 36 CFR 220.4(f). If an EA or EIS is required, the Forest Service will seek public input in connection with the environmental analysis.

Comment. Some respondents believed that the direction in proposed section 73.11b, paragraph 6, to ensure that applicants avoid placing substations or large buildings at high elevations and along skylines that are visible to the public should apply to wind turbines as well. These respondents also stated that any direction regarding the location, design, or concealment of electrical substations should note that the first priority with regard to these structures is safety.

Response. The Agency has not expanded this provision, which appears in section 73.4b, paragraph 3, in the final directives, to apply to wind turbines. Each wind energy project will be analyzed at the site-specific level, and it may or may not be appropriate to place wind turbines at highly visible elevations or along skylines that are visible to the public. Safety is addressed in section 73.32, paragraphs 6 and 8, in the final directives.

Comment. One respondent suggested adding a cross-reference in proposed section 73.11b, paragraph 7, regarding burial of distribution lines for scenery management, to proposed section 73.11a, paragraph 7, regarding burial of distribution lines for wildlife management. This respondent also suggesting qualifying the requirement in proposed section 73.11b, paragraph 7, with the phrase ''where feasible.''

Response. The Agency does not believe that a cross-reference in proposed section 73.11b, paragraph 7 (sec. 73.4b, para. 4, in the final directives) is necessary. However, to be consistent with the provision regarding burial of distribution lines for wildlife management in section 73.4a, paragraph 6, in the final directives, the Agency has qualified section 73.4b, paragraph 4, in the final directives to state: ''Where possible, bury utility and distribution lines to minimize visual disturbance.'' In addition, the Agency has added a paragraph regarding consideration of SIOs in the location, design, and construction of the power line connecting a wind energy project to the energy grid.

73.11c—Noise Management

Comment. One respondent noted that medical studies have shown many adverse effects on nearby residents from the sounds and shadows from wind turbine blades.

Response. The proposed and final directives (proposed section 73.11c) and final section 73.4c require authorized officers to ensure that applicants minimize noise where possible and practical and, if possible and practical, minimize the amplitude of wind turbine and associated generator noise using available sound dampening technologies. In particular, these provisions require authorized officers to ensure that applicants restrict noise to 10 decibels above background noise levels, when possible, at nearby residences and campsites, in or near habitats of wildlife known to be sensitive to noise during reproductive, roosting, or hibernation, or where habitat abandonment may be an issue. These provisions also require authorized officers to ensure that applicants provide for comparisons of noise measurements of planned equipment during wind turbine operation with background noise levels in the project area over a 24-hour period.

Comment. Some respondents suggested removing the words ''when possible'' and ''where possible'' from proposed section 73.11c and revising proposed paragraph 2a to require restriction of noise to 10 decibels above background noise levels at nearby residences and campsites and in wildlife habitat. Other respondents believed that in the vicinity of residences, hiking trails, and campgrounds, even 10 decibels above background noise levels is unacceptable, especially at night. Two respondents suggested that the proposed directives provide for measurement of and limitations on infrasound (low frequency noise inaudible to humans) and high frequency sound. Other respondents commented that the noise level in this provision was impossible to measure and recommended a fixed limit, such as 50 decibels, near residences, critical habitat, and campgrounds. These respondents also suggested setting a fixed decibel level at a fixed distance from wind turbines, as prescribed in the corresponding environmental analysis. These respondents noted that acoustic shielding is already included on wind turbines and therefore suggested revising proposed paragraph 2c, which provided for minimizing wind turbine noise through the use of acoustic shielding in nacelles and associated facilities, if technologically feasible.

Response. The Agency does not believe it would be appropriate to establish specific noise restrictions in the final directives because the appropriate level of noise restrictions is a site-specific decision that needs to be based on local conditions. Section 73.4c, paragraph 2, in the final directives provides for minimizing the amplitude of wind turbine and associated generator noise using available noise dampening technologies, rather than acoustic shielding. Ten decibels above the background noise level was selected based on FWS's

Interim Guidelines on Avoiding and Minimizing Wildlife Impacts From Wind Turbines. The Agency believes it is not necessary to address infrasound and high frequency sound in this context.

Comment. One respondent noted that the noise level from construction of wind energy facilities would be harmful to and could drive away wildlife that would not later return.

Response. Section 75.21 in the final directives requires applicants to submit a monitoring plan prepared in consultation with the authorized officer that will become part of the permit for construction and operation of a wind energy facility. Section 75.21, paragraph 6a, in the final directives lists as an item that may need to be addressed in the monitoring plan the effects of wind turbine construction and operation on species of management concern and their habitats.

73.11d—Lighting

Comment. Some respondents believed that any flashing lights on top of 400-foot towers would be a source of light pollution and that any high-intensity lighting should be turned off unless needed for specific tasks. These respondents also recommended that the proposed directives include a statement that compliance with FAA requirements cannot be used to justify a failure to meet scenic integrity objectives.

Response. The Agency has clarified requirements regarding lighting for wind energy facilities. For example, proposed section 73.11d directed authorized officers to ensure that applicants use the minimum amount of warning lights required by the FAA. Section 73.4d in the final directives directs authorized officers to ensure that, unless otherwise required by the FAA, applicants mark approximately 1 in 5 turbines with duel red-strobe lights on the top of the nacelles of marked turbines and that under no circumstance should L–180 lights be used. Section 73.4b addresses scenic integrity objectives in the context of authorization of a wind energy facility.

Comment. Several respondents supported FAA and FWS guidelines providing for use of red strobe lights for wind energy facilities. These respondents recommended that only the minimum number and intensity of strobe lights be used and suggested including a reference to the FWS guidelines at *http://www.fws.gov/migratorybirds/issues/towers/comtow.html* in the proposed directives.

Response. The FAA and FWS guidelines regarding wind energy uses recommend marking approximately 1 in 5 turbines with duel red–strobe lights on the top of the nacelles of marked turbines and that under no circumstance should L–180 lights be used. Section 73.11d in the proposed directives and section 73.4d in the final directives are consistent with these guidelines. In addition, section 73.4d, paragraph 2, in the final directives directs authorized officers to ensure that, unless otherwise required by the FAA, applicants use the minimum intensity and maximum ''off'' phase (*i.e.,* 20 flashes per minute) that effectively marks the facility boundary and turbines within the project site, making the facility visible to pilots at night. The Agency has included a reference to the FWS guidelines in section 70.6 of the final directives.

73.12—Public Outreach

Comment. Several respondents recommended changing ''ensure that applicants consider conducting public meetings'' to ''ensure that applicants conduct public meetings.'' One respondent believed that this provision was redundant, since public meetings were already included in the NEPA process. Another respondent noted that the proposed directives should address public education, as well as public outreach, regarding wind energy uses on NFS lands.

Response. The Agency does not believe it is appropriate or necessary to ensure that applicants conduct public meetings. Proposed section 73.12 (sec. 73.5 in the final directives) addresses public outreach conducted by applicants. Therefore, proposed section 73.12 does not duplicate public meetings conducted by the Forest Service during the NEPA process. Public meetings conducted by the Forest Service during the NEPA process may be educational.

73.2—Application Requirements for a Permit for Construction and Operation of a Wind Energy Facility

Comment. One respondent stated that the proposed directives were disconnected from how wind energy projects are actually financed and developed. For example, the proposed directives allowed the Agency to require that wind turbines be moved after a project is already in operation. This respondent believed that the possibility of required wind turbine relocation would preclude financing of wind energy projects. The respondent stated that to avoid unnecessary administrative costs, the proposed directives should encourage the use of private sector practices and standardization of commercial terms and conditions in wind energy permits.

Response. Like the proposed directives, the final directives require the authorized officer to ensure that applicants for a permit for the construction and operation of a wind energy facility submit a study plan (sec. 73.31), plan of development (sec. 73.32), and site plan (sec. 73.33). These documents must take into consideration placement of and site disturbance from proposed wind turbines, facilities, access roads, trails, utility corridors, and other facilities.

Section 77.4, paragraph 8, in the final directives directs authorized officers to ensure that holders of wind energy permits use results from multi-year monitoring to adjust operations to mitigate or eliminate impacts on species of management concern and their habitats, while still achieving the energy production objectives for the facility.

73.21—Study Plan

Comment. One respondent stated that the purpose and timing of the study plan were unclear and that the proposed directives required applicants to gather environmental information for the study plan that should be collected later in the NEPA process. This respondent also noted that the Forest Service already has inventories of improvements, resources, and existing conditions and management plans and that applicants should not be responsible for updating or duplicating this work.

Response. The requirements in section 73.21 in the proposed directives (section 73.31 in the final directives) are necessary for the authorized officer to evaluate wind energy applications fully during environmental analysis. The inventories and other information compiled in the study plan are specific to each proposed use and relate to assessment of potential impacts on wildlife, other uses, and valid outstanding rights.

Comment. Several respondents recommended the following changes to proposed section 73.21: (1) In the introductory paragraph, changing the phrase ''submit a study plan which enumerates and provides a brief description of the methodologies for the studies required'' to ''submit a study plan which specifies and describes the methodologies and studies required;'' (2) requiring submission of actual studies and underlying data, and stating that the studies described in the study plan must, rather than should, enable the authorized officer to evaluate the application fully during environmental analysis; (3) in proposed paragraph 2, adding a reference to duration and timing in connection with the presence of certain species, critical habitats, or

other important habitat features; (4) in proposed paragraph 6, changing ''an inventory of improvements and resource investments, such as distribution lines, powerlines and other utilities, access roads, reforestation, restoration, wildlife habitat structures, and fencing'' to ''an inventory of facilities, such as power lines and other utilities and resource management activities such as reforestation, restoration, habitat structures and fencing''; (5) in proposed paragraph 7, changing ''an inventory and assessment of the existing project area'' to ''an inventory and assessment of the proposed project area''; and (6) in proposed paragraph 8, after ''a review of land ownership records,'' adding ''and evidence of easements or negotiations for access to private inholdings.''

Other respondents suggested referring specifically to habitat mapping; raptor nest surveys; general avian use surveys; and wildlife impacts, including loss, modification, fragmentation, and abandonment of forest, grassland, and sage-steppe habitat, increase in edge, potential increase in nest parasitism and predation, potential for reduced nesting and breeding densities, attraction to modified habitats, and other potential effects on wildlife behavior.

Response. In response to these comments, the Agency has revised the introductory paragraph to proposed section 73.21 (sec. 73.31 in the final directives) to require study plans to provide a brief description of the studies required for processing the application, including the methodologies to be used in needed studies. In addition, the Agency has revised proposed section 73.21, paragraph 7 (sec. 73.31, para. 7, in the final directives) to require study plans to include an inventory and assessment of the landscape using the SMS or an alternate visualization technique suitable for assessing potential impacts on scenery. The Agency has revised proposed section 73.21, paragraph 8 (sec. 73.31, para. 8, in the final directives) to require study plans to include a review of land ownership records, noting any valid outstanding rights, including mining claims and land use authorizations.

With respect to submission of actual data, as opposed to descriptions of studies, section 74.3 in the final directives directs authorized officers to require applicants for a permit for construction and operation of a wind energy facility to submit sufficiently detailed wind energy data to support environmental analysis of the application and to allow evaluation of the proposed development. In addition, section 75.4, paragraph 2, in the final directives directs authorized officers to ensure before issuance of a permit for construction and operation of a wind energy facility that applicants have submitted a study plan that includes survey outcomes from site testing and feasibility studies.

Similar to proposed section 73.21, paragraphs 1 and 2, section 73.31, paragraphs 1 and 2, in the final directives require study plans to include:

1. A review of existing information regarding identified species of management concern, including habitat use, location, or presence in the study area, and identification of ecologically sensitive areas in or near the study area, including landscape and topographical features known to attract or concentrate birds or bats;
2. Identification of information and methods by which to gather information for the development of biological assessments and evaluations of project-specific species of management concern and their habitats;

The Agency believes that these provisions are broad enough to encompass habitat mapping, raptor nest surveys, general avian use surveys, and wildlife impacts and that it is not necessary to reference these studies specifically in the final directives.

73.22—Plan of Development

Comment. Some respondents were unsure of the meaning and intent of proposed section 73.22, paragraph 9, which addressed proposed alteration of existing uses. With respect to proposed section 73.22, paragraph 13, which required photo-realistic simulations of all wind energy facilities, one respondent stated that it would be impractical to prepare photo-realistic simulations other than for wind turbines. This respondent also noted that proposed section 73.22 should provide for a preliminary plan of development as part of an application and a revised plan of development that includes mitigation measures identified in the NEPA decision document for the project. Another respondent requested that ''should'' be changed to ''must'' in paragraphs 5, 7, and 11.

Response. In response to these comments, the Agency has clarified proposed section 73.22, paragraph 9 (sec. 73.32, para. 9, in the final directives) by removing the reference to the relationship of proposed alteration of existing uses to management objectives for the site and associated restrictions on uses. The final directives require a plan of development to address proposed alteration of the project area and potential impacts on existing land uses, including necessary restrictions on public use.

The Agency believes it is feasible and necessary for a plan of development to contain photo-realistic visual simulations depicting all proposed wind energy facilities, not just wind turbines, and has therefore not revised section 73.32, paragraph 12, in the final directives.

Section 75.21, paragraph 2, in the proposed directives and section 75.21, paragraph 3, in the final directives provide for revision of a plan of development, as appropriate, based on environmental analysis of a wind energy application. Section 75.21, paragraph 3, in the final directives requires a plan of development to be included as an appendix to a permit for construction and operation of a wind energy facility.

The Agency has changed the word ''should'' to ''must'' to ensure that the specifications are met in a plan of development in section 73.32, paragraphs 5, 7, 11a, and 11b.

With regard to access to wind energy facilities, the Agency has added a reference to the width of roads, in addition to their number and length, in proposed section 73.22, paragraph 5 (sec. 73.32, para. 5, in the final directives). The Agency has revised proposed section 73.22, paragraph 6 (sec. 73.32, para. 6, in the final directives) to specify that a plan for security of wind energy facilities and equipment must address fire protection and spill prevention, containment, and cleanup. In addition, the Agency has expanded proposed paragraph 6 to require the site plan to address emergency repair and scheduled equipment replacement and has revised proposed paragraph 10 to require that reclamation plan provide for removal of foundations, roads, and associated infrastructure; re-vegetation using native species; invasive species control; and restoration of the project area upon termination of the authorized use.

73.23—Site Plan

Comment. With respect to the introductory paragraph for proposed section 73.23, respondents recommended requiring the authorized official to consult with the applicant, rather than advising the applicant to consult with the authorized officer, during preparation of the site plan to ensure that it is adequate.

One respondent stated that it would be impractical to provide the exact location and number of all wind turbines, as required by proposed section 73.23, paragraph 1. This respondent believed that the Agency should give applicants the flexibility to propose the maximum number of wind turbines supported by predetermined

areas that have been studied and cleared for that purpose.

Response. The Agency agrees that the authorized officer must consult with applicants during preparation of a site plan to ensure that wind energy projects are adequately described and has revised section 73.33 in the final directives to reflect that intent.

The Agency believes that it is feasible and necessary to show the location of all proposed facilities, including wind turbines, in the site plan and has therefore retained this requirement in section 73.33, paragraph 1, of the final directives.

74—Requirements for Processing Wind Energy Applications

Comment. One respondent suggested stating that teams reviewing wind energy applications should have experience and training in wind energy.

Response. The Agency typically utilizes a range of resource specialists in reviewing special use applications, including those with experience and training in special uses, environmental analysis, and, as needed, wildlife and other areas of expertise. The expertise needed generally is based on the effects of the proposed use on existing conditions and therefore does not tend to vary based on the type of the proposed use. Therefore, the Agency does not believe it would be appropriate to state that those reviewing wind energy applications should have experience and training in wind energy. Both the teams reviewing applications and the authorized officer can consult as needed with those who have that training and experience.

74.1—Effects on Species of Management Concern

Comment. One respondent stated that the proposed directives should encourage wind energy developers and the Forest Service to comply with applicable State wildlife laws.

Response. The final directives provide for compliance with all applicable Federal and State law concerning wildlife and their habitats, including NEPA and the ESA. In particular, section 73.4a, paragraphs 1 and 2, require authorized officers to ensure that applicants for a permit for construction and operation of a wind energy facility comply with all Federal and State laws and regulations regarding wildlife, fish, and rare plants. Section 74.1 addresses environmental analysis of wind energy applications.

Comment. One respondent stated that peer-reviewed guidelines and recommendations must, rather than should, be used and sampling must, rather than should, occur over multiple days and nights and across multiple seasons to account sufficiently for spatial and temporal variation in wildlife activity.

Response. Section 73.4a of the final directives addresses seasonal and spatial variation in wildlife activity in connection with wind energy facilities. In particular, section 73.4a, paragraph 8, in the final directives requires authorized officers to ensure that applicants for a permit for the construction and operation of a wind energy facility consider the effects of proposed wind energy uses on bats and birds that are continental migrants, semi- or regional migrants, or year-round residents; habitat use and requirements; seasonal use; and migration activity. In addition, section 73.4a, paragraph 9, in the final directives requires authorized officers to ensure that applicants for these permits include in assessment of direct, indirect, and cumulative effects on migrant birds and bats all factors routinely assessed for resident species, including susceptibility to mortality from collision with or electrocution from proposed wind energy facilities and seasonal variation in the effects that construction or operation of wind energy facilities may have on these species.

Comment. Some respondents noted that to be consistent with the way the Agency analyzes the effects of other proposed uses on wildlife, the effects of proposed wind energy uses on wildlife must be biologically significant to be addressed in environmental analysis. Additionally, these respondents believed that proposed section 74.1 was overly restrictive with respect to site testing and feasibility permits and recommended a 30-day environmental review period for site testing and feasibility permits, as in BLM's policy.

Response. The final directives are entirely consistent with the way the Agency analyzes the effects of other proposed uses on wildlife. Section 73.4a, paragraph 1, in the final directives requires the authorized officer to ensure that applicants for a permit for construction and operation of a wind energy facility develop biological evaluations and assessments for Forest Service sensitive species and federally designated threatened, endangered, and candidate species that meet the requirements of FSM 2670, and, if needed, conduct consultation pursuant to Section 7 of the ESA. Section 73.4a, paragraph 2, in the final directives requires the authorized officer to ensure that applicants for a permit for construction and operation of a wind energy facility comply with all other Federal and State laws and regulations regarding wildlife, fish, and rare plants.

It would be inconsistent with Forest Service directives to provide that impacts on wildlife from proposed wind energy uses must be biologically significant to be addressed during environmental analysis. The Agency addresses the significance of any potential environmental effects of proposed uses on a site-specific basis during the NEPA process in accordance with applicable law. To reinforce this point, the Agency has added a statement in section 74.1 in the final directives that environmental analysis for wind energy applications must comply with Agency NEPA procedures at 36 CFR part 220 and FSH 1909.15 and should be commensurate with the activities proposed and potential effects anticipated.

The Agency has revised proposed sections 73.11a through 73.11d governing wildlife, scenery, noise, and lighting management (sec. 73.4a through 73.4d in the final directives); 73.12 governing public outreach (sec. 73.5 in the final directives); and 74.1 governing wildlife management (sec. 73.4a in the final directives) to clarify that they apply only to applications for permits for construction and operation of a wind energy facility, not to applications for site testing and feasibility permits.

Comment. Some respondents suggested that the amount of baseline data required on wildlife impacts should be determined on a project-specific basis. These respondents believed that reliance on anecdotal models or wildlife assumptions would result in information of little utility in assessing impacts on birds and bats and therefore recommended that scientifically rigorous surveys of avian and bat use be conducted prior to construction of wind energy projects.

Response. Several provisions in the final directives provide for acquiring baseline data on wildlife impacts, conducting additional surveys, and implementing a monitoring program. Section 72.1 provides for identification of potential information needs at the pre-proposal meeting. In particular, paragraph 2c states: ''Identify environmental or cultural resource analyses that may be required.'' Section 73.1, paragraph 1, requires coordination with Federal, State, and tribal agencies, which will result in identification of site-specific information needs. Section 73.31 lists the types of baseline data that are needed to prepare a study plan. In addition, FSH 2609.13, Wildlife Monitoring and Wind Energy Facilities, enumerates the requirements for

collecting additional information under a monitoring plan.

Comment. In proposed section 74.1, paragraph 1, in the absence of intensive survey efforts, one respondent suggested considering each potentially affected species with range overlaps in the proposed area as potentially affected, rather than as present in the area. In addition, in proposed section 74.1, paragraph 2, this respondent suggested adding that structural measures, such as shielding exposed electrical lines and installing perch guards, are the best way to reduce the likelihood of electrocution of birds and bats. Another respondent commenting on proposed section 74.1, paragraph 2, stated that greater susceptibility of certain species to mortality from collision with or electrocution by wind energy facilities has not been established.

Response. Environmental analysis of wind energy applications will assess whether species of management concern are potentially affected. For purposes of establishing the scope of the analysis, it is more appropriate to speak in terms of species in the area being present, rather than potentially affected. The Agency has clarified this point in section 73.4a, paragraph 7a, of the final directives.

Section 73.2 in the final directives directs authorized officers to require applicants to avoid the use of guy wires on METs, if feasible, to reduce bat and bird mortality, and if applicants propose to use guy wires, to require applicants to mark them with bird-deterrent devices when possible. Section 73.4a, paragraph 5, in the final directives directs authorized officers to ensure that applicants for a permit for construction and operation of a wind energy facility design wind energy structures, including utility poles and wires, to discourage perching or nesting by birds and to use the 2006 APLIC recommendations for design of above-ground lines, transformers, and conductors.

Studies have shown the susceptibility of birds and bats to mortality due to collision with or electrocution from wind energy facilities. Some of these sources, including ''Mitigating Bird Collisions With Power Lines: The State of the Art in 1994,'' published by the Edison Electric Institute, and ''Suggested Practices for Raptor Protection on Powerlines: The State of the Art in 1996,'' published by the Edison Electric Institute and Raptor Research Foundation, are cited in section 70.6 of the final directives.

74.2—Applications Involving Lands Under the Jurisdiction of Multiple Agencies

Comment. Some respondents recommended adding a reference to FWS, the National Park Service, and State fish and wildlife agencies in the first paragraph of proposed section 74.2. One respondent suggested providing for investigations, hearings, and proceedings conducted jointly by the Forest Service and other Federal and State agencies.

Another respondent stated that proposed section 74.2 improperly focuses on activities taking place primarily on NFS lands and fails to mention other agencies' activities on private, State, tribal, or other Federal lands, as required by CEQ's NEPA regulations. This respondent noted that the potential for ignoring activities on private lands is especially troubling given the miles of NFS lands bordering private land and the increasing effects of private land use, such as primary and secondary housing development and resort communities. This respondent further noted that ignoring activities on adjacent State, other Federal, or tribal lands could result in failure to identify potential sources of conflict or potential opportunities to site and develop wind energy facilities effectively.

Response. Section 74.2 in the proposed and final directives addresses coordination in connection with processing wind energy applications that involve lands under the jurisdiction of the Forest Service and one or more other Federal agencies. Lands under the jurisdiction of FWS and the National Park Service are covered by section 74.2. Lands under the jurisdiction of State fish and wildlife agencies are not covered by section 74.2. The Forest Service does not coordinate processing of applications for use of NFS lands with applications for use of State lands. However, the Agency has revised proposed section 72.1, paragraph 2h (para. 2g in the final directives) to provide for discussion of the need to coordinate with affected State agencies.

To clarify the scope of section 74.2, the Agency has changed its title in the final directives to ''Applications Involving Lands under the Jurisdiction of Multiple Federal Agencies,'' rather than ''multiple Agencies.'' In addition, the Forest Service has added a statement that each affected agency must issue a land use authorization for the lands under that agency's jurisdiction.

Section 74.2 does not address investigations, hearings, and proceedings. Section 74.2 also does not address environmental and aesthetic effects and therefore does not preclude consideration, as appropriate, of those effects in siting wind energy uses and evaluating wind energy applications. Environmental and aesthetic considerations are addressed in sections 72.21a, 72.21d, 73.4a, 73.4b, and 74.1 of the final directives.

74.3—Proprietary Information

Comment. One respondent commented that only summaries of wind inventory data, rather than actual data, should be required in site testing and feasibility studies on the grounds that wind data are sensitive commercial information that should not be made available to the public. This respondent believed that once these data were submitted to the Forest Service, they would be subject to disclosure under the Freedom of Information Act.

Another respondent believed that wind inventory data needed to be better defined so that truly proprietary information could be protected. This respondent also believed that data collected by wind energy developers related to wildlife, plants, and other resources on Federal lands should be shared with the public. Other respondents stated that wind energy developers who use Federal lands should be required to make their resource data available to the public as a trade-off for using Federal lands.

Response. The Agency believes that actual wind inventory data, rather than summaries of the data, are necessary to support environmental analysis of applications for permits for construction and operation of a wind energy facility and to allow evaluation of the proposed development. In addition, section 74.3 in the proposed and final directives states that wind inventory data collected under a site testing and feasibility permit are proprietary information that may be withheld from public review to the extent allowable by law and shall be used only for analysis and decisionmaking related to authorization of construction and operation of the proposed wind energy facility. Therefore, the Agency has not changed the substance of section 74.3 in the final directives.

74.4—Change in Ownership of an Applicant

Comment. One respondent suggested requiring applicants that have undergone a change in ownership to provide additional documentation or to refile their application.

Several respondents stated that the requirement to file a new application upon a change in ownership was overly burdensome financially and would

delay the application process by months. These respondents recommended transfer of the application to the new owner, as allowed with communications site authorizations.

Response. Section 74.4 in the proposed directives required submission of additional documentation or refiling of the application when an applicant has undergone a change in ownership. The Agency has revised section 74.4 in the final directives so that it applies to a change in control, as well as a change in ownership, of an applicant. In addition, the Agency has clarified that the entity that acquires ownership or control, as opposed to the original applicant, has the option of filing a new application.

Section 74.4 in the final directives gives the authorized officer the option to require the applicant to provide current documentation of ownership or control or to require the entity that has acquired ownership or control to withdraw the pending application and file a new one with any necessary revisions. Forest Service regulations require special use applicants to demonstrate technical and financial capability to conduct their proposed use. 36 CFR 251.54(e)(5)(iv). Therefore, when an applicant undergoes a change in ownership or control, the application may not simply be transferred to the entity that acquires ownership or control. Additional analysis of the applicant's or new entity's technical and financial capability may be required, but does not have to result in a lengthy delay, particularly if the application is subject to cost recovery.

The application process when there is a change in ownership or control is no different for applicants for a communications site lease. However, holders of a lease for a communications site may assign their lease to an entity that acquires ownership or control of the communications site facility. The Forest Service allows assignment only of authorizations like leases and easements that convey an interest in real property. A wind energy permit does not convey an interest in real property.

74.5—Cost Recovery Requirements

Comment. One respondent stated that the cost of NEPA documentation for wind energy applications should be borne by the applicants, not the taxpayers.

Response. Section 74.5 in the proposed and final directives incorporates the cost recovery requirements in Forest Service regulations for processing special use applications, including cost recovery for NEPA documentation.

75.1—Site Testing and Feasibility Permits

Comment. One respondent suggested providing specific guidance on application requirements for site testing and feasibility permits. For example, this respondent suggested encouraging the use of a CE for site testing and feasibility permits, given the minimal impact of METs.

Other respondents suggested that a monitoring plan should be required for every wind energy permit, including site testing and feasibility permits. These respondents cited the need for monitoring data and the difficulty in obtaining these data from private landowners. Another respondent wondered which criteria would be used for monitoring effects on wildlife and noted that baseline data must be collected before an area is disturbed by installation of METs.

Response. Section 73.1 in the final directives provides direction on application requirements for all wind energy permits. Section 73.2 in the final directives provides direction on application requirements for site testing and feasibility permits. The appropriate level of environmental documentation is site-specific. Therefore, the Agency believes it is best to address NEPA compliance generally in the final directives.

The Agency's experience with installation of METs in many locations on NFS lands has shown that reliance on a CE for this activity is often warranted. The analysis conducted to comply with the Agency's NEPA regulations will be based on site-specific information and anticipated environmental effects. Provided that extraordinary circumstances are not an issue under 36 CFR 220.6(b), the CE in 36 CFR 220.6(e)(3)(i) may apply to applications for minimum area site testing and feasibility permits, which involve up to 5 acres.

The Agency has determined that a monitoring plan is not needed for a site testing and feasibility permit, given the minimal effect of METs on the environment. Therefore, the Agency has removed proposed 75.1, paragraph 1, which addressed the need for a monitoring plan for a site testing and feasibility permit, from the final directives. Section 75.21, paragraph 6, in the final directives requires submission of a monitoring plan as a prerequisite to issuance of a permit for construction and operation of a wind energy facility and addresses the contents of the plan.

Comment. One respondent suggesting requiring holders of site testing and feasibility permits to prepare a site restoration plan and post a bond to cover the costs of restoring the site if the project terminates before wind turbines are installed.

Response. The Agency does not believe it is necessary to regulate holders of a testing and feasibility permit to prepare a site restoration plan. However, the Agency has revised section 75.13 in the final directives to require holders of these permits to obtain a construction and reclamation bond of at least $2,000 per MET.

Comment. One respondent was concerned that an EIS and 2 years of extensive wildlife monitoring could be required for site testing and feasibility permits, given the ambiguity in the proposed directives regarding the applicability of proposed sections 73.11a and 74.1, regarding effects on wildlife, to those permits.

Response. Section 73.2 in the final directives states that an application for a site testing and feasibility permit requires less documentation than that required for a permit to construct and operate a wind energy facility. In addition, the Agency has revised proposed sections 73.11a and 74.1 (sec. 73.4a in the final directives) to clarify that these provisions regarding effects on wildlife apply only to permits for construction and operation of a wind energy facility.

Comment. Several respondents stated that new roads and utilities should not be built for METs and that METs should not be located in sensitive habitats or areas where ecological resources are known to be sensitive to human activities. One respondent suggested enumerating performance standards and criteria that should be included in a CE or finding of no significant impact for a MET, such as avoiding locating METs in ecologically sensitive areas or at cultural or historic sites; prohibiting permanent foundations for METs; and avoiding construction of new roads to access METs.

Response. The Agency believes that the final directives appropriately address sensitive habitats, sensitive ecological resources, cultural and historic sites, and minimizing development in connection with siting METs. Specifically, section 72.21d, paragraph 1, directs the authorized officer to locate METs away from protected areas or where ecological resources are known to be sensitive to human activities and lists examples of these areas. Section 72.21d, paragraph 4, directs the authorized officer to use existing roads and utility corridors to

the extent feasible and to minimize the number, length, and size of new roads. Section 72.21e directs the authorized officer to consider potential effects on historic properties and cultural resources and to comply with section 106 of the NHPA and FSM 2360.

Comment. Some respondents suggested increasing the term of site testing and feasibility permits to a maximum of 6 years, consistent with BLM's approach, to allow holders to meet the rigorous requirements for site testing and feasibility permits. These respondents stated that having to conduct extensive pre-installation wildlife monitoring would economically deter or preclude the necessary site testing and feasibility phase.

Response. Under Section 75.1, paragraph 3, in the final directives, the holder of a site testing and feasibility permit has 2 years to install and operate METs. In the final directives, the Agency has added the phrase, unless a written justification for the delay is submitted and accepted by the authorized officer prior to the end of the 2-years period. The holder has 3 years to report results of site testing to the Forest Service. The authorized officer may extend the permit for up to 2 years, up to a maximum term of 5 years, pursuant to section 75.1, paragraph 3b. The Agency believes a maximum term of 5 years is adequate for installing and operating METs and reporting test results to the Agency.

The Agency has determined that a monitoring plan is not needed for a site testing and feasibility permit, given the minimal effect of METs on the environment. Therefore, the Agency has removed proposed 75.1, paragraph 1, which addressed the need for a monitoring plan for a site testing and feasibility permit, from the final directives.

Comment. One respondent objected to requiring a study plan for site testing and feasibility permits, which merely authorize data-gathering devices.

Response. The introductory paragraph of section 73.21 in the proposed directives and section 73.31 in the final directives states that a study plan must be submitted by applicants for a permit for construction and operation of a wind energy facility, not by applicants for a site testing and feasibility permit.

75.11—Types of Site Testing and Feasibility Permits

Comment. With respect to proposed section 75.11, paragraph 2, one respondent questioned whether it was feasible or necessary for proponents to justify the proposed number of METs and the proposed acreage for project area permits, since only the minimum number of METs would ever be proposed to obtain needed data. Other respondents recommended that justification of the proposed number of METs and the proposed acreage be mandatory. Another respondent stated that the reference to the Department of Energy's National Renewal Energy Laboratory in Denver, Colorado, should be changed to ''National Wind Technology Center in Golden, Colorado (*http://www.nrel.gov*).

Response. Proposed section 75.11, paragraph 2, required proponents to justify the proposed number of METs and the proposed acreage for project area permits. The Agency has retained this provision in section 75.1, paragraph 2, in the final directives because a project area permit authorizes multiple METs and excludes use of the authorized area for site testing and feasibility study by other project proponents. The Agency believes it is feasible and necessary for purposes of evaluation to project proposed development in all special use proposals and applications. In section 75.1, paragraph 2, in the final directives, the Agency has modified the reference to the National Wind Technology Center as requested by the respondent.

75.13—Site Testing and Feasibility Permit Form

The Agency received no comments on this section. However the Agency revised this section to read, ''To authorize site testing and feasibility, use form FS–2700–4, Special Use Permit, and use code 414, ''Wind energy site testing.'' See FSH 2709.11, for guidance on completing form FS–2700–4.''

The Agency added a paragraph to this section to require construction and reclamation bonding of at least $2,000 per MET for all site testing and feasibility permits. Bonding may take the form of corporate surety, U.S. Treasury bills, notes, bonds, or other negotiable securities, cash deposits, irrevocable letters of credit, assignment of savings accounts, or assignment of certificates of deposit.

75.21—Pre-Authorization Requirements

Comment. With respect to proposed section 75.21, paragraph 1, several respondents questioned the need at the pre-authorization stage for documentation that construction and operation of a wind energy facility will not ''hinder national security, military readiness and training areas, radar and electronic security, and military and civilian airspace. These respondents believed that this documentation would already be provided in the environmental analysis.

Response. The items listed in proposed and final section 75.21 are prerequisites for issuance of a permit for construction and operation of a wind energy facility. Documentation required in paragraph 1 may have been provided during environmental analysis or some other stage of the evaluation process. However, if the required documentation has not been provided beforehand, it must be provided at the pre-authorization stage.

Consistent with section 77.2, paragraph 1, of the final directives, the Agency has added a requirement in section 75.21, paragraph 5b, governing the annual operating plan for the operational phase for holders of a permit for construction and operation of a wind energy facility to provide an annual inspection report of METs and other authorized wind energy equipment. In addition, to address potential reporting requirements, the Agency has also added a requirement in this section for holders to provide an annual report of the amount of energy produced by the authorized facility and where that energy is sold.

The Agency has moved the requirement for bonding for permits for construction and operation of wind energy facility to this section to ensure that the required bonding is obtained before the permit is issued.

Comment. One respondent suggested requiring applicants to submit a site-specific mitigation plan to minimize environmental degradation.

Response. Proposed section 75.21, paragraph 3 (para. 4 in the final directives) requires applicants to submit a final site plan consistent with the corresponding environmental analysis before a permit for construction and operation of a wind energy facility is issued. Proposed section 75.21, paragraph 5 (para. 6 in the final directives) requires applicants to submit a monitoring plan that addresses the potential effects on wildlife and any required mitigation measures discussed in the corresponding environmental analysis and site testing and feasibility studies before a permit for construction and operation of a wind energy facility is issued.

Comment. In proposed section 75.21, paragraph 4a, one respondent suggested stating that the operating plan must, rather than should, address minimizing hazards resulting from increased truck traffic.

Response. The Agency agrees and has stated that an operating plan must address minimizing hazards resulting from increased truck traffic in section

75.21, paragraph 5a, in the final directives.

Comment. With respect to proposed section 75.21, paragraph 4b(1), one respondent questioned the need for applicants to specify the dates or seasons of operation if wind energy projects are operated 24 hours a day, year round.

Response. Depending on the climate and other site-specific factors, wind energy facilities may not be able to operate all the time. Specifically, there may be seasonal limitations on the use of heavy equipment and requirements for plowing snow, as addressed in sections 75.21, paragraphs 5a and 5b(1), in the final directives. The Agency needs to know when these facilities will operate to minimize their resource impacts.

Comment. One respondent stated that relocating wind energy facilities based on monitoring results, as suggested by proposed section 75.21, paragraph 5b, would be cost-prohibitive and should be a consideration only during the planning phase.

Response. The Agency agrees and has revised section 75.21, paragraph 5b (para. 6b in the final directives), by removing the reference to relocating wind energy facilities or staging areas.

Comment. In proposed section 75.21, paragraph 5c, one respondent suggested replacing ''evidence identified through ongoing monitoring of newly discovered ecologically significant habitats or features'' with ''data from ongoing monitoring of newly discovered ecologically significant habitats or features.''

Response. The Agency has removed proposed section 75.21, paragraph 5c, from the final directives because it is covered by proposed paragraph 5d (para. 6c in the final directives), which requires the holder to submit to the authorized officer an annual report summarizing results of all monitoring data and use of the annual report as appropriate to revise the next annual operating plan.

Comment. One respondent stated that to allow independent validation and analysis of data and to return some value to the public for the development of Federal lands, proposed section 75.21, paragraph 5d, should require that all monitoring data—not just summaries of the data—be submitted to the authorized officer in the annual report.

Response. The Agency believes that requiring summaries of the results of monitoring are sufficient for purposes of annual reporting to the authorized officer under the operating plan. Section 75.21, paragraph 6c, in the final directives also provides for use of the annual report as appropriate to revise the next annual operating plan, including adding provisions to mitigate adverse effects on species of management concern. The authorized officer may request the underlying data, if needed.

Comment. One respondent suggested adding a reference in proposed section 75.21, paragraph 5e, to avoiding harassment and disturbance of wildlife during fledging seasons.

Response. The Agency agrees and has added this reference to section 75.21, paragraph 6d, in the final directives.

75.22—Authorization of Wind Energy Facilities

Comment. Some respondents believed that a special use permit is not adequate for financing wind energy projects and that a lease or an easement, which conveys an interest in real property, is necessary to obtain a loan for these projects.

Response. The Agency believes that issuance of a long-term permit of up to 30 years is appropriate for wind energy projects. Many other uses of NFS lands involving significant improvements, such as ski areas, marinas, and resorts, are authorized with a long-term permit, and the holders of these permits have been able to obtain financing. Directives at FSM 2717.3 and standard form FS–2700–12, Agreement Concerning Loan for Holder of Special Use Permit, facilitate this process. The form explains the legal effect of a Forest Service special use permit and the rights and obligations of the holder, the lender, and the Forest Service in this context.

Comment. One respondent stated that proposed section 75.22, paragraph 2, should specify the terms of the site restoration bond; should allow corporate guarantees and letters of credit in lieu of bonds; and should cite section 2.6 in BLM's PEIS regarding bonding. Another respondent stated that the Forest Service should establish national forms and amounts for bonding. Another respondent stated that the holder should be required to obtain a construction bond for site restoration prior to commencement of construction, rather than upon completion of construction, to protect against insufficient funds being available to restore the site if construction is not completed.

One respondent suggested revising proposed section 75.22, paragraph 2, to state that holders of a permit for construction and operation of a wind energy facility must obtain a construction bond ''for site restoration or dismantling of a facility upon completion of construction,'' rather than ''for site restoration upon completion of construction.'' This respondent believed that this revision would ensure that structures are not left indefinitely at the site.

Response. The Agency intends to require holders of a permit for construction and operation of a wind energy facility to obtain a construction bond prior to commencement, not upon completion, of construction. The construction bond is for site restoration upon completion of construction. To clarify this point, the Agency has moved the bonding provision to section 75.21, paragraph 7 in the final directives. Section 75.21 enumerates the prerequisites for issuance of a permit for construction and operation of a wind energy facility. Placing the bonding requirement in that section will require applicants for those permits to obtain a construction bond before the permit is issued.

The Agency believes it would be inappropriate to specify the terms, including the amount, of construction bonds in the directives because the terms may change based on site-specific considerations. In addition, the Agency does not believe it is necessary to develop a standard form for construction bonds because they are common and readily available. Forest Service Handbook 2709.11k, chapter 70, section 75.21, paragraph 7, in the final directives provides that bonding may take the form of corporate surety, U.S. Treasury bills, notes, bonds, or other negotiable securities, cash deposits, irrevocable letters of credit, assignment of savings accounts, or assignment of certificates of deposits. It would not make sense to provide for a construction bond for dismantling a wind energy facility upon completion of construction, because upon completion of construction, wind energy facilities will operate. Therefore, the Agency has made this change in the final directives.

Comment. One respondent stated that the 2-year limit in proposed section 75.22, paragraph 3a, for commencement of construction of a wind energy facility is problematic because this requirement does not account for delays resulting from having to secure other permits or other events outside the holder's control. This respondent recommended including a provision allowing for reasonable construction delays with notification. Another respondent noted that there was a significant backlog on orders of many wind energy facility components (5 years for wind turbine components) and that the 2-year timeframe for commencement of construction was therefore unrealistic. This respondent recommended

increasing the time frame for commencement of construction to 5 years and increasing the time frame for having turbines operational to 7 years.

Response. Forest Service special use regulations at 36 CFR 251.54(d)(5) state that the authorized officer may require proponents to comply with requirements for clearances, certificates, permits, or licenses associated with the proposed use. Proponents and applicants should plan on obtaining other necessary permits before their special-use permits are issued, so that they are ready to start construction upon issuance.

Forest Service special use regulations at 36 CFR 251.54(d)(3) require all proponents to provide sufficient evidence to satisfy the authorized officer that the proponent has, or prior to commencement of construction will have, the technical and financial capability to construct, operate, maintain, and terminate the proposed use. Accordingly, to pass second-level screening, a proponent must demonstrate the financial and technical capability to undertake the proposed use. 36 CFR 251.54(e)(5)(iv). To meet these requirements, proponents must show that they have or will have the capability to construct a wind energy facility, including wind turbines.

However, to address situations where the delay in construction or operation of a wind energy facility is due to circumstances beyond the holder's control, the Agency has provided an exception to termination in the final directives, if a written justification for the delay is submitted and accepted by the authorized officer prior to the end of the termination period and the authorized officer establishes a new time frame for the required actions.

76—Land Use Fees

Comment. One respondent suggested establishing a land use fee payment system similar to BLM's so that wind energy applicants have an approximation of the amount prior to approval of their application.

Response. FSH 2709.11, section 76, establishes the method for calculating the land use fees for wind energy permits. Authorized officers should be able to provide an estimate of the annual land use fee before a wind energy application is granted.

Comment. For increased efficiency and standardization, several respondents proposed establishing a standard land use fee schedule that would be uniformly applied to all Forest Service wind energy permits. Alternatively, these respondents proposed basing land use fees on the quality of the wind resource and the term of the permit. These respondents believed that land use fees should increase as the wind capacity and permit term increase. These respondents stated that the Forest Service could reserve use of the fee schedule until industry or economic conditions change. These respondents believed that appraisals should be used only to confirm that the values in the fee schedule achieve a fair return to the Government for use of NFS lands. These respondents stated that while standardization in assessment of the value of the land use is important, the Forest Service should recognize and allow for unique situations.

Another respondent stated that assessment of land use fees should take into account generating capacity, including anticipated intermittency in the wind resource, and should create a disincentive for sprawl in siting wind turbines.

One respondent stated that because wind energy facilities are essentially permanent structures, taxpayers should receive a fair and significant royalty on each megawatt of electricity they generate.

Response. The Agency does not believe that a fee schedule is appropriate for wind energy uses. The Forest Service's special use regulations at 36 CFR 251.57(a)(1) authorize charging a land use fee based on the market value of the authorized use, as determined by appraisal or other sound business management principles. Section 76.1, paragraph 1, in the final directives provides for standardization of the land use fee by establishing a flat fee for each MET authorized under a minimum area permit. Section 76.1, paragraph 2, in the final directives provides for use of an appraisal to assess the value of the use authorized by a project area permit. Section 76.2 in the final directives provides for use of an appraisal to assess the value of the use authorized by a permit for construction and operation of a wind energy facility. In assessing the value of the authorized use, the appraiser will take into account all relevant factors, in accordance with applicable appraisal standards.

76.1—Land Use Fees for Site Testing and Feasibility Permits

Comment. One respondent stated that the land use fee of $100 for minimum area permits is much too low and that the fee should cover all Forest Service administrative and monitoring costs for the permit.

Response. Proposed section 76.1, paragraph 1, stated that the land use fee for minimum area permits shall be the regional minimum fee or $100 for each MET, whichever is higher. The Agency agrees that $100 for each MET is too low. Accordingly, the final directives provide that the land use fee for minimum area permits shall be the regional minimum fee or $600 for each MET. This amount will be revised annually, based on the Consumer Price Index, (CPI–U). This change in the CPI is posted in section 97 of the FSH 2709.11. This fee is rounded to the nearest $10.

77.2—Inspections

Comment. With respect to proposed section 77.2, paragraph 1, one respondent stated that annual technical inspection reports of METs and other wind energy equipment should be mandatory, not optional.

Response. Proposed and final sections 77.2, paragraph 1, require holders to provide annual technical inspection reports of METs and other wind energy equipment. In addition, section 75.21, paragraph 5b(5) in the final directives requires the annual operating plan for the operational phase to provide for an annual inspection report of METs and other authorized wind energy equipment.

77.3—Construction Requirements

Comment. With respect to proposed section 77.3, paragraph 1, one respondent suggested adding the following sentence: ''Ensure that habitat features attractive to wildlife, especially prey species, are not left in place among the turbines.'' Another respondent requested additional guidance on avoiding, minimizing, and mitigating adverse effects of construction of wind energy facilities. Another respondent suggested adding the following after the first sentence: ''Minimize impacts on groundwater and surface water, including sedimentation and other impacts on water quantity and quality.''

Response. Effects on wildlife and their habitats, including landscape features that attract species of management concern, are addressed in sections 72.21d, 73.4a, and 75.21, paragraph 6, in the final directives. Section 75.21, paragraph 6a, addresses effects of wind turbine construction and operation on species of management concern. The Agency believes that impacts on groundwater and surface water from special uses generally should be addressed in separate directives, and the Agency is working on those directives.

77.4—Operational Requirements

Comment. Another respondent believed that proposed section 77.4

would allow operation of a wind energy facility even if injury to protected species were occurring, in violation of the MBTA. This respondent stated that any violation of the MBTA should be reported to the enforcement branch of the FWS and the U.S. Department of Justice.

Response. None of the provisions in proposed and final section 77.4 authorizes operation of a wind energy facility in violation of the MBTA. To the contrary, section 77.4 addresses maintenance of wind energy facilities, proper use of security lighting, noise management, control of noxious weeds and invasive species and proper use of pesticides. In addition, paragraph 7 in the final directives provides for using results from multi-year monitoring to adjust operations to mitigate or eliminate impacts on species of management concern and their habitats, while still achieving the energy production objectives for the facility.

Comment. One respondent suggested adding deadlines for operational requirements.

Response. The Agency believes that it would not be appropriate to include deadlines for operational requirements, as they may vary depending on project-specific circumstances. Section 73.32, paragraph 4, in the final directives states that the applicant's plan of development must describe the development process, including the sequence, timing, and duration of construction phases; construction methods; required access to facilities; and additional development that may be requested in the future. In addition, section 75.21, paragraph 5a, in the final directives requires applicants to submit an annual operating plan that addresses transportation and traffic management for the construction phase of the project. Therefore, the Agency has not made the change suggested by the respondent.

Comment. With respect to proposed section 77.4, paragraph 1, one respondent stated that wind turbines should be cleaned ''as needed,'' rather than ''yearly,'' to minimize the need to bring large cranes to the site to perform the task.

Response. The agency agrees and has revised proposed section 77.4, paragraph 2, by replacing ''yearly'' with ''as needed.''

Comment. One respondent stated that there is an inconsistency between proposed section 77.4, paragraph 2, and proposed section 73.11d, paragraph 5, in that the former provides for motion sensors for security lighting, while the latter provides for designing the site to minimize or eliminate the need for security lights. This respondent recommended limiting security lighting requirements to certain sites. Another respondent noted that motion sensors for security lighting are not typical at wind energy facilities and may unduly disturb wildlife in the area. This respondent stated that motion sensors should not be required for security lighting, especially given that proposed section 73.11d, paragraph 5, provides for designing the site to minimize or eliminate the need for security lights.

Response. There is no inconsistency between the two provisions. It is consistent to require that wind energy sites be designed to minimize or eliminate the need for security lighting, but to require that if security lighting is used, the lighting be activated by motion sensors. However, the Agency has clarified sections 77.4, paragraph 3, in the final directives by requiring that security lighting be limited to areas where safety is a concern.

Comment. With respect to proposed section 77.4, paragraph 4, another respondent requested clarification of the phrase ''sound-control devices'' and wondered whether it referred to something other than the acoustic shielding referenced in proposed section 73.11c.

Response. The sound-control devices referenced in section 77.4, paragraph 5, in the final directives are the available noise-dampening technologies referenced in section 73.4c, paragraph 2, in the final directives.

Comment. With respect to proposed section 77.4, paragraph 6, a respondent suggested discouraging the use of rodenticides to control rodent burrowing around towers.

Response. Section 77.4, paragraph 6 in the proposed directives and section 77.4, paragraph 7, in the final directives adequately address proper use of pesticides at wind energy facilities.

Comment. With respect to proposed section 77.4, paragraph 7, one respondent suggested removing the phrase ''as necessary'' in connection with adjusting operations to avoid or mitigate impacts on species of management concern and their habitats.

Response. The Agency agrees and has revised section 77.4, paragraph 8 in the final directives to state: ''Use results from multi-year monitoring to adjust operations to mitigate or eliminate impacts on species of management concern and their habitats, while still achieving the energy production objectives for the facility.''

77.5—Site Restoration Upon Discontinuation of the Authorized Use

Comment. One respondent suggested setting specific timelines for site restoration. Another respondent stated that wind energy applicants should be required to establish a standard for evaluation of site restoration. This respondent stated that the standard could be based on selection of a point of reference within the project area for each vegetation type, the typical vegetation description for each soil type in a soil survey, or another agreed-upon standard.

Response. The Agency does not believe it would be appropriate to set specific timelines or standards for site restoration, since the timelines and standards may vary depending on site-specific circumstances.

Comment. One respondent stated that proposed section 77.5, paragraph 1, should include additional guidance on decommissioning and that decommissioning should be considered when assessing the environmental impact of a proposed wind energy use. Another respondent stated that proposed section 77.5 should state more clearly that decommissioning and full reclamation of sites are required after removal of wind energy facilities and that the environmental analysis for wind energy uses should clearly iterate their impacts and any necessary mitigation. One respondent noted that if species are disturbed, they will avoid the entire area, not just their habitats within the area, and that the Forest Service should require habitat mitigation based on more than the area of the disturbed footprint. Another respondent stated that the Forest Service should require not only decommissioning of access roads, but also returning the roads to their pre-project state.

Response. The Agency has replaced the reference to decommissioning roads in paragraph 1 with a reference to returning roads to their pre-project state, since roads may exist in the project area before wind energy facilities are built. In that case, decommissioning would not be appropriate. Roads that were built for the project would be decommissioned. The other provisions in section 77.5 regarding removal of authorized facilities, re-establishment of predevelopment vegetation cover, use of certified weed-free materials, and conducting other site restoration activities required by the plan of development and the permit provide adequate environmental protection.

Comment. Some respondents stated that while it is virtually impossible to return developed land to pre-existing conditions, wind energy developers should be required to submit removal and reclamation plans with their proposals, including complete

information about the proper location and width of roads and the footprint of underground electrical cables. These respondents stated that if a wind energy proponent cannot fully restore the proposed site when the use terminates, the Forest Service may want to consider the site unsuitable for wind energy development.

Response. Both sections 73.22, paragraph 10, in the proposed directives and 73.32, paragraph 10, in the final directives require an applicant's plan of development to include a reclamation plan. In the final directives, the Agency enhanced this provision by providing for removal of foundations, roads, and associated infrastructure; providing for invasive species control; and specifying that re-vegetation should involve use of native species. In recognition of the difficulty of restoring a wind energy site to its original condition, the final directives provide for restoration of the project area upon termination of the authorized use.

Response to Comments on FSH 2609.13, Chapter 80

Comment. One respondent noted that wind energy facilities on NFS lands offer a unique research opportunity for learning how wildlife interacts with wind energy facilities. This respondent stated that this type of research opportunity is not necessarily available on private lands, where owners can control access to their facilities and to the data generated. This respondent suggested that the Agency include a provision in wind energy permits allowing access to wind energy sites by government, university, and other wildlife researchers and providing for public access to the data generated from the research.

Response. The Forest Service agrees that it is important to obtain information on the interaction of wildlife with wind energy facilities, both for research and adaptive management so that impacts to wildlife can be reduced. Consequently, the Forest Service has developed guidelines (FSH 2609.13, chapter 80) for pre- and post-construction monitoring of wildlife at wind energy facilities.

In addition, Forest Service regulations at 36 CFR 251.55(b) provide that the Agency has the right to require common use of NFS lands covered by a special use permit or to authorize others to use those lands in any way that is not inconsistent with the holder's rights and privileges after consultation with all parties and agencies involved. Under this provision, after consultation with the holder, the authorized officer may allow access to wind energy facilities for research purposes, provided that the access is not inconsistent with the holder's rights and privileges under the permit.

80.4—Responsibilities

Comment. Several respondents requested that the Forest Service obtain direct involvement from FWS and State wildlife agencies in developing and reviewing wind facility monitoring plans.

Response. The final handbook ensures that this will take place by adding interagency involvement to the responsibilities of the authorized officer. Similar language was also added to FSH 2609.13, section 81, ''Monitoring Plans.''

Comment. Some respondents requested that any data underlying the permit holder's monitoring reports be given to the Forest Service to be used for independent validation of monitoring reports and summaries and that this information be provided to the public for review and comment.

Response. The Agency believes that requiring summaries of the results of monitoring are sufficient for purposes of annual reporting to the authorized officer under the operating plan. Section 75.21, paragraph 6c, in the final directives also provides for use of the annual report as appropriate to revise the next annual operating plan, including adding provisions to mitigate adverse effects on species of management concern. The authorized officer may request the underlying data, if needed. Monitoring reports, operating plans and land use authorizations are public documents, not protected under the Privacy Act or eligible for one of the Freedom of Information Act exemptions.

Comment. One respondent suggested that the party responsible for monitoring should have experience in experimental design and analysis.

Response. This recommendation was not included under ''Responsibilities,'' as proposed by the respondent, but FSH 2609.13, section 81, now states that monitoring plans must be developed ''in consultation with an individual who has expertise in sampling design.''

80.6—References

Comment. Respondents suggested numerous additional references to include in the References section. Specifically, several respondents recommended that the Forest Service incorporate and reference California's Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development.

Response. Generally speaking, Forest Service handbooks are not intended to serve as a comprehensive source of literature on a specific topic. Therefore, only literature actually referenced in the handbook has been included. However, the final list of references has been augmented to include some of the literature referenced by respondents. The Forest Service agrees that California's guidelines are well-written and contain useful guidance for monitoring. However, many other States have wind energy guidelines. Rather than single out the guidelines of one State, the handbook encourages coordination with the applicable State agency in which the project is located.

81—Monitoring Plans

Comment. Respondents indicated that the draft handbook was not clear in the amount of monitoring required for site testing and feasibility permits as opposed to permits for construction and operation of a wind energy facility.

Response. To clarify that monitoring is a requirement associated with permits for construction and operation of a wind energy facility, as opposed to site testing and feasibility permits, the introductory sentence now reads, ''The monitoring plan will describe all pre- and post-construction monitoring conducted under a permit for construction and operation of a wind energy facility.''

Comment. Some respondents expressed concern that too many monitoring decisions were left to the authorized officer and permit holders. Additionally, several respondents suggested changing the word ''should'' to ''shall'' in several places throughout chapter 80 to distinguish monitoring requirements from discretionary actions of the authorized officer.

Response. The final directives impose requirements in several keys places with respect to wildlife monitoring, such as in connection with components of monitoring plans; the number of years for pre- and post-construction monitoring, which may be extended, if needed; and involvement of FWS and State wildlife agencies in development and review of monitoring plans.

Comment. Although many respondents supported using an interagency committee for formulating a monitoring plan, some respondents believed that this would be a time-consuming and unnecessary step.

Response. The Agency believes that involvement from FWS, State agencies, and other sources of wildlife expertise is necessary for producing a monitoring plan that is scientifically sound as well as practical to implement.

Comment. Several respondents suggested that monitoring plans contain thresholds that would indicate the point

at which further mitigation or changes in management would be initiated.

Response. In FSH 2609.13, section 81, the concept of a trigger point has been added as part of the requirement of plan objectives. However, sections 82.1, 82.2 and 84 state that the amount and degree of changes in permit operation will be limited to those that are practical and feasible.

Comment. Some respondents believed that the handbook should include authority to shut down wind turbines on a seasonal basis or remove them from the facility if they cause unacceptable mortality to wildlife.

Response. This recommendation has not been included in the final directives because shutting down or removing wind turbines after a facility is in place is not an operating model that the Forest Service wishes to follow. Rather, the Forest Service prefers to build mitigation and careful planning into the pre-construction phase and is therefore requiring 2 years of pre-construction monitoring and close attention to siting considerations to avoid wind turbine placements where unacceptable mortality might occur. See FSH 2609.13, section 84, ''Adaptive Management,'' for responses to similar comments.

Comment. Some respondents commented that monitoring after construction takes place is too late because ecological damage will have already occurred.

Response. Post-construction monitoring is a necessary step in adaptive management to detect desired and undesired effects as soon as possible and to minimize undesired effects through changes in operation to the extent possible. Additionally, post-construction monitoring provides useful information for design and operation of future wind energy facilities so that appropriate mitigation can be included in future projects (sec. 84).

82—Monitoring Objectives

Comment. Several respondents expressed concern that the monitoring objectives were focused solely on species abundance or mortality and not on other aspects, such as habitat fragmentation, behavioral avoidance of developed areas, and noise issues.

Response. The final direction in FSH 2609.13, section 82, clarifies the linkage between species abundance, presence and activity levels and the suite of environmental factors that potentially affect these factors. As indicated in this section, monitoring of species abundance, presence, and activity levels also needs to include measuring the appropriate environmental factors that are likely to change as a consequence of the wind energy facility. For example, a documented increase in habitat fragmentation associated with the facility could result in reduced abundance or lack of presence of a target species.

Comment. One respondent requested that Objective 1 be reworded to read, ''Monitoring changes in wildlife presence caused by the establishment of a wind energy facility'' rather than ''monitoring changes before and after the establishment of a wind energy facility.''

Response. The Forest Service has concluded that the current wording is more appropriate because it implies that other environmental data should be included in the monitoring design.

Comment. Some respondents commented that federally protected species, such as bald and gold eagles and migratory birds, should be included in all monitoring plans.

Response. The Forest Service has concluded that these species should be monitored if there are risks to these species, as determined from the best available science and from surveys conducted under a site testing and feasibility permit. As stated in the response to comments on section 81, the authorized officer will identify which species or groups of species are most in need of monitoring.

82.1—Monitoring Wildlife Presence, Abundance, and Activity Levels

Comment. Section 82.1 does not consistently use presence, abundance, and activity levels throughout, so it is difficult to tell when all three measures are being discussed.

Response. For consistency, the final handbook direction refers to wildlife presence, abundance, and activity levels throughout this section. The choice of which attributes to monitor depends on the species' use of the site (breeding, migration and dispersal) and whether it is frequently or rarely detected, as described in the third paragraph of this section.

Comment. Some respondents commented that monitoring requirements did not include certain species, such as State listed species, management indicator species, or Forest Service sensitive species.

Response. The definition for species of management concern in FSH 2709.11, chapter 70, includes all of the groups of species that respondents mentioned. Therefore, all direction pertaining to species of management concern in FSH 2709.11, chapters 70 and 80, applies to all the management classes listed in the definition.

Comment. One respondent stated that the Forest Service needs to define what is meant by a ''significant'' change in the presence or abundance of any species of management concern.

Response. As mentioned in the response to comments on section 81, the final directives include a requirement for establishing a trigger point as part of the monitoring objective for each species or group of species. In section 82.1, the term ''significant change'' has been replaced with ''is approaching or has reached an undesired management threshold identified in the objective of the species' monitoring design'' (FSH 2609.13, section 82.1).

Comment. Respondents were either supportive or critical of the Before-After-Control-Impact (BACI) design as a recommended approach for pre- and post-construction monitoring. Some respondents applauded the Forest Service for recommending this design, whereas others believed it was not appropriate in many circumstances associated with wind energy facilities.

Response. The Forest Service believes that it is in the best interest of all parties, including the permit holder, to use the BACI design whenever possible to help distinguish wildlife changes due to the wind energy facility from changes due to other environmental factors. For example, a decline in species abundance that is only measured at the site of the facility would tend to be attributed entirely to the facility, whereas a similar decline on a control site could indicate other factors at work. Although the handbook does not require the use of BACI as a monitoring design, it is recommended because it is a standard tool for monitoring wildlife populations in response to management actions.

Comment. Respondents were mixed in their support of 2 years of pre-construction monitoring and 3 years of post-construction monitoring. Some respondents applauded these timeframes and suggested long-term monitoring, whereas other respondents suggested that these timeframes were excessive and were not needed in situations with minimal environmental concerns.

Response. The final directives maintain the desire of 2 years of pre-construction monitoring because a period of 2 years is the minimum time needed to measure some of the natural variation in environmental conditions so that all changes are not attributed entirely to the wind energy facility. This approach is beneficial to the permit holder as well as to the authorized officer. However, the final directives reduce the post-construction monitoring

to a minimum of 2 years, which still allows for some measure of natural variation while acknowledging that some sites may not have significant environmental issues requiring longer monitoring periods. The final directives provide that 3 years of monitoring are needed if significant risks to any species of management concern have been identified or if a permit has been modified in response to outcomes from the first 2 years of monitoring (FSH 2609.13, sec. 82.1).

Comment. One respondent stated that this section should reference Federal laws, such as the ESA, MBTA, and the Bald and Golden Eagle Protection Act.

Response. None of these acts require monitoring. Therefore, they are outside of the scope of these directives. However, these acts and other legislation affecting Forest Service management are cited in FSH 2709.11, chapter 70, ''Wind Energy Uses.''

82.2—Monitoring Mortality

Comment. One respondent suggested using a more precise monitoring objective for monitoring mortality.

Response. This suggestion has been incorporated into the final directives: ''The objective of post-construction mortality monitoring is to estimate the approximate annual number of collision fatalities of birds and bats on a per-turbine or per-megawatt basis.'' The final directives states, ''and to estimate the influence of physical and biological factors such as season, weather, topography, wind speed and turbine cut-in speed on mortality rates.''

Comment. Several respondents requested that ''should'' be changed to ''shall'' and ''encourage'' to ''required'' in this section.

Response. The Forest Service has carefully evaluated use of these terms and has changed the wording as appropriate to clarify what is actually required as opposed to encouraged. Adjusting for scavenging rates and individual detection rates is required because it is not possible to interpret mortality results without these adjustments. The time intervals between mortality sampling and the amount of area searched depend on local factors and are worded with more flexibility.

Comment. A respondent commented that dog-handler teams should be used instead of human searchers.

Response. The final directives do not include this requirement, but state that dogs provide higher searching efficiency than human searchers and provides a reference for using this method.

Comment. Several individuals commented on specifics of conducting mortality searches. One respondent suggested that mortality searches should extend a fixed distance beyond the rotor -swept radius. A respondent also suggested that a correlation factor needs to be added if there is a forested canopy within the radius of the rotor-sweep area because it is possible that bats and small birds will be caught in the branches and not fall to the ground. One respondent stated that the guidance is vague for determining when a subset of wind turbines rather than all wind turbines would be sampled for carcasses.

Response. Topography and wind speed have local effects on carcass location, so the final directives state that preliminary tests may be needed to determine the optimal search distance for local conditions. A correction factor for forested canopy was not incorporated into the final directives because this level of detail needs to be addressed locally. The final directives clarify that when a wind energy facility contains 20 or fewer wind turbines, mortality searches will be conducted at all wind turbines unless otherwise directed by the authorized officer. For facilities with more than 20 wind turbines, a random sample of all wind turbines will be selected for mortality searches.

Comment. Some respondents commented on additional aspects of mortality monitoring, such as depositing carcasses in research repositories and collecting tissue for subsequent DNA analyses.

Response. The final handbook states, ''The monitoring plan must provide details on documenting and mapping the location of carcasses; procedures for collecting all or a proportion of carcasses; the name of the repository or academic collection where carcasses will be sent; and proper handling of tissue for potential future analyses of DNA.''

Comment. Some responses addressed the need to notify FWS if carcasses of bald or golden eagles or other migratory birds were found. One respondent suggested that the permit holder notify the authorized officer when an anomalous or unusually high mortality event takes place involving any species or combination of species.

Response. The final directives state that FWS will be notified ''within 24 hours'' rather than ''promptly'' when the carcass of a bald or golden eagle is found. The final directives further state, ''Carcasses of other migratory bird species must be reported to the authorized officer and FWS by the next business day, and other species should be reported in progress reports to the authorized officer at intervals specified in the monitoring plan.'' The Forest Service added a statement that the permit holder will promptly notify the authorized officer when an anomalous or unusually high mortality event takes place involving any species or combination of species.

82.3—Other Monitoring

Comment. The proposed directives stated that monitoring ''may also include other species that are of management concern or of substantial public interest,'' but respondents commented that ''substantial public interest'' was not defined.

Response. The final directives eliminate this phrase from section 82.3 because the definition of species of management concern in FSH 2709.11, chapter 70, includes ''species of high public interest.'' These species will be locally identified during the environmental analysis of proposed wind energy facilities. In addition, section was eliminated because the language was in conflict with section 82.2, paragraph 8.

83—Monitoring Tools and Evolving Technology

The Forest Service did not receive any public comments on this section. The term ''evolving technology'' was added to the title of section 83 in recognition that current methods of monitoring might be replaced by improved methods.

84—Adaptive Management

Comment. Several respondents expressed concern that monitoring results might lead to changes in operations that could be economically unrealistic. Some respondents requested that the full range of possible mitigation measures be established when a permit is issued. Respondents focused their concerns on removal of wind turbines or seasonal shutting down of wind turbine operations, since these were seen as the only methods to reduce impacts.

Response. The Forest Service recognizes the costs of changing wind turbine location and operation once a facility is in place. Therefore, the Agency has emphasized site surveys, careful attention to siting requirements, and 2 years of pre-construction monitoring to avoid after-the-fact mitigation. Moreover, language has been added throughout chapter 80 that any modifications to the permit should be within limits that are practical and feasible.

There are numerous forms of mitigation and changes in facility operation that are economically feasible after a wind energy facility is operating,

such as closure of secondary roads that inhibit terrestrial animal movements; reseeding of areas that have converted to invasive species; changes in lighting around buildings; and construction of retaining walls to curtail observed soil erosion. Permit holders could be required to modify certain operations such as changing wind turbine cut-in speed or observing seasonal shut-downs if these measures would significantly reduce bird or bat mortality during specific migration periods. However, it is unlikely that the full range of possible mitigation could be established when a permit is issued.

Comment. One respondent expressed concern that if a permit holder disagreed with revocation of a permit, there would be no appeal process.

Response. Forest Service appeal regulations at 36 CFR 251.60(a)(2)(ii) and the terms of special use authorizations provide for administrative review of decisions to revoke a special use authorization.

Comment. One respondent stated that merely ensuring that facilities do not have long-term unacceptable impacts on wildlife is too vague and the standard is too low.

Response. In section 84, this statement was replaced with the following: ''The purpose of monitoring wildlife at wind energy facilities is to detect both desired and undesired effects as soon as possible and to minimize undesired effects through changes in operation to the extent possible.''

Comment. One respondent suggested that periodic reviews (*e.g.,* at 5-year intervals) be required during the term of the permit.

Response. Section 75.1, paragraph 6, in the final directives requires submission of a monitoring plan as a prerequisite to issuance of a permit for construction and operation of a wind energy facility and lists examples of terms that may need to be addressed or included in the monitoring plan. In particular, paragraph 6c lists as a possible requirement submission by the holder to the authorized officer of an annual report summarizing the results of all monitoring data and use of the annual report as appropriate to revise the next annual operating plan, including adding provisions to mitigate adverse effects on species of management concern. However, FSH 2709.11 contains provisions for periodic reviews and requires annual operating plans as part of all special use permits.

85—Exhibits

Comment. Some respondents suggested that thermal imagery and radio telemetry techniques be added as useful tools. Some respondents also recommended that the reference to spotlighting and use of ceilometers be eliminated because they are not particularly useful tools.

Response. The final directives do not contain any reference to ceilometers or spotlighting. However, rather than add more methods to this exhibit, the final directives reference two publications that contain numerous methods for detecting diurnal and nocturnal presence of wildlife species (Anderson, *et al.,*1999 and Kunz, *et al.,* 2007).

Response to Comments on the Regulatory Certification for the Proposed Directives

Comment. One respondent commented that formulation of a wind energy program and attendant policies and procedures clearly fits the definition of a major Federal action and has the potential to significantly affect the quality of the human environment. This respondent contended that the Forest Service had violated NEPA in proposing the wind energy directives without accompanying environmental analysis in a PEIS. The respondent believed that the Agency's blanket assumption that wind energy projects will not require an EA or EIS would establish a dangerous foundation for widespread development on NFS lands.

Response. Neither a PEIS, EIS, or EA is required for issuance of the wind energy directives. The formulation of a wind energy program and attendant policies and procedures fits the Forest Service's categorical exclusion for rules, regulations, or policies to establish Servicewide administrative procedures, program processes, or instructions (36 CFR 220.6(d)(2)), and there are no extraordinary circumstances that would require documentation in an EA, EIS, or PEIS.

The final directives establish guidance for Forest Service employees on siting wind energy facilities, evaluating a variety of resource concerns, and addressing issues specifically associated with wind energy facilities in the special use permitting process. Specifically, the final directives address the processing of proposals and applications for and issuance of two types of wind energy permits: (1) Site testing and feasibility permits for the collection of data on the wind resource and (2) permits for construction and operation of a wind energy facility. The final directives also address competitive interest in wind energy uses, land use fees for wind energy permits, and potential impacts of proposed wind energy facilities on wildlife, scenery, cultural and heritage resources, and national security. The final directives do not compel approval or denial of wind energy permits. Each proposed wind energy use will be assessed to determine the level of environmental analysis and documentation that is required.

Comment. With respect to the certification regarding civil justice reform in the proposed directives, one respondent stated that the proposed directives would conflict with State and local laws and regulations, that the conflict must be addressed, and that the views of citizens should be given full consideration in siting wind energy projects on NFS lands within their State.

Response. Under Executive Order (E.O.) 12988 on civil justice reform, Agencies promulgating rules or issuing directives through public notice and comment must address whether the proposed and final rules or directives are intended to preempt conflicting State and local laws and regulations; whether the rules or directives will be given retroactive effect; and whether administrative proceedings will be required before parties can file suit in court challenging the rules or directives. The Agency does not anticipate that the final directives will conflict with State or local law. Nevertheless, to ensure national consistency, the regulatory certifications for the final directives provide that they will preempt all State and local laws and regulations that conflict with the final directives or that impede their full implementation.

Each proposed wind energy use on NFS lands will be subject to NEPA. If an EA or EIS is required, the Forest Service will seek public input as required by NEPA.

Comment. One respondent objected to the conclusion in the certification regarding energy effects of the proposed directives that they could have a positive, rather than a negative, effect on the supply, distribution, and use of energy. This respondent stated that the environmental costs of siting wind energy facilities on the ridge tops of mountains in the mid-Atlantic region outweigh the benefits derived from additional energy supplied.

Response. The Agency believes that implementation of these directives could have a positive effect on the supply, distribution, and use of energy to the extent the directives facilitate development of a renewable energy source.

3. Summary of Revisions to the Proposed Directives

The Agency has made nonsubstantive changes to the proposed directives for

clarity and has renumbered FSH 2709.11, sections 70.1 through 77.5.

In addition, the Agency has made the following substantive changes to the proposed directives:

70.2—Objectives. Clarified the objectives of the wind energy directives.

70.5—Definitions. Removed the definition for ''adaptive management'' because the term is not used in chapter 70. Revised the definitions for ''cultural resource,'' ''site plan,'' and ''species of management concern.'' Added a definition for ''historic property.''

70.6—References. Added references.

71—Site Testing and Feasibility Permits. Revised paragraph 1 to clarify the term of and option to extend site testing and feasibility permits.

72.1—Pre-Proposal Meetings. Revised paragraph 2g to provide for discussion of the need to coordinate with affected State agencies.

72.21e—Historic Properties and Cultural Considerations. Added this section.

72.31a—General Considerations (72.21, Siting Considerations, in the final directives). Revised the second sentence of paragraph 2 (the last sentence in the first paragraph in 72.21 in the final directives) to clarify that it applies to wind energy facilities. Removed paragraphs 4a through 4d as duplicative. Removed paragraph 7a.

72.31b—Recreational and Scenery Considerations (72.21a in the final directives). Clarified paragraph 2b.

72.31d—Public Access Considerations (72.21c in the final directives). Revised to add more guidance regarding management of NFS roads and NFS trails.

72.31e—Wildlife, Fish, and Rare Plant Considerations (72.21d, Species of Management Concern, in the final directives). Clarified and narrowed the scope of paragraphs 1 and 2.

73.11a—Wildlife, Fish, and Rare Plant Considerations (73.4a, Species of Management Concern, in the final directives). Expanded and strengthened considerations regarding species of management concern associated with wind energy uses at the application stage. Revised to clarify that the provision applies only to applications for permits for construction and operation of a wind energy facility.

73.11b—Scenery Management (73.4b in the final directives). Revised and expanded paragraph 1. Qualified paragraph 7 (paragraph 4 in the final directives). Added a paragraph regarding consideration of SIOs in location, design, and construction of the power line connecting a wind energy project to the energy grid. Expanded and strengthened considerations regarding species of management concern associated with wind energy uses at the application stage. Revised to clarify that the provision applies only to applications for permits for construction and operation of a wind energy facility.

73.11c—Noise Management (73.4c in the final directives). Revised paragraph 2 to provide for use of available noise-dampening technologies. Expanded and strengthened considerations regarding species of management concern associated with wind energy uses at the application stage. Revised to clarify that the provision applies only to applications for permits for construction and operation of a wind energy facility.

73.11d—Lighting (73.4d in the final directives). Clarified requirements regarding lighting for wind energy facilities. Expanded and strengthened considerations regarding species of management concern associated with wind energy uses at the application stage. Revised to clarify that the provision applies only to applications for permits for construction and operation of a wind energy facility.

73.12—Public Outreach (73.5 in the final directives). Revised to clarify that the provision applies only to applications for permits for construction and operation of a wind energy facility.

73.21—Study Plan (73.31 in the final directives). For clarity, revised the introductory paragraph and paragraphs 7 and 8.

73.22—Plan of Development (73.32 in the final directives). Revised paragraphs 5, 6, 7, 10, and 11.

73.23—Site Plan (73.33 in the final directives). Revised to require the authorized officer to consult with applicants during preparation of a site plan.

74—Requirements for Processing Wind Energy Applications. Added language regarding compliance with applicable law, including NEPA. Added section (sec. 74.1 in the final directives) requiring environmental analysis for wind energy applications to comply with the Agency's NEPA procedures and to be commensurate with the activities proposed and potential effects anticipated.

74.1—Effects on Species of Management Concern (73.4a in the final directives). Revised to address more fully effects on wildlife from wind energy development and to clarify that the provision applies only to applications for permits for construction and operation of a wind energy facility.

74.2—Applications Involving Lands under the Jurisdiction of Multiple Agencies. Changed title to ''Applications Involving Lands under the Jurisdiction of Multiple Federal Agencies.'' Added a statement that each agency must issue a land use authorization for the lands under that agency's jurisdiction.

74.4—Change in Ownership of an Applicant. Revised to apply to change in control, as well as ownership, of an applicant and to clarify that the entity that acquires ownership or control has the option to file a new application.

75.1—Site Testing and Feasibility Permits. Removed paragraph 1, which addressed the need for a monitoring plan for site testing and feasibility permits. In paragraph 2, modified the reference to the Department of Energy's National Wind Technology Center in Golden, Colorado.

In paragraph 3a, provided an exception to termination if a written justification for the delay in installation and operation of equipment is submitted and accepted by the authorized officer prior to the time specified for termination. Moved and expanded the provisions governing site testing and feasibility studies and moved the provisions regarding issuance of a wind energy facility to new section 75.11, entitled ''Site Testing and Feasibility Studies.''

75.13—Site Testing and Feasibility Permit Form. Revised to require holders of these permits to obtain a construction and reclamation bond of at least $2,000 per MET.

75.21—Pre-Authorization Requirements. Revised paragraph 4a (para. 5a in the final directives) to state that an operating plan must, rather than should, address minimizing hazards resulting from increased truck traffic. Revised paragraph 4b (para. 5b in the final directives) to require an annual inspection of METs and other authorized wind energy equipment and an annual report of the amount of energy provided by the authorized facility and where that energy is sold. Revised paragraph 5b (para. 6b in the final directives) by removing the reference to relocating wind energy facilities or staging areas. Removed proposed paragraph 5c because it is covered by proposed paragraph 5d (para. 6c in the final directives). Revised paragraph 5e (para. 6d in the final directives) to provide for avoiding harassment and disturbance of wildlife during fledging seasons.

75.22—Authorization of Wind Energy Facilities. Moved paragraph 2, which requires a construction bond, to section 75.21 to ensure that the bond will be obtained before the permit is issued. Revised the last paragraph to provide an exception to the termination provisions if a written justification for the delay is submitted and accepted by the

authorized officer prior to the time specified for termination and the authorized officer establishes a new timeframe for the required actions.

76.1—Land Use Fees for Site Testing and Feasibility Permits. In paragraph 1, increased the amount of the land use fee for each MET to $600.

77.4—Operational Requirements. Revised paragraph 1 by replacing ''yearly'' with ''as needed.'' Clarified paragraph 2 regarding security lighting. Revised paragraph 7 regarding impacts on species of management concern and their habitats.

80.4—Responsibilities. Added interagency involvement to the responsibilities of the authorized officer.

81—Monitoring Plans. Clarified that monitoring is a requirement of construction and operation permits and not site testing and feasibility permits by amending introductory sentence. Added the concept of a trigger point for further mitigation as part of the requirement of plan objectives.

82—Monitoring Objectives. Clarified the linkage between species abundance, presence or activity level and the suite of environmental factors that potentially affect these measures.

82.1—Monitoring Wildlife Presence, Abundance, and Activity Levels. For consistency, referred to wildlife presence, abundance and activity levels throughout the section. Replaced the term ''significant change'' with ''in approaching or has reached an undesired management threshold identified in the objective of the species' monitoring design.'' Reduced the post-construction monitoring to a minimum of 2 years, but indicated that 3 years of monitoring is needed if significant risks to any species of management concern have been identified or the permit has been modified in response to outcomes from the first 2 years of monitoring.

82.2—Monitoring Mortality. Established a more precise monitoring objective for mortality, *i.e.,* ''The objective of post-construction mortality monitoring is to estimate the approximate annual number of collision fatalities of birds and bats on a per turbine or per megawatt basis.'' Noted that dog handler teams provide a higher searching efficiency than human searches alone. Clarified that preliminary tests may be needed to determine the optimal search distance for local conditions. Clarified that when a facility contains 10 or fewer turbines, all turbines will be sampled, and when there are more than 10 turbines, 20 percent of the turbines will be sampled. Clarified that the monitoring plan must provide for details on documenting and mapping the location of carcasses, collecting carcasses, name of the repository or academic collection where carcasses will be sent, and proper handling of tissue for possible future analyses of DNA. Clarified that FWS will be notified ''within 24 hours'' rather than ''promptly'' when the carcass of a bald or golden eagle is found; carcasses of migratory birds will be reported to the authorized officer and FWS the next business day; other species should be reported in progress reports or as specified in the monitoring plan; and the authorized officer will be promptly notified when an anomalous or unusually high mortality event occurs.

82.3—Other Monitoring. Removed this section which eliminated the phrase concerning species of substantial public interest, because these species are included in the definition of species of management concern in chapter 70 and monitoring language which was in conflict with section 82.1, paragraph 8.

83—Monitoring Tools and Evolving Technology. Added the term ''evolving technology'' to the title of section 83 in recognition of the fact that current methods of monitoring might be replaced by improved methods in the future.

84—Adaptive Management. Added language throughout this chapter that any modifications to the permit should be within limits that are practical and feasible. Replaced the statement that the purpose of monitoring is to ensure facilities do not have long-term unacceptable impacts on wildlife with the following statement: ''The purpose of monitoring wildlife at wind energy facilities is to detect both desired and undesired effects as soon as possible, and to minimize undesired effects through changes in operation to the extent possible.''

4. Regulatory Certifications for the Final Directives

Environmental Impacts

Forest Service regulations at 36 CFR 220.6(d)(2) (73 FR 43096) exclude from documentation in an EA or EIS ''rules, regulations, or policies to establish Servicewide administrative procedures, program processes, or instructions.'' The Agency has concluded that the special use and wildlife monitoring directives fall within this category of actions and that no extraordinary circumstances exist which would require preparation of an EA or EIS.

Regulatory Impact

The final directives have been reviewed under USDA procedures and E.O. 12866 on regulatory planning and review. The Office of Management and Budget (OMB) has determined that the final directives are significant for purposes of E.O. 12866. The final directives will not have an annual effect of $100 million or more on the economy, nor will they adversely effect productivity, competition, jobs, the environment, public health and safety, or State or local governments. The final directives will not interfere with an action taken or planned by another agency, nor will they raise new legal or policy issues. Finally, the final directives will not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of those programs. Accordingly, the final directives are not subject to OMB review under E.O. 12866.

In accordance with the Office of Management and Budget (OMB) Circular A–4, ''Regulatory Analysis,'' a cost/benefit analysis was conducted. The analysis compared the costs and benefits associated with the current condition of having Agency implementing procedures combined with Agency explanatory guidance in Forest Service Handbook (FSH) and the proposed condition of having implementing direction in regulation and explanatory guidance in FSH.

The wind energy directives have no direct economic effect on any entities or individuals beyond what is imposed under current regulations and directives, such as cost recovery associated with processing special use applications and monitoring special use authorizations under 36 CFR 251.58. The Agency anticipates that the wind energy directives will reduce costs by providing clear direction, enhancing consistency and efficiency in program administration.

Moreover, the Forest Service has considered the final directives in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). The Forest Service has determined that the final directives will not have a significant economic impact on a substantial number of small entities as defined by the Act, because the final directives will not impose recordkeeping requirements on them; will not affect their competitive position in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market. The final directives will have no direct effect on small businesses. The final directives merely clarify existing requirements that apply to processing special use proposals and applications and issuing permits for wind energy uses.

No Taking Implications

The Agency has analyzed the final directives in accordance with the principles and criteria contained in E.O. 12630. The Agency has determined that the final directives do not pose the risk of a taking of private property.

Civil Justice Reform

The Agency has reviewed the final directives under E.O. 12988 on civil justice reform. Upon adoption of the final directives, (1) All State and local laws and regulations that conflict with the final directives or that impede their full implementation will be preempted; (2) no retroactive effect will be given to the final directives; and (3) administrative proceedings will not be required before parties can file suit in court challenging their provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, (2 U.S.C. 1531–1538), the Agency has assessed the effects of the final directives on State, local, and tribal governments and the private sector. The final directives will not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Federalism

The Agency has considered the final directives under the requirements of E.O. 13132 on federalism and has determined that the final directives conform with the federalism principles set out in this Executive order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of federalism implications is necessary.

Consultation and Coordination With Indian Tribal Governments

In recognition of the unique government-to-government relationship with federally recognized Indian tribes, the Agency consulted with tribal officials in developing these final directives. In accordance with Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments,'' and relevant policy and direction, the Agency has considered the concerns raised by tribes during the consultation process and has made changes to the directives where appropriate in response to those concerns.

On August 25, 2010, the Deputy Chief for the National Forest System sent letters to the Regional Foresters, Station Directors, Area Director, IITF Director, Deputy Chiefs, and Washington Office Directors inviting them to conduct government-to-government consultation with federally recognized tribes on the proposed wind energy directives. The Forest Service considers tribal consultation as an ongoing, iterative process that, as applicable, encompasses development of proposed directives through issuance of final directives.

From late September 2010 to March 2011, Forest and Grassland Supervisors and District Rangers in each Region made contacts in person and in writing to the tribes within their area of jurisdiction. These Forest Service officials met with tribal leaders or their designees to discuss the proposed wind energy directives. The Agency received comments from tribes in the Northeast, Northern, and Pacific Northwest Regions. All comments received through March 2011 were considered in development of the final directives. Several of the comments are outside the scope of the proposed directives and will be addressed project by project, as appropriate, during development of a particular wind energy facility.

To date, the Agency has heard from tribal leaders that Forest Service activities associated with siting of wind energy facilities should consider the impacts on tribal traditional and cultural resources, uses, and areas, including sacred sites. The tribes also indicated that the Forest Service should assess the impacts of wind energy projects on treaty and reserved rights and the federal government's trust responsibility. Several tribes emphasized a need to engage in tribal consultation early and continuously throughout the wind energy permitting process.

The Agency addressed the comments received through the tribal consultation process in development of the final directives. In response to the comments received from tribes, the final directives were changed as follows:

1. To strengthen Section 70.5, ''Definitions,'' the word ''significant'' was deleted from the term ''cultural resource,'' and a definition for ''historic property'' was added. Corresponding changes to the references to cultural resources were made in sections 72.21b and 73.32, paragraph 9.

2. In Section 72.1, ''Pre-Proposal Meetings,'' paragraph 2b was revised to reflect potential issues associated with cultural resources, including sacred sites and other areas used for tribal traditional and cultural purposes, and treaty and reserved rights.

3. Section 72.1, paragraph 2g, specifies that the responsible official should use pre-proposal meetings to clarify expectations for coordination and consultation with tribal governments.

4. Section 73.5, ''Public Outreach,'' was revised to direct the authorized officer to ''consult, as appropriate under relevant policy and direction, with affected tribes after an application for a wind energy project has been accepted, as part of the ongoing government-to-government consultation process.''

In addition, the USDA Office of Tribal Relations and the Forest Service are conducting a policy review concerning sacred sites and are consulting with tribes during this effort. The Forest Service has informed tribes of this initiative and how they can participate during the consultation meetings.

Pursuant to Executive Order 13175 of November 6, 2000, ''Consultation and Coordination with Indian Tribal Governments,'' the Agency has assessed the impact of the final directives on Indian tribal governments and has determined that the final directives do not significantly or uniquely affect communities of Indian tribal governments. The final directives merely provide a framework that guides the siting of wind energy facilities on NFS lands.

The Agency has also determined that these final directives do not impose substantial direct compliance costs on Indian tribal governments. The final directives do not mandate tribal participation. Instead, they provide guidance to authorized officers to consult with affected tribes once a wind energy application has been accepted and to consider potential impacts on cultural resources and tribal rights throughout the wind energy permitting process.

Energy Effects

The Agency has reviewed the final directives under E.O. 13211 of May 18, 2001, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' The Agency has determined that the final directives do not constitute a significant energy action as defined in the E.O. To the contrary, the final directives could have a positive rather than a negative effect on the supply, distribution, and use of energy to the extent the final directives provide direction on processing proposals and applications and issuing special use permits for wind energy uses.

Controlling Paperwork Burdens on the Public

The final directives do not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

5. Access to the Final Directives

The Forest Service organizes its Directive System by alphanumeric codes and subject headings. The intended audience for this direction is Forest Service employees charged with issuing and administering wind energy permits. To view the full text of the final directives, visit the Forest Service's Web site at *http://www.fs.fed.us/im/directives/*. The final directives and this **Federal Register** notice are also available electronically *http://www.fs.fed.us/specialuses/*.

Dated: July 28, 2011.

Thomas L. Tidwell,

Chief, Forest Service.

[FR Doc. 2011–19673 Filed 8–3–11; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 98

Mandatory Reporting of Greenhouse Gases; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2011–0147; FRL–9443–1]

RIN 2060–AQ85

Mandatory Reporting of Greenhouse Gases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend specific provisions in the Mandatory Reporting of Greenhouse Gases Rule to correct certain technical and editorial errors that have been identified since promulgation and to clarify or propose amendments to certain provisions that have been the subject of questions from reporting entities. These proposed changes include additional information to clarify compliance obligations, correct data reporting elements so they more closely conform to the information used to perform emission calculations, and make other corrections and amendments. EPA has received petitions for reconsideration on some of these subparts. EPA is still considering these petitions, and the issues raised in the petitions are not discussed or addressed in this action.

DATES: *Comments.* Comments must be received on or before September 19, 2011.

Public Hearing. EPA does not plan to conduct a public hearing unless requested. To request a hearing, please contact the person listed in the following **FOR FURTHER INFORMATION CONTACT** section by August 11, 2011. If requested, the hearing will be conducted on August 19, 2011, in the Washington, DC area. EPA will provide further information about the hearing on its webpage if a hearing is requested.

ADDRESSES: You may submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0147 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail: MRR_Corrections@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2011–0147 [and/or RIN number] in the subject line of the message.
- *Fax:* (202) 566–9744.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 2822T, Attention: Docket ID No. EPA–HQ–OAR–2011–0147, 1200 Pennsylvania Avenue, NW., Washington, DC 20004.
- *Hand/Courier Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0147, 2011 Technical Corrections, Clarifying and Other Amendments to Certain Provisions of the Mandatory Reporting of Greenhouse Gases Rule. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; e-mail address: *GHGReportingRule@epa.gov.* For technical information, please go to the Greenhouse Gas Reporting Rule Program Web site *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.* To submit a question, select Rule Help Center, followed by Contact Us. To obtain information about the public hearing or to register to speak at the hearing, please go to *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.* Alternatively, contact Carole Cook at 202–343–9263.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this proposal will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's Greenhouse Gas Reporting Program Web site at *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

SUPPLEMENTARY INFORMATION:

Additional Information on Submitting Comments: To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207–J, Washington, DC 20460, telephone (202) 343–9263, e-mail address: *GHGReportingRule@epa.gov.*

Regulated Entities. The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). See CAA section 307(d)(1)(V) (the provisions of section 307(d) apply to ''such other actions as the Administrator may determine''). These are proposed amendments to existing regulations. If finalized, these amended regulations would affect owners or operators of certain industrial gas suppliers and direct emitters of GHGs. Regulated categories and examples of affected entities include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
Petroleum and Natural Gas Systems	486210	Pipeline transportation of natural gas.
	221210	Natural gas distribution facilities.
	211	Extractors of crude petroleum and natural gas.
	211112	Natural gas liquid extraction facilities.
Underground Coal Mines	212113	Underground anthracite coal mining operations.
	212112	Underground bituminous coal mining operations.
Electrical Transmission and Distribution Equipment Use.	221121	Electric bulk power transmission and control facilities.
Industrial Wastewater Treatment	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills
	322130	Paperboard mills.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
	325193	Ethanol manufacturing facilities.
	324110	Petroleum refineries.
Suppliers of Industrial GHGs	325120	Industrial gas production facilities.
Geologic Sequestration of Carbon Dioxide	N/A	CO_2 geologic sequestration projects
Industrial Waste Landfills	562212	Solid waste landfills.
	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills.
	322130	Paperboard mills.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
	221320	Sewage treatment facilities.

Table 1 of this preamble is not intended to be exhaustive, but rather lists the types of facilities or suppliers that EPA is now aware could be potentially affected by the reporting requirements. Other types of facilities and suppliers than those listed in the table could also be subject to reporting requirements. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A or the relevant criteria in the sections related to suppliers and direct emitters of GHGs. If you have questions regarding the applicability of this action to a particular facility or supplier, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** Section.

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

acf actual cubic feet.
AGR acid gas removal.
ASTM American Society for Testing and Materials.
BAMM best available monitoring methods.
CAA Clean Air Act.
CBI confidential business information.
CEMS continuous emissions monitoring system.
CFC chlorofluorocarbon.
CFR Code of Federal Regulations.
CH_4 methane.
CO_2 carbon dioxide.
DOC degradable organic carbon.
EF emission factor.
e-GGRT electronic-GHG Reporting Tool.
EPA U.S. Environmental Protection Agency.
FR **Federal Register**.
GHG greenhouse gas.
GHGRP Greenhouse Gas Reporting Program.
HCFC hydrochlorofluorocarbon.
kg kilograms.
kg/ft^3 kilograms per cubic foot.
mcf methane correction factor.
MMscf million standard cubic feet.
MRV monitoring, reporting and verification.
MSHA Mine Safety and Health Administration.
$MtCO_2e$ metric tons carbon dioxide equivalent.
N_2O nitrous oxide.
NAICS North American Industry Classification System.
NOAA National Oceanic and Atmospheric Administration.
NTTAA National Technology Transfer and Advancement Act.
OMB Office of Management and Budget.
PFCs perfluorocarbons.
psia pounds per square inch absolute.
RFA Regulatory Flexibility Act.
SF_6 sulfur hexafluoride.
U.S. United States.
UMRA Unfunded Mandates Reform Act of 1995.

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I. Background

A. How is this preamble organized?

The first section of this preamble contains the basic background information about the origin of these proposed rule amendments and request for public comment. This section also discusses EPA's use of our legal authority under the Clean Air Act to collect data under the Mandatory Reporting of Greenhouse Gases (GHG reporting) rule.

The second section of this preamble describes in detail the changes that are being proposed to correct technical errors, to provide clarification, or propose amendments to address implementation issues identified by EPA and others. This section also presents EPA's rationale for the proposed changes and identifies issues on which EPA is particularly interested in receiving public comments.

Finally, the last (third) section of the preamble discusses the various statutory and executive order requirements applicable to this proposed rulemaking.

B. Background on This Action

The 2009 final GHG reporting rule (2009 final rule) was signed by EPA Administrator Lisa Jackson on September 22, 2009 and published in the **Federal Register** on October 30, 2009 (74 FR 56260, October 30, 2009). The 2009 final rule, which became effective on December 29, 2009, includes reporting of GHGs from various facilities and suppliers, consistent with the 2008 Consolidated Appropriations Act.[1] Subsequent notices were published in 2010 finalizing the requirements for subparts FF, II, and TT (75 FR 39736, July 12, 2010), subpart W (75 FR 74458, November 30, 2010), subpart DD (75 FR 74774, December 1, 2010) and subpart RR (75 FR 75060, December 1, 2010). Subpart OO, which was promulgated as part of the 2009 final rule was also revised in 2010 (75 FR 79092, December 17, 2010). The source categories in 40 CFR part 98 cover approximately 85–90 percent of U.S. GHG emissions through reporting by direct emitters, as well as suppliers of certain products that would result in GHG emission when released, used, or oxidized, and those that geologically sequester or otherwise inject carbon dioxide (CO_2) underground.

C. Legal Authority

EPA is proposing these rule amendments under its existing CAA authority, specifically authorities provided in CAA section 114.

As stated in the preamble to the 2009 final rule (74 FR 56260) and the Response to Comments on the Proposed Rule, Volume 9, Legal Issues, CAA section 114 provides EPA broad authority to require the information proposed to be gathered by this rule because such data would inform and are relevant to EPA's carrying out a wide variety of CAA provisions. As discussed in the preamble to the initial proposed rule (74 FR 16448, April 10, 2009), CAA section 114(a)(1) authorizes the Administrator to require emissions sources, persons subject to the CAA, manufacturers of control or process equipment, or persons whom the Administrator believes may have necessary information to monitor and report emissions and provide such other information the Administrator requests for the purposes of carrying out any provision of the CAA. For further information about EPA's legal authority, see the preambles to the 2009 proposed and final rules and EPA's Response to Comments, Volume 9.

D. How would these amendments apply to 2012 reports?

EPA is planning to address the comments on these proposed amendments and publish the final amendments before the end of 2011. Therefore, reporters would be expected to calculate emissions and other relevant data for the reports that are submitted in 2012 using 40 CFR part 98 as amended by this proposed action. We have determined that it is feasible for the sources to implement these changes for the 2011 reporting year because the revisions primarily provide additional clarifications regarding the existing regulatory requirements, do not change the type of information that must be collected, and do not materially affect how emissions are calculated.

For example, EPA is proposing several technical clarifications and amendments to subpart A to address issues raised by reporters through questions to the hotline in late 2010 and early 2011, as well as those identified by EPA. For additional background information on the questions raised, please refer to the Technical Support Document for the 2011 Technical Corrections, Clarifying and Other Amendments to Certain Provisions of the Mandatory Reporting of Greenhouse Gases Rule proposal available in the docket to this rulemaking (EPA–HQ–OAR–2011–0147). For instance, we are proposing to change the threshold for underground coal mines to include only those that liberate 36,500,000 actual cubic feet (acf) of methane (CH_4) or more per year (equivalent to 100,000 acf of CH_4 or more per day). If the current regulatory threshold is retained, all mines that are currently subject to quarterly or more frequent sampling by Mine Safety and Health Administration (MSHA) would be required to report. Given that the original requirements were based on an incorrect assumption regarding the number of mines that MSHA samples, we are proposing a new threshold that will remove reporting requirements for approximately 500 mines (see relevant discussion in Section II.C of this preamble). We are also proposing provisions to clarify the time period during which information must be submitted to EPA and to clarify which information may be submitted through the electronic Greenhouse Gas Reporting Tool (e-GGRT) and which must be mailed to the Director of the Climate Change Division. We are also proposing a revision to the definition of ''supplier'' to be consistent with changes made to the rule during 2010. These changes impose no additional burden for facilities, and could be readily implemented for the 2011 reporting year.

Many proposed revisions provide additional information to provide clarity on existing requirements. For example, in subpart W (Petroleum and Natural Gas Systems) we are providing additional clarity on the methodological options for calculating emissions from acid gas removal units and emissions from well venting for liquids unloading. In subpart FF (Underground Coal Mines) we are proposing to clarify use of MSHA data to calculate emissions. While MSHA data may be used to collect data for volume and concentration of methane, it does not provide temperature and pressure data; therefore, we are proposing that measurements of temperature must be made at the same time as MSHA measurements for volume and concentration of methane and that for pressure, facilities must use either a measured value or the average annual barometric pressure from the nearest National Oceanic and Atmospheric Administration (NOAA) weather service station. This proposed clarification is consistent with clarifications EPA has issued in response to industry questions and does not change the rule requirements for facilities collecting data in 2011 because the requirements to collect temperature and pressure data were already clear in 40 CFR 98.324(b)(1). In subpart RR, clarifying text is proposed in 40 CFR 98.443(d) to ensure that facilities account for CO_2

[1] Consolidated Appropriations Act, 2008, Public Law 110–161, 121 Stat. 1844, 2128.

entrained in produced fluids from oil or gas production wells or from other fluid wells that are not processed through a gas-liquid separator. Although we intended that CO_2 content in all produced liquids would be determined (see Section II.B.4 of the preamble to the final subpart RR rule (75 FR 75065, December 1, 2010)), the text in 40 CFR 98.443(d) and associated equations were based on measurements that did not include fluids removed without the use of a separator, such as water removed for pressure relief. Therefore, the clarifying text does not change the rule requirements for facilities collecting data in 2011.

Other proposed amendments provide additional clarity to the data reporting elements. For example, in subpart II (Industrial Wastewater Treatment) we are proposing to clarify what is meant by weekly sampling in 40 CFR 98.353(c) and (d); the proposed revisions would clarify that reporters that sample only once per week must sample more than three days apart.

For some subparts, we are proposing amendments that would provide additional flexibility to the sources. Thus, while they would be free to use the amended regulations once final, facilities are not required to follow the amendments for 2011 data collection. For example, in subpart TT (Industrial Waste Landfills), facilities are provided an additional approach for determining the volatile solids concentration or the waste-specific degradable organic carbon (DOC) values for historically disposed streams. The July 12, 2010 final rule had no provisions by which waste streams that were not disposed of in the first reporting year could be assessed. These waste streams were required to use the default DOC values, which have a high degree of uncertainty. The proposed revision allows owners and operators of industrial waste landfills to develop more accurate values for volatile solids concentration and site-specific DOC. With these proposed amendments, these facilities would have the option, but not be required, to use the newly proposed option for the reports submitted to EPA in 2012 and thereafter.

EPA is also proposing corrections to terms and definitions in certain equations. For example, in subpart TT (Industrial Waste Landfill), we are proposing to delete Equation TT–7 and amend Equation TT–8, which were incorrectly based on the assumption that the volatile solids concentration was expected to have units of mass of volatile solids per mass of (wet) waste. We are correcting these equations per Standard Method 2540G ''Total, Fixed, and Volatile Solids in Solid and Semisolid Samples,'' in which the volatile solids concentration is determined on a dry basis. These clarifications do not result in additional requirements; therefore, EPA has concluded that reporters subject to the subparts that would be amended by this proposed action can follow the rule, as amended, in submitting their reports in 2012 and thereafter.

Finally, EPA is proposing other technical corrections (*e.g.,* correcting cross references) that have no impact on facilities' data collection efforts in 2011.

In summary, these amendments would not require any additional monitoring or information collection above what was already included in 40 CFR part 98. Therefore, we expect that sources can use the same information that they have been collecting under 40 CFR part 98 for each subpart to calculate and report GHG emissions for 2011 and submit reports in 2012 under the amended subparts.

EPA generally seeks comment on the conclusion that it is appropriate to implement these amendments and incorporate the requirements in the data reported to EPA in 2012. Further, we seek comment on whether there are specific subparts and specific proposed changes where this timeline may not be feasible or appropriate due to the nature of the proposed changes or the way in which data have been collected thus far in 2011. We request that commenters provide specific examples of how the proposed implementation schedule would or would not work.

II. Technical Corrections and Other Amendments

Following promulgation of subparts A and OO on October 30, 2009, subparts FF, II, and TT on July 12, 2010, subpart W on November 30, 2010, and subparts DD and RR on December 1, 2010, EPA has identified errors in the regulatory language that we are now proposing to correct. These errors were identified as a result of working with affected industries to implement these subparts. We have also identified certain rule provisions that should be amended to provide greater clarity. The amendments we are now proposing include the following types of changes:

- Changes to correct cross references within and between subparts.
- Additional information to better or more fully understand compliance obligations in a specific provision, such as the reference to a standardized method that must be followed.
- Amendments to certain equations to better reflect actual operating conditions.
- Corrections to terms and definitions in certain equations.
- Corrections to data reporting requirements so that they more closely conform to the information used to perform emission calculations.
- Other amendments related to certain issues identified as a result of working with the affected sources during rule implementation and outreach.

We are seeking public comment only on the issues specifically identified in this notice for the identified subparts. We will not respond to any comments addressing other aspects of 40 CFR part 98.

A. Subpart A—General Provisions

EPA is proposing several technical clarifications and amendments to subpart A to address issues raised by reporters and identified by EPA during the first year of implementation of the GHG Reporting Program (GHGRP), as well as to clarify terminology to ensure consistency across all subparts. In addition, a number of minor amendments are proposed to ensure that the General Provisions appropriately reflect the incorporation of the additional subparts into the GHGRP that were finalized in 2010.

Threshold for Electrical Transmission and Distribution Equipment Use. We are proposing to amend Table A–3 in the General Provisions to clarify applicability of the rule for Electrical Transmission and Distribution Equipment Use (subpart DD). The final subpart DD rule (December 1, 2010; 75 FR 74774) specifies at § 98.301 that reporting is required for an electric power system only if the total nameplate capacity of SF_6 and PFC containing equipment located within the electric power system, when added to the total nameplate capacity of SF_6 and PFC containing equipment that is not located within the electric power system but is under common ownership or control, exceeds 17,820 pounds. That section of the rule also specifies that a facility other than an electric power system that is subject to part 98 because of emissions from another source category is only required to report emissions under subpart DD if the total nameplate capacity of SF_6 and PFC containing equipment located within that facility exceeds 17,820 pounds. The final rule, however, does not include the 17,820 pound capacity threshold in Table A–3. Some potential reporters have questioned if this omission means that all facilities with electric power equipment must submit an annual report, even if they are below the capacity threshold and are not

otherwise required to report under any other provisions of part 98. This interpretation is clearly not the intent of the rule. The regulatory text in the final rule can and should be interpreted to mean that a facility is required to submit an annual report only if the capacity threshold is exceeded. This interpretation is clear from the preamble to the proposal (74 FR 16609) as well as the final rule (75 FR 74774)). However, we are proposing to revise Table A–3 to insert the capacity threshold language of § 98.301 to make the rule clearer and less subject to misinterpretation. Because the test for whether a facility meets the numerical threshold differs depending on the type of facility, we are including a reference to § 98.301. Therefore, we are revising the Table A–3 entry for subpart DD to read as follows: Electrical transmission and distribution use at facilities where the total nameplate capacity of SF_6 and PFC containing equipment exceeds 17,820 pounds, as determined under § 98.301 (subpart DD).

Threshold for Underground Coal Mines. We are proposing to change the threshold for underground coal mines to include only those that have ventilation emissions of 36,500,000 acf of CH_4 or more per year. For a full description of this proposed change, please refer to the relevant discussion under subpart FF of this action.

Computation of Time. EPA is proposing to add a provision to 40 CFR 98.3(b) to allow information, including but not limited to, the annual GHG report and any subsequent re-submissions, the certificate of representation, and requests to use best available monitoring methods, to be submitted to EPA on the next business day in the event that a regulatory deadline falls on a weekend or a Federal holiday. The proposed language is consistent with a similar provision under the Acid Rain Program (40 CFR 72.11) and will provide all reasonable flexibilities for submitting data without compromising data quality.

2012 Reporting Deadline. We are proposing a one-time extension of the 2012 reporting deadline for facilities and suppliers subject to source categories for which data collection began January 1, 2011 (referred to below as the ''new 2011 reporting year source categories'').[2] A deadline extension from March 31, 2012 to September 28, 2012 would apply only to reporting of data elements under the following source categories: Electronics Manufacturing (subpart I), Fluorinated Gas Production (subpart L), Magnesium Production (subpart T), Petroleum and Natural Gas Systems (subpart W), Use of Electric Transmission and Distribution Equipment (subpart DD), Underground Coal Mines (subpart FF), Industrial Wastewater Treatment (subpart II), Imports and Exports of Equipment Pre-charged with Fluorinated GHGs or Containing Fluorinated GHGs in Closed–cell Foams (subpart QQ), Geologic Sequestration of Carbon Dioxide (subpart RR), Manufacture of Electric Transmission and Distribution (subpart SS), Industrial Waste Landfills (subpart TT), and Injection of Carbon Dioxide (subpart UU).

All facilities and suppliers subject to the GHGRP, including facilities and suppliers that include the source categories listed above, would still be required to report their GHG information for all other subparts by March 31, 2012. For example, a facility subject to report GHG information under subparts C, W, and PP would still be required to report GHG information for subparts C and PP by March 31, 2012, but would not be required to submit the required data reporting elements under subpart W until September 28, 2012.

We are proposing this change to the 2012 reporting deadline for the new 2011 reporting year source categories in order to allow sufficient time for development, and more importantly stakeholder testing, of the electronic-GHG Reporting Tool (e-GGRT). Stakeholder testing provides an opportunity for EPA to receive feedback from reporters and other interested stakeholders to enable EPA to test the effectiveness of the user interface of e-GGRT, correct any problems in advance of the reporting deadline, and ultimately ensure that the data received under the program are of the highest quality. Stakeholder testing of the electronic reporting tool for the new 2011 reporting year source categories is particularly important given the large number of reporters affected by these new categories (more than one quarter of all reporters are estimated to be required to report under these new subparts).

Based on the discussion above, we are seeking comment on whether a six-month extension of the 2012 reporting deadline for the new 2011 reporting year source categories to September 28, 2012, would be appropriate. Facilities and suppliers subject to the rule would still be required to report all other required data reporting elements by March 31, 2012, but would not report information related to the new 2011 reporting year source categories until September 28, 2012.

Reporting on use of Best Available Monitoring Methods (BAMM). We are proposing to amend 40 CFR 98.3(c)(7) to remove the phrase ''according to paragraph (d) of this section'' thereby requiring all facilities and suppliers that use BAMM to provide a brief description of each ''best available monitoring method'' used, the parameter measured using the method, and the time period during which the ''best available monitoring method'' was used, if applicable. This reporting requirement was applicable to all facilities and suppliers using BAMM in the 2009 final rule. Most of the subparts promulgated in 2010 (subparts T, DD, FF, II, QQ, RR, SS, TT, and UU) directly referred back to the procedures in 40 CFR 98.3(d), and therefore the requirement to report basic information on BAMM is required. Through this amendment, we are clarifying that this basic information must be reported for all subparts, including subparts L (Fluorinated Gas Production) and W (Petroleum and Natural Gas Systems). This does not impact the requirements of subpart I (Electronics Manufacturing), which already directly include this reporting requirement in the data reporting requirements of that subpart.

Definitions

Blowdown vent stack. We are proposing to amend the definition of blowdown vent stack emissions to add the phrase ''emissions from emergency events are not included.'' EPA is proposing to make this change to promote better consistency with provisions in subpart C, which exempted emissions from emergency generators and equipment from being included in the GHG emissions calculations.

Supplier. Based on changes made to the rule during 2010, the definition of supplier does not adequately represent the breadth of subparts covered under the rule. EPA is proposing to change the definition of supplier in 40 CFR 98.6 so it specifically refers to those source categories listed in Table A–5 to subpart A of part 98, and is as described in the definition of the source category in the applicable subparts.

The proposed amendment is necessary because suppliers are currently defined as suppliers of fossil fuels and industrial GHGs. However, during 2010, EPA changed the definition of fossil fuels in a rulemaking (75 FR 79092) that could be wrongly

[2] There was a separate one-time extension of the reporting deadline for facilities and suppliers first required to report GHG information to EPA in 2011, for data collected during 2010 (76 FR 14812). The deadline extension in this proposal only applies to the reporting of information from those source categories for which data collection began in 2011 and for which data are to be reported in 2012.

interpreted to exclude some suppliers that are clearly subject to the rule. In the 2009 final rule, fossil fuel was defined in 40 CFR 98.6 as meaning natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material, including for example, consumer products that are derived from such materials and are combusted. Using this definition, suppliers of fossil fuel-based products were covered by subparts MM and NN regardless of the product end-use. This interpretation is clear from the preamble to the 2009 final rule (74 FR 56260). However, in the subsequent rulemaking (75 FR 79092) EPA modified the definition of fossil fuel to read natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material, for purpose of creating useful heat. We were clear in the preamble to that final rule that the change was not intended to have any impact on coverage of GHGs under the GHGRP (see 75 FR 79104). Nevertheless, referring to only suppliers of fossil fuels could now wrongly be interpreted so as to exclude some coverage under subparts MM and NN.

In addition, we added a new source category to the rule called Importers and Exporters of Fluorinated GHGs Contained in Pre-charged Equipment or Closed-cell Foams (subpart QQ, 75 FR 74774). Although one could interpret the existing definition to include suppliers of fluorinated GHGs in bulk and in products, the proposed amendment further clarifies that suppliers include all the relevant source categories included in Table A–5.

We are also proposing a harmonizing change in 40 CFR 98.1(a)(1) to remove the terms ''fossil fuel'' and ''industrial greenhouse gas'' before the term ''supplier.''

Submission of reports and other information to EPA. There were some questions raised in the 2009 final rule about where certain communications should be directed, whether electronically through the electronic greenhouse gas reporting tool (40 CFR 98.5) or through the mail with an attention to the Director of the Climate Change Division (40 CFR 98.9). 40 CFR 98.5 reads that each GHG report and certificate of representation for a facility or supplier must be submitted electronically in a format specified by the Administrator. 40 CFR 98.9 was intended to provide a mailing address for all other communications under the program, however, the regulatory language indicated that the mailing address was for all requests, notifications, and communications to the Administrator other than submittal of the annual GHG report. This raised a question as to whether the certificate of representation could be submitted through the mail.

To address this potential source of confusion, we are clarifying that the annual GHG report, the certificate of representation, and all other requests, notifications, or communications that can be submitted through e-GGRT, must be submitted through e-GGRT. All other requests, notifications, or communications to the Administrator pursuant to this part shall be submitted through the mail to the Director of the Climate Change Division.

Other Technical Corrections. We are proposing to amend 40 CFR 98.2(d) and (e) to remove references to paragraphs 40 CFR 98.2(a)(4)(i) and (a)(4)(ii), respectively, which were removed when we finalized amendments during 2010 to consolidate the lists of source categories covered into tables. The correct references for both paragraphs should have been to 40 CFR 98.2(a)(4). In those same paragraphs we are clarifying that the applicability determination for importers should be assessed separately from the applicability determination for exporters. In other words, the emissions from the quantity of GHGs imported should be calculated for comparison to the 25,000 metric tons CO_2e threshold and separately the quantity of GHGs exported should be calculated for comparison to the 25,000 metric tons CO_2e. Based on questions received from reporters during the 2010 reporting year, it was unclear if the quantity of imports and exports should be assessed separately, added together, or the net imports minus exports calculated for comparison to the threshold. Finally, we are clarifying in Table A–5 that coverage and the applicability determination for importers and exporters under subpart MM includes suppliers of natural gas liquids in addition to suppliers of petroleum products. The inclusion of natural gas liquids suppliers was clear in 40 CFR 98.2(a)(4) and subpart MM (40 CFR 98.390), however, it was inadvertently omitted from Table A–5.

We are proposing to amend 40 CFR 98.2(i)(3) to add a date by which owners and operators must notify EPA that they no longer need to submit an annual GHG report because their operations have changed such that all applicable GHG-emitting processes and operations cease to operate. 40 CFR 98.2(i) provides three instances where facilities or suppliers no longer need to report to EPA. In instances where facilities or suppliers report less than 25,000 metric tons carbon dioxide equivalent ($mtCO_2e$) per year for 5 years, or less than 15,000 $mtCO_2e$ for 3 years, they are required to notify EPA by March 31 of the following year that they are no longer to report for the year after the year in which these conditions have been met. Similarly, the owner or operator is exempt from reporting in the years following the year in which cessation of such operations occurs, provided that the owner or operator submits a notification to the Administrator. However, the rule does not provide a date by which such notification be made. EPA is proposing that, similar to the requirements in 40 CFR 98.2(i)(1) and (i)(2), owners or operators notify EPA by March 31 of the year following the reporting year in which such conditions have been met.

In 40 CFR 98.3(c)(10) and in the definition of United State parent company(s) in 40 CFR 98.6, we are proposing to replace the term ''reporting entity'' with the term ''facility or supplier.'' Reporting entity has not typically been used in the GHGRP and for consistency across the individual subparts of the rule, we are proposing to use the term ''facility or supplier'' which in turn clarifies that the obligation is on the owner or operator of any such facility or supplier. This is consistent with the preamble to the rule that amended 40 CFR part 98 with 40 CFR 98.3(c)(10), in which it is clear that ''reporting entity'' means ''facility or supplier'' (see, for example, 75 FR 57676).

To address several requests for clarification received on the recordkeeping requirements, we are proposing to clarify that the 3-year requirement for retention of records starts from the date of submission of the annual GHG report for the reporting year in which the record was generated. This is as opposed to having the 3-year clock start on the day that the record was generated. The proposal, which is consistent with the Acid Rain Program, is in recognition of the fact that common practice is to retain all of the records for a single reporting year in a readily retrievable format, regardless if the record was generated on January 1st or December 31st of that reporting year. We are therefore proposing that the records be retained for 3 years from the data of submission of the applicable annual GHG report.

In 40 CFR 98.3(c)(5)(ii) we are proposing to replace the use of the term ''emissions'' with ''quantities'' when referring to the information reported under industrial GHG suppliers. This is consistent with efforts throughout the GHG Reporting Program to clarify that information reported for supplier categories do not necessarily reflect

emissions to the atmosphere, but rather ''quantities'' that may be released if all of the supply were combusted or released.

We are also proposing to correct an incorrect cross reference in 40 CFR 98.4(m)(4) from (m)(2)(iv)(A) to (m)(2)(v)(A).

B. Subpart W—Petroleum and Natural Gas Systems

EPA is proposing several technical clarifications and amendments to subpart W to address issues raised during the first year of promulgation of the rule, as well as clarifications to specified provisions in the rule to ensure consistency across all subparts. In addition, several technical corrections are proposed to clarify provisions that were either erroneous or unclear to reporters.

Definitions. EPA is proposing to amend the definition for gas well in 40 CFR 98.238. The definition of gas well that was finalized in the rule, posed the question of whether or not gas wells that included any hydrocarbon condensate were also considered gas wells. The amendment clarifies the definition for gas well by stating that it includes gas wells that also produce natural gas including condensate.

Threshold Clarifications. EPA is broadly including clarification to several throughput thresholds in subpart W in response to clarifications sought by reporters subject to the rule. We are proposing to amend the threshold in the definition of the source category for the onshore natural gas processing industry segment in 40 CFR 98.230(a)(2). This definition includes a threshold provision, which states that all processing facilities that do not fractionate with a throughput per day of 25 million standard cubic feet (MMscf) or greater are covered under the rule. Without a clarification on how the 25 MMscf per day is to be determined, this provision resulted in confusion for reporters. Thus, we propose to amend the definition to state that the 25 MMscf per day throughput threshold is based on an annual average throughput that the reporter would use to determine if they are covered under this definition.

Similarly, we are proposing to clarify that the throughput threshold for glycol dehydrators (40 CFR 98.233(e)(1) and (e)(2)) and onshore production storage tanks (40 CFR 98.233(j)(1),(j)(2),(j)(3) and (j)(4)) are also based on annual average throughput. These proposed amendments are described further in the Calculating Greenhouse Gas Emissions section below.

Greenhouse Gases to Report. We are proposing to clarify in 40 CFR 98.232(d) that the greenhouse gases to be reported under the natural gas processing industry segment include nitrous oxide (N_2O) emissions and not just CO_2 and CH_4 emissions. This proposed amendment will make 40 CFR 98.232(d) consistent with other provisions in the rule related to calculating GHG emissions from flare stacks. The rule in 40 CFR 98.232(j) clearly states that you are required to report CO_2, CH_4 and N_2O emissions for all flare stacks in all applicable industry segments and flare stacks are included to be reported in natural gas processing facilities (98.232(d)(6)). Finally, the calculation methodology for flare stack emissions includes the method for quantifying N_2O emissions from these stacks (See section 98.233(n)(8)). This proposed clarification avoids confusion as to whether N_2O emissions, which typically result from flaring activities, would need to be reported under this industry segment.

In addition, we are proposing to clarify in 40 CFR 98.232(i) that CO_2 and CH_4 emissions are to be reported from the natural gas distribution industry segment. This clarification was necessary to ensure that the affected reporters are aware that these GHG's are to be reported from this industry segment.

Calculating Greenhouse Gas Emissions. We are proposing several clarifications, corrections, and amendments throughout 40 CFR 98.233.

First, we are proposing to amend the definition for GHG_i of Equation W–1 in 40 CFR 98.233(a) which is used for calculating GHG emissions from natural gas pneumatic device venting. In specific, the definition for the parameter GHG_i in Equation W–1 was incorrect in that it inferred that it applied to facilities listed in 40 CFR 98.230(a)(3) through (a)(8) when it actually only applies to the onshore production, natural gas transmission, and underground natural gas storage industry segments of subpart W. In addition, we are proposing to further amend the definition for parameter GHG_i in Equation W–1 to clarify that GHG_i should equal 0.952 for CH_4 and 1 X 10–3 for CO_2 for facilities in 40 CFR 98.230(a)(4) and (a)(5). Previously, this equation did not include any clarification of what the parameter GHG_i would be for methane and carbon dioxide and as a result confusion arose as to what values should be used for the natural gas transmission and underground natural gas storage industry segments. Further, for both Equation W–1, and W–2, of 40 CFR 98.233, we are proposing to amend the definition for the parameter GHG_i to include a reference to 40 CFR 98.233(u)(2)(i) to clarify how and at what frequency GHG_i is to be determined for produced natural gas from the onshore production industry segment. We are proposing these amendments to Equations W–1 and W–2, to clarify specific aspects of the parameter GHG_i and how it applies to applicable industry segments and how it is to be determined to address lack of clarity on these aspects of the equation.

Next, we are proposing amendments to 40 CFR 98.233(d) to clarify how the four different methods are to be used for determining GHG emissions from acid gas removal (AGR) vents. In many cases a reporter may have both a continuous emissions monitoring system (CEMS) or a vent meter available at their facility, and when reviewing the methods in 40 CFR 98.233(d) in the final rule, the reporter would not be able to easily determine which method would apply when certain technologies are available. Thus, we are proposing to amend 40 CFR 98.233(d)(2), (3) and (4) to clarify that if a facility has a vent meter but no CEMs available for determining the CO_2 emissions from AGR units then they would use Calculation Methodology 2 and if a facility has neither a CEMs in place or a vent meter in place, they have the option of using either Calculation Methodology 3 or 4 of 40 CFR 98.233(d).

Next, we are proposing several amendments to 40 CFR 98.233(e) for calculating emissions from dehydrator vents. First, we are proposing to include minor non-substantive revisions to the citations in 40 CFR 98.233(e) and (e)(1)(xi)(C). Next we are proposing to fix an erroneous citation in 40 CFR 98.233(e)(1)(xi) to correctly reference 40 CFR 98.233(e)(1)(xi) instead of 40 CFR 98.233(e)(2)(xi). Finally, we are proposing to amend 40 CFR 98.233(e)(1) and (e)(2) to clarify that the throughput threshold of 0.4 million standard cubic feet per day is to be determined using an annual average daily throughput. We are proposing to include this particular amendment to clarify to reporters how this throughput threshold is to be determined.

We are proposing to amend engineering Equation W–8, which is used to calculate emissions from well venting for liquids unloading. First, we are proposing to amend the first sentence in 40 CFR 98.233(f)(2) to state that Calculation Methodology 2 is to be used to calculate the total emissions for well venting for liquids unloading whereas the rule previously stated that Calculation Methodology 2 was to be used to calculate emissions from each well venting for liquids unloading event. This clarification is in line with

the equation in that the emissions from well venting for liquids unloading that have occurred in the year of data collection are to be summed and an annual value would result for all wells, as opposed to each well separately.

We are proposing to amend Equation W–13 to include corrections and clarifications to the parameter definitions. First we are proposing to correct parameter $E_{a,n}$, EF_{wo}, and V_f to state that they represent standard conditions and not actual conditions. Secondly, we are proposing a correction to the emission factor (EF) value in EF_{wo} that was based on actual conditions and should have been in standard conditions. This proposed change would result in the emissions factor value adjustment EF_{wo} = 2,454 to 3,114 standard cubic feet per workover. Next, we are proposing to revise the definition of $E_{a,n}$ to $E_{s,n}$ to clarify that the annual natural gas emissions calculated are from a single gas well venting event and at standard conditions. Previously the rule stated that the $E_{a,n}$ (now referred to as the E_{sn}), represents emissions from gas well venting, which resulted in confusion as to whether this equation was to apply for gas well venting in previous years or to more than one gas well venting during the year of data collection. Finally, we are proposing to revise 40 CFR 98.233(h)(1). The rule states that the resulting emissions from Equation W–13 are to be converted into standard conditions. However, this should not be the case because Equation W–13 would already result in emissions in standard condition. As a result, we are proposing to include language in 40 CFR 98.233(h)(1) that would reference paragraphs in subpart W that will convert the emissions from Equation W–13 into GHG volumetric and mass emissions.

In Equation W–14 used for determining blowdown vent stacks emissions, we are proposing to clarify that the parameter V_v is the actual physical volume of the blowdown equipment and not the gas volume. It was always EPA's intent that the physical volume between isolation valves be considered against the 50 standard cubic feet threshold for blowdown vent stacks.[3] EPA is also proposing to clarify the reporting requirements for blowdown vent stacks by stating that emissions are calculated per unique volume type and not equipment type. Equation W–14 in 40 CFR 98.233(i) determines emissions on a unique volume basis; therefore, emissions should be reported as such.

In addition, we are proposing to make amendments to equations and parameters dependant on CH_4 and CO_2 composition by making clarifications to the parameter, GHGs used to convert whole gas, total hydrocarbon, or methane emissions into volumetric or mass CO_2, and CH_4 emissions in Equations W–1, W–2, W–30, and W–31.

In 40 CFR 98.233(j) we are proposing to clarify that the throughput threshold referenced in Calculation Methodologies 1–4 is based on an annual average daily throughput of oil, whereas the rule gave no clarification as to what basis the oil throughput was based on, resulting in many questions from affected owners and operators on how this throughput threshold was to be determined. We are also proposing to correct an erroneous citation in 40 CFR 98.234(j)(1)(vii) and 40 CFR 98.233(j)(2), which referenced citations that do not exist. In Equation W–15, where volumetric GHG emissions are determined from onshore production storage tanks, we are proposing to revise the equation by including a multiplier so the resulting emissions would be in the correct units. In addition, we are proposing to amend the definition for the EF_i and count parameters to clarify that these parameters must be used for both gas-liquid separators with throughput less than 10 barrels per day and wells with throughput less than 10 barrels per day sending liquids straight to a tank without going through any separator. The definition to equation W–15 in the 2010 final rule could have been misinterpreted to apply only to instances where there was a separator at the well. The proposed clarification makes the definitions to Equation W–15 consistent with the introduction to 40 CFR 98.233(j)(5).

In Equation W–16, we are proposing to amend the definition for the parameter E_n by first correcting the citation that erroneously included 40 CFR 98.233(j)(3), which should not have been included because it references a methodology that is specific for wells that flow directly to storage tanks bypassing a wellhead separator. In addition, we are proposing to amend the definition for E_n by including a conversion factor that would result in the emissions being determined on a yearly basis as opposed to an hourly basis. In addition, we are proposing to delete the parameter E_t in the equation as it is being accounted for in the revised equation and is no longer necessary.

In 40 CFR 98.233(k) we are proposing the inclusion of minor revisions to 40 CFR 98.233(k)(2) and (k)(4) to clarify that emissions to be calculated are annual emissions. In addition, we are proposing to revise 40 CFR 98.233(k)(4)(i) by removing the reference to 40 CFR 98.233(j)(1) as this reference was incorrectly directed to the onshore production storage tank calculations where owners and operators could use a software program to determine flashing emissions which are not covered under the transmission storage tanks calculations. Finally, we are also proposing to revise 40 CFR 98.233(k)(4)(ii) by clarifying that the flare stack calculations are to be used for emissions that are sent to a flare and not from a flare. The latter resulted in confusion from reporters as to what emissions they would be capturing by using the flare calculation methodologies.

We are proposing to amend the provisions in 40 CFR 98.233(z) for determining combustion emissions from both the onshore petroleum and natural gas production and natural gas distribution industry segments. First, we are proposing to include an engineering equation to be used for determining CH_4 emissions resulting from combustion of a fuel. The rule did not include a specific equation or methodology for determining the methane emissions from combustion of fuel, however, the provisions stated that both CH_4 and CO_2 emissions were to be calculated from the combustion of fuel. In addition, we are proposing to amend the equation used to calculate CO_2 emissions by including a combustion efficiency parameter.

We are proposing to clarify that 40 CFR 98.233(z)(6), calculation of N_2O emissions from stationary combustion, applies only to units combusting field gas or process vent gas. Units combusting other fuels listed in Table C–1 would estimate N_2O (and CH_4) emissions using the appropriate Tier 1 equations in subpart C. We have reorganized section 98.233(z)(6) to incorporate this proposed amendment. We are proposing to amend Equation W–40 to account for an incorrect exponent on the conversion factor from kilograms to metric tons. Without making this change to the rule, the emissions would have resulted in an incorrect calculation of emissions.

We are also proposing to revise equation W–41 to insert missing variables a and b from the equation. Without including the missing variables, equation 41 would lack clarity and be unusable.

[3] Please see Response to Comment number EPA–HQ–OAR–2009–0923–1018–27 in Mandatory Greenhouse Gas Reporting Rule Subpart W—Petroleum and Natural Gas: EPA's Response to Public Comments, Volume 8. This document can be found at *http://www.epa.gov/climatechange/emissions/downloads10/Subpart-W_RTC_part2.pdf.*

Emission Factor Tables. We are proposing to revise the emission factors for high bleed, low bleed, and intermittent bleed pneumatic devices to correct for an error where the original emission factors were on a CH_4 basis and should have been adjusted to account for the total hydrocarbon basis as noted in equation. These proposed revisions would apply to Table W–3 and Table W–4.

Other Technical Corrections. EPA is proposing to clarify in 40 CFR 98.236(c)(6)(ii)(B) that only the number of workovers with hydraulic fracturing that vent gas to the atmosphere or flare gas needs to be reported. The current rule language could suggest you must report on the total number of workovers per year, including those that don't involve hydraulic fracture and those that do not vent gas to the atmosphere.

It came to EPA's attention that the density parameter in Equation W–36 was calculated incorrectly. EPA proposes correcting these parameters to 0.0520 kg/ft^3 for CO_2 and N_2O, and 0.0190 kilograms per square foot (kg/ft^3) for CH_4 at 68° F and 14.7 pounds per square inch absolute (psia).

C. Subpart FF—Underground Coal Mines

Proposed changes to Subpart A. We are proposing to amend Table A–3 to subpart A of part 98. According to Table A–3 to subpart A of part 98, all underground coal mines that are subject to quarterly or more frequent sampling by MSHA of ventilation systems (subpart FF) must report, regardless of size.

This threshold was based on EPA's understanding that quarterly sampling by MSHA was only done at the largest, gassiest mines, defined as those emitting more than 100,000 actual cubic feet (acf) CH_4 per day. For example, the proposal preamble states,

> ''We propose that all active underground coal mines for which CH_4 from the ventilation system is sampled quarterly by MSHA (or on a more frequent basis), are required to report under this rule. MSHA conducts quarterly testing of CH_4 concentration and flow at mines emitting more than 100,000 cf CH_4 per day. We selected this threshold because subjecting underground mine operators to a new emissions-based threshold is unnecessarily burdensome, as many of these mines are already subject to MSHA regulations. The MSHA threshold for reporting of 100,000 cf CH_4 per day covers approximately 94 percent of the CH_4 emitted from underground coal mine ventilation systems and about 86 percent of total emissions from underground mining (including stationary fuel combustion emissions at mine sites, as shown in Table FF–1 of this preamble).''

In the proposal preamble, we estimated that this threshold covers only about 128 of the estimated 612 active underground mines in the United States (74 FR 16553). Although it was not evident in reviewing the public comments received on the proposed subpart FF, since finalization we have learned that the threshold was based on an incorrect understanding that MSHA only samples quarterly at mines liberating 100,000 acf of CH_4 or more per day.

If the current regulatory threshold is retained, all mines would be required to report. This would add nearly 500 mines to the number previously expected to report, but these 500 mines would represent only another 14 percent of the total GHG emissions from underground coal mines. EPA is reviewing ways to address this and ensure that the threshold in the rule reflects EPA's longstanding intent to capture the gassiest mines that are responsible for the majority of emissions from underground coal mines in the United States.

We are proposing to amend the language so that mines liberating 36,500,000 acf of CH_4 or more per year from their ventilation systems are subject to the rule. This capacity threshold (equivalent to an average of 100,000 acf of CH_4 or more per day) may be more easily identifiable for the coal industry, is consistent with our original intent in terms of coverage, and removes reporting requirement for the approximately 500 mines.

We considered but are not proposing, a threshold of 15,000 metric tons CO_2e per year. This threshold would also be consistent with our original intent in terms of coverage and it would remove the reporting requirement for the approximately 500 mines. However, it would be less familiar to industry than the roughly equivalent threshold of 36,500,000 acf of CH_4 or more per year.

Equations FF–1 and FF–3. We are proposing the following technical amendments to Equations FF–1 and FF–3 in 40 CFR 98.323.

We propose to amend 40 CFR 98.324(a) and 98.324(b) to specify that variables ''V,'' ''MCF,'' ''C,'' ''T,'' and ''P'' are not ''daily'' rates. We are also proposing to edit the units of ''V'' to cfm from scfm and to revise the units for ''C'' to read ''%'' to allow for the use of ''C'' on a dry basis.

Sampling for pressure. We propose to amend FF–1 to allow facilities to use the annual average barometric pressure from the nearest NOAA weather service station as a default to measuring ventilation system pressure. According to MSHA, approved equipment to conduct pressure measurements is not readily available in the United States.

Sampling for moisture content. We received numerous questions regarding the placement of timing of sampling for moisture content. We are proposing to add a paragraph (d) to 40 CFR 98.324 to specify that when flow and concentration are measured on different bases, moisture content is measured at the location of the flow meter at least weekly if using CEMS, and at the location and time of the grab sample, if using grab samples.

Additionally, we received numerous inquiries about how reporters are to measure for moisture content, and asking whether measurements were really necessary because no moisture content measurement requirements are in 40 CFR 98.324. To clarify how and when reporters are to measure for moisture content, we are proposing to amend 40 CFR 98.323 and 98.324 to include reference to calibration and documentation of procedures for moisture content monitors. These proposed amendments clarify that the moisture content is to be based on measurement values and not assumed moisture content values. In related amendments, we are proposing to amend 40 CFR 98.326(o) to clarify the reporting requirements for temperature, pressure, and moisture content measurements. Together, the proposed amendments to Equations FF–1 and FF–3 and 40 CFR 98.324 would clarify that moisture content need only be determined when the concentration and flow measurements are made on different basis (one wet and one dry) and that, if needed, the moisture content must be measured.

MSHA data. We received numerous comments on the use of MSHA data to calculate emissions. MSHA samples volume and concentration of methane, but does not collect data on temperature, pressure, and moisture content, which are required inputs for the equations in this subpart. To allow facilities to use MSHA data, we propose to amend 40 CFR 98.324(b)(2) to clarify that temperature and moisture content must be sampled at the same time and location as the MSHA samples, and that for pressure, facilities must use either a measured value or the average annual barometric pressure from the nearest NOAA weather service station.

Monitoring equipment. We propose to amend 40 CFR 98.324(g) to include the use of infrared and flame ionization analyzers with the provision that they are calibrated annually using measurements made by gas chromatography methods. The infrared and flame ionization analyzers are

frequently used by the coal mining industry and they are often more familiar with their calibration and operation.

We propose to amend 40 CFR 98.324(f) for consistency with the types of monitoring equipment required. We propose to replace references to ''fuel flow meters'' with ''flow meters,'' because the gas that is measured may or may not be used as a fuel. We also propose to delete references to ''heating value monitors,'' and ''sour gas flow meters'' because these monitors and meters are not required.

D. Subpart II—Industrial Wastewater Treatment

We are proposing clarifying amendments and technical corrections to subpart II to address questions EPA has received about the rule's requirements, as well as to clarify terminology.

We are proposing to amend 40 CFR 98.352(d) to replace the term ''landfill gas'' with ''biogas'' to correct a typographical error.

We are proposing to amend the definitions of the terms for ''T_m'' and ''P_m'' in Equation II–4 to refer to ''average temperature'' and ''average pressure'' to clarify how reporters should use the multiple temperature and pressure measurements that they may make during a measurement period. We are also proposing to amend these definitions to clarify how the calculation should be adjusted if the flow rate meter automatically corrects for temperature and pressure.

We are proposing to amend 40 CFR 98.353(c)(2)(ii), 40 CFR 98.353(c)(2)(iii)(A) and (B), and 40 CFR 98.354(c) and (d) to replace ''once each calendar week, with at least three days between measurements'' with ''at least once each calendar week; if only one measurement is made each calendar week, there must be at least three days between measurements,'' to clarify what is meant by weekly sampling.

We are proposing to amend Equation II–6 of 40 CFR 98.353 to correct an error in the placement of brackets and parentheses. This amendment will eliminate the possibility that the equation will return incorrect quantities of methane emissions. We are also proposing to amend the units in the definition of CH_4E_n under Equation II–6 to clarify that the annual quantity should be reported in ''metric tons'' not ''metric tons/yr.''

We are proposing to amend 40 CFR 98.353(c) to reorder the text to clarify that continuous gas flow monitoring is required for each anaerobic sludge digester, anaerobic reactor, or anaerobic lagoon from which some biogas is recovered; and to clarify that the continuous gas flow measurements must be used to determine cumulative gas production each week. We are also proposing to amend 40 CFR 98.353(c)(1) to replace the term ''content'' with the term ''quantity'' to clarify that fully integrated systems report CH_4 quantity which accounts for both CH_4 concentration and biogas flow.

We are proposing to amend 40 CFR 98.354(f) by dividing it into subparagraphs and by deleting an incorrect cross reference, to clarify the monitoring requirements for anaerobic sludge digester, anaerobic reactor, or anaerobic lagoon from which some biogas is recovered.

We are proposing to amend 40 CFR 98.356(a) by replacing the term ''explain'' with ''indicate'' to provide guidance to reporters about the information they should include in the description or diagram of their wastewater treatment system. We are also proposing to replace the term ''all anaerobic lagoons'' with ''each anaerobic lagoon'' to clarify that reporters should provide the average depth of each lagoon, not the average of all lagoons.

We are proposing to amend 40 CFR 98.356(b)(3) and (4) to clarify that the values for ''Bo'' and ''MCF,'' that are used as inputs to Equation II–1 or II–2, are to be taken from Table II–1. We are also proposing to amend 40 CFR 98.356(d)(2) by replacing the text ''Cumulative volumetric biogas flow for each week'' with ''Total weekly volumetric biogas flow for each week (up to 52 weeks/year)'' to clarify that reporters should provide the total gas recovered for the week, for up to 52 weeks per year.

We are proposing to amend subpart II (Industrial Wastewater Treatment) (40 CFR 98.350 to 40 CFR 98.358) in multiple places, replacing the term ''anaerobic digester'' with ''anaerobic sludge digester'' to clarify the test refers to the anaerobic process defined in 40 CFR 98.350(b)(2); and to replace the term ''gas'' with ''biogas'' to clarify the gas referred to is the biogas defined in 40 CFR 98.358.

E. Subpart OO—Suppliers of Industrial Greenhouse Gases

We are proposing to amend subpart OO to require that the data currently reported under 40 CFR 98.416(a)(8) and (9) be kept as a record rather than reported. We are also proposing to make a corresponding revision to 40 CFR 98.416(a)(10).

Section 98.416(a)(8) requires that fluorinated GHG and nitrous oxide production facilities report the total mass in metric tons of each reactant fed into the F–GHG or nitrous oxide production process, by process; and section 98.416(a)(9) requires that fluorinated GHG and nitrous oxide production facilities report the total mass in metric tons of the reactants, by-products, and other wastes permanently removed from the F–GHG or nitrous oxide production process, by process. Although these data elements do not, in themselves, represent additions to or subtractions from the U.S. supply of industrial GHGs, we required reporting of these data elements in the October 30, 2009, Mandatory GHG Reporting Rule to facilitate verification of production levels through a material balance. (For more discussion of that decision, see page 26 of the Mandatory Greenhouse Gas Reporting Rule: EPA's Response to Public Comments, Volume No. 40, Subpart OO—Suppliers of Industrial Greenhouse Gases.)

We are now proposing to require recordkeeping, rather than reporting, of these data elements. After additional consideration, we have concluded that these data elements, by themselves, have somewhat limited usefulness for verifying production levels because the relationship between the masses of the reactants fed into the process, the mass of the nitrous oxide or fluorinated GHG product, and the mass of the reactants, by-products, and other wastes permanently removed from the process can vary. For example, if catalysts are added to the process and subsequently removed from it, the sum of the masses of the product and the materials removed from the process may exceed the sum of the masses of the reactants fed into the process. On the other hand, if by-products or other materials are emitted from the process, *e.g.,* through fugitive emissions, the sum of the masses of the reactants may exceed the sum of the masses of the product and the materials removed from the process. Finally, the accuracies and precisions of the various instruments used to measure the masses of the reactants fed into the process, the mass of the nitrous oxide or fluorinated GHG produced, and the masses of the materials permanently removed from the process may all vary, further complicating comparisons among these quantities. Retention of these data as records would permit on-site verification of production as part of the audit process, which would have the benefit of permitting consideration of other production process information (*e.g.,* the use of catalysts) in making comparisons among the inputs and outputs of the production process. We

estimate that approximately 20 facilities produce fluorinated GHGs or nitrous oxide in the U.S., making on-site verification a practicable option for subpart OO.

We are also proposing to revise § 98.416(a)(10) by removing the introductory qualifier. In its entirety, the provision currently reads, ''For transformation processes that do not produce an F–GHG or nitrous oxide, mass in metric tons of any fluorinated GHG or nitrous oxide fed into the transformation process, by process.'' The phrase ''for transformation processes that do not produce an F–GHG or nitrous oxide'' was intended to prevent double-reporting between this provision and § 98.416(a)(8), which requires reporting of the mass of each reactant fed into the fluorinated GHG or nitrous oxide production process. (In the case where one fluorinated GHG was transformed into another, the first fluorinated GHG would be one of the reactants fed into the process and would therefore be reported under (a)(8).) With the proposed removal of § 98.416 (a)(8), the introductory qualifier in § 98.416(a)(10) must be removed to ensure that the quantities of fluorinated GHGs fed into all transformation processes, including transformation processes that produce other fluorinated GHGs, will be reported under subpart OO.[4]

F. Subpart RR—Geologic Sequestration of Carbon Dioxide

We are proposing clarifying amendments and technical corrections to subpart RR to correct known errors.

Accounting for CO_2 Entrained in Produced Water. We are proposing to clarify 40 CFR 98.443(d) to ensure that CO_2 entrained in produced water that is not processed through a gas-liquid separator is accounted for in the mass balance equation. We intended that CO_2 content in all produced liquids would be determined,[5] and assumed that all produced liquids would be processed through a gas-liquid separator. The text in 40 CFR 98.443(d), and the associated equations (Equations RR–7, RR–8, and RR–9) are based on measurements made at a separator to calculate the amount of CO_2 in produced fluids. However, EPA has recognized that in some situations, including water removed for pressure relief or reservoir maintenance, fluids may be removed from the subsurface without being processed through a separator. The current text and equations would not account for CO_2 in water that is withdrawn from the subsurface and reinjected or disposed without going through a separator.

To address this issue, we propose adding a new sentence to 40 CFR 98.443(d) to specifically account for any CO_2 in fluids that are produced and not processed through a separator. We also propose adding a new sentence to 40 CFR 98.443(d)(3) to clarify that the reporter must include additional information regarding the measurement methods used to determine the concentration of CO_2 in fluids, and a discussion of how the amount of produced CO_2 would be determined, in the monitoring, reporting and verification (MRV) plan. In the MRV plan, the reporter would describe the disposition of the produced water (reinjected into another zone, reused, or otherwise disposed) and provide justification for determining whether the CO_2 entrained in the water is sequestered. The MRV plan would also describe considerations the reporter intends to use to calculate CO_2 from produced water for the mass balance equation.

CO_2 Emissions from Equipment Leaks and Vented Emissions of CO_2. We are proposing to revise the term ''CO_2 equipment leakage and vented CO_2 emissions'' throughout subpart RR with the term ''CO_2 emissions from equipment leaks and vented emissions of CO_2.'' This change is proposed to ensure consistency with the terminology that is used in 40 CFR part 98 subpart W and to more accurately describe the equipment between flow meters and wellheads for which monitoring requirements are specified in subpart RR. Specifically, we are proposing the following changes:

- At 40 CFR 98.442(e) and 98.442(f), revise the term ''Mass of CO_2 equipment leakage and vented CO_2 emissions'' to read ''Mass of CO_2 emissions from equipment leaks and vented emissions of CO_2.''
- In Equations RR–11 and RR–12 at 40 CFR 98.443, revise the term ''Total annual CO_2 mass emitted (metric tons) as equipment leakage or vented emissions'' to read ''Total annual CO_2 mass emitted (metric tons) from equipment leaks and vented emissions of CO_2.''
- At 40 CFR 98.444(d), revise the heading ''CO_2 equipment leakage and vented CO_2 emissions'' to read ''CO_2 emissions from equipment leaks and vented emissions of CO_2.''
- At 40 CFR 98.445(e), revise the term ''CO_2 equipment leakage or vented CO_2 emissions to read ''CO_2 emissions from equipment leaks and vented emissions of CO_2.''
- At the introductory text of 40 CFR 98.446(f)(3), revise the term ''CO_2 equipment leakage and vented CO_2 emissions'' to read ''CO_2 emissions from equipment leaks and vented emissions of CO_2.''
- At 40 CFR 98.446(f)(3)(i) and 98.446(f)(3)(ii), revise the term ''mass of CO_2 emitted (in metric tons) annually as equipment leakage or vented emissions'' to read ''mass of CO_2 emitted (in metric tons) annually from equipment leaks and vented emissions of CO_2.''
- At 40 CFR 98.447(a)(5) and 98.447(a)(6), revise the term ''CO_2 emitted as equipment leakage or vented emissions'' to read ''CO_2 emitted from equipment leaks and vented emissions of CO_2.''
- At 40 CFR 98.448(a)(5), revise the term ''considerations for calculating equipment leakage and vented emissions'' to read ''considerations for calculating CO_2 emissions from equipment leaks and vented emissions of CO_2.''

Other Technical Corrections. We are proposing to amend a cross reference in the introductory language of 40 CFR 98.446(a)(2) and 40 CFR 98.446(a)(3). The incorrect references refer the reader to 40 CFR 98.446(a)(5), but should refer the reader 40 CFR 98.446(a)(4). We are also proposing to amend a cross reference at 40 CFR 98.446(f)(1)(vii). The incorrect reference refers the reader to 40 CFR 98.446(f)(1)(i), but should refer the reader to 40 CFR 98.446(f)(1)(ii).

We are proposing to revise the data reporting element at 40 CFR 98.446(e) and the introductory text at 40 CFR 98.446(f). As currently written, it is ambiguous when reporters would report total amount sequestered. We are proposing that the revised data reporting element at 40 98.446(e) read as follows: ''Report the date that you began collecting data for calculating total amount sequestered according to § 98.448(a)(7) of this subpart''. We are proposing that the revised introductory text at 40 CFR 98.446(f) read as follows: ''Report the following. If the date specified in paragraph (e) of this section is during the reporting year for this annual report, report the following starting on the date specified in paragraph (e) of this section.''

We are proposing to revise the heading of 40 CFR 98.448(e) to correct a typographical error. The text of 40 CFR 98.448(e) refers to requirements for revised MRV plans, but the heading is incorrectly labeled as ''Final MRV plan.'' We propose to revise the heading to read ''Revised MRV plan.''

[4] Note that if a fluorinated GHG is produced and transformed at the same facility, neither its production nor its transformation are required to be reported under subpart OO.

[5] See Section II.B.4 of preamble to the final Subpart RR rule (75 FR 75065, December 1, 2010).

We are proposing to revise the definition of ''CO_2 received'' at 40 CFR 98.449 to correct a typographical error by adding the word ''means'' after the CO_2 received defined term. The definition would read ''CO_2 received means the CO_2 stream that you receive to be injected for the first time into a well on your facility that is covered by this subpart. CO_2 received includes, but is not limited to, a CO_2 stream from a production process unit inside your facility and a CO_2 stream that was injected into a well on another facility, removed from a discontinued enhanced oil or natural gas or other production well, and transferred to your facility.''

G. Subpart TT—Industrial Waste Landfills

Numerous clarifying amendments and technical corrections are proposed to subpart TT to address questions EPA has received about the rule's requirements and to correct known errors. Technical amendments to the rule are also proposed to address some additional questions. These more substantive technical amendments are discussed first, and then the clarifying amendments are presented.

Determining Waste-specific DOC values for Closed Landfills. We are proposing to amend 40 CFR 98.464 by adding a new paragraph (c) to provide methodologies for closed landfills or active landfills that have stopped accepting certain types of wastes to determine the volatile solids concentration (for exemption purposes under 40 CFR 98.460(c)(2)(xii)) or to determine the waste-specific DOC values for historically disposed waste streams. The proposed provisions would allow landfills to identify waste streams similar to those that had been historically placed in the landfill, measure the volatile solids concentration of these ''similar'' waste streams, and use those measured values to assess the applicability of the exemption under 40 CFR 98.460(c)(2)(xii) or to determine the average DOC value for the historical waste streams. The proposed provisions also allow use of process knowledge to determine the volatile solids concentration and, if needed, to calculate the corresponding DOC value if a similar waste stream cannot be identified.

This provision is being proposed to allow industrial waste landfill owners and operators a means by which to develop volatile solids concentration and site-specific DOC values for historically disposed waste streams. The site-specific DOC values will in turn improve the accuracy of the modeled methane generation. The July 12, 2010, final rule had no provisions by which waste streams that were not disposed of in the landfill during the first reporting year could be assessed. These waste streams would be required to use the default DOC values, which have a higher degree of uncertainty. Facilities may still elect to use the default DOC values, but proposed amendments provide methodologies for developing site-specific DOC values for these ''historically-disposed'' waste streams.

We are also proposing to amend 40 CFR 98.467 to clarify that records must be retained for the volatile solids concentration determinations, including determinations using process knowledge.

Equations for Determining Volatile Solids and DOC Values. We are proposing to delete Equation TT–7 and amend Equation TT–8 to 40 CFR 98.464 to correct inadvertent errors in these equations. These equations as presented in the July 12, 2010, final rule were incorrect because the volatile solids concentration was expected to have units of mass of volatile solids per mass of (wet) waste. However, per Standard Method 2540G ''Total, Fixed, and Volatile Solids in Solid and Semisolid Samples,'' the volatile solids concentration is determined on a dry basis (milligram (mg) volatile solids per mg dried solids). As such, Standard Method 2540G provides the volatile solids concentration in the appropriate units needed for 40 CFR 98.464(b)(3), and Equation TT–7 in the final rule can be deleted. Additionally, we propose to amend 40 CFR 98.464(b)(4) to correct the errors in Equation TT–8 (which is proposed to be renumbered as Equation TT–7) and to clarify the units of the variables used in the equation.

We are revising the variable ''F'' in Equation TT–1 and new Equation TT–7 (which was Equation TT–8) to correct the measured CH_4 concentration for zero percent oxygen. We are proposing to change ''F_x'' to be ''F'' in Equation TT–1 because this parameter should be a fixed value for a given reporting year and revising the definition of ''F'' to be ''Fraction by volume of CH_4 in landfill gas (fraction, dry basis, corrected to 0% oxygen). If you have a gas collection system, use the annual average CH_4 concentration from measurement data for the current reporting year; otherwise, use the default value of 0.5'' to clarify that, if a measured value of CH_4 concentration is used it should be based on measurements made during the reporting year and the volume fraction should be adjusted to 0 percent oxygen for use in Equation TT–1.

In addition, we are proposing to add a new paragraph (g) in 40 CFR 98.464 and a new Equation TT–8 to provide guidance on how to correct the measured CH_4 concentration for zero percent oxygen in order to arrive at an appropriate value for F in the case of air infiltration into the landfill gas at the monitoring location.

Provisions for Actively Aerated Landfills and Other Amendments To Conform with Amendments to subpart HH. Similar to amendments that were made to subpart HH (Municipal Solid Waste Landfills), we propose to amend the definition of the methane correction factor (MCF) to allow landfills with active aeration units to use an MCF value other than the default value of 1. For landfills with active aeration units, a site-specific MCF can be developed based on the amount of aeration and the fraction of the landfill that is actively aerated. Owners and operators of landfills with active aeration can use the default MCF factor of 1 or they may elect to develop a site-specific MCF value. The owner or operator of the industrial waste landfill must document the basis for the alternative MCF value; in no cases can an MCF value less than 0.5 be used. These amendments are being proposed because the default MCF value of 1 is expected to overestimate the modeled methane generation at a facility that actively aerates the waste in the landfill. Additionally, we propose to add 40 CFR 98.466(d)(4) to require reporting of the MCF value and the basis for using an MCF value other than the default value of 1.

We are proposing to define the term ''construction and demolition waste landfills'' as defined in subpart HH and use that term rather than ''dedicated construction and demolition waste landfills.''

We are also proposing to revise the footnote to Table TT–1 to subpart TT of part 98 to clarify that leachate recirculation rates can be determined from company records or engineering estimates and that the owner or operator of a landfill that uses leachate recirculation may elect to use the k value for the wet climate rather than calculating the leachate recirculation rate. These amendments provide improved consistency between the reporting requirements for municipal and industrial waste landfills.

Other Technical Corrections. We are proposing other technical corrections for subpart TT to correct typographical errors, to correct equations, and to provide minor clarifications. These proposed corrections are summarized below:

• In 40 CFR 98.460(c)(2)(i), replacing ''Coal combustion residue (*e.g.,* fly ash)'' with ''Coal combustion or incinerator ash (*e.g.,* fly ash)'' to better describe our intent to classify all combustion ash products as inert.

• In 40 CFR 98.463(a)(1):

—Revising the definition of G_{CH4} to delete the word ''rate'' because the units of the modeled methane generation is metric tons.

—Revising the definition of DOC_x from ''degradable organic carbon for year X * * *'' to be ''degradable organic carbon for waste disposed in year X * * *'' for clarity.

• In 40 CFR 98.463(a)(2):

—Revising ''January 1, 1980'' to be ''January 1, 1960'' in both places to correct an inadvertent error.

—Replacing the term ''first emissions monitoring year'' with ''first emissions reporting year'' to improve consistency with the terminology used in other sections of subpart TT.

• In 40 CFR 98.463(a)(2)(ii)(C):

—Deleting the phrase ''fixed average annual bulk waste disposal quantity for each year for which historic disposal quantity and'' in the paragraph text and adding to the definition of W_X ''This annual bulk waste disposal quantity applies for all years from 'YrOpen' to 'YrData' inclusive'' to clarify that the value calculated by Equation TT–4 applies for all years from ''YrOpen'' to ''YrData'' inclusive.

—Revising the definition of LFC and YrData to allow closed landfills that have some measurement data to appropriately calculate W_X only for years for which the closed landfill does not have waste disposal data available from company records or from Equation TT–3.

• In 40 CFR 98.464(b), replacing ''For each waste stream for which you choose to determine * * *'' with ''For each waste stream received during the reporting year for which you choose to determine * * *'' for clarity given the addition of 40 CFR 98.464(c).

• In 40 CFR 98.464(b)(1), adding the parenthetical ''(as received at the landfill)'' to clarify that the representative sample of each waste stream was to be determined ''as received at that landfill'' (as opposed to sampling waste in ''closed'' sections of the landfill) and for clarity given the addition of 40 CFR 98.464(c).

• In 40 CFR 98.466(b), replacing ''Report the following waste characterization information:'' with ''Report the following waste characterization and modeling information:'' to better describe the reporting elements included in this paragraph.

• Moving paragraphs 40 CFR 98.466(d)(3) and (4) to 98.466(b)(3) and (4) because these reporting elements are based on reporting year practices and do not need to be separately reported for each year or used in the summation for Equation TT–1. Also, to clarify that the fraction of CH_4 in the landfill gas, F, should be based on CH_4 concentration corrected to 0% oxygen.

• In 40 CFR 98.466(b)(2), adding ''* * * for which Equation TT–1 of this subpart is used to calculate modeled CH_4 generation'' to clarify that only descriptions of waste streams disposed of in the landfill and used in Equation TT–1 must be reported (as opposed to all wastes managed on-site regardless of whether the waste in managed in the landfill).

• In 40 CFR 98.466(c)(3)(ii), replacing ''The year, the waste disposal quantity and production quantity for each year Equation TT–2 applies'' with ''The year, the waste disposal quantity and production quantity for each year used in Equation TT–2 of this subpart to calculate the average waste disposal factor (WDF)'' to clarify that these data are to be reported for the years used to calculate WDF, not the years for which WDF was subsequently used to calculate waste quantities.

• In 40 CFR 98.466(d), adding the phase ''and each year thereafter up'' so that the paragraph reads ''For each year of landfilling starting with the ''Start Year'' (S) and each year thereafter up to the current reporting year, report the following information:'' to clarify that the reporting elements must be reported separately for each year.

• Adding a new paragraph 40 CFR 98.466(d)(1) to read ''The calendar year for which following data elements apply'' to ensure the calendar year is also reported. Renumber existing paragraphs 98.466(d)(1) and (2) to (d)(2) and (3) and add the phrase ''for the specified year'' to ensure the data elements are reported with specified year in the new paragraph 98.466(d)(1).

• In 40 CFR 98.466(f), deleting the word ''rate'' to conform with revised definition of term and replace it with ''(G_{CH4})'' to clarify this is the equation term to be reported.

• In 40 CFR 98.466(f), adding ''(MG)'' after ''methane generation'' to improve clarity and replace ''Equation TT–5'' with ''Equation TT–6'' to correct an improper equation cross-reference.

• In 40 CFR 98.468, adding the definition of ''design capacity'' to clarify what is meant by this term as it is used in 40 CFR 98.460. The definition is similar to 40 CFR 60.751 (Standards of Performance for Municipal Solid Waste Landfills).

• In Table TT–1, amending the default value of construction and demolition waste from 0.04 to 0.08 to correct an inadvertent error.

• In Table TT–1, revising the description of the waste type ''Inert Waste'' to read ''Inert Waste [*i.e.,* wastes listed in 40 CFR 98.460(c)(2)]'' to correct an incorrect cross-reference.

III. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden. These proposed amendments do not make any substantive changes to the reporting requirements in any of the subparts for which amendments are being proposed. In many cases, the proposed amendments to the reporting requirements could potentially reduce the reporting burden by making the reporting requirements conform more closely to current industry practices. However, the OMB has previously approved the information collection requirements for subparts A and OO contained in the regulations promulgated on October 30, 2009, subpart W promulgated on November 30, 2010, subpart DD promulgated on December 1, 2010, subparts FF and TT promulgated on July 12, 2010, and subpart RR promulgated on December 1, 2010 under 40 CFR part 98 under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.,* and has assigned OMB control numbers 2060–0629; 2060–0650; and 2060–0647; and 2060–0649 respectively. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Further information on EPA's assessment on the impact on burden can be found in the Technical Corrections and Amendments Cost Memo in docket number EPA–HQ–OAR–2011–0147.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice

and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

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

After considering the economic impacts of these proposed rule amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed rule amendments will not impose any new requirement on small entities that are not currently required by the regulation of subparts A and OO promulgated on October 30, 2009; subparts FF, II, and TT promulgated on July 12, 2010; subpart W promulgated on November 30, 2010, or subparts DD or RR, both promulgated on December 1, 2010.

EPA took several steps to reduce the impact of 40 CFR part 98 on small entities when developing the final GHG reporting rules in 2009 and 2010. For example, EPA determined appropriate thresholds that reduced the number of small businesses reporting. In addition, EPA conducted several meetings with industry associations to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting. Finally, EPA continues to conduct significant outreach on the GHG reporting program and maintains an ''open door'' policy for stakeholders to help inform EPA's understanding of key issues for the industries.

We continue to be interested in the potential impacts of the proposed rule amendments on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

The proposed rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, the proposed rule amendments are not subject to the requirements of section 202 and 205 of the UMRA. This 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. The proposed amendments will not impose any new requirements that are not currently required for 40 CFR part 98, and the rule amendments would not unfairly apply to small governments. Therefore, this action is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

These amendments apply directly to facilities that supply certain products that would result in GHGs when released, combusted or oxidized and facilities that directly emit greenhouses gases. They do not apply to governmental entities unless the government entity owns a facility that directly emits GHGs above threshold levels (such as a landfill), so relatively few government facilities would be affected. This regulation also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

Although section 6 of Executive Order 13132 does not apply to this action, EPA did consult with State and local officials or representatives of State and local governments in developing subparts A and OO promulgated on October 30, 2009; subparts FF, II, and TT promulgated on July 12, 2010; subpart W promulgated on November 30, 2010, and subparts DD and RR, both promulgated on December 1, 2010. A summary of EPA's consultations with State and local governments is provided in Section VIII.E of the preamble to the 2009 final rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The proposed rule amendments would not result in any changes to the current requirements of 40 CFR part 98. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, EPA sought opportunities to provide information to Tribal governments and representatives during the development of the rules for subparts A and OO promulgated on October 30, 2009; subparts FF, II, and TT promulgated on July 12, 2010; subpart W promulgated on November 30, 2010, and subparts and DD and RR, both promulgated on December 1, 2010. A summary of the EPA's consultations with Tribal officials is provided in Sections VIII.D and VIII.F of the preamble to the 2009 final rule and in Section IV.F of the final rule for subpart W.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

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

regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 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.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment because it is a rule addressing information collection and reporting procedures.

List of Subjects in 40 CFR Part 98

Environmental protection, Administrative practice and procedure, Greenhouse gases, Suppliers, Reporting and recordkeeping requirements.

Dated: July 19, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, part 98 of title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 98—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 98.2 is amended by:

a. Revising paragraph (d).

b. Revising paragraph (e).

c. Revising paragraph (f) introductory text.

d. Revising paragraph (h).

e. Revising paragraph (i)(3).

Subpart A—[Amended]

§ 98.2 Who must report?

* * * * *

(d) To calculate GHG quantities for comparison to the 25,000 metric ton CO_2 per year threshold for importers and exporters of coal-to-liquid products under paragraph (a)(4) of this section, calculate the mass in metric tons per year of CO_2 that would result from the complete combustion or oxidation of the quantity of coal-to-liquid products that are imported during the reporting year and, that are exported during the reporting year. Compare the imported quantities and the exported quantities separately to the 25,000 metric ton CO_2 per year threshold. Calculate the quantities using the methodology specified in subpart LL of this part.

(e) To calculate GHG quantities for comparison to the 25,000 metric ton CO_2e per year threshold for importers and exporters of petroleum products under paragraph (a)(4) of this section, calculate the mass in metric tons per year of CO_2 that would result from the complete combustion or oxidation of the combined volume of petroleum products and natural gas liquids that are imported during the reporting year and that are exported during the reporting year. Compare the imported quantities and the exported quantities separately to the 25,000 metric ton CO_2 per year threshold. Calculate the quantities using the methodology specified in subpart MM of this part.

(f) To calculate GHG quantities for comparison to the 25,000 metric ton CO_2e per year threshold under paragraph (a)(4) of this section for importers and exporters of industrial greenhouse gases and for importers and exporters of CO_2, the owner or operator shall calculate the mass in metric tons per year of CO_2e imports and exports as described in paragraphs (f)(1) through (f)(3) of this section. Compare the imported quantities and the exported quantities separately to the 25,000 metric ton CO_2 per year threshold.

* * * * *

(h) An owner or operator of a facility or supplier that does not meet the applicability requirements of paragraph (a) of this section is not subject to this rule. Such owner or operator would become subject to the rule and reporting requirements, if a facility or supplier exceeds the applicability requirements of paragraph (a) of this section at a later time pursuant to § 98.3(b)(3). Thus, the owner or operator should reevaluate the applicability to this part (including the revising of any relevant emissions calculations or other calculations) whenever there is any change that could cause a facility or supplier to meet the applicability requirements of paragraph (a) of this section. Such changes include but are not limited to process modifications, increases in operating hours, increases in production, changes in fuel or raw material use, addition of equipment, and facility expansion.

(i) * * *

(3) If the operations of a facility or supplier are changed such that all applicable GHG-emitting processes and operations listed in paragraphs (a)(1) through (a)(4) of this section cease to operate, then the owner or operator is exempt from reporting in the years following the year in which cessation of such operations occurs, provided that the owner or operator submits a notification to the Administrator that announces the cessation of reporting and certifies to the closure of all GHG-emitting processes and operations no later than March 31 of the year following such changes. This paragraph (i)(3) does not apply to seasonal or other temporary cessation of operations. This paragraph (i)(3) does not apply to facilities with municipal solid waste landfills or industrial waste landfills, or to underground coal mines. The owner or operator must resume reporting for any future calendar year during which any of the GHG-emitting processes or operations resume operation.

* * * * *

3. Section 98.3 is amended by:

a. Revising paragraph (b) introductory text.

b. Revising paragraph (b)(1).

c. Adding paragraph (b)(4).

d. Revising paragraph (c)(5)(ii).

e. Revising paragraph (c)(7).

f. Revising paragraph (c)(10).

g. Revising paragraph (c)(11).

h. Revising the second sentence of paragraph (g) introductory text.

§ 98.3 What are the general monitoring, reporting, recordkeeping and verification requirements of this part?

* * * * *

(b) *Schedule.* The annual GHG report for reporting year 2010 must be submitted no later than September 30, 2011. The annual report for reporting years 2011 and beyond must be submitted no later than March 31 of each calendar year for GHG emissions in the previous calendar year, except as provided in paragraph (b)(1) of this section.

(1) For reporting year 2011, GHG information required by the subparts listed in paragraphs (b)(1)(i) through (b)(1)(xii) of this section must be submitted no later than September 28, 2012. This reporting date applies only to the data reporting requirements identified in the listed subparts and does not affect data reporting requirements of other subparts that apply to a facility or supplier.

(i) Electronics Manufacturing (subpart I).

(ii) Fluorinated Gas Production (subpart L).

(iii) Magnesium Production (subpart T).

(iv) Petroleum and Natural Gas Systems (subpart W).

(v) Use of Electric Transmission and Distribution Equipment (subpart DD).

(vi) Underground Coal Mines (subpart FF).

(vii) Industrial Wastewater Treatment (subpart II).

(viii) Imports and Exports of Equipment Pre-charged with Fluorinated GHGs or Containing Fluorinated GHGs in Closed-cell Foams (subpart QQ).

(ix) Geologic Sequestration of Carbon Dioxide (subpart RR).

(x) Manufacture of Electric Transmission and Distribution (subpart SS).

(xi) Industrial Waste Landfills (subpart TT).

(xii) Injection of Carbon Dioxide (subpart UU).

* * * * *

(4) Unless otherwise stated, if the final day of any time period falls on a weekend or a Federal holiday, the time period shall be extended to the next business day.

(c) * * *

(5) * * *

(ii) Quantity of each GHG from each applicable supply category in Table A–5 of this subpart, expressed in metric tons of each GHG. For fluorinated GHG, report quantities of all fluorinated GHG, including those not listed in Table A–1 of this subpart.

* * * * *

(7) A brief description of each ''best available monitoring method'' used, the parameter measured using the method, and the time period during which the ''best available monitoring method'' was used, if applicable.

* * * * *

(10) NAICS code(s) that apply to the facility or supplier.

(i) *Primary NAICS code.* Report the NAICS code that most accurately describes the facility or supplier's primary product/activity/service. The primary product/activity/service is the principal source of revenue for the facility or supplier. A facility or supplier that has two distinct products/activities/services providing comparable revenue may report a second primary NAICS code.

(ii) *Additional NAICS code(s).* Report all additional NAICS codes that describe all product(s)/activity(s)/service(s) at the facility or supplier that are not related to the principal source of revenue.

(11) Legal name(s) and physical address(es) of the highest-level United States parent company(s) of the owners (or operators) of the facility or supplier and the percentage of ownership interest for each listed parent company as of December 31 of the year for which data are being reported according to the following instructions:

(i) If the facility or supplier is entirely owned by a single United States company that is not owned by another company, provide that company's legal name and physical address as the United States parent company and report 100 percent ownership.

(ii) If the facility or supplier is entirely owned by a single United States company that is, itself, owned by another company (*e.g.,* it is a division or subsidiary of a higher-level company), provide the legal name and physical address of the highest-level company in the ownership hierarchy as the United States parent company and report 100 percent ownership.

(iii) If the facility or supplier is owned by more than one United States company (*e.g.,* company A owns 40 percent, company B owns 35 percent, and company C owns 25 percent), provide the legal names and physical addresses of all the highest-level companies with an ownership interest as the United States parent companies, and report the percent ownership of each company.

(iv) If the facility or supplier is owned by a joint venture or a cooperative, the joint venture or cooperative is its own United States parent company. Provide the legal name and physical address of the joint venture or cooperative as the United States parent company, and report 100 percent ownership by the joint venture or cooperative.

(v) If the facility or supplier is entirely owned by a foreign company, provide the legal name and physical address of the foreign company's highest-level company based in the United States as the United States parent company, and report 100 percent ownership.

(vi) If the facility or supplier is partially owned by a foreign company and partially owned by one or more U.S. companies, provide the legal name and physical address of the foreign company's highest-level company based in the United States, along with the legal names and physical addresses of the other U.S. parent companies, and report the percent ownership of each of these companies.

(vii) If the facility or supplier is a federally owned facility, report ''U.S. Government'' and do not report physical address or percent ownership.

* * * * *

(g) *Recordkeeping.* * * * Retain all required records for at least 3 years from the date of submission of the annual GHG report for the reporting year in which the record was generated. * * *

* * * * *

4. Section 98.4 is amended by revising paragraph (m)(4) to read as follows:

§ 98.4 Authorization and responsibilities of the designated representative.

* * * * *

(m) * * *

(4) Any electronic submission covered by the certification in paragraph (m)(2)(v)(A) of this section and made in accordance with a notice of delegation effective under paragraph (m)(3) of this section shall be deemed to be an electronic submission certified, signed, and submitted by the designated representative or alternate designated representative submitting such notice of delegation.

5. Section 98.6 is amended by revising the definitions of ''Blowdown vent stack'', ''Supplier'', and ''United States parent company(s)'' to read as follows:

§ 98.6 Definitions.

* * * * *

Blowdown vent stack emissions mean natural gas and/or CO_2 released due to maintenance and/or blowdown operations including compressor blowdown and emergency shut-down (ESD) system testing. Emissions from emergency events are not included.

* * * * *

Supplier means a producer, importer, or exporter in any supply category

included in Table A–5, as defined by the corresponding subpart of this part.

* * * * *

United States parent company(s) means the highest-level United States company(s) with an ownership interest in the facility or supplier as of December 31 of the year for which data are being reported.

* * * * *

6. Section 98.9 introductory text is revised to read as follows:

§ 98.9 Addresses.

All requests, notifications, and communications to the Administrator pursuant to this part, other than submittal of the annual GHG report; the certificate of representation; and other requests, notifications or communications that can be submitted through the electronic greenhouse gas reporting tool, shall be submitted to the following address:

* * * * *

7. Table A–3 to subpart A is amended by revising the entry for ''Underground coal mines'' and for ''Electrical transmission and distribution equipment use'' to read as follows:

TABLE A–3 OF SUBPART A OF PART 98—SOURCE CATEGORY LIST FOR § 98.2(a)(1)

Source Categories[a] Applicable in 2010 and Future Years
* * * * * * *
Additional Source Categories[a] Applicable in 2011 and Future Years
* * * * * * *
Electrical transmission and distribution equipment use at facilities where the total nameplate capacity of SF_6 and PFC containing equipment exceeds 17,820 pounds, as determined under § 98.301 (subpart DD).
Underground coal mines liberating 36,500,000 actual cubic feet of CH_4 or more per year (subpart FF).
* * * * * * *

[a] Source categories are defined in each applicable subpart.

8. Table A–5 to subpart A is amended by revising the entries for ''Petroleum product suppliers (subpart MM)'' to read as follows:

TABLE A–5 TO SUBPART A OF PART 98—SUPPLIER CATEGORY LIST FOR § 98.2(a)(4)

Supplier Categories[a] Applicable in 2010 and Future Years
* * * * * * *
Petroleum product suppliers (subpart MM): (A) All petroleum refineries that distill crude oil. (B) Importers of an annual quantity of petroleum products and natural gas liquids that is equivalent to 25,000 metric tons CO_2e or more. (C) Exporters of an annual quantity of petroleum products and natural gas liquids that is equivalent to 25,000 metric tons CO_2e or more.
* * * * * * *

[a] Suppliers are defined in each applicable subpart.

Subpart W—[Amended]

9. Section 98.230 is amended by revising paragraph(a)(3)(ii) to read as follows:

§ 98.230 Definition of the source category.

(a) * * *

(3) * * *

(ii) All processing facilities that do not fractionate with annual average throughput of 25 MMscf per day or greater.

* * * * *

10. Section 98.232 is amended by revising paragraph (d) introductory text and paragraph (i) introductory text to read as follows:

§ 98.232 GHGs to report.

* * * * *

(d) For onshore natural gas processing, report CO_2, CH_4, and N_2O emissions from the following sources:

* * * * *

(i) For natural gas distribution, report CO_2 and CH_4 emissions from the following sources:

* * * * *

11. Section 98.233 is amended by:

a. Revising the definition of ''GHG_i'' in Equation W–1 of paragraph (a).

b. Revising the definition of ''GHG_i'' in Equation W–2 and W–2 in paragraph (c).

c. Revising the first sentence of paragraphs (d)(2), (d)(3), and (d)(4).

d. Revising paragraphs (e) introductory text, (e)(1) introductory text, (e)(1)(xi) introductory text, (e)(1)(xi)(A) through (C), and (e)(2) introductory text.

e. Revising paragraph (f)(2) introductory text.

f. In paragraph (f)(2), revising the introductory text, Equation W–8, and definitions of Equation W–8.

g. In paragraph (f)(3), revising Equation W–9 and the definitions of Equation W–9.

h. In paragraph (h), revising the definitions of ''$E_{a,n}$'', ''EF_{wo}'', and ''V_f'' in Equation W–13.

i. Removing paragraph (h)(1).

j. Redesignating paragraphs (h)(2) and (h)(3) as paragraphs (h)(1) and (h)(2), respectively, and revising new paragraph (h)(1).

k. Revising paragraphs (i) introductory text and (i)(2).

l. Revising the definition of ''Vv'' in Equation W–14 of paragraph (i)(3).

m. Revising paragraph (i)(4).

n. Revising the first sentence of paragraph (j)(1) and revising paragraph (j)(1)(vii).

o. Revising paragraphs (j)(2), (j)(3) introductory text, and (j)(4) introductory text.

p. In paragraph (j)(5), revising Equation W–15, revising the definitions of ''EF_i'' and ''Count'', and defining the use of ''1,000''.

q. In paragraph (j)(8), revising Equation W–16, revising the definition

of ''En'', removing the definition of ''Et'', and defining the use of ''8,760''.

r. Revising paragraphs (k)(2) and (k)(4).

s. Revising paragraph (q) introductory text.

t. Revising the definition of ''ρ_i'' in Equation W–36 of paragraph (v).

u. Revising paragraph (z) introductory text.

v. In paragraph (z)(2)(iii), revising Equation W–39; adding Equations W–39A and W–39B; adding definitions for ''$Ea_{,CH4}$'', ''η'', ''YCO_2'', and ''Y_{CH4}''; and revising the definitions of ''Y_j'' and ''R_j''.

w. Revising paragraph (z)(3).

x. Removing paragraphs (z)(6)(i) through (z)(6)(iii).

y. Redesignating paragraphs (z)(4), (z)(5), and (z)(6) as (z)(2)(iv), (z)(2)(v), and (z)(2)(vi), respectively.

z. In newly redesignated paragraph (z)(2)(vi), revising Equation W–40 and revising the definition of ''HHV''.

§ 98.233 Calculating GHG emissions.

* * * * *

(a) * * *

GHG_i = For onshore petroleum and natural gas production facilities, concentration of GHG_i, CH_4 or CO_2, in produced natural gas as defined in paragraph (u)(2)(i) of this section; for facilities listed in § 98.230(a)(4) and (a)(5), GHG_i equals 0.952 for CH_4 and 1×10^{-2} for CO_2.

* * * * *

(c) * * *

GHG_i = Concentration of GHG_i, CH_4 or CO_2, in produced natural gas as defined in paragraph (u)(2)(i) of this section.

* * * * *

(d) * * *

(2) *Calculation Methodology 2.* If CEMS is not available but a vent meter is installed, use the CO_2 composition and annual volume of vent gas to calculate emissions using Equation W–3 of this section.

* * * * *

(3) *Calculation Methodology 3.* If CEMS or a vent meter is not installed, you may use the inlet or outlet gas flow rate of the acid gas removal unit to calculate emissions for CO_2 using Equation W–4 of this section.

* * * * *

(4) *Calculation Methodology 4.* If CEMS or a vent meter is not installed, you may calculate emissions using any standard simulation software packages, such as AspenTech HYSYS® and API 4679 AMINECalc, that uses the Peng-Robinson equation of state, and speciates CO_2 emissions. * * *

* * * * *

(e) *Dehydrator vents.* For dehydrator vents, calculate annual CH_4, CO_2 and N_2O (when flared) emissions using any of the calculation methodologies described in paragraph (e) of this section.

(1) *Calculation Methodology 1.* Calculate annual mass emissions from dehydrator vents with annual average daily throughput greater than or equal to 0.4 million standard cubic feet per day using a software program, such as AspenTech HYSYS® or GRI–GLYCalc, that uses the Peng-Robinson equation of state to calculate the equilibrium coefficient, speciates CH_4 and CO_2 emissions from dehydrators, and has provisions to include regenerator control devices, a separator flash tank, stripping gas and a gas injection pump or gas assist pump. A minimum of the following parameters determined by engineering estimate based on best available data must be used to characterize emissions from dehydrators:

* * * * *

(xi) Wet natural gas composition. Determine this parameter by selecting one of the methods described under paragraph (e)(1)(xi) of this section.

(A) Use the wet natural gas composition as defined in paragraph (u)(2)(i) or (u)(2)(ii) of this section.

(B) If wet natural gas composition cannot be determined using paragraph (u)(2)(i) or (u)(2)(ii) of this section, select a representative analysis.

(C) You may use an appropriate standard method published by a consensus-based standards organization if such a method exists or you may use an industry standard practice as specified in § 98.234(b) to sample and analyze wet natural gas composition.

* * * * *

(2) *Calculation Methodology 2.* Calculate annual CH_4 and CO_2 emissions from glycol dehydrators with annual average daily throughput less than 0.4 million cubic feet per day using Equation W–5 of this section: * * *

* * * * *

(f) * * *

(2) *Calculation Methodology 2.* Calculate the total emissions for well venting for liquids unloading using Equation W–8 of this section.

$$E_{a,n} = \sum_W \left[V_W \times \left(\left(0.37\times10^{-3}\right) \times CD_W^2 \times WD_W \times SP_W \right) + \sum_V \left(SFR_W \times \left(HR_{V,W} - 1.0 \right) \times Z_{V,W} \right) \right] \quad \text{(Eq. W-8)}$$

Where:

$E_{a,n}$ = Annual natural gas emissions at actual conditions, in cubic feet/year.

W = Number of wells with well venting for liquids unloading at the facility.

0.37×10^{-3} = {3.14 (pi)/4}/{14.7*144} (psia converted to pounds per square feet).

CD_W = Casing diameter for each well, in inches.

WD_W = Well depth to first producing horizon for each well, in feet.

SP_W = Shut-in pressure for each well, in pounds square inch atmosphere (psia).

V_W = Number of vents per year per well.

SFR_W = Average sales flow rate of each gas well in cubic feet per hour.

$HR_{V,W}$ = Hours that each well was left open to the atmosphere during each unloading event.

1.0 = Hours for average well to blowdown casing volume at shut-in pressure.

$Z_{V,W}$ = If $HR_{V,W}$ is less than 1.0 then $Z_{V,W}$ is equal to 0. If $HR_{V,W}$ is greater than or equal to 1.0 then $Z_{V,W}$ is equal to 1.

* * * * *

(3) * * *

$$E_{a,n} = \sum_W \left[V_W \times \left(\left(0.37\times10^{-3}\right) \times CD_W^2 \times WD_W \times SP_W \right) + \sum_V \left(SFR_W \times \left(HR_{V,W} - 1.0 \right) \times Z_{V,W} \right) \right] \quad \text{(Eq. W-9)}$$

Where:

$E_{a,n}$ = Annual natural gas emissions at actual conditions, in cubic feet/year.

W = Number of wells with well venting for liquids unloading at the facility.

0.37×10^{-3} = {3.14 (pi)/4}/{14.7*144} (psia converted to pounds per square feet).

TD_W = Tubing diameter for each well, in inches.

WD_W = Tubing depth to plunger bumper for each well, in feet.

SP_W = Sales line pressure for each well, in pounds per square inch atmospheric (psia).
N_V = Number of vents per year per well.
SFR_W = Average sales flow rate of each gas well in cubic feet per hour.
$HR_{V,W}$ = Hours that each well was left open to the atmosphere during each unloading event.
0.5 = Hours for average well to blowdown tubing volume at sales line pressure.
$Z_{V,W}$ = If $HR_{V,W}$ is less than 0.5 then $Z_{V,W}$ is equal to 0. If $HR_{V,W}$ is greater than or equal to 0.5 then $Z_{V,W}$ is equal to 1.

* * * * *

(h) * * *

$E_{s,n}$ = Annual natural gas emissions in standard cubic feet from a gas well venting during well completions and workovers without hydraulic fracturing.

* * * * *

EF_{wo} = Emission Factor for non-hydraulic fracture well workover venting in standard cubic feet per workover. EF_{wo} = 3114 standard cubic feet per well workover without hydraulic fracturing.

* * * * *

V_f = Average daily gas production rate in standard cubic feet per hour of each well completion without hydraulic fracturing. This is the total annual gas production volume divided by total number of hours the wells produced to the sales line. For completed wells that have not established a production rate, you may use the average flow rate from the first 30 days of production. In the event that the well is completed less than 30 days from the end of the calendar year, the first 30 days of the production straddling the current and following calendar years shall be used.

(1) Volumetric emissions for both CH_4 and CO_2 shall be calculated from volumetric natural gas emissions using calculations in paragraphs (u) of this section. Mass emissions for both CH_4 and CO_2 shall be calculated from volumetric natural gas emissions using calculations in paragraphs (v) of this section.

(2) Calculate annual emissions from gas well venting during well completions and workovers not involving hydraulic fracturing to flares as follows:

* * * * *

(i) *Blowdown vent stacks.* Calculate CO_2 and CH_4 blowdown vent stack emissions from depressurizing equipment to the atmosphere (excluding depressurizing to a flare, over-pressure relief, operating pressure control venting and blowdown of non-GHG gases; desiccant dehydrator blowdown venting before reloading is covered in paragraph (e)(5) of this section) as follows (Emissions from emergency events are not included.):

* * * * *

(2) If the total physical volume between isolation valves is greater than or equal to 50 cubic feet, retain logs of the number of blowdowns for each equipment type (including but not limited to compressors, vessels, pipelines, headers, fractionators, and tanks). Blowdown volumes smaller than 50 standard cubic feet are exempt from reporting under paragraph (i) of this section.

(3) * * *

V_v = Total physical volume of blowdown equipment chambers (including pipelines, compressors and vessels) between isolation valves in cubic feet.

* * * * *

(4) Calculate both CH_4 and CO_2 volumetric and mass emissions using calculations in paragraph (u) and (v) of this section.

* * * * *

(j) * * *

(1) *Calculation Methodology 1.* For separators with annual average daily throughput of oil greater than or equal to 10 barrels per day. * * *

* * * * *

(vii) Separator oil composition and Reid vapor pressure. If this data is not available, determine these parameters by selecting one of the methods described under paragraph (j)(1)(vii) of this section.

* * * * *

(2) *Calculation Methodology 2.* Calculate annual CH_4 and CO_2 emissions from onshore production storage tanks for wellhead gas-liquid separators with annual average daily throughput of oil greater than or equal to 10 barrels per day by assuming that all of the CH_4 and CO_2 in solution at separator temperature and pressure is emitted from oil sent to storage tanks. You may use an appropriate standard method published by a consensus-based standards organization if such a method exists or you may use an industry standard practice as described in § 98.234(b) to sample and analyze separator oil composition at separator pressure and temperature.

(3) *Calculation Methodology 3.* For wells with annual average daily oil production greater than or equal to 10 barrels per day that flow directly to atmospheric storage tanks without passing through a wellhead separator, calculate annual CH_4 and CO_2 emissions by either of the methods in paragraph (j)(3) of this section:

* * * * *

(4) *Calculation Methodology 4.* For wells with annual average daily oil production greater than or equal to 10 barrels per day that flow to a separator not at the well pad, calculate annual CH_4 and CO_2 emissions by either of the methods in paragraph (j)(4) of this section:

* * * * *

(5) * * *

$$E_{s,i} = EF_i * Count * 1000 \qquad \text{(Eq. W-15)}$$

Where:
$E_{s,i}$ = Annual total volumetric GHG emissions (either CO_2 or CH_4) at standard conditions in cubic feet.
EF_i = Populations emission factor for separators or wells in thousand standard cubic feet per separator or well per year, for crude oil use 4.3 for CH_4 and 2.9 for CO_2 at 68°F and 14.7 psia, and for gas condensate use 17.8 for CH_4 and 2.9 for CO_2 at 68°F and 14.7 psia.
Count = Total number of separators or wells with throughput less than 10 barrels per day.
1,000 = Conversion to cubic feet.

* * * * *

(8) * * *

$$E_{s,i} = \left(CF_n * \frac{E_n}{8760} * T_n \right) + \left(E_n * (8760 - T_n) \right) \qquad \text{(Eq. W-16)}$$

Where:

* * * * *

E_n = Storage tank emissions as determined in Calculation Methodologies 1, 2, or 4 in paragraphs (j)(1), (j)(2) and (j)(4) of this section (with wellhead separators) in cubic feet per year.

* * * * *

8,760 = Conversion to hourly emissions.

* * * * *

(k) * * *

(2) If the tank vapors are continuous for 5 minutes, or the acoustic leak detection device detects a leak, then use one of the following two methods in paragraph (k)(2) of this section to quantify annual emissions:

* * * * *

(4) Calculate annual emissions from storage tanks to flares as follows:

(i) Use the storage tank emissions volume and gas composition as determined in paragraphs (k)(1) through (k)(3) of this section.

(ii) Use the calculation methodology of flare stacks in paragraph (n) of this section to determine storage tank emissions sent to a flare.

* * * * *

(q) *Leak detection and leaker emission factors.* You must use the methods described in § 98.234(a) to conduct leak detection(s) of equipment leaks from all sources listed in § 98.232(d)(7), (e)(7), (f)(5), (g)(3), (h)(4), and (i)(1). This paragraph (q) applies to emissions sources in streams with gas content greater than 10 percent CH_4 plus CO_2 by weight. Emissions sources in streams with gas content less than 10 percent CH_4 plus CO_2 by weight do not need to be reported. Tubing systems equal to or less than one half inch diameter are exempt from the requirements of this paragraph (q) and do not need to be reported. If equipment leaks are detected for sources listed in this paragraph (q), calculate equipment leak emissions per source per reporting facility using Equation W–30 of this section for each source with equipment leaks.

* * * * *

(v) * * *

ρ_i = Density of GHG i. Use 0.0520 kg/ft³ for CO_2 and N_2O, and 0.0190 kg/ft³ for CH_4 at 68°F and 14.7 psia or 0.0530 kg/ft³ for CO_2 and N_2O, and 0.0193 kg/ft³ for CH_4 at 60°F and 14.7 psia.

* * * * *

(z) *Onshore petroleum and natural gas production and natural gas distribution combustion emissions.* Calculate CO_2, CH_4, and N_2O combustion-related emissions from stationary or portable equipment, except as specified in paragraph (z)(3) of this section, as follows:

(2) * * *

(iii) * * *

$$E_{a,CO2} = (V_a * Y_{CO2}) \quad + \quad \eta * \sum_j V_a * Y_j * R_j \qquad \text{(Eq. W-39A)}$$

$$E_{a,CH4} = V_a * (1-\eta) * Y_{CH4} \qquad \text{(Eq. W-39B)}$$

Where:

* * * * *

$E_{a,CH4}$ = Contribution of annual CH_4 emissions from portable or stationary fuel combustion sources in cubic feet, under actual conditions.

η = Combustion efficiency for portable and stationary equipment determined based on engineering estimation.

* * * * *

Y_j = Concentration of gas hydrocarbon constituents j (such as methane, ethane, propane, butane, and pentanes plus) in gas sent to combustion unit.

Y_{CH4} = Concentration of methane constituent in gas sent to combustion unit.

Y_{CO2} = Concentration of CO_2 constituent in gas sent to combustion unit.

R_j = Number of carbon atoms in the gas hydrocarbon constituent j; 1 for methane, 2 for ethane, 3 for propane, 4 for butane, and 5 for pentanes plus) in gas sent to combustion unit.

(iv) Calculate GHG volumetric emissions at standard conditions using calculations in paragraph (t) of this section.

(v) Calculate both combustion-related CH_4 and CO_2 mass emissions from volumetric CH_4 and CO_2 emissions using calculation in paragraph (v) of this section.

(vi) Calculate N_2O mass emissions using Equation W–40 of this section.

$$N_2O = \left(1 \times 10^{-3}\right) \times Fuel \times HHV \times EF \qquad \text{(Eq. W-40)}$$

Where:

* * * * *

HHV = For the high heat value for field gas or process vent gas, use 1.235 x 10^{-3} mmBtu/scf for HHV.

* * * * *

(3) External fuel combustion sources with a rated heat capacity equal to or less than 5 mmBtu/hr do not need to report combustion emissions or include these emissions for threshold determination in § 98.231(a). You must report the type and number of each external fuel combustion unit.

12. Section 98.234 is amended by revising Equation W–41 of paragraph (e) to read as follows:

§ 98.234 Monitoring and QA/QC requirements.

* * * * *

(e) * * *

$$p = \frac{RT}{V_m - b} - \frac{a\alpha}{V_m^2 + 2bV_m - b^2} \qquad \text{(Eq. W-41)}$$

Where:

p = Absolute pressure.

R = Universal gas constant.

T = Absolute temperature.

Vm = Molar volume.

$$a = \frac{0.45724 R^2 T_c^2}{p_c}$$

$$b = \frac{0.7780 R T_c}{p_c}$$

$$\alpha = \left(1 + \left(0.37464 + 1.54226\omega - 0.26992\omega^2\right)\left(1 - \sqrt{\frac{T}{T_c}}\right)\right)^2$$

Where:

ω = Acentric factor of the species.

Tc = Critical temperature.

Pc = Critical pressure.

* * * * *

13. Section 98.236 is amended by revising paragraphs (c)(6)(ii)(B) and (c)(7)(i).

§ 98.236 Data reporting requirements.

* * * * *

(c) * * *

(6) * * *

(ii) * * *

(B) Total count of workovers in calendar year that flare gas or vent gas to the atmosphere.

* * * * *

(7) * * *

(i) Total number of blowdowns per unique volume type in calendar year.

* * * * *

14. Tables W–3 and W–4 to subpart W are amended by revising the entries for ''Low Continuous Bleed Pneumatic Device Vents'', ''High Continuous Bleed Pneumatic Device Vents'', and ''Intermittent Bleed Pneumatic Device Vents'' as follows:

TABLE W–3 TO SUBPART W OF PART 98—DEFAULT TOTAL HYDROCARBON EMISSION FACTORS FOR ONSHORE NATURAL GAS TRANSMISSION COMPRESSION

Onshore natural gas transmission compression	Emission factor (scf/hour/component)
Leaker Emission Factors—Compressor Components, Gas Service	
* * * * * * *	
Leaker Emission Factors—Non-Compressor Components, Gas Service	
* * * * * * *	
Population Emission Factors—Gas Service	
Low Continuous Bleed Pneumatic Device Vents [2]	1.79
High Continuous Bleed Pneumatic Device Vents [2]	20.1
Intermittent Bleed Pneumatic Device Vents [2]	20.1

[1] Valves include control valves, block valves and regulator valves.
[2] Emission Factor is in units of ''scf/hour/device''.

TABLE W–4 TO SUBPART W OF PART 98—DEFAULT TOTAL HYDROCARBON EMISSION FACTORS FOR UNDERGROUND NATURAL GAS STORAGE

Underground natural gas storage	Emission factor (scf/hour/component)
Leaker Emission Factors—Storage Station, Gas Service	
* * * * * * *	
Population Emission Factors—Storage Wellheads, Gas Service	
* * * * * * *	
Population Emission Factors—Other Components, Gas Service	
Low Continuous Bleed Pneumatic Device Vents [2]	1.79
High Continuous Bleed Pneumatic Device Vents [2]	20.1
Intermittent Bleed Pneumatic Device Vents [2]	20.1

[1] Valves include control valves, block valves and regulator valves.
[2] Emission Factor is in units of ''scf/hour/device''.

Subpart FF—[Amended]

15. Section 98.322 is amended by revising paragraph (f) to read as follows:

§ 98.322 GHGs to report.

* * * * *

(f) An underground coal mine that is subject to this part because emissions from source categories described in Tables A–3, A–4 or A–5, or from stationary combustion (subpart C), is not required to report emissions under subpart FF of this part unless the coal mine liberates 36,500,000 actual cubic

feet (acf) or more of methane per year from its ventilation system.

16. Section 98.323 is amended by:

a. Revising the definitions of ''V'', ''C'', and ''P'' in Equation FF–1 of paragraph (a).

b. Revising the first sentence of paragraph (a)(2).

c. Revising the definitions of ''Vi'', ''Ci'', Ti, and ''Pi'' in equation FF–3 of paragraph (b).

d. Revising the first sentence of parapraph (b)(1).

e. Revising paragraph (c) introductory text.

§ 98.323 Calculating GHG emissions.

(a) * * *

V = Volumetric flow rate for the quarter (cfm) based on sampling or a flow rate meter. If a flow rate meter is used and the meter automatically corrects for temperature and pressure, replace ''520°R/T × P/1 atm'' with ''1''.

* * * * *

C = CH_4 concentration of ventilation gas for the quarter (%).

* * * * *

P = Pressure at which flow is measured (atm) for the quarter. The annual average barometric pressure from the nearest NOAA weather service station may be used as a default.

* * * * *

(2) Values of V, C, T, P, and fH_2O, if applicable, must be based on measurements taken at least once each quarter with no fewer than 6 weeks between measurements. * * *

* * * * *

(b) * * *

V_i = Measured volumetric flow rate for the days in the week when the degasification system is in operation at that monitoring point, based on sampling or a flow rate meter (cfm). If a flow rate meter is used and the meter automatically corrects for temperature and pressure, replace ''520°R/T_i × P_i/1 atm'' with ''1''.

* * * * *

C_i = CH_4 concentration of gas for the days in the week when the degasification system is in operation at that monitoring point (%).

* * * * *

T_i = Temperature at which flow is measured (°R).

P_i = Pressure at which flow is measured (atm).

* * * * *

(1) Values for V, C, T, P, and fH2O, if applicable, must be based on measurements taken at least once each calendar week with at least 3 days between measurements. * * *

* * * * *

(c) If gas from degasification system wells or ventilation shafts is sold, used onsite, or otherwise destroyed (including by flaring), you must calculate the quarterly CH_4 destroyed for each destruction device and each point of offsite transport to a destruction device, using Equation FF–5 of this section. You must measure CH_4 content and flow rate according to the provisions in § 98.324, and calculate the methane routed to the destruction device (CH_4) using either Eq. FF–1 or Eq. FF–3, as applicable.

* * * * *

17. Section 98.324 is amended by:

a. Revising paragraphs (b)(1) and (b)(2).

b. Revising paragraph (c).

c. Revising paragraph (d).

d. Revising paragraph (e) introductory text.

e. Revising paragraphs (g) and (h).

§ 98.324 Monitoring and QA/QC requirements.

* * * * *

(b) * * *

(1) Collect quarterly or more frequent grab samples (with no fewer than 6 weeks between measurements) for methane concentration and make quarterly measurements of flow rate, temperature, pressure, and moisture content, if applicable. The sampling and measurements must be made at the same locations as MSHA inspection samples are taken, and should be taken when the mine is operating under normal conditions. You must follow MSHA sampling procedures as set forth in the MSHA Handbook entitled, General Coal Mine Inspection Procedures and Inspection Tracking System Handbook Number: PH–08–V–1, January 1, 2008 (incorporated by reference, see § 98.7). You must record the date of sampling, flow, temperature, pressure, and moisture measurements, the methane concentration (percent), the bottle number of samples collected, and the location of the measurement or collection.

(2) Obtain results of the quarterly (or more frequent) testing performed by MSHA for the methane flowrate. At the time and location of the MSHA sampling, make measurements of temperature, pressure and moisture content using the same procedures specified in paragraph (b)(1) of this section. If the MSHA data for methane flow is provided in the units of actual cubic feet of methane per day, the methane flow data is inserted into Equation FF–1 of this section in place of the value for V and the variables MCF, C/100%, and 1440 are removed from the equation.

* * * * *

(c) For CH_4 liberated at degasification systems, determine whether CH_4 will be monitored from each well and gob gas vent hole, from a centralized monitoring point, or from a combination of the two options. Operators are allowed flexibility for aggregating emissions from more than one well or gob gas vent hole, as long as emissions from all are addressed, and the methodology for calculating total emissions is documented. Monitor both gas volume and methane concentration by one of the following two options:

(1) Monitor emissions through the use of one or more continuous emissions monitoring systems (CEMS). If operators use CEMS as the basis for emissions reporting, they must provide documentation on the process for using data obtained from their CEMS to estimate emissions from their mine ventilation systems.

(2) Collect weekly (once each calendar week, with at least three days between measurements) or more frequent samples, for all degasification wells and gob gas vent holes. Determine weekly or more frequent flow rates, methane concentration, temperature, and pressure from these degasification wells and gob gas vent holes. Methane composition should be determined either by submitting samples to a lab for analysis, or from the use of methanometers at the degasification well site. Follow the sampling protocols for sampling of methane emissions from ventilation shafts, as described in § 98.324(b)(1). You must record the date of sampling, flow, temperature, pressure, and moisture measurements, the methane concentration (percent), the bottle number of samples collected, and the location of the measurement or collection.

(3) If the CH_4 concentration is determined on a dry basis and flow is determined on a wet basis or CH_4 concentration is determined on a wet basis and flow is determined on a dry basis, and the flow meter does not automatically correct for moisture content, determine the moisture content in the gas in a location near or representative of the location of:

(i) The gas flow meter at least once each calendar week; if measuring with CEMS. If only one measurement is made each calendar week, there must be at least three days between measurements; and

(ii) The grab sample, if using grab samples, at the time of the sample.

(d) Monitoring must adhere to one of the methods specified in paragraphs (d)(1) through (d)(2) of this section.

(1) ASTM D1945–03, Standard Test Method for Analysis of Natural Gas by Gas Chromatography; ASTM D1946–90 (Reapproved 2006), Standard Practice

for Analysis of Reformed Gas by Gas Chromatography; ASTM D4891–89 (Reapproved 2006), Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion; or ASTM UOP539–97 Refinery Gas Analysis by Gas Chromatography (incorporated by reference, see § 98.7).

(2) As an alternative to the gas chromatography methods provided in paragraph (d)(1) of this section, you may use gaseous organic concentration analyzers and a correction factor to calculate the CH_4 concentration following the requirements in paragraphs (d)(2)(i) through (d)(2)(iii) of this section.

(i) Use Method 25A or 25B at 40 CFR part 60, appendix A–7 to determine gaseous organic concentration as required in § 98.323 and in paragraphs (b) and (c) of this section. You must calibrate the instrument with CH_4 and determine the total gaseous organic concentration as carbon (or as CH_4; K = 1 in Equation 25A–1 of Method 25A at 40 CFR part 60, appendix A–7).

(ii) Determine a correction factor that will be used with the gaseoue organic concentrations measured in paragraph (i) of this section. The correction factor must be determined at the routine sampling location no less frequently than once a reporting year following the requirements in paragraphs (d)(2)(ii)(A) through (d)(2)(ii)(C) of this section.

(A) Take a minimum of three grab samples of the gas with a minimum of 20 minutes between samples and determine the methane composition of the gas using one of the methods specified in paragraph (d)(1) of this section.

(B) As soon as practical after each grab sample is collected and prior to the collection of a subsequent grab sample, determine the gaseous organic concentration of the gas using either Method 25A or 25B at 40 CFR part 60, appendix A–7 as specified in paragraph (d)(2)(i) of this section.

(C) Determine the arithmetic average methane concentration and the arithmetic average gaseous organic concentration of the samples analyzed according to paragraphs (d)(2)(ii)(A) and (d)(2)(ii)(B) of this section, respectively, and calculate the non-methane organic carbon correction factor as the ratio of the average methane concentration to the average total gaseous organic concentration. If the ratio exceeds 1, use 1 for the correction factor.

(iii) Calculate the CH_4 concentration as specified in Equation FF–9 of this section:

$$C_{CH4} = f_{NMOC} \times C_{TGOC} \qquad \text{(Eq. FF-9)}$$

Where:

C_{CH4} = Methane (CH_4) concentration in the gas (volume %) for use in Equations FF–1 and FF–3 of this subpart.

f_{NMOC} = Correction factor from the most recent determination of the correction factor as specified in paragraph (d)(2)(ii) of this section (unitless).

C_{TGOC} = Gaseous organic carbon concentration measured using Method 25A or 25B at 40 CFR part 60, appendix A–7 during routine monitoring of the gas (volume %).

(e) All flow meters and gas composition monitors that are used to provide data for the GHG emissions calculations shall be calibrated prior to the first reporting year, using the applicable methods specified in paragraphs (d), and (e)(1) through (e)(7) of this section. Alternatively, calibration procedures specified by the flow meter manufacturer may be used. Flow meters and gas composition monitors shall be recalibrated either at the minimum frequency specified by the manufacturer or annually. The operator shall operate, maintain, and calibrate a gas composition monitor capable of measuring the concentration of CH_4 in the gas using one of the methods specified in paragraph (d) of this section. The operator shall operate, maintain, and calibrate the flow meter using any of the following test methods or follow the procedures specified by the flow meter manufacturer. Flow meters must meet the accuracy requirements in § 98.3(i).

* * * * *

(g) All temperature, pressure, and moisture content monitors must be operated and calibrated using the procedures and frequencies specified by the manufacturer.

(h) If applicable, the owner or operator shall document the procedures used to ensure the accuracy of gas flow rate, gas composition, temperature, pressure, and moisture content measurements. These procedures include, but are not limited to, calibration of flow meters, and other measurement devices. The estimated accuracy of measurements, and the technical basis for the estimated accuracy shall be recorded.

18. Section 98.325 is amended by revising the first sentence of paragraph (b) as follows:

§ 98.325 Procedures for estimating missing data.

* * * * *

(b) For each missing value of CH_4 concentration, flow rate, temperature, pressure, and moisture content for ventilation and degasification systems, the substitute data value shall be the arithmetic average of the quality-assured values of that parameter immediately preceding and immediately following the missing data incident. * * *

Section 98.326 is amended by:

a. Revising paragraph (f).
b. Revising paragraph (h).
c. Revising paragraph (j).
d. Revising paragraph (k).
e. Revising paragraph (o).

§ 98.326 Data reporting requirements.

* * * * *

(f) Quarterly volumetric flow rate for each ventilation monitoring point (scfm), date and location of each measurement, and method of measurement (quarterly sampling or continuous monitoring), used in Equation FF–1.

* * * * *

(h) Weekly volumetric flow rate used to calculate CH_4 liberated from degasification systems (cfm) and method of measurement (sampling or continuous monitoring), used in Equation FF–3.

* * * * *

(j) Weekly volumetric flow rate used to calculate CH_4 destruction for each destruction device and each point of offsite transport (cfm).

(k) Weekly CH_4 concentration (%) used to calculate CH_4 flow to each destruction device and each point of offsite transport (C).

* * * * *

(o) Temperatures (°R), pressure (atm), and moisture content used in Eq. FF–1 and FF–3, and the gaseous organic concentration correction factor, if Equation FF–9 was required.

* * * * *

Subpart II—[Amended]

19. Section 98.350 is amended by revising the first sentence of paragraph (b) introductory text to read as follows:

§ 98.350 Definition of Source Category

* * * * *

(b) An *anaerobic process* is a procedure in which organic matter in wastewater, wastewater treatment sludge, or other material is degraded by

micro-organisms in the absence of oxygen, resulting in the generation of CO_2 and CH_4. * * *

* * * * *

20. Section 98.352 is amended by revising paragraph (d) as follows:

§ 98.352 GHGs to report.

* * * * *

(d) You must report under subpart C of this part (General Stationary Fuel Combustion Sources) the emissions of CO_2, CH_4, and N_2O from each stationary combustion unit associated with the biogas destruction device, if present, by following the requirements of subpart C of this part.

21. Section 98.353 is amended by:

a. Revising paragraph (a)(2).

b. Revising paragraph (c) introductory text and paragraph (c)(1) introductory text.

c. Revising the definitions of ''Rn'', ''Tm'', and ''Pm'' in Equation II–4 of paragraph (c)(1).

d. Revising paragraph (c)(2).

e. Revising paragraph (d) introductory text.

f. Revising the definition of ''Rn'' in Equation II–5 in paragraph (d)(1).

g. Revising Equation II–6 and revising the definition of ''CH_4E_n'', ''R_n'', ''DE_1'', and ''f_{Dest_1}'' in paragraph (d)(2).

§ 98.353 Calculating GHG emissions.

(a) * * *

(2) If you measure the concentration of organic material entering an anaerobic reactor or anaerobic lagoon using methods for the determination of 5-day biochemical oxygen demand (BOD_5), then estimate annual mass of CH_4 generated using Equation II–2 of this section.

* * * * *

(c) For each anaerobic sludge digester, anaerobic reactor, or anaerobic lagoon from which some biogas is recovered, estimate the annual mass of CH_4 recovered according to the requirements in paragraphs (c)(1) and (c)(2) of this section. To estimate the annual mass of CH_4 recovered, you must continuously monitor biogas flow rate and determine the volume of biogas each week and the cumulative volume of biogas each year that is collected and routed to a destruction device as specified in § 98.354(h). If the gas flow meter is not equipped with automatic correction for temperature, pressure, or, if necessary, moisture content, you must determine these parameters as specified in paragraph (c)(2)(ii) of this section.

(1) If you continuously monitor CH_4 concentration (and if necessary, temperature, pressure, and moisture content required as specified in § 98.354(f)) of the biogas that is collected and routed to a destruction device using a monitoring meter specifically for CH_4 gas, as specified in § 98.354(g), you must use this monitoring system and calculate the quantity of CH_4 recovered for destruction using Equation II–4 of this section. A fully integrated system that directly reports CH_4 quantity requires only the summing of results of all monitoring periods for a given year.

* * * * *

R_n = Annual quantity of CH_4 recovered from the nth anaerobic reactor, sludge digester, or lagoon (metric tons CH_4/yr)

* * * * *

T_m = Average temperature at which flow is measured for the measurement period (°R). If the flow rate meter automatically corrects for temperature to 520° R, replace ''520° R/T_m'' with ''1''.

P_m = Average pressure at which flow is measured for the measurement period (atm). If the flow rate meter automatically corrects for pressure to 1 atm, replace ''P_m/1'' with ''1''.

* * * * *

(2) If you do not continuously monitor CH_4 concentration according to paragraph(c)(1) of this section, you must determine the CH_4 concentration, temperature, pressure, and, if necessary, moisture content of the biogas that is collected and routed to a destruction device according to the requirements in paragraphs (c)(2)(i) through (c)(2)(ii) of this section and calculate the quantity of CH_4 recovered for destruction using Equation II–4 of this section.

(i) Determine the CH_4 concentration in the biogas that is collected and routed to a destruction device in a location near or representative of the location of the gas flow meter at least once each calendar week; if only one measurement is made each calendar week, there must be least three days between measurements. For a given calendar week, you are not required to determine CH_4 concentration if the cumulative volume of biogas for that calendar week, determined as specified in paragraph (c) of this section, is zero.

(ii) If the gas flow meter is not equipped with automatic correction for temperature, pressure, or, if necessary, moisture content:

(A) Determine the temperature and pressure in the biogas that is collected and routed to a destruction device in a location near or representative of the location of the gas flow meter at least once each calendar week; if only one measurement is made each calendar week, there must be at least three days between measurements.

(B) If the CH_4 concentration is determined on a dry basis and biogas flow is determined on a wet basis, or CH_4 concentration is determined on a wet basis and biogas flow is determined on a dry basis, and the flow meter does not automatically correct for moisture content, determine the moisture content in the biogas that is collected and routed to a destruction device in a location near or representative of the location of the gas flow meter at least once each calendar week that the cumulative biogas flow measured as specified in § 98.354(h) is greater than zero; if only one measurement is made each calendar week, there must be at least three days between measurements.

(d) For each anaerobic sludge digester, anaerobic reactor, or anaerobic lagoon from which some quantity of biogas is recovered, you must estimate both the annual mass of CH_4 that is generated, but not recovered, according to paragraph (d)(1) of this section and the annual mass of CH_4 emitted according to paragraph (d)(2) of this section.

(1) * * *

R_n = Annual quantity of CH_4 recovered from the nth anaerobic reactor, anaerobic lagoon, or anaerobic sludge digester, as calculated in Equation II–4 of this section (metric tons CH_4).

* * * * *

(2) For each anaerobic sludge digester, anaerobic reactor, or anaerobic lagoon from which some quantity of biogas is recovered, estimate the annual mass of CH_4 emitted using Equation II–6 of this section.

$$CH_4E_n = CH_4L_n + R_n\,(1 - [\,(DE_1 * f_{Dest_1}) + (DE_2 * f_{Dest_2})]) \qquad \text{(Eq. II-6)}$$

Where:

CH_4E_n = Annual quantity of CH_4 emitted from the process n from which biogas is recovered (metric tons).

* * * * *

R_n = Annual quantity of CH_4 recovered from the nth anaerobic reactor or anaerobic sludge digester, as calculated in Equation II–4 of this section (metric tons CH_4).

DE_1 = Primary destruction device CH_4 destruction efficiency (lesser of manufacturer's specified destruction efficiency and 0.99). If the biogas is

transported off-site for destruction, use DE=1.

f_{Dest_1} = Fraction of hours the primary destruction device was operating (device operating hours/hours in the year). If the biogas is transported off-site for destruction, use f_{Dest}=1.

* * * * *

22. Section 98.354 is amended by:

a. Revising the second sentence of paragraph (c).

b. Revising paragraph (d) introductory text.

c. Revising paragraph (f).

d. Revising paragraph (g) introductory text.

e. Revising paragraph (h) introductory text and paragraph (h)(5).

f. Revising paragraph (k).

§ 98.354 Monitoring and QA/QC requirements.

(c) * * * You must collect and analyze samples for COD or BOD_5 concentration at least once each calendar week that the anaerobic wastewater treatment process is operating; if only one measurement is made each calendar week, there must be at least three days between measurements. * * *

(d) You must measure the flowrate of wastewater entering anaerobic wastewater treatment process at least once each calendar week that the process is operating; if only one measurement is made each calendar week, there must be at least three days between measurements. You must measure the flowrate for the 24-hour period for which you collect samples analyzed for COD or BOD_5 concentration. The flow measurement location must correspond to the location used to collect samples analyzed for COD or BOD_5 concentration. You must measure the flowrate using one of the methods specified in paragraphs (d)(1) through (d)(5) of this section or as specified by the manufacturer.

* * * * *

(f) For each anaerobic process (such as anaerobic reactor, sludge digester, or lagoon) from which biogas is recovered, you must make the measurements or determinations specified in paragraphs (f)(1) through (f)(3) of this section.

(1) You must continuously measure the biogas flow rate as specified in paragraph (h) of this section and determine the cumulative volume of biogas recovered.

(2) You must determine the CH_4 concentration of the recovered biogas as specified in paragraph (g) of this section at a location near or representative of the location of the gas flow meter. You must determine CH_4 concentration either continuously or intermittently. If you determine the concentration intermittently, you must determine the concentration at least once each calendar week that the cumulative biogas flow measured as specified in paragraph (h) of this section is greater than zero, with at least three days between measurements.

(3) As specified in § 98.353(c) and paragraph (h) of this section, you must determine temperature, pressure, and moisture content as necessary to accurately determine the biogas flow rate and CH_4 concentration. You must determine temperature and pressure if the gas flow meter or gas composition monitor do not automatically correct for temperature or pressure. You must measure moisture content of the recovered biogas if the biogas flow rate is measured on a wet basis and the CH_4 concentration is measured on a dry basis. You must also measure the moisture content of the recovered biogas if the biogas flow rate is measured on a dry basis and the CH_4 concentration is measured on a wet basis.

(g) For each anaerobic process (such as an anaerobic reactor, sludge digester, or lagoon) from which biogas is recovered, operate, maintain, and calibrate a gas composition monitor capable of measuring the concentration of CH_4 in the recovered biogas using one of the methods specified in paragraphs (g)(1) through (g)(6) of this section or as specified by the manufacturer.

* * * * *

(h) For each anaerobic process (such as an anaerobic reactor, sludge digester, or lagoon) from which biogas is recovered, install, operate, maintain, and calibrate a gas flow meter capable of continuously measuring the volumetric flow rate of the recovered biogas using one of the methods specified in paragraphs (h)(1) through (h)(8) of this section or as specified by the manufacturer. Recalibrate each gas flow meter either biennially (every 2 years) or at the minimum frequency specified by the manufacturer. Except as provided in § 98.353(c)(2)(iii), each gas flow meter must be capable of correcting for the temperature and pressure and, if necessary, moisture content.

* * * * *

(5) ASME MFC–11M–2006 Measurement of Fluid Flow by Means of Coriolis Mass Flowmeters (incorporated by reference, see § 98.7). The mass flow must be corrected to volumetric flow based on the measured temperature, pressure, and biogas composition.

* * * * *

(k) If applicable, the owner or operator must document the procedures used to ensure the accuracy of measurements of COD or BOD_5 concentration, wastewater flow rate, biogas flow rate, biogas composition, temperature, pressure, and moisture content. These procedures include, but are not limited to, calibration of gas flow meters, and other measurement devices. The estimated accuracy of measurements made with these devices must also be recorded, and the technical basis for these estimates must be documented.

23. Section 98.355 is amended by revising paragraph (b) to read as follows:

§ 98.355 Procedures for estimating missing data.

* * * * *

(b) For each missing value of the CH_4 content or biogas flow rates, the substitute data value must be the arithmetic average of the quality-assured values of that parameter immediately preceding and immediately following the missing data incident.

* * * * *

24. Section 98.356 is amended by:

a. Revising paragraph (a) introductory text.

b. Revising paragraphs (b)(3) and (b)(4).

c. Revising paragraph (d) introductory text and paragraphs (d)(2), (d)(4), (d)(6), and (d)(8).

§ 98.356 Data reporting requirements.

(a) A description or diagram of the industrial wastewater treatment system, identifying the processes used to treat industrial wastewater and industrial wastewater treatment sludge. Indicate how the processes are related to each other and identify the anaerobic processes. Provide a unique identifier for each anaerobic process, indicate the average depth in meters of each anaerobic lagoon, and indicate whether biogas generated by each anaerobic process is recovered. The anaerobic processes must be identified as:

* * * * *

(b) * * *

(3) Maximum CH_4 production potential (B_0) used as an input to Equation II–1 or II–2 of this subpart, from Table II–1.

(4) Methane conversion factor (MCF) used as an input to Equation II–1 or II–2 of this subpart, from Table II–1.

* * * * *

(d) For each anaerobic wastewater treatment process and anaerobic sludge digester from which some biogas is recovered, you must report:

* * * * *

(2) Total weekly volumetric biogas flow for each week (up to 52 weeks/

year) that biogas is collected for destruction.

* * * * *

(4) Weekly average biogas temperature for each week at which flow is measured for biogas collected for destruction, or statement that temperature is incorporated into monitoring equipment internal calcultations.

* * * * *

(6) Weekly average biogas pressure for each week at which flow is measured for biogas collected for destruction, or statement that pressure is incorporated into monitoring equipment internal calcultations.

* * * * *

(8) Whether destruction occurs at the facility or off-site. If destruction occurs at the facility, also report whether a back-up destruction device is present at the facility, the annual operating hours for the primary destruction device, the annual operating hours for the back-up destruction device (if present), the destruction efficiency for the primary destruction device, and the destruction efficiency for the back-up destruction device (if present).

* * * * *

Subpart OO—[Amended]

25. Section 98.416 is amended by removing and reserving paragraphs (a)(8) and (a)(9) and revising paragraph (a)(10) to read as follows:

§ 98.416 Data reporting requirements.

* * * * *

(a) * * *

(8) [Reserved]

(9) [Reserved]

(10) Mass in metric tons of any fluorinated GHG or nitrous oxide fed into the transformation process, by process.

* * * * *

26. Section 98.417 is amended by adding paragraphs (a)(3) and (a)(4) to read as follows:

§ 98.417 Records that must be retained.

(a) * * *

(3) Dated records of the total mass in metric tons of each reactant fed into the F–GHG or nitrous oxide production process, by process.

(4) Dated records of the total mass in metric tons of the reactants, by-products, and other wastes permanently removed from the F–GHG or nitrous oxide production process, by process.

* * * * *

Subpart RR—[Amended]

27. Section 98.442 is amended by revising paragraphs (e) and (f) to read as follows:

§ 98.442 GHGs to report.

* * * * *

(e) Mass of CO_2 emissions from equipment leaks and vented emissions of CO_2 from surface equipment located between the injection flow meter and the injection wellhead.

(f) Mass of CO_2 emissions from equipment leaks and vented emissions of CO_2 from surface equipment located between the production flow meter and the production wellhead.

* * * * *

28. Section 98.443 is amended by:

a. Revising paragraph (d) introductory text.

b. Revising paragraph (d)(3).

c. Revising the definition of ''CO_{2FI}'' and ''CO_{2FP}'' in Equation RR–11 of paragraph (f)(1).

d. Revising the definition of ''CO_{2FI}'' in Equation RR–12 of paragraph (f)(2).

§ 98.443 Calculating CO_2 geologic sequestration.

* * * * *

(d) You must calculate the annual mass of CO_2 produced from oil or gas production wells or from other fluid wells for each separator that sends a stream of gas into a recycle or end use system in accordance with the procedures specified in paragraphs (d)(1) through (d)(3) of this section. You must account for any CO_2 that is produced and not processed through a separator. You must account only for wells that produce the CO_2 that was injected into the well or wells covered by this source category.

* * * * *

(3) To aggregate production data, you must sum the mass of all of the CO_2 separated at each gas-liquid separator in accordance with the procedure specified in Equation RR–9 of this section. You must assume that the total CO_2 measured at the separator(s) represents a percentage of the total CO_2 produced. In order to account for the percentage of CO_2 produced that is estimated to remain with the produced oil or other fluid, you must multiply the quarterly mass of CO_2 measured at the separator(s) by a percentage estimated using a methodology in your approved MRV plan. If fluids containing CO_2 from injection wells covered under this source category are produced and not processed through a gas-liquid separator, the concentration of CO_2 in the produced fluids must be measured at a flow meter located prior to reinjection or reuse using methods in § 98.444(f)(1). The considerations you intend to use to calculate CO_2 from produced fluids for the mass balance equation must be described in your approved MRV plan in accordance with § 98.448(d)(5).

* * * * *

(f) * * *

(1) * * *

CO_{2FI} = Total annual CO_2 mass emitted (metric tons) from equipment leaks and vented emissions of CO_2 from equipment located on the surface between the flow meter used to measure injection quantity and the injection wellhead, for which a calculation procedure is provided in subpart W of this part.

CO_{2FP} = Total annual CO_2 mass emitted (metric tons) from equipment leaks and vented emissions of CO_2 from equipment located on the surface between the production wellhead and the flow meter used to measure production quantity, for which a calculation procedure is provided in subpart W of this part.

* * * * *

(2) * * *

CO_{2FI} = Total annual CO_2 mass emitted (metric tons) from equipment leaks and vented emissions of CO_2 from equipment located on the surface between the flow meter used to measure injection quantity and the injection wellhead.

29. Section 98.444 is amended by revising the heading of paragraph (d) to read as follows:

§ 98.444 Monitoring and QA/QC requirements.

* * * * *

(d) *CO_2 emissions from equipment leaks and vented emissions of CO_2.*

* * *

* * * * *

30. Section 98.445 is amended by revising paragraph (e) to read as follows:

§ 98.445 Procedures for estimating missing data.

* * * * *

(e) For any values associated with CO_2 emissions from equipment leaks and vented emissions of CO_2 from surface equipment at the facility that are reported in this subpart, missing data estimation procedures should be followed in accordance with those specified in subpart W of this part.

* * * * *

31. Section 98.446 is amended by:

a. Revising paragraph (a)(2) introductory text and (a)(3) introductory text.

b. Revising paragraph (e).

c. Revising paragraph (f) introductory text.

d. Revising paragraph (f)(1)(vii).

e. Revising paragraphs (f)(3).

§ 98.446 Data reporting requirements.

(a) * * *

(2) If a volumetric flow meter is used to receive CO_2 report the following unless you reported yes to paragraph (a)(4) of this section:

* * * * *

(3) If a mass flow meter is used to receive CO_2 report the following unless you reported yes to paragraph (a)(4) of this section:

* * * * *

(e) Report the date that you began collecting data for calculating total amount sequestered according to § 98.448(a)(7) of this subpart.

(f) Report the following. If the date specified in paragraph (e) of this section is during the reporting year for this annual report, report the following starting on the date specified in paragraph (e) of this section.

(1) * * *

(vii) The standard used to calculate each value in paragraphs (f)(1)(ii) through (f)(1)(iv) of this section.

* * * * *

(3) For CO_2 emissions from equipment leaks and vented emissions of CO_2, report the following:

(i) The mass of CO_2 emitted (in metric tons) annually from equipment leaks and vented emissions of CO_2 from equipment located on the surface between the flow meter used to measure injection quantity and the injection wellhead.

(ii) The mass of CO_2 emitted (in metric tons) annually from equipment leaks and vented emissions of CO_2 from equipment located on the surface between the production wellhead and the flow meter used to measure production quantity.

* * * * *

32. Section 98.447 is amended by revising paragraphs (a)(5) and (a)(6) to read as follows:

§ 98.447 Records that must be retained.

(a) * * *

(5) Annual records of information used to calculate the CO_2 emitted from equipment leaks and vented emissions of CO_2 from equipment located on the surface between the flow meter used to measure injection quantity and the injection wellhead.

(6) Annual records of information used to calculate the CO_2 emitted from equipment leaks and vented emissions of CO_2 from equipment located on the surface between the production wellhead and the flow meter used to measure production quantity.

* * * * *

33. Section 98.448 is amended by revising paragraphs (a)(5) and (e) to read as follows:

§ 98.448 Geologic sequestration monitoring, reporting, and verification (MRV) plan.

(a) * * *

(5) A summary of the considerations you intend to use to calculate site-specific variables for the mass balance equation. This includes, but is not limited to, considerations for calculating CO_2 emissions from equipment leaks and vented emissions of CO_2 between the injection flow meter and injection well and/or the production flow meter and production well, and considerations for calculating CO_2 in produced fluids.

* * * * *

(e) *Revised MRV plan.* The requirements of paragraph (c) of this section apply to any submission of a revised MRV plan. You must continue reporting under your currently approved plan while awaiting approval of a revised MRV plan.

* * * * *

34. Section 98.449 is amended by revising the definition of ''CO_2 received'' to read as follows:

§ 98.449 Definitions.

* * * * *

CO_2 received means the CO_2 stream that you receive to be injected for the first time into a well on your facility that is covered by this subpart. CO_2 received includes, but is not limited to, a CO_2 stream from a production process unit inside your facility and a CO_2 stream that was injected into a well on another facility, removed from a discontinued enhanced oil or natural gas or other production well, and transferred to your facility.

* * * * *

Subpart TT—[Amended]

35. Section 98.460 is amended by revising paragraphs (c)(1) and (c)(2)(i) to read as follows:

§ 98.460 Definition of the source category.

* * * * *

(c) * * *

(1) Construction and demolition waste landfills.

(2) * * *

(i) Coal combustion or incinerator ash (*e.g.,* fly ash).

* * * * *

36. Section 98.463 is amended by:

a. In paragraph (a)(1), revising Equation TT–1 and revising the definitions of ''G_{CH4}'', ''DOC_x'', ''MCF'', and ''F_x''.

b. Revising paragraph (a)(2) introductory text.

c. Revising paragraph (a)(2)(ii)(C).

d. In paragraph (a)(2)(ii)(C), revising the definitions of ''W_x'', ''LFC'', and ''YrData'' in Equation TT–4.

§ 98.463 Calculating GHG emissions.

(a) * * *

(1) * * *

$$G_{CH4} = \left[\sum_{x=S}^{T-1} \left\{ W_x \times DOC_x \times MCF \times DOC_F \times F \times \frac{16}{12} \times \left(e^{-k(T-x-1)} - e^{-k(T-x)} \right) \right\} \right] \quad \text{(Eq. TT-1)}$$

Where:

G_{CH4} = Modeled methane generation in reporting year T (metric tons CH_4).

* * * * *

DOC_x = Degradable organic carbon for waste disposed in year X from Table TT–1 of this subpart or from measurement data [as specified in paragraph (a)(3) of this section], if available [fraction (metric tons C/metric ton waste)].

* * * * *

MCF = Methane correction factor (fraction). Use the default value of 1 unless there is active aeration of waste within the landfill during the reporting year. If there is active aeration of waste within the landfill during the reporting year, use either the default value of 1 or select an alternative value no less than 0.5 based on site-specific aeration parameters.

F = Fraction by volume of CH_4 in landfill gas (fraction, dry basis, corrected to 0% oxygen). If you have a gas collection system, use the annual average CH_4 concentration from measurement data for the current reporting year; otherwise, use the default value of 0.5.

* * * * *

(2) *Waste stream quantities.* Determine annual waste quantities as specified in paragraphs (a)(2)(i) through (ii) of this section for each year starting with January 1, 1960 or the year the landfills first accepted waste if after January 1, 1960, up until the most recent reporting year. The choice of method for determining waste quantities will vary according to the availability of historical data. Beginning in the first emissions reporting year (2011 or later) and for each year thereafter, use the

procedures in paragraph (a)(2)(i) of this section to determine waste stream quantities. These procedures should also be used for any year prior to the first emissions reporting year for which the data are available. For other historical years, use paragraph (a)(2)(i) of this section, where waste disposal records are available, and use the procedures outlined in paragraph (a)(2)(ii) of this section when waste disposal records are unavailable, to determine waste stream quantities. Historical disposal quantities deposited (*i.e.,* prior to the first year in which monitoring begins) should only be determined once, as part of the first annual report, and the same values should be used for all subsequent annual reports, supplemented by the next year's data on new waste disposal.

* * * * *

(ii) * * *

(C) For any year in which historic production or processing data are not available such that historic waste quantities cannot be estimated using Equation TT–3 of this section, calculate an average annual bulk waste disposal quantity using Equation TT–4 of this section.

* * * * *

W_x = Quantity of waste placed in the landfill in year X (metric tons, wet basis). This annual bulk waste disposal quantity applies for all years from ''YrOpen'' to ''YrData'' inclusive.

LFC = Capacity of the landfill used (or the total quantity of waste-in-place) at the end of the ''YrData'' from design drawings or engineering estimates (metric tons). For closed landfills for which waste quantity data are not available, use the landfill's design capacity.

YrData = The year prior to the year when waste disposal data are first available from company records or from Equation TT–3 of this section. For landfills for which waste quantity data are not available, the year in which the landfill last received waste.

* * * * *

37. Section 98.464 is amended by:

a. Revising paragraph (b) introductory text.

b. Revising paragraph (b)(1).

c. Revising paragraph (b)(3).

d. In paragraph (b)(4), revising the first sentence, redesignating Equation TT–8 as Equation TT–7, and revising the definition of ''% Volatile $Solids_x$'' and ''% Total $Solids_x$''.

e. Redesignating paragraphs (c), (d),(e) and (f) as paragraphs (d), (e), and (f) and (h) respectively.

f. Adding paragraph (c).

g. Adding paragraph (g).

§ 98.464 Monitoring and QA/QC requirements.

* * * * *

(b) For each waste stream received during the reporting year for which you choose to determine volatile solids concentration for the purposes of § 98.460(c)(2)(xii) or choose to determine a landfill-specific DOC_x for use in Equation TT–1 of this subpart, you must collect and test a representative sample of that waste stream using the methods specified in paragraphs (b)(1) through (b)(4) of this section.

(1) Develop and follow a sampling plan to collect a representative sample of each waste stream (as received at the landfill) for which testing is elected.

* * * * *

(3) For the purposes of § 98.460(c)(2)(xii), the volatile solids concentration (weight percent on a dry basis) is the percent volatile solids determined using Standard Method 2540G ''Total, Fixed, and Volatile Solids in Solid and Semisolid Samples'' (incorporated by reference; see § 98.7).

(4) Calculate the waste stream-specific DOC_x value using Equation TT–7 of this section.

$$DOC_x = F_{DOC} \times \frac{\%\ \text{Volatile Solids}_x}{100\%} \times \frac{\%\ \text{Total Solids}_x}{100\%} \qquad \text{(Eq. TT-7)}$$

* * * * *

% $Volatile\ Solids_x$ = Percent volatile solids determined using Standard Method 2540G ''Total, Fixed, and Volatile Solids in Solid and Semisolid Samples'' (incorporated by reference; see § 98.7) for Year X [milligrams (mg) volatile solids per 100 mg dried solids].

% $Total\ Solids_x$ = Percent total solids determined using Standard Method 2540G ''Total, Fixed, and Volatile Solids in Solid and Semisolid Samples'' (incorporated by reference; see § 98.7) for Year X (mg dried solids per 100 mg wet waste).

(c) For each waste stream for which you choose to determine volatile solids concentration for the purposes of paragraph § 98.460(c)(2)(xii), and that was historically managed in the landfill but was not received during the first reporting year, you must determine volatile solids concentration of the waste stream as initially placed in the landfill using the methods specified in paragraph (c)(1) or (c)(2) of this section, as applicable.

(1) If you can identify a similar waste stream to the waste stream that was historically managed in the landfill, you must determine the volatile solids concentration of the similar waste stream using the procedures in paragraphs (b)(1) through (b)(3) of this section.

(2) If you cannot identify a similar waste stream to the waste stream that was historically managed in the landfill, you may determine the volatile solids concentration of the historically managed waste stream using process knowledge. You must document the basis for volatile solids concentration as determined through process knowledge.

(d) For landfills with gas collection systems, operate, maintain, and calibrate a gas composition monitor capable of measuring the concentration of CH_4 according to the requirements specified at § 98.344(b).

(e) For landfills with gas collection systems, install, operate, maintain, and calibrate a gas flow meter capable of measuring the volumetric flow rate of the recovered landfill gas according to the requirements specified at § 98.344(c).

(f) For landfills with gas collection systems, all temperature, pressure, and if applicable, moisture content monitors must be calibrated using the procedures and frequencies specified by the manufacturer.

(g) For landfills electing to measure the fraction by volume of CH_4 in landfill gas (F), follow the requirements in paragraphs (g)(1) and (g)(2) of this section.

(1) Use a gas composition monitor capable of measuring the concentration of CH_4 on a dry basis that is properly operated, calibrated, and maintained according to the requirements specified at § 98.344(b). You must either use a gas composition monitor that is also capable of measuring the O_2 concentration correcting for excess (infiltration) air or you must operate, maintain, and calibrate a second monitor capable of measuring the O_2 concentration on a dry basis according to the manufacturer's specifications.

(2) Use Equation TT–8 of this section to correct the measured CH_4 concentration to 0% oxygen. If multiple CH_4 concentration measurements are made during the reporting year, determine F separately for each

measurement made during the reporting year, and use the results to determine the arithmetic average value of F for use in Equation TT–1 of this part.

$$F = \left(\frac{C_{CH4}}{100\%}\right) \times \left[20.9_c \Big/ \left(20.9 - \%O_2\right) \right] \qquad \text{(Eq. TT-8)}$$

Where:

F = Fraction by volume of CH_4 in landfill gas (fraction, dry basis, corrected to 0% oxygen).

C_{CH4} = Measured CH_4 concentration in landfill gas (volume %, dry basis).

20.9_c = Defined O_2 correction basis, (volume %, dry basis).

20.9 = O_2 concentration in air (volume %, dry basis).

$\%O_2$ = Measured O_2 concentration in landfill gas (volume %, dry basis).

(h) The facility shall document the procedures used to ensure the accuracy of the estimates of disposal quantities and, if the industrial waste landfill has a gas collection system, gas flow rate, gas composition, temperature, pressure, and moisture content measurements. These procedures include, but are not limited to, calibration of weighing equipment, fuel flow meters, and other measurement devices. The estimated accuracy of measurements made with these devices shall also be recorded, and the technical basis for these estimates shall be provided.

38. Section 98.466 is amended by:

a. Revising paragraph (b) introductory text.

b. Revising paragraph (b)(2).

c. Adding paragraphs (b)(3) and (b)(4).

d. Revising paragraph (c)(3)(ii).

e. Revising paragraph (d).

f. Revising paragraph (f).

g. Revising paragraph (g)(1).

§ 98.466 Data reporting requirements.

* * * * *

(b) Report the following waste characterization and modeling information:

* * * * *

(2) A description of each waste stream (including the types of materials in each waste stream) for which Equation TT–1 of this subpart is used to calculate modeled CH_4 generation.

(3) The fraction of CH_4 in the landfill gas, F, (volume fraction, dry basis, corrected to 0% oxygen) for the reporting year and an indication as to whether this was the default value or a value determined through measurement data.

(4) The methane correction factor (MCF) value used in the calculations. If an MCF value other than the default of 1 is used, provide a description of the aeration system, including aeration blower capacity, the fraction of the landfill containing waste affected by the aeration, the total number of hours during the year the aeration blower was operated, and other factors used as a basis for the selected MCF value.

(c) * * *

(3) * * *

(ii) The year, the waste disposal quantity and production quantity for each year used in Equation TT–2 of this subpart to calculate the average waste disposal factor (WDF).

* * * * *

(d) For each year of landfilling starting with the ''Start Year'' (S) and each year thereafter up to the current reporting year, report the following information:

(1) The calendar year for which the following data elements apply.

(2) The quantity of waste (W_x) disposed of in the landfill (metric tons, wet weight) for the specified year for each waste stream identified in paragraph (b) of this section.

(3) The degradable organic carbon (DOC_x) value (mass fraction) for the specified year and an indication as to whether this was the default value from Table TT–1 of this subpart or a value determined through sampling and calculation for each waste stream identified in paragraph (b) of this section.

* * * * *

(f) The modeled annual methane generation (G_{CH4}) for the reporting year (metric tons CH_4) calculated using Equation TT–1 of this subpart.

(g) * * *

(1) The annual methane emissions (*i.e.,* the methane generation (MG), adjusted for oxidation, calculated using Equation TT–6 of this subpart), reported in metric tons CH_4.

* * * * *

39. Section 98.467 is revised to read as follows:

§ 98.467 Records that must be retained.

In addition to the information required by § 98.3(g), you must retain the calibration records for all monitoring equipment, including the method or manufacturer's specification used for calibration, and all total and volatile solids concentration measurement data used for the purposes of paragraph § 98.460(c)(2)(xii) or used to determine landfill-specific DOC_x values.

40. Section 98.468 is amended by adding the definitions for ''Construction and demolition (C&D) waste landfill'' and ''Design capacity'' to read as follows:

§ 98.468 Definitions.

* * * * *

Construction and demolition (C&D) waste landfill means a solid waste disposal facility subject to the requirements of subparts A or B of part 257 of this chapter that receives construction and demolition waste and does not receive hazardous waste (defined in § 261.3 of this chapter) or industrial solid waste (defined in § 258.2 of this chapter) or municipal solid waste (defined in § 98.6 of this part) other than residential lead-based paint waste. A C&D waste landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste.

Design capacity means the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the State, local, or Tribal agency responsible for regulating the landfill, plus any in-place waste not accounted for in the most recent permit. If the owner or operator chooses to convert the design capacity from volume to mass to determine its design capacity, the calculation must include a site specific density, which must be recalculated annually.

* * * * *

41. Table TT–1 of Subpart TT is amended by revising the entries for ''Construction and Demolition'' and ''Inert Waste [*i.e.,* wastes listed in § 98.460(c)(2)]'' to read as follows:

TABLE TT–1 OF SUBPART TT—DEFAULT DOC AND DECAY RATE VALUES FOR INDUSTRIAL WASTE LANDFILLS

Industry/waste type	DOC (weight fraction, wet basis)	K [dry climate [a]] (yr_{-1})	k [moderate climate [a]] (yr_{-1})	k [wet climate [a]] (yr_{-1})
* * * *	*	*		*
Construction and Demolition	0.08	0.02	0.03	0.04
Inert Waste [*i.e.,* wastes listed in § 98.460(c)(2)]	0	0	0	0
* * * *	*	*		*

[a] The applicable climate classification is determined based on the annual rainfall plus the recirculated leachate application rate. Recirculated leachate application rate (in inches/year) is the total volume of leachate recirculated from company records or engineering estimates and applied to the landfill divided by the area of the portion of the landfill containing waste [with appropriate unit conversions].

(1) Dry climate = precipitation plus recirculated leachate less than 20 inches/year.

(2) Moderate climate = precipitation plus recirculated leachate from 20 to 40 inches/year (inclusive).

(3) Wet climate = precipitation plus recirculated leachate greater than 40 inches/year.

Alternatively, landfills that use leachate recirculation can elect to use the k value for wet climate rather than calculating the recirculated leachate rate.

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