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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1202

RIN 2590–AA44

Freedom of Information Act Implementation

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) issues this final regulation revising its existing Freedom of Information Act (FOIA) regulation. This final regulation provides procedures and guidelines under which FHFA and the FHFA Office of Inspector General (FHFA–OIG) will implement FOIA.

DATES: The final regulation is effective January 31, 2012.

FOR FURTHER INFORMATION CONTACT: David A. Lee, FHFA Chief FOIA Officer, (202) 649–3058, *david.lee@fhfa.gov* (not a toll-free number), Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20024. *Please note that all mail sent to FHFA via the United States Postal Service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.* The telephone number for the Telecommunications Device for the Hearing Impaired (TDD) is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Interim Final Regulation

FHFA issued an interim final regulation on May 23, 2011 at 76 FR 29633 revising its 2009 FOIA regulation in various aspects. These revisions were necessary to provide procedures and guidelines under which FHFA and FHFA–OIG would implement FOIA, as well as to implement certain necessary updates and revisions to the 2009 regulation. FHFA solicited public comments on the interim final regulation for a 60-day period that ended on July 22, 2011.

II. Analysis of Comment Received and Final Regulation

FHFA received one comment letter in response to the interim final regulation from the National Archives and Records Administration's Office of Government Information Services (NARA). NARA recommended several changes to the interim final regulation. These changes are discussed below. Additionally, since the publication of the interim final regulation, FHFA has relocated its headquarters and its mailing address and contact information for the FOIA program has changed. As a result, FHFA will also be making technical changes to the regulation to include the new mailing address and telephone, and facsimile numbers for the FOIA program.

Section 1202.1—Why did FHFA issue this regulation?

NARA suggested revising § 1202.1(c) to clarify how FHFA and FHFA–OIG will handle first-party access requests—*i.e.,* a request for information about yourself—which are commonly submitted pursuant to the Privacy Act. FHFA and FHFA–OIG agree with this recommendation and have revised the final regulation to clarify how first-party access requests will be handled.

Section 1202.2—What do the terms in this regulation mean?

NARA suggested adding definitions for the terms ''FOIA Liaison,'' ''Fee Waiver,'' and ''Requester Category.'' FHFA has revised the regulation to include definitions for the terms ''FOIA Liaison'' and ''Fee Waiver.'' As for NARA's recommendation regarding the term ''Requester Category,'' FHFA and FHFA–OIG have incorporated three different categories into the definition of ''Requester in the final regulation.'' Therefore, a separate, stand-alone definition of ''Requester Category'' is unnecessary and has not been adopted in the final regulation.

NARA also suggested that clarifying language be added to the definition of ''Direct Costs,'' at least to the extent that such costs may relate to contract services costs. Since neither FHFA nor FHFA–OIG uses or contemplates using contract services to fulfill FOIA responsibilities, the term's current definition is sufficiently descriptive and no further clarification is necessary, and none has been adopted in the final regulation.

NARA further suggested that the definition of ''Unusual Circumstances'' be revised to ''differentiate between FHFA's 12 Federal Home Loan Banks (FHLBanks) located across the country and an office that is on another floor or a few blocks away.'' This comment suggests that the FHLBanks are units of FHFA. FHLBanks are not units of FHFA. FHFA regulates the FHLBanks, which are wholly private entities and therefore not subject to FOIA. Any reference in this final regulation to ''other components'' of FHFA or FHFA–OIG refers to offices within FHFA or FHFA–OIG, not to the FHLBanks. As a result, such a revision is unnecessary and has not been adopted in the final regulation.

Section 1202.3—What information can I obtain through FOIA?

NARA recommended that § 1202.3(b) be revised to expand the universe of information a requester may obtain to include compilations of information contained in databases, ''especially if a compilation can be produced through a few keystrokes.'' FHFA and FHFA–OIG decline to make this change. NARA's recommendation would require proactive disclosure of anything that might be produced electronically while imposing an undue burden, regardless of whether the requester sought it. However, if a requester seeks a compilation of information contained in databases, he or she may ask for it. This position is consistent with FOIA and with applicable case precedent. Therefore, FHFA and FHFA–OIG decline to adopt NARA's suggested modification. FHFA, however, will be making technical changes to this section to update the contact information of the FOIA program to that of FHFA's new headquarters.

Section 1202.4—What information is exempt from disclosure?

NARA recommended that § 1202.4(d), which specifically concerns ''[e]xempt and redacted material,'' be revised to make plain that no itemized index of withheld materials needs to be provided to a requester ''at the administrative

stage of processing a request.'' The current language of paragraph (d) complies with applicable statutory and precedential requirements for FOIA. Therefore, FHFA and FHFA–OIG decline to adopt NARA's suggested modification.

Section 1202.5—How do I request information from FHFA or FHFA–OIG under FOIA?

NARA suggested that § 1202.5(c) through (g) be revised to indicate not that requesters ''must'' comply with the procedural requirements set forth therein, but that they merely ''should'' do so. FHFA and FHFA–OIG decline to adopt this recommendation. Establishing clear requirements minimizes ambiguity in processing and handling FOIA requests, and helps ensure that all requesters are treated equally. Therefore, FHFA and FHFA–OIG decline to adopt NARA's suggested modification.

NARA also suggested that § 1202.5(d) be revised to indicate that requesters should attempt to identify their fee status, but not absolutely require that they do so. FHFA and FHFA–OIG agree and have made the suggested modification.

Additionally, FHFA will be making technical changes to this section to update the contact information of the FOIA program to that of FHFA's new headquarters.

Section 1202.7—How will FHFA and FHFA–OIG respond to my FOIA request?

In the interim final regulation, § 1202.7(c), Referrals to other agencies, provided that FHFA and FHFA–OIG refer requests that seek records originating in other agencies to that agency. It also provided that the requester be notified when such referrals occur. NARA recommended that § 1202.7(c) be revised to provide that FHFA and FHFA–OIG also notify requesters of what part of the request was referred, the name of the agency to which the request was referred, as well as the name of a contact at that agency to whom the requester may speak about the referred request. As a matter of procedure, FHFA provides this information to requesters but will include that procedure expressly in § 1202.7(c).

NARA also recommended that § 1202.7(d) be revised to designate the ''search cut-off date''—*i.e.,* the date of the request—as the date of search, on the presumption that such a designation could ''result in a much fuller search.'' As a matter of policy, however, FHFA and FHFA–OIG consistently use the date on which each request is received as the date of search. Further, it is not evident that the recommended change would necessarily result in a ''fuller'' search. FHFA and FHFA–OIG elect to use their discretion on this point, and thereby decline to adopt NARA's suggested modification.

Section 1202.9—How do I appeal a response denying my FOIA request?

NARA suggested that § 1202.9(b) be revised to extend a requester's deadline for appealing the agency response on a given request from 30 days to 45 or even 60 days. FOIA requires only a 30-day appeal window and FHFA and FHFA–OIG decline to extend it further.

NARA also suggested that § 1202.9 be amended by adding a new paragraph (g), which would require that requesters be advised of the services offered by NARA's Office of Government Information Services (OGIS) services, and further informing the requester that FHFA and FHFA–OIG will work with OGIS to resolve disputes concerning responses to FOIA requests. Section 1202.9 of the final regulation has been amended to include a new paragraph (g), which advises requesters that they may consult the OGIS regarding disputes. However, current law does not require that such disputes be referred to the OGIS, which offers mediation services, but possesses no binding authority over either FHFA or FHFA–OIG with regard to information production or any other matter. NARA's additional suggestions would commit FHFA and FHFA–OIG to take steps beyond those required by law that would unduly burden this process. Therefore, FHFA and FHFA–OIG decline to adopt NARA's suggested modification.

Additionally, FHFA will be making technical changes to this section to update the contact information of the FOIA program to that of FHFA's new headquarters.

Section 1202.11—What will it cost to get the records I requested?

NARA recommended that § 1202.11(a) be revised to provide requesters with a breakdown of all fees applicable to the FOIA process. This change is unnecessary, because paragraph (c) of this section directs requesters to FHFA's Web site for the most current fee schedule, to which FHFA–OIG also abides. Referring requesters to the Web site eliminates the need to update formally the regulation every time a fee changes. Therefore, FHFA and FHFA–OIG decline to adopt NARA's suggested modification.

NARA also recommended that § 1202.11(b) be modified to provide information on how FHFA would determine the electronic equivalent of 100 pages of duplication, for the purpose of assessing an applicable fee. FHFA and FHFA–OIG decline to confine themselves to any one method for making such a determination, since the nature and format of the responsive material will necessarily dictate how best to ascertain that material's relative ''page length.'' Further, methods for making this determination are likely to change as technology develops, making a regulatory commitment to follow one method over another inadvisable. Therefore, FHFA and FHFA–OIG decline to adopt NARA's suggested modification.

NARA further recommended that § 1202.11(h) be revised to permit fee waivers ''as a matter of administrative discretion.'' FHFA and FHFA–OIG decline to revise the existing language, which tracks the statutory and legal requirements of FOIA and provides for the even-handed treatment of all requesters. Therefore, FHFA and FHFA–OIG decline to adopt NARA's suggested modification.

Regulatory Impacts

Paperwork Reduction Act

The regulations in this part do not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation does not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). FHFA has considered the impact of the regulation under the Regulatory Flexibility Act. FHFA certifies that the regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the internal operations and legal obligations of FHFA and FHFA–OIG.

List of Subjects in 12 CFR Part 1202

Appeals, Confidential commercial information, Disclosure, Exemptions, Fees, Final action, Freedom of Information Act, Judicial review, Records, Requests.

Authority and Issuance

Accordingly for the reasons stated in the preamble, the interim final regulation amending 12 CFR part 1202 that was published in the **Federal Register** at 76 FR 29633 on May 23, 2011 is adopted as a final regulation with the following changes:

PART 1202—FREEDOM OF INFORMATION ACT

■ 1. The authority citation for part 1202 continues to read as follows:

Authority: Pub. L. 110–289, 122 Stat. 2654; 5 U.S.C. 301, 552; 12 U.S.C. 4526; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 13392, 70 FR 75373–75377, 3 CFR, 2006 Comp., p. 216–200.

■ 2. Amend § 1202.1 by revising paragraph (c) to read as follows:

§ 1202.1 Why did FHFA issue this regulation?

* * * * *

(c) If you want to request information about yourself, this is considered a first-party or Privacy Act request under the Privacy Act (5 U.S.C. 552a), and therefore you should file your request using FHFA's Privacy Act regulations at part 1204 of this title. If you file a request for information about yourself, FHFA or FHFA–OIG will process this request under both FOIA and Privacy Act in order to give you the greatest degree of access to any responsive material.

* * * * *

■ 3. Amend § 1202.2 as follows:

■ a. Add definitions for the terms ''Fee Waiver'' and ''FOIA Public Liaison'' in alphabetical order; and

■ b. Revise the definition for the term ''Requester''.

The additions and revisions read as follows:

§ 1202.2 What do the terms in this regulation mean?

* * * * *

Fee Waiver means the waiver or reduction of fees if the requester can demonstrate that certain statutory standards are met.

* * * * *

FOIA Public Liaison is a person who is responsible for assisting requesters with their requests.

* * * * *

Requester means any person seeking access to FHFA or FHFA–OIG records under FOIA. A requester falls into one of three categories for the purpose of determining what fees may be charged. The three categories are—

(1) Commercial;

(2) News media, scientific institution or educational; and

(3) Other.

* * * * *

§ 1202.3—[Amended]

■ 4. Amend § 1202.3(c)(1) as follows:

■ a. Remove the words ''1700 G Street, NW., Fourth Floor, Washington, DC 20552'' and add in their place the words ''400 Seventh Street, SW., Eighth Floor, Washington, DC 20024''.

■ b. Remove the words ''1625 Eye Street, NW., Washington, DC 20006'' and add in their place the words ''400 Seventh Street, SW., Third Floor, Washington, DC 20024''.

■ c. Remove the telephone number ''(202) 414–6425'' and add in its place the telephone number ''(202) 649–3803''.

■ d. Remove the telephone number ''(202) 408–2577'' and remove the email address ''*bryan.saddler@fhfa.gov*'' and add in their place the telephone number ''(202) 730–2824'' and the email address ''*bryan.saddler@fhfaoig.gov*''.

■ 5. Amend § 1202.5 as follows:

■ a. In paragraph (a) remove the words ''1700 G Street, NW., Washington, DC 20552'' and remove the facsimile number ''(202) 414–8917'' and add in their place the words ''400 Seventh Street, SW., Eighth Floor, Washington, DC 20024'' and the facsimile number ''(202) 649–1073''.

■ b. Revise paragraph (d) to read as follows:

§ 1202.5 How do I request information from FHFA or FHFA–OIG under FOIA?

* * * * *

(d) *Your FOIA status.* If you are submitting your request as a ''commercial use'' requester, an ''educational institution'' requester, a ''non-commercial scientific institution'' requester, or a ''representative of the news media'' for the purposes of the fee provisions of FOIA, your request should include a statement specifically identifying your status.

* * * * *

■ 6. Amend § 1202.7 by revising paragraph (c) to read as follows:

§ 1202.7 How will FHFA and FHFA–OIG respond to my FOIA request?

* * * * *

(c) *Referrals to other agencies.* If you submit a FOIA request that seeks records originating in another Federal Government agency, FHFA or FHFA–OIG will refer your request or a portion of your request, as applicable, to the other agency for response. FHFA or FHFA–OIG will provide you notice of the referral, what portion of the request was referred, and the name of the other agency and contact information.

* * * * *

■ 7. Amend § 1202.9 as follows:

■ a. In paragraph (a) remove the words ''1700 G Street, NW., Washington, DC 20552'' and remove the facsimile number ''(202) 414–8917'' and add in their place the words ''400 Seventh Street, SW., Eighth Floor, Washington, DC 20024'' and the facsimile number ''(202) 649–1073''.

■ b. Add paragraph (g) to read as follows:

§ 1202.9 How do I appeal a response denying my FOIA request?

* * * * *

(g) *Additional Resource.* The National Archives and Records Administration (NARA), Office of Government Information Services (OGIS) offers non-compulsory, non-binding mediation services to resolve FOIA disputes. If you seek information regarding the OGIS and/or the services it offers, please contact the OGIS directly at Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740–6001, Email: *ogis@nara.gov*, Phone: (301) 837–1996, Fax: (301) 837–0348, Toll-free: 1–(877) 684–6448. This information is provided as a public service only. By providing this information, FHFA and FHFA–OIG do not commit to refer disputes to OGIS, or to defer to OGIS' mediation decisions in particular cases.

Dated: January 24, 2012.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2012–1967 Filed 1–30–12; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1204

RIN 2590–AA46

Privacy Act Implementation

AGENCY: Federal Housing Finance Agency.

ACTION: Final regulation.

SUMMARY: The Federal Housing Finance Agency (FHFA) is adopting as a final

regulation the interim final regulation that revised FHFA's implementing regulation under the Privacy Act of 1974 (Privacy Act). The changes to the existing Privacy Act regulation provide the procedures and guidelines under which FHFA and the FHFA Office of Inspector General (FHFA–OIG) will implement the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The final regulation is effective January 31, 2012.

FOR FURTHER INFORMATION CONTACT: Stacy J. Easter, Privacy Act Officer, (202) 649–3067, *stacy.easter@fhfa.gov*, or David A. Lee, Senior Agency Official for Privacy, (202) 649–3058, *david.lee@fhfa.gov* (not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street, SW., Eighth Floor, Washington, DC 20024. *Please note that all mail sent to FHFA via the United States Postal Service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.* The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

In August 2011, FHFA published an interim final regulation with request for comments that revised its Privacy Act regulation. *See* 76 FR 51869 (Aug. 19, 2011). The revised Privacy Act regulation (12 CFR part 1204) provided the procedures and guidelines under which FHFA and FHFA–OIG will implement the Privacy Act. The 60-day public comment period for the interim final regulation closed on October 18, 2011. *See* 76 FR 51869.

II. Analysis of Public Comments and the Final Regulation

FHFA received no comments in response to the interim final regulation. Thus, for the reasons set forth in detail in the interim final regulation, FHFA is adopting the interim final regulation as a final regulation without any substantive changes. However, since the publication of the interim final regulation, FHFA has relocated its headquarters and its mailing address and contact information for the Privacy program has changed. As a result, FHFA will be making only technical changes to the regulation to include the new mailing address and facsimile numbers for the Privacy program.

III. Paperwork Reduction Act

The final regulation does not contain any information collection requirement that requires the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final regulation under the Regulatory Flexibility Act. FHFA certifies that the regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable to the internal operations and legal obligations of FHFA and FHFA–OIG.

List of Subjects in 12 CFR Part 1204

Amendment, Appeals, Correction, Disclosure, Exemptions, Fees, Privacy, Privacy Act, Records, Requests, Social Security numbers.

Authority and Issuance

For the reasons stated in the preamble, the interim final regulation amending 12 CFR part 1204 that was published in the **Federal Register** at 76 FR 51869 on August 19, 2011, is adopted as a final regulation with the following technical changes:

PART 1204—PRIVACY ACT IMPLEMENTATION

■ 1. The authority citation for part 1204 continues to read as follows:

Authority: 5 U.S.C. 552a.

PART 1204—[AMENDED]

■ 2. Amend part 1204 as follows:

■ a. Revise all references to ''1700 G Street, NW., Washington, DC 20552'' to read as ''400 Seventh Street, SW., Eighth Floor, Washington, DC 20024''.

■ b. In § 1204.3(b) remove the facsimile number ''(202) 414–6425'' and add in its place ''(202) 649–1073''.

■ c. In § 1204.5(b)(2) remove the facsimile number ''(202) 414–8917'' and add in its place ''(202) 649–1073''.

Dated: January 24, 2012.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2012–1968 Filed 1–30–12; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0037; Directorate Identifier 2012–NM–003–AD; Amendment 39–16935; AD 2012–02–12]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes. This AD requires an inspection of a certain alternating current (AC) power wire bundle for damage, and repair if necessary. Additionally, this AD requires segregating the wire bundle into two wire bundles and installing Teflon tubing. This AD was prompted by multiple reports of the loss of certain AC systems caused by a burnt AC power wire bundle. We are issuing this AD to prevent the loss of ice protection systems for the angle of attack vanes, pitot probes, engine inlets, and windshields, and consequent loss of or misleading airspeed indication and increased workload for the flight crew, which could lead to loss of control of the airplane.

DATES: This AD becomes effective February 15, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 15, 2012.

We must receive comments on this AD by March 16, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7301; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2011–46, dated December 20, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There have been several reports of the loss of certain Alternating Current (AC) systems along with the tripping of associated circuit breakers. During maintenance troubleshooting, the same AC power wire bundle was found burnt. All AC systems and AC Generators could be affected by damage to this AC power wire bundle resulting in the loss of ice protection systems for the angle of attack vanes, pitot probes, engine inlets or windshields. In icing conditions, the loss of the ice protection systems could affect continued safe flight.
>
> This [TCCA] Airworthiness Directive (AD) mandates the detailed inspection [for damage] of the AC power wire bundle [and repair if necessary] and segregation of the wires within the affected AC power wire bundle to prevent a dual system loss [and installing Teflon tubing].

The detailed inspection for damage includes inspecting for any foreign object damage (FOD), damage due to sharp bends and kinking or deterioration, insulation cracking, evidence of heat damage to the insulation, and chafing. The unsafe condition is the loss of ice protection systems for the angle of attack vanes, pitot probes, engine inlets, and windshields, and consequent loss of or misleading airspeed indication and increased workload for the flight crew, which could lead to loss of control of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 84–24–52, dated November 22, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

Differences Between the AD and the MCAI

Although the MCAI recommends accomplishing the actions within 600 flight hours or 90 days, whichever occurs first, after the effective date of the MCAI, this AD requires accomplishment within 400 flight hours or 60 days, whichever occurs first, after the effective date of this AD. We find that a compliance time of 600 flight hours or 90 days, whichever occurs first, would not address the unsafe condition soon enough to maintain an adequate level of safety for the affected fleet. In developing an appropriate compliance time for this AD, we considered the degree of urgency associated with addressing the unsafe condition, the upcoming inclement weather conditions, and the maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. We find that 400 flight hours or 60 days, whichever occurs first, after the effective date of this AD, to be an appropriate compliance time to complete these actions. This difference has been coordinated with TCCA.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because there have been several reports of the loss of certain AC systems along with the tripping of associated circuit breakers. During maintenance troubleshooting, the same AC power wire bundle was found burnt. All AC systems and AC Generators could be affected by damage to this AC power wire bundle resulting in the loss of ice protection systems for the angle of attack vanes, pitot probes, engine inlets or windshields. In icing conditions, the loss of the ice protection systems could affect continued safe flight. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0037; Directorate Identifier 2012–NM–003–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for

safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–02–12 Bombardier, Inc.: Amendment 39–16935. Docket No. FAA–2012–0037; Directorate Identifier 2012–NM–003–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective February 15, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes; certificated in any category; serial numbers 4095 through 4391 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 24: Electrical Power.

(e) Reason

This AD was prompted by multiple reports of the loss of certain alternating current (AC) systems caused by a burnt AC power wire bundle. We are issuing this AD to prevent the loss of ice protection systems for the angle of attack vanes, pitot probes, engine inlets, and windshields, and consequent loss of or misleading airspeed indication and increased workload for the flight crew, which could lead to loss of control of the airplane.

(f) Compliance

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

(g) Inspection and Corrective Actions

Within 400 flight hours or 60 days, whichever occurs first, after the effective date of this AD, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Do a detailed inspection of the affected AC power wire bundle for damage (any foreign object damage (FOD), damage due to sharp bends and kinking or deterioration, insulation cracking, evidence of heat damage to the insulation, and chafing) and do all applicable repairs, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–24–52, dated November 22, 2011. Do all applicable repairs before further flight.

(2) Segregate the AC power wire bundle into two bundles and install Teflon tubing, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–24–52, dated November 22, 2011.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(i) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2011–46, dated December 20, 2011; and Bombardier Service Bulletin 84–24–52, dated November 22, 2011; for related information.

(j) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51:

(i) Bombardier Service Bulletin 84–24–52, dated November 22, 2011.

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

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

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

Issued in Renton, Washington, on January 23, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–1993 Filed 1–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0994; Directorate Identifier 2009–NE–39–AD; Amendment 39–16934; AD 2012–02–11]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc (RR) RB211–535 Series Turbofan Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for

all RR RB211–535E4–37, –535E4–B–37, –535E4–B–75, and –535E4–C–37 turbofan engines. That AD currently requires performing initial and repetitive visual and fluorescent penetrant inspections (FPI) of the low-pressure (LP) turbine stage 1, 2, and 3 discs to detect cracks in the discs. This new AD continues to require those inspections and changes the definition of a shop visit to be less restrictive. This AD was prompted by our finding that the definition of shop visit in the existing AD was too restrictive. We are issuing this AD to revise the definition of shop visit and to detect cracks in the LP turbine stage 1, 2, and 3 discs, which could result in an uncontained release of LP turbine blades and damage to the airplane.

DATES: This AD is effective March 6, 2012.

ADDRESSES: For service information identified in this AD, contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: 011 44 1332 242424, fax: 011 44 1332 249936; or email: *http://www.rolls-royce.com/contact/civil_team.jsp,* or download the publication from *https://www.aeromanager.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. 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: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7143; fax: (781) 238–7199; email: *alan.strom@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2011–11–08, amendment 39–16707 (76 FR 30529, May 26, 2011). That AD applies to the specified products. The NPRM was published in the **Federal Register** on October 25, 2011 (76 FR 65997). That NPRM proposed to continue to require performing an initial FPI on the LP turbine stage 1, 2, and 3 discs at the next engine shop inspection after the effective date of that AD. That NPRM also continued to require repetitive inspections at each engine shop visit after accumulating 1,500 cycles since last inspection of the LP turbine stage 1, 2, and 3 discs. That NPRM also proposed to change the definition of a shop visit to be less restrictive.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 65997, October 25, 2011) 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 affects about 588 RB211–535 series turbofan engines installed on airplanes of U.S. registry. We also estimate that it will take about 30 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. No parts are required. Based on these figures, we estimate the cost of this AD on U.S. operators to be $1,499,400.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2011–11–08, Amendment 39–16707 (76 FR 30529, May 26, 2011, and adding the following new AD:

2012–02–11 Rolls-Royce plc: Amendment 39–16934; Docket No. FAA–2009–0994; Directorate Identifier 2009–NE–39–AD.

(a) Effective Date

This airworthiness directive (AD) is effective March 6, 2012.

(b) Affected ADs

This AD supersedes AD 2011–11–08, Amendment 39–16707 (76 FR 30529, May 26, 2011).

(c) Applicability

This AD applies to Rolls-Royce plc RB211–535E4–37, –535E4–B–37, –535E4–B–75, and –535E4–C–37 turbofan engines.

(d) Unsafe Condition

This AD was prompted by our determination that the definition of ''shop visit'' in the existing AD is too restrictive, in

that it would require operators to inspect more often than required to ensure safety. We are issuing this AD to revise the definition of shop visit and to detect cracks in the low-pressure (LP) turbine stage 1, 2, and 3 discs, which could result in an uncontained release of LP turbine blades and damage to the airplane.

(e) Compliance

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

(1) Initial Inspection Requirements

At the next engine shop visit after the effective date of this AD, perform a visual and a fluorescent penetrant inspection of the LP turbine stage 1, 2, and 3 discs.

(2) Repeat Inspection Requirements

At each engine shop visit after accumulating 1,500 cycles since the last inspection of the LP turbine stage 1, 2 and 3 discs, repeat the inspections specified in paragraph (e)(1) of this AD.

(3) Remove Cracked Discs

If you find cracks, remove the disc from service.

(f) Definitions

For the purpose of this AD, an ''engine shop visit'' is induction of an engine into the shop for any purpose where:

(1) All the blades are removed from the high-pressure (HP) compressor discs and the HP turbine disc, or

(2) All the blades are removed from the intermediate pressure turbine disc.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(h) Related Information

(1) Contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7143; fax: (781) 238–7199; email: *alan.strom@faa.gov,* for more information about this AD.

(2) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0244, dated November 9, 2009, and Rolls-Royce plc Alert Service Bulletin No. RB.211–72–AG272 for related information. Contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: 011 44 1332 242424, fax: 011 44 1332 249936; or email: http://www.rollsroyce.com/contact/civil_team.jsp, for a copy of this service information or download the publication from *https://www.aeromanager.com.*

(i) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on January 25, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–1954 Filed 1–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0068; Directorate Identifier 2010–NE–05–AD; Amendment 39–16930; AD 2012–02–07]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding two existing airworthiness directives (ADs) for General Electric Company (GE) CF6–45 and CF6–50 series turbofan engines with certain low-pressure turbine (LPT) rotor stage 3 disks installed. The existing ADs currently require inspections of high-pressure turbine (HPT) and LPT rotors, engine checks, and vibration surveys. This new AD retains the requirements of the two ADs being superseded, adds an optional LPT rotor stage 3 disk removal after a failed HPT blade borescope inspection (BSI) or a failed engine core vibration survey, establishes a new lower life limit for the affected LPT rotor stage 3 disks, and requires removing these disks from service at times determined by a drawdown plan. This AD was prompted by the determination that a new lower life limit for the LPT rotor stage 3 disks is necessary. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: This AD is effective March 6, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 22, 2011 (76 FR 6323, February 4, 2011).

ADDRESSES: For service information identified in this AD, contact General Electric Company, GE-Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, phone: (513) 552–3272; email: *geae.aoc@ge.com.* 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: Tomasz Rakowski, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7735; fax: (781) 238–7199; email: *tomasz.rakowski@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2011–02–07, Amendment 39–16580 (76 FR 6323, February 4, 2011) and AD 2011–18–01, Amendment 39–16783 (76 FR 52213, August 22, 2011). Those ADs apply to the specified products. The NPRM published in the **Federal Register** on October 19, 2011 (76 FR 64844). That NPRM proposed to retain the requirements of AD 2011–02–07 and AD 2011–18–01, except that reporting to the FAA would no longer be required and there would be an optional LPT rotor stage 3 disk removal after a failed HPT blade BSI or a failed engine core vibration survey. That NPRM also proposed to establish a new lower life limit for the LPT rotor stage 3 disk part numbers listed in Table 1 of the proposed AD, and proposed to require removing these disks from service at times determined by a drawdown plan.

Comments

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

Support for the NPRM as Written

One commenter, The Boeing Company, supports the NPRM (76 FR 64844, October 19, 2011) as written.

Request To Allow Credit for Vibration Surveys Performed in a Test Cell

One commenter, MTU Maintenance Hannover GmbH, requested that we add a paragraph that allows credit for performing vibration surveys in a test cell, as meeting the AD vibration survey requirements.

We agree. We added paragraph (k)(8) to the AD, which states ''Vibration surveys carried out in an engine test cell as part of an engine manual performance run fulfill the vibration survey requirements of paragraphs (k)(2) through (k)(3) of this AD.''

Request To Add a Requirement for Raw Exhaust Gas Temperature (EGT) Trend Data Point Exceedance

One commenter, Evergreen International Airlines, requested that we add a requirement that two consecutive raw EGT trend data point exceedances must be confirmed by a corresponding shift of other engine parameters to trigger the HPT blade BSI.

We partially agree. We agree that EGT system error should not force a BSI of turbine blades. But we disagree with troubleshooting the EGT raw data points once the EGT system error was ruled out. We added paragraph (o)(4) to the AD to state that, for the purposes of this AD, a raw EGT trend data point above the smoothed average is a confirmed temperature reading over the rolling average of EGT readings that is not a result of EGT system error. We also rearranged the wording in paragraph (iv) in Table 2 of the AD for clarification.

Correction to Engine Model CF6–50–E2D

Since we issued the NPRM (76 FR 67844, October 19, 2011), we discovered that, in applicability paragraph (c), engine model CF6–50–E2D was incorrect. We corrected it to read CF6–50E2B in the AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (76 FR 64844, October 19, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

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

Costs of Compliance

We estimate that this AD will affect 387 CF6–45 and CF6–50 series turbofan engines installed on airplanes of U.S. registry. We also estimate that it will take about 8 work-hours to perform the HPT blade inspection, 6 work-hours to perform a vibration survey, 4 work-hours to perform an ultrasonic inspection, 2 work-hours to perform an EGT resistance check, 1 work-hour to perform an EGT thermocouple inspection, and 7 work-hours to clean and perform an fluorescent-penetrant inspection of the LPT rotor stage 3 disk for each engine. The average labor rate is $85 per work-hour. The cost estimate for the work just described was covered in the two ADs we are superseding. For this AD, we estimate that a replacement LPT rotor stage 3 disk prorated part cost is $75,000. Based on these figures, we estimate the total cost of this AD to U.S. operators to be $29,025,000.

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

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

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

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

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

(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]

The FAA amends § 39.13 by removing airworthiness directive (AD) 2011–02–07, Amendment 39–16580 (76 FR 6323, February 4, 2011) and AD 2011–18–01, Amendment 39–16783 (76 FR 52213, August 22, 2011), and adding the following new AD:

2012–02–07 General Electric Company: Amendment 39–16930; Docket No. FAA–2010–0068; Directorate Identifier 2010–NE–05–AD.

(a) Effective Date

This airworthiness directive (AD) is effective March 6, 2012.

(b) Affected ADs

This AD supersedes AD 2011–02–07, Amendment 39–16580 (76 FR 6323, February 4, 2011) and AD 2011–18–01, Amendment 39–16783 (76 FR 52213, August 22, 2011).

(c) Applicability

This AD applies to General Electric Company (GE) CF6–45A, CF6–45A2, CF6–50A, CF6–50C, CF6–50CA, CF6–50C1, CF6–50C2, CF6–50C2B, CF6–50C2D, CF6–50E, CF6–50E1, CF6–50E2, and CF6–50E2B turbofan engines, including engines marked on the engine data plate as CF6–50C2–F and CF6–50C2–R, with any of the low-pressure turbine (LPT) rotor stage 3 disk part numbers listed in Table 1 of this AD installed.

TABLE 1—APPLICABLE LPT ROTOR STAGE 3 DISK PART NUMBERS

9061M23P06	9061M23P07	9061M23P08	9061M23P09	9224M75P01
9061M23P10	1473M90P01	1473M90P02	1473M90P03	1473M90P04
9061M23P12	9061M23P14	9061M23P15	9061M23P16	1479M75P01
1479M75P02	1479M75P03	1479M75P04	1479M75P05	1479M75P06
1479M75P07	1479M75P08	1479M75P09	1479M75P11	1479M75P13
1479M75P14	N/A	N/A	N/A	N/A

(d) Unsafe Condition

This AD was prompted by the determination that a new lower life limit for the LPT rotor stage 3 disks listed in Table 1 of this AD is necessary. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

(e) Compliance

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

(f) Borescope Inspections (BSI) of High-Pressure Turbine (HPT) Rotor Stage 1 and Stage 2 Blades

For the BSIs required by paragraphs (f)(1), (f)(2), and (f)(3) of this AD, inspect the blades from the forward and aft directions. Inspect all areas of the blade airfoil. Your inspection must include blade leading and trailing edges and their convex and concave airfoil surfaces. Inspect for signs of impact, cracking, burning, damage, or distress.

(1) Perform an initial BSI of the HPT rotor stage 1 and stage 2 blades within 10 cycles after the effective date of this AD.

(2) Thereafter, repeat the BSI of the HPT rotor stage 1 and stage 2 blades within every 75 cycles since last inspection (CSLI).

(3) Borescope-inspect the HPT rotor stage 1 and stage 2 blades within the cycle limits after the engine has experienced any of the events specified in Table 2 of this AD.

(4) Remove any engine from service before further flight if the engine fails any of the BSIs required by this AD.

TABLE 2—CONDITIONAL BSI CRITERIA

If the engine has experienced:	Then borescope-inspect:
(i) An exhaust gas temperature (EGT) above redline.	Within 10 cycles.
(ii) A shift in the smoothed EGT trending data that exceeds 18 °F (10 °C), but is less than or equal to 36 °F (20 °C).	Within 10 cycles.
(iii) A shift in the smoothed EGT trending data that exceeds 36 °F (20 °C)	Before further flight.
(iv) Two consecutive raw EGT trend data points that exceed 18 °F (10 °C), but is less than or equal to 36 °F (20 °C), above the smoothed average.	Within 10 cycles.
(v) Two consecutive raw EGT trend data points that exceed 36 °F (20 °C) above the smoothed average	Before further flight.

(g) Actions Required for Engines With Damaged HPT Rotor Blades

For those engines that fail any BSI requirements of this AD, before returning the engine to service:

(1) Remove the LPT rotor stage 3 disk from service; or

(2) Perform a fluorescent-penetrant inspection (FPI) of the inner diameter surface forward cone body (forward spacer arm) of the LPT rotor stage 3 disk as specified in paragraphs (l)(1)(i) through (l)(1)(iii) of this AD.

(h) EGT Thermocouple Probe Inspections

(1) Inspect the EGT thermocouple probe for damage within 50 cycles after the effective date of this AD or before accumulating 750 CSLI, whichever occurs later.

(2) Thereafter, re-inspect the EGT thermocouple probe for damage within every 750 CSLI.

(3) If any EGT thermocouple probe shows wear through the thermocouple guide sleeve, remove and replace the EGT thermocouple probe before further flight, and ensure the turbine mid-frame liner does not contact the EGT thermocouple probe.

(i) EGT System Resistance Check Inspections

(1) Perform an EGT system resistance check within 50 cycles from the effective date of this AD or before accumulating 750 cycles since the last resistance check on the EGT system, whichever occurs later.

(2) Thereafter, repeat the EGT system resistance check within every 750 cycles since the last resistance check.

(3) Remove and replace, or repair any EGT system component that fails the resistance system check before further flight.

(j) Ultrasonic Inspection (UI) of the LPT Rotor Stage 3 Disk Forward Spacer Arm

Within 75 cycles after the effective date of this AD, perform a UI of the forward spacer arm of the LPT rotor stage 3 disk. Use Appendix A of GE Service Bulletin (SB) No. CF6–50 S/B 72–1312, Revision 1, dated October 18, 2010, paragraph 4. except for paragraph 4.(12), to do the UI.

(k) Engine Core Vibration Survey

(1) Within 75 cycles after the effective date of this AD, perform an initial engine core vibration survey.

(2) Use about a one-minute acceleration and a one-minute deceleration of the engine between ground idle and 84% N2 (about 8,250 rpm) to perform the engine core vibration survey.

(3) Use a spectral/trim balance analyzer or equivalent to measure the N2 rotor vibration.

(4) If the vibration level is above 5 mils Double Amplitude then, before further flight, remove the engine from service.

(5) For those engines that fail any engine core vibration survey requirements of this AD, then before returning the engine to service:

(i) Remove the LPT rotor stage 3 disk from service; or

(ii) Perform an FPI of the inner diameter surface forward spacer arm of the LPT rotor stage 3 disk as specified in paragraphs (l)(1)(i) through (l)(1)(iii) of this AD.

(6) Thereafter, within every 350 cycles since the last engine core vibration survey, perform the engine core vibration survey as required in paragraphs (k)(1) through (k)(5) of this AD.

(7) If the engine has experienced any vibration reported by maintenance or flight crew that is suspected to be caused by the engine core (N2), perform the engine core vibration survey as required in paragraphs (k)(1) through (k)(5) of this AD within 10 cycles after the report.

(8) Vibration surveys carried out in an engine test cell as part of an engine manual performance run fulfill the vibration survey requirements of paragraphs (k)(2) through (k)(3) of this AD.

(l) Initial and Repetitive FPI of LPT Rotor Stage 3 Disks

(1) At the next shop visit after the effective date of this AD:

(i) Clean the LPT rotor stage 3 disk forward spacer arm, including the use of a wet-abrasive blast, to eliminate residual or background fluorescence.

(ii) Perform an FPI of the LPT rotor stage 3 disk forward spacer arm for cracks and for a band of fluorescence. Include all areas of the disk forward spacer arm and the inner diameter surface forward spacer arm of the LPT rotor stage 3 disk.

(iii) Remove the disk from service before further flight if a crack or a band of fluorescence is present.

(2) Thereafter, clean and perform an FPI of the LPT rotor stage 3 disk forward spacer arm, as specified in paragraphs (l)(1)(i) through (l)(1)(iii) of this AD, at each engine shop visit that occurs after 1,000 cycles since the last FPI of the LPT rotor stage 3 disk forward spacer arm.

(m) Removal of LPT Rotor Stage 3 Disks

Remove LPT rotor stage 3 disks listed in Table 1 from service as follows:

(1) For disks that have fewer than 3,200 flight cycles since new (CSN) on the effective date of this AD, remove the disk from service before exceeding 6,200 CSN.

(2) For disks that have 3,200 CSN or more on the effective date of this AD, do the following:

(i) If the engine has a shop visit before the disk exceeds 6,200 CSN, remove the disk from service before exceeding 6,200 CSN.

(ii) If the engine does not have a shop visit before the disk exceeds 6,200 CSN, remove the disk from service at the next shop visit after 6,200 CSN, not to exceed 3,000 cycles from the effective date of this AD.

(n) Installation Prohibition

(1) After the effective date of this AD, do not install or reinstall in any engine any LPT rotor stage 3 disk that exceeds the new life limit of 6,200 CSN.

(2) Remove from service any LPT rotor stage 3 disk that is installed or re-installed after the effective date of this AD, before the disk exceeds the new life limit of 6,200 CSN.

(o) Definitions

(1) For the purposes of this AD, an EGT above redline is a confirmed over-temperature indication that is not a result of EGT system error.

(2) For the purposes of this AD, a shift in the smoothed EGT trending data is a shift in a rolling average of EGT readings that can be confirmed by a corresponding shift in the trending of fuel flow or fan speed/core speed (N1/N2) relationship. You can find further guidance about evaluating EGT trend data in GE Company Service Rep Tip 373 ''Guidelines For Parameter Trend Monitoring.''

(3) For the purposes of this AD, an engine shop visit is the induction of an engine into the shop after the effective date of this AD, where the separation of a major engine flange occurs; except the following maintenance actions, or any combination, are not considered engine shop visits:

(i) Induction of an engine into a shop solely for removal of the compressor top or bottom case for airfoil maintenance or variable stator vane bushing replacement.

(ii) Induction of an engine into a shop solely for removal or replacement of the stage 1 fan disk.

(iii) Induction of an engine into a shop solely for replacement of the turbine rear frame.

(iv) Induction of an engine into a shop solely for replacement of the accessory gearbox or transfer gearbox, or both.

(v) Induction of an engine into a shop solely for replacement of the fan forward case.

(4) For the purposes of this AD, a raw EGT trend data point above the smoothed average is a confirmed temperature reading over the rolling average of EGT readings that is not a result of EGT system error.

(p) Previous Credit

(1) A BSI performed before the effective date of this AD using AD 2010–06–15, Amendment 39–16240 (75 FR 12661, March 17, 2010) or AD 2010–12–10, Amendment 39–16331 (75 FR 32649, June 9, 2010) or AD 2011–02–07, Amendment 39–16580 (76 FR 6323, February 4, 2011) within the last 75 cycles, satisfies the initial BSI requirement in paragraph (f)(1) of this AD.

(2) A UI performed before the effective date of this AD using AD 2011–02–07, Amendment 39–16580 (76 FR 6323, February 4, 2011) or GE SB No. CF6–50 S/B 72–1312, dated August 9, 2010 or GE SB No. CF6–50 S/B 72–1312 Revision 1, dated October 18, 2010, satisfies the inspection requirement in paragraph (j) of this AD.

(3) An engine core vibration survey performed before the effective date of this AD using AD 2011–02–07, Amendment 39–16580 (76 FR 6323, February 4, 2011) or GE SB No. CF6–50 S/B 72–1313, dated August 9, 2010 or GE SB No. CF6–50 S/B 72–1313 Revision 1, dated October 18, 2010, within the last 350 cycles, satisfies the initial survey requirement in paragraphs (k)(1) through (k)(5) of this AD.

(4) An FPI of the LPT rotor stage 3 disk forward spacer arm performed before the effective date of this AD using AD 2011–18–01, Amendment 39–16783 (75 FR 52213, August 22, 2011), within the last 1,000 flight cycles of the LPT rotor stage 3 disk, satisfies the initial inspection requirements in paragraphs (l)(1)(i) through (l)(1)(iii) of this AD.

(q) Alternative Methods of Compliance (AMOCs)

(1) AMOCs previously approved for AD 2010–06–15, Amendment 39–16240 (75 FR 12661, March 17, 2010) are not approved for this AD. However, AMOCs previously approved for AD 2010–12–10, Amendment 39–16331 (75 FR 32649, June 9, 2010), AD 2011–02–07, Amendment 39–16580 (76 FR 6323, February 4, 2011), or AD 2011–18–01, Amendment 39–16783 (76 FR 52213, August 22, 2011) are approved for this AD.

(2) The Manager, Engine Certification Office, may approve alternative methods of compliance for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(r) Related Information

(1) For more information about this AD, contact Tomasz Rakowski, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7735; fax: (781) 238–7199; email: *tomasz.rakowski@faa.gov.*

(2) For service information identified in this AD, contact General Electric Company, GE–Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, phone: (513) 552–3272; email: *geae.aoc@ge.com.* 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.

(s) Material Incorporated by Reference

(1) You must use the following service information to do the UIs required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on July 22, 2011: General Electric Company Service Bulletin No. CF6–50 S/B 72–1312 Revision 1, dated October 18, 2010.

(2) For service information identified in this AD, contact General Electric Company, GE–Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, phone: (513) 552–3272; email: *geae.aoc@ge.com.*

(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 NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr_locations.html.*

Issued in Burlington, Massachusetts, on January 20, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–1953 Filed 1–30–12; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2011–0094]

Requiring Electronic Filing of Select Appeals by Certain Claimant Representatives

AGENCY: Social Security Administration.

ACTION: Notification of implementation of requirement.

SUMMARY: We are announcing the requirement that appointed representatives file certain appeals using our electronic systems in matters for which the representatives request direct fee payment. This is the first service required under the regulation we published on September 12, 2011 (76 FR 56107), Requiring Use of Electronic Services.

DATES: The effective date of this notification of implementation of requirement is March 16, 2012.

FOR FURTHER INFORMATION CONTACT: Joann S. Anderson, Social Security Administration, Office of Income Security Programs, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–6716.

For information on eligibility or filing for benefits, call our national toll-free number, 1–(800)–772–1213 or TTY 1–(800)–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Requiring Electronic Filing of Appeals

On September 12, 2011, we published final rules that require representatives to conduct business with us electronically at the times and in the manner we prescribe on matters for which the representative requests direct fee payment. At the time, we did not require representatives to use any specific electronic service. Rather, in the preamble to the final rule (76 FR 56107), we stated that, ''Once we determine that we should make a particular electronic service publicly available because it works well, we will publish a notice in the **Federal Register**. The notice will contain the new requirement(s) and a list of all established electronic service requirements.'' We also said in the preamble that we would adjust the burden for affected Office of Management and Budget (OMB) approved collections before requiring representatives to use the collections' electronic versions. We published a notice on December 1, 2011 (76 FR 74838) concerning the burden adjustment for the affected electronic services under OMB No. 0960–0144, Disability Report-Appeal, OMB No. 0960–0269 (Request for Hearing by Administrative Law Judge), and OMB No. 0960–0622, Request for Reconsideration.

As of March 16, 2012, we will begin mandating electronic filing of certain appeals in each matter in which a representative requests direct payment of the authorized fee. This electronic filing requirement is limited to the filing of a request for reconsideration or for a hearing by an administrative law judge for disability claims under title II of the Social Security Act (Act) or Supplemental Security Income claims based on disability or blindness under title XVI of the Act denied for medical reasons. Representatives must satisfy this electronic filing requirement by using our Internet Appeals web portal: *www.socialsecurity.gov.*

A representative has an affirmative duty to comply with this requirement. We may investigate to determine if a representative purposefully violated this duty or is attempting to circumvent our rules. We may sanction a representative who does not follow these rules. However, we will not reject or delay a claimant's request or process it differently if a representative fails to comply with this electronic filing requirement.

Claimants, whether they are represented or not, and representatives who are not eligible for or who do not request direct fee payment on a matter, may continue to file all appeal requests either electronically, on paper, or in any manner we prescribe.

Additional Information

Additional information is available on our Representing Claimants Web site at *http://www.ssa.gov/representation/* or it can be obtained by writing to: Social Security Administration, Office of Public Inquiries, Windsor Park Building, 6401 Security Boulevard, Baltimore, MD 21235.

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

Michael J. Astrue,

Commissioner of Social Security.

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 641

RIN 1205–AB60

Senior Community Service Employment Program; Final Rule, Additional Indicator on Volunteer Work

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) issues this final rule to implement an additional indicator for volunteer work in the Senior Community Service Employment Program (SCSEP). Specifically, this rule amends our regulations regarding Performance Accountability for title V of the Older Americans Act (OAA) and corresponding definitions. These regulations provide administrative and programmatic guidance and requirements for the implementation of the SCSEP.

DATES: *Effective date:* This final rule is effective March 1, 2012. The information collection requirements contained in this rule have been submitted to OMB for approval; however, that approval is pending. Upon OMB concluding its review, the Department will publish a subsequent notice to announce OMB's action on the request and when the information collections will take effect.

FOR FURTHER INFORMATION CONTACT: Judith Gilbert, Team Leader, Division of National Programs, Tools and Technical Assistance, Office of Workforce Investment, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–4209, Washington, DC 20210; telephone (202) 693–3046 (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: The preamble to this Final Rule is organized as follows:

I. Background—provides a brief description of the development of the final rule.
II. Summary of the Comments—provides an overview of the comments received.
III. Section-by-Section Review—summarizes and discusses changes to the SCSEP regulations.
IV. Administrative Information—sets forth the applicable regulatory requirements.

I. Background

The SCSEP, authorized by title V of the OAA, is the only Federally-sponsored employment and training program targeted specifically to low-income older individuals who want to enter or re-enter the workforce. Participants must be unemployed and 55 years of age or older and have incomes at no more than 125 percent of the Federal poverty level. The program offers participants training at community service assignments in public and non-profit agencies. The dual goals of the program are to promote useful opportunities in community service activities and to also move SCSEP participants into unsubsidized employment, where appropriate, so that they can achieve economic self-sufficiency. The Older Americans Act Amendments of 2006, Public Law 109–365 (2006 OAA), amended the statute authorizing the SCSEP and necessitated changes to the SCSEP regulations in 20 CFR part 641. A final rule promulgating such changes was published on September 1, 2010. 75 FR 53786. Previously, an interim final rule (IFR) on performance measures was

published on June 29, 2007, and a notice of proposed rulemaking (NPRM) was published on August 14, 2008. This statute requires the Department to issue definitions of any indicator of performance through regulation. OAA § 513(b)(3).

As established in the SCSEP Final Rule published September 1, 2010, there are eight performance measures, of which six are core indicators and two are additional indicators. 20 CFR 641.700(b) and (c). The OAA requires the grantees and the Secretary of Labor to ''reach agreement on the expected level of performance'' for the six core indicators, but has no such requirement for the additional indicators. OAA § 513(a)(2)(C).

In comments on the SCSEP IFR of June 29, 2007, and the SCSEP NPRM of August 14, 2008, several commenters expressed concern that the proposed measures were not appropriate to the SCSEP because they placed an undue emphasis on employment outcomes and did not adequately reflect the importance of community service. Grantees who commented said that they felt the SCSEP performance measurement system did not adequately value community service and that there was too much emphasis on employment outcomes.

Although in the SCSEP Final Rule published on September 1, 2010, we declined ''at this time'' to adopt any additional indicators beyond those required by statute, after due consideration, the Department has decided that the benefits of adopting an additional indicator of volunteer work outweigh the additional burden of collecting the data for the indicator. Under its authority in OAA § 513(b)(2)(C) to add additional indicators of performance, the Department solicited comments on an additional performance indicator for volunteer work by publishing the SCSEP NPRM on an Additional Indicator for Volunteer Work, on November 23, 2010. 75 FR 71514. The additional indicator outlined in the NPRM proposes volunteer work as a way to provide additional information and emphasis on the community service goal of SCSEP. The summary of the comments from that NPRM follows.

II. Summary of the Comments

We received 113 comments on the NPRM from State and local governmental entities, non-profit organizations that host or help to place participants, academic professionals in the field of gerontology and several private citizens. Overall, comments on the NPRM were extremely supportive of the NPRM, stating that the NPRM clearly supports Congressional intent as reflected in the statement of purpose and the dual goals of SCSEP.

The main reason cited by most commenters for supporting the additional indicator was the large and rapidly growing body of research about the important benefits of volunteer work for the elderly and the positive impact their volunteer work has on the larger community. Specifically, several commenters, including a director of a multi-year research project on older adult civic engagement, cited a report from the Corporation for National and Community Service, ''* * * 'The Health Benefits of Volunteering: A Review of Recent Research,' [which] documents that those who volunteer have lower mortality rates, greater functional ability, and lower rates of depression later in life than those who do not volunteer.'' Commenters also noted that volunteerism is more likely to occur where people are invited to volunteer, or where volunteer options are presented to them, therefore improving the pool of trained, active volunteers in communities across the country. Finally, according to the comments, ''* * * [R]esearch consistently shows that older volunteers in particular benefit greatly from improved physical well-being, enhanced self-esteem, and a greater sense of personal accomplishment.'' This assertion is supported by the research cited above.[1]

Three comments were submitted that opposed the proposed additional indicator. These commenters voiced strong opposition to the additional indicator, suggesting that the focus of SCSEP should be on the unsubsidized employment goal alone, rather than a shared emphasis with community service. These commenters also were concerned that volunteerism would discourage employers from hiring participants when they could continue to volunteer. However, the purpose of this regulation is not to create an either/or situation, where we encourage volunteer work over employment or vice versa. Rather, the point is to ask grantees and/or sub-grantees to make a good faith effort to account for any participants who choose to volunteer post-SCSEP entry, regardless of whether they also have found unsubsidized employment. The information culled from this additional indicator will provide further information on both the impact of the SCSEP on the individual SCSEP participants, and the impact of the SCSEP on local communities through an increase in volunteerism by both current and former SCSEP participants.

Finally, a few other commenters were concerned about whether ''a measure of volunteerism as a program outcome may be misinterpreted by policy makers'' because other ''successful programs administered by the Corporation for National and Community Service are being operated at a considerably lower unit cost.'' Essentially, these commenters are concerned that the SCSEP budget will suffer because, in their view, the reason for existing support from lawmakers is based entirely on SCSEP's ''outstanding record of placing the hardest to serve older workers in employment and providing paid community service opportunities to those enrolled.'' The Department understands this concern and agrees that an important connection exists between SCSEP's outstanding record of placement and its continued funding by Congress. However, as discussed above, the OAA laid out dual goals for the SCSEP: unsubsidized employment and community service. It is appropriate to consider the success of the program in achieving both of these goals. Consequently, the Department believes that this volunteerism indicator will reinforce the value of the community service aspect of SCSEP.

The Department acknowledged in the September 1, 2010 Final Rule that unsubsidized employment is not a suitable or appropriate outcome for every SCSEP participant, and that while our participants are low-income and in need of financial support, being employed may not be an appropriate or achievable outcome for every individual participant. Rather, because community service is an equally important goal of SCSEP, as envisioned by Congress in the OAA, the Department is following Congress' lead by collecting information about how participation in SCSEP community service leads to continued service to the community after participants exit SCSEP. DOL finds this information valuable not only for those individuals for whom unsubsidized employment post-SCSEP is not an appropriate or achievable outcome, but also for those who do obtain unsubsidized employment. We are not collecting information *only* for those who volunteer after exit without having a job; rather, we are collecting information regardless of whether the participant also has found unsubsidized employment.

We discuss the more specific substantive comments received on the

[1] See generally, The Health Benefits of Volunteering, A Review of Recent Research, The Corporation for National and Community Service, 2007, available at: *http://www.nationalservice.gov/about/role_impact/performance_research.asp#HBR.*

NPRM in Section III below. Section III does not include discussion of those provisions that were not the subject of a comment, or that were not revised for technical reasons. We have adopted such provisions as proposed, without further discussion.

III. Section-by-Section Review

In this section, we discuss the comments on specific provisions of the proposed regulation, our responses to them and any changes to the regulations that we made as a result of the comments.

Subpart A—Purpose and Definitions

What definitions apply to this subpart? (§ 641.140)

Section 641.140 of the SCSEP regulations provides definitions for the SCSEP, including definitions relevant to the SCSEP performance measures and indicators. The NPRM proposed to amend the definitions in § 641.140 to accommodate a new additional indicator in § 641.710. The NPRM proposed to add ''entry into volunteer work'' to the definition of ''additional indicators.'' The existing regulations provide that the only additional indicators are the two required by the statute: (1) retention in unsubsidized employment for 1 year; and (2) the satisfaction of participants, employers and their host agencies with their experiences and the services provided. The term ''additional indicators'' now would include three indicators.

This Final Rule amends the proposed rule to add a new definition of ''volunteer work'' to § 641.140 for clarity and uniformity, so that all grantees understand and use the same definition, all seniors are treated the same, and all data we receive are comparable from grantee to grantee. The original language of this definition in the NPRM referred only to ''a public agency of a State, local government or intergovernmental agency, or for a charity or similar nonprofit organization.'' One commenter suggested that we add specific language recognizing that volunteer work can occur in faith- or community-based organizations, since they also provide significant community service opportunities. We agree. Although the proposed definition was not intended to exclude volunteer work with faith- or community-based organizations, for the sake of clarity we have amended the definition to include faith- or community-based organizations as among those entities for which volunteer work may be performed.

Upon further reflection, for data collection purposes, we also have broadened the language of the definition to make clear that it includes informal volunteer work that an individual performs on his or her own and not through an organization. An example would be a woman who invites neighborhood girls to her home after school for sewing classes. This type of informal volunteering is fairly common and is as likely to have positive effects on those who volunteer as is a volunteer activity conducted through non-profit organizations. This informal volunteer work does not include service performed for a member of the individual's own family or of the individual's own household since the self-interest of the individual makes it impossible to determine whether it is being performed with the intent to help others, which is the essence of volunteer work. Because the circumstances under which participants may enter into informal volunteer activities may vary widely, we will not count such activities in the performance indicator. But we are interested in capturing the positive impact on participants who enter into informal volunteer activities, so we will collect information about such volunteer activities. Therefore, these type of informal volunteer activities will not be included in the calculation of the ''entry into volunteer indicator'' under § 641.140. The Department will collect and share information about the informal volunteer work for information purposes only.

In another change, we have deleted the portion of the definition that reads: ''[v]olunteer work does not include work a former participant performs that is similar or identical to work the former participant performed for compensation for the organization.'' From a reading of the comments, it is apparent that this language was confusing, and detracted from our primary goal of creating a definition of ''volunteer'' that is consonant with that concept as it is applied under the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.,* a statute that is administered and enforced by the Department's Wage and Hour Division. SCSEP has always prohibited participants from volunteering at the host agency at which they are performing their community service assignment. This deletion is meant to clarify that this prohibition does not extend to volunteering at the host agency after exit from the program, nor does it prohibit a former SCSEP participant from using the skills learned in a SCSEP placement when later volunteering for another organization.

The definition, as revised, now reads that volunteer work means ''(1) for purposes of § 641.140 of this part, activities or work that former participants perform for a public agency of a State, local government or intergovernmental agency, or for a charity or not-for-profit organization, including faith-based or community-based organizations, for civic, charitable, or humanitarian reasons, and without promise, expectation, or receipt of compensation; (2) for informational reporting purposes, volunteer work also can include similar activities that a former participant performs on his or her own that are not conducted through a formal organization or agency as long as those activities are not performed for a member of the former participant's family or of the individual's own household. These types of volunteer activities will not be included in the calculation of the ''entry into volunteer work'' indicator under § 641.140.'' This definition closely follows the concept of a volunteer as it is used under the FLSA, which recognizes the generosity and public benefit of volunteering. Encouraging volunteerism, however, must be balanced with the fundamental purpose of the FLSA, which is to prevent covered employers from gaining an unfair competitive advantage through payment of substandard wages. *See Tony and Susan Alamo Found.* v. *Sec'y of Labor,* 471 U.S. 290, 296 (1985).

Grantees, sub-grantees and host agencies should be aware that the FLSA, and in particular its definitions of ''employee'' and ''employ,'' has been interpreted quite broadly to effectuate its remedial purposes. *See, e.g., Alamo Found.,* 471 U.S. at 299. For example, the Department has consistently stated that individuals cannot volunteer for for-profit entities, or volunteer in the business and commercial activities of a non-profit organization when those activities are covered by the FLSA. Likewise, so-called volunteer work that an individual performs for a former employer will be closely scrutinized to determine whether an employment relationship exists, particularly if the individual is performing the same services for which he or she was previously employed. *See, e.g.,* 29 CFR 553.103.

We recognize that the new indicator for entered volunteer work is based on self-report by former participants and that grantees are not in a position to monitor the conditions in the nonprofit organizations in which former participants perform volunteer work. However, grantees, sub-grantees, and nonprofit organizations should consult with their nearest Wage and Hour Division office if they have questions about whether activities performed by

current or former SCSEP participants constitute employment under the FLSA.

Additional information on the FLSA definitions of ''employer,'' ''employee,'' and ''employ'' is available in the Wage and Hour's Field Operations Handbook Chapter 10 (*http://www.dol.gov/whd/FOH/FOH_Ch10.pdf*). For information on finding local Wage and Hour Division offices, please visit: *http://www.dol.gov/whd.*

Subpart G—Performance Accountability

What performance measures/indicators apply to SCSEP grantees? (§ 641.700)

20 CFR 641.700 separates SCSEP indicators into two categories: core and additional. The NPRM proposed to amend § 641.700(a) to add a new additional indicator. Additional indicators are not subject to goal-setting and therefore are not subject to corrective action. However, the statute does mandate that the Department annually publish each grantee's performance on additional indicators. In addition, the NPRM also proposed to amend paragraph (c)(3), which currently only lists the additional indicators of employment retention and customer satisfaction, to reflect that the Secretary has designated entry into volunteer work as an additional indicator.

DOL intends for the new indicator of ''entered volunteer work'' to parallel the ''entered employment'' measure, which grantees have been reporting since 2004. SCSEP grantees can capture much of the information required for this indicator at the time of exit and need only confirm the participant's engagement in volunteer work at any time during the quarter after the exit quarter, in the same way as grantees have long captured the data for entered employment at the first follow-up after exit. We note that during this brief follow-up with former participants, grantees may also learn if the participants have obtained unsubsidized employment, of which the grantee was not previously aware, and for which placement the grantee also may obtain entered employment credit. Like the entered employment measure, which excludes participants who were employed at the time of enrollment, the new indicator excludes those who are engaged in volunteer work at the time of entry into the SCSEP. However, as is true with the entered employment measure, grantees will collect data on several aspects of the volunteer work, including whether the participant had been performing volunteer work at the time of entry into the SCSEP or during the community service assignment, and information about the type of volunteer work performed after exit, the setting in which it is performed, and the number of hours of volunteer work per week. DOL will collect data on these characteristics in the SCSEP data collection system so they can be used for analysis and additional reporting, but DOL will not use the data to measure the performance of the grantee. The actual measure itself will report only on the percent of participants who were not volunteering at the time of enrollment but are volunteering after exit.

Several commenters suggested that the regulatory text be changed to delete ''entry into'' and substitute with ''new or continued participation in'' volunteer work. A number of commenters appeared to mistakenly interpret the exclusion of individuals already volunteering from the indicator as an exclusion from SCSEP eligibility and suggested we remove the restriction that participants cannot be engaged in volunteer activity upon enrollment in SCSEP. One commenter raised concerns about who might be excluded from the broad definition, asking, ''Would everyone who volunteered at the time of entry into SCSEP be excluded regardless of type/extent of volunteerism?'' Another commenter said that ''[s]ince I have observed many seniors who volunteer while also doing paid work, I would recommend that you consider not imposing the restriction that SCSEP enrollees not be engaged in volunteering work before leaving the program.''

In response to these comments, we are explaining in this preamble that the new indicator will have no impact on eligibility and explaining why the indicator does not count those who were volunteering before enrollment. As stated earlier, DOL will collect data about those individuals who were volunteering before SCSEP entry and will also share this data when it reports the additional indicator of entry into volunteer work, which does not include those who were volunteering prior to entry. The exclusion of participants who were doing volunteer work at the time of enrollment applies only to determining who is in the pool of participants counted in the additional indicator of entry into volunteer work. It has nothing to do with eligibility for SCSEP. The purpose of the new indicator is to determine what effect SCSEP participation has on former participants' desire to remain active and continue their community service through volunteer work. There is little value in collecting a simple count of SCSEP participants who volunteer after exit unless we know what their status was before enrollment. Without that information, we are merely reporting something about the individuals who enrolled, while not necessarily revealing the impact of SCSEP. Specifically, if we do not narrow the pool of participants to exclude those participants doing volunteer work already when they enrolled in SCSEP, then we are unable to correlate their volunteerism after SCSEP with their participation in SCSEP.

The Department proposed this additional indicator to identify volunteer work initiated after enrollment so that we can define the impact that SCSEP has on the lives of participants, not only during but also after exit from the program. Therefore, individuals who reported having volunteered upon enrollment are not included in any way in the calculation of the volunteer work indicator. For these reasons, we do not want to include these individuals in the additional indicator.

Some commenters who objected to the language about ''entry into'' volunteer work also misunderstood the purpose and effect of the new indicator. Grantees are required by the SCSEP Final Rule published on September 1, 2010 to assist participants in finding unsubsidized employment if that goal is feasible for them. The core measure of entered employment provides an additional incentive for grantees to provide this assistance and to claim credit for unsubsidized placements whenever possible. However, if unsubsidized employment is not feasible, or if participants are due to exit without having secured unsubsidized employment, grantees are obligated to assist participants in achieving other forms of self-sufficiency, which includes opportunities to continue or start volunteer work after the SCSEP participation ends. This volunteer service is not necessarily an alternative to employment; indeed, it may occur concurrently with unsubsidized employment. The new indicator merely captures volunteer service where it exists and reports it as an additional program outcome.

How are the performance indicators defined? (§ 641.710)

The NPRM proposed to establish the new additional indicator in § 641.710 by adding a new paragraph to (b)(3), which defines the ''entry into volunteer work'' measure. This Final Rule adopts the additional indicator as proposed. As set forth above, DOL intends for the new indicator to parallel the existing core measure of entered employment, which SCSEP has been reporting since 2004. The denominator for the new indicator

consists of all participants who exit during a quarter, and the numerator consists of all those participants who are engaged in any volunteer work in the quarter after they exited. The indicator entirely excludes participants who were engaged in volunteer work at the time of entry into the SCSEP: such participants are neither in the denominator nor in the numerator. As explained above, DOL will collect and report the data for such individuals separately and not as an additional program outcome.

In order to provide context for the new indicator and to make it more useful, grantees will enter into the SCSEP data system information on the characteristics of the volunteer work (as they currently do for the characteristics of unsubsidized employment), including the number of hours per week and whether participants were engaged in volunteer work at the time of entry into the SCSEP or during their community service assignment, so that it will be possible to determine which participants are newly engaged in volunteer work after exiting as a result of participating in the SCSEP and which are continuing to do volunteer work. Later in this preamble, the Paperwork Reduction Act (PRA) section sets forth the data elements that DOL will capture in conjunction with this new indicator.

Several commenters suggested that volunteer work should be on the list of excluded exits for the Common Measures, described in Training and Employment Guidance Letter (TEGL) No. 17–05, so that it is not considered a negative exit but rather a neutral outcome, and so that it would keep documentation and follow-up required of sponsors to a minimum. Since the additional indicator supplements entered employment and is not an alternative to it, making volunteer service an additional exclusion under the Common Measures TEGL is not necessary. Whether an exiter who engages in volunteer work after exit qualifies for an exclusion under the TEGL is determined by the reason for the exit, not by how the participant chooses to spend her time after exit. The TEGL addresses only the core measure of entered employment and has nothing to do with the additional indicators.

Other commenters said volunteer service should be measured in ways that parallel the other additional indicators, rather than the core indicators. For example, one commenter recommended that ''[v]olunteering should be measured in a manner parallel to * * * 'customer satisfaction' or 'retention in unsubsidized employment for 1 year' and should not parallel the measurement of a core indicator such as 'entered employment.' '' One commenter expressed concern ''that in an attempt to 'parallel' the entered employment measure, resulting data collection requirements will be unnecessarily burdensome when implemented.'' Another commenter suggested ''a more simplistic process that allows grantees to track participants 30 days after exit'' and that the Department should ''provide additional guidance on documenting such exits in SPARQ'' before publishing this Final Rule, as well as reduce paperwork ''by allowing grantees to utilize the same documentation for the 'entered employment' performance measure as acceptable documentation for [v]olunteerism.'' Further, another commenter recommended that the indicator should include ''quantifying community satisfaction with the SCSEP volunteer and the number of hours that are donated to the community.''

We understand the commenters' concerns, but those who suggest that we should follow the approach of the additional indicators rather than the core indicators overlook that the customer satisfaction measures employ a well defined and universally used definition (the American Customer Satisfaction Index, the ACSI) and that the indicator for retention at one year employs a definition that closely follows the common measures. Because grantees are familiar with the entered employment indicator as a useful and meaningful way to capture information about SCSEP participants, we believe that paralleling that indicator to capture the rate of volunteer work is the most effective means to evaluate both the impact of SCSEP on continuing service to the community and enhanced quality of life for participants.

As one commenter suggested, the additional data collection that will accompany the new indicator will enable the Department to report the number of volunteer hours performed post-exit along with an estimate of their monetary value to the organizations and communities in which the service is performed, by multiplying the hours by the standard monetary value of volunteer work. Since the participant customer satisfaction survey already includes exiters in its sample, it may also be feasible to add a few additional questions to this survey in order to determine the satisfaction of exiters with their volunteer work and the impact of this volunteer work on their quality of life. We agree that such data would increase the value and usefulness of the indicator because DOL would be able to use this information to enhance the various reports and analyses of these issues that it routinely conducts.

Some commenters also were concerned about the entry into volunteer work definition's impact on grantees, not simply of the data collection burden, but also in helping participants seeking post-SCSEP volunteer positions overcome barriers to service. Commenters stated that grantees would need training on volunteerism to better assist older adults, and that without training, ''it will be difficult to connect participants to opportunities well-suited and can be discouraging for some. Barriers to volunteerism exist just as they do in the SCSEP such as lack of transportation and location, working for free and not receiving a paycheck, conflicts in scheduling (much like those used for breaks in participation), care giving, costs associated with proper attire, and mismanagement of expectations of assigned tasks.'' The Department recognizes these concerns but notes that grantees already have an obligation under the SCSEP Final Rule published on September 1, 2010 to prepare and implement transition plans for participants who are exiting the program without having secured unsubsidized employment. 20 CFR 641.570(a)(2). As part of the transition plan, grantees are expected to assess the participants' circumstances, including their degree of social engagement, and to assist participants in identifying volunteer activities that meet their needs and interests and that may serve to enhance their physical and emotional well-being. The Department already has provided considerable training and resources to the grantees on how to meet that obligation, and the Department intends to offer additional training and technical assistance as needed. The new additional indicator of entry into volunteer service provides a degree of credit to the grantees for doing this work, but it in no way imposes a new programmatic responsibility on them.

IV. Administrative Information

A. Regulatory Flexibility Analysis, Executive Order 13272, Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 603 requires agencies to prepare a regulatory flexibility analysis to determine whether a regulation will have a significant economic impact on a substantial number of small entities. Section 605(b) of the RFA allows an agency to certify a rule in lieu of preparing an analysis if the regulation is not expected to have a significant economic impact on a substantial number of small entities. Section 601 of

the RFA defines small entities to include small businesses, small organizations, including not-for-profit organizations, and small governmental jurisdictions. Section 601(4) defines a small organization as any not-for-profit enterprise that is independently owned and operated and not dominant in its field.

SCSEP includes 74 grantees, and approximately 970 sub-recipients and sub-sub-recipients. More than 50 of the grantees are States, State agencies, or territories, and are not small entities as defined within the RFA. The vast majority of the rest are non-profit organizations, many of which may be categorized as small entities for RFA purposes. The Department does not have a precise number of small entities that may be impacted by this rulemaking.

The Department has determined that the economic impact of this Final Rule is not likely to be significant for any of these small entities, because these regulations will result in negligible additional costs to grantees and sub-recipients. This Final Rule involving SCSEP performance measures will have only a minor information collection impact on a number of small entities. DOL has addressed this burden by submitting to the Office of Management and Budget (OMB) a request for approval for changes to three of the four reporting forms before submission of this Final Rule. DOL estimated the increase in paperwork burden to be 1000 hours. The SCSEP is designed so that SCSEP funds cover the vast majority of the costs of implementing this program, including the costs of reporting the volunteer work indicator. We reached a similar conclusion in our review of the August 14, 2008 NPRM. At that time, the Department requested public comments on the potential economic impact that the rule may have on small entities and did not receive any comments on this question. For these reasons, the Department has determined and certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

OMB has also determined that this rule is not a ''major rule'' for purposes of the Small Business Regulatory Enforcement Fairness Act (SBREFA), Public Law 104–121 (1996) (codified in scattered sections at 5 U.S.C.). SBREFA requires agencies to take certain actions when a ''major rule'' is promulgated. 5 U.S.C. 801. SBREFA defines a ''major rule'' as one that will have an annual effect on the economy of $100 million or more; that will result in a major increase in costs or prices for, among other things, State or local government agencies; or that will significantly and adversely affect the business climate. 5 U.S.C. 804(2).

This Final Rule will not significantly or adversely affect the business climate. First, the rule will not create a significant impact on the business climate because, as discussed above, SCSEP grantees are governmental jurisdictions and not-for-profit enterprises. Moreover, any secondary impact of the program on the business community would not be adverse. To the contrary, we believe the SCSEP assists the business community by training older Americans to participate in the workforce and benefits the overall community by providing volunteer work opportunities.

The Final Rule will also not result in a major increase in costs or prices for States or local government agencies. The SCSEP has no impact on prices. Finally, this Final Rule will not have an annual effect on the economy of $100 million or more.

Therefore, because none of the definitions of ''major rule'' apply in this instance, this Final Rule is not a ''major rule'' for SBREFA purposes.

B. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

As stated in the SBREFA analysis, this Final Rule will not have an annual effect on the economy of $100 million or more. However, the rule does raise novel policy issues about implementing an additional performance indicator on volunteer work in the SCSEP. The key policy change reinforces the dual purpose of the SCSEP by counting those who begin performing volunteer work—or who perform volunteer work in lieu of or in addition to unsubsidized employment—after participating in SCSEP. Therefore, the Department has submitted this Final Rule to OMB.

C. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing in the **Federal Register** a summary of the collection of information and a brief description of the need for and proposed use of the information and requesting public comments. 44 U.S.C. 3507.

Because the 2006 OAA necessitated changes in many of the SCSEP forms used by grantees before the effective date of the Act, in July 2007 the Department submitted to OMB for review and approval, in accordance with PRA § 3507(d), a modification to the SCSEP information collection requirements. The four-year strategy newly required by the 2006 OAA (see § 641.302) was accounted for in that PRA submission. OMB approved the SCSEP PRA submission (OMB control number 1205–0040) in October 2007 and again (without the added form and burden estimate for the volunteer work indicator) on April 18, 2011, extending the expiration date through April 30, 2014. For more information on this request, please visit: *www.reginfo.gov.* This Final Rule introduces new information collection requirements and thus requires a PRA submission.

A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

The Department has submitted the information collection contained in this final rule for review under the PRA to the OMB, as part of a revision to Control Number 1205–0040; however, OMB has not yet completed its review. The Department will publish an additional Notice to announce OMB's action on the request and when the information collection requirements will take effect.

Public Comments:

In the NPRM stage, the Department requested comments on the burdens imposed by information collections contained in this rule. The Department received eleven comments expressing concern about the burden on grantees and/or sub-grantees to collect information about former participants' volunteer activities post-SCSEP. The Department shares this concern and intends to preserve a balance between the value of information gained from

this additional indicator and the burdens of extra data collection. This indicator is an additional indicator, not a core indicator, and thus has no goal-setting, no data validation, and no negative repercussions attached to it for the sponsors involved. This additional indicator is designed so that sponsors can obtain the required information during intake, at exit, and through brief and non-burdensome follow-up efforts with participants after their SCSEP service. While the Department understands that sponsors may not be able to reach every participant after exit from the program, we find that the data obtained through low burden follow-up efforts will provide valuable information to justify the minimal increase in burden.

While much of the information provided to OMB in support of the information collection request appears in this preamble, interested parties may obtain a copy of the full supporting statement by sending a written request to the mail address shown in the **ADDRESSES** section at the beginning of this preamble or by visiting the *http://www.reginfo.gov/public/do/PRAMain* Web site.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4, 2 U.S.C. 1501 *et seq.*) requires an agency to ''prepare a written statement'' providing specific information if the rulemaking ''is likely to result in promulgation of 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 million or more'' in any 1 year. Since the Department has determined that this Final Rule does not include any Federal mandate that may result in increased expenditure by State, local, and tribal governments, or by the private sector, of more than $100 million, it has not prepared the written statement under section 1532 of the UMRA.

E. Executive Order 13132

The Department has reviewed this Final Rule in accordance with Executive Order 13132 on federalism, and has determined that the Final Rule does not have ''policies that have federalism implications.'' As explained at § 1(a) of the Executive Order, '' 'Policies that have federalism implications' refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This rule does not have such ''substantial direct effects'' because it does not preempt any State law, nor interfere with functions essential to the State's separate and independent existence, nor impose any form or method of program administration on the States. In addition, this new measure is reasonably related to the purpose of the SCSEP program, which is a grant program that flows directly from the 2006 OAA, in which State participation is voluntary. Therefore, this Final Rule does not constitute a ''substantial direct effect'' on the States, nor will it alter the relationship, power, or responsibilities between the Federal and State governments; the relationship, power, or responsibilities were already established in the authorizing legislation.

F. Executive Order 13045

Executive Order 13045 concerns the protection of children from environmental health risks and safety risks. This Final Rule addresses the SCSEP, a program for older Americans, and has no impact on safety or health risks to children.

G. Executive Order 13175

Executive Order 13175 addresses the unique relationship between the Federal Government and Indian tribal governments. The order requires Federal agencies to take certain actions when regulations have ''tribal implications.'' Required actions include consulting with tribal governments before promulgating a regulation with tribal implications and preparing a tribal impact statement. The order defines regulations as having ''tribal implications'' when they have substantial direct effects 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.

The Department has reviewed this Final Rule and concludes that it does not have tribal implications. Although tribes are sub-recipients of national SCSEP grant funds, this rule will not have a substantial direct effect on those tribes because, as outlined in the Regulatory Flexibility section of the preamble, there are only minor additional costs associated with implementing this Final Rule and these are covered by grant funds. This regulation does not affect the relationship between the Federal Government and the tribes, nor does it affect the distribution of power and responsibilities between the Federal Government and tribal governments.

Accordingly, we conclude that this Final Rule does not have tribal implications for the purposes of Executive Order 13175.

H. Environmental Impact Assessment

The Department has reviewed this Final Rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR part 1500), and the Department's NEPA procedures (29 CFR part 11). This Final Rule will not have a significant impact on the quality of the human environment, and thus the Department has not prepared an environmental assessment or an environmental impact statement.

I. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681), requires the Department to assess the impact of this Final Rule on family well-being. An agency that determines that the rule will have a negative affect on families must support the rule with an adequate rationale.

The Department has assessed this Final Rule and determines that it will not have a negative effect on families. Indeed, we believe the SCSEP strengthens families by providing job training and support services to low-income older Americans.

J. Executive Order 12630

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, is not relevant to this Final Rule because the rule does not involve implementation of a policy with takings implications.

K. Executive Order 12988

This Final Rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The regulation has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

L. Executive Order 13211

Executive Order 13211 is not relevant to this Final Rule because the rule will not have a significant adverse effect on the supply, distribution, or use of energy.

M. Plain Language

The Department drafted this rule in plain language.

List of Subjects in 20 CFR Part 641

Aged, Employment, Government contracts, Grant programs—Labor, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Department of Labor amends 20 CFR part 641 as follows:

PART 641—PROVISIONS GOVERNING THE SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

■ 1. The authority citation for part 641 continues to read as follows:

Authority: 42 U.S.C. 3056 *et seq.*

■ 2. Amend § 641.140 by revising the definition of ''additional indicators'' and adding the definition of ''volunteer work'' to read as follows:

§ 641.140 What definitions apply to this part?

* * * * *

Additional indicators mean retention in unsubsidized employment for 1 year; satisfaction of participants, employers and their host agencies with their experiences and the services provided; entry into volunteer work; and any other indicators of performance that the Secretary determines to be appropriate to evaluate services and performance. (OAA § 513(b)(2)).

* * * * *

Volunteer work means:

(1) For purposes of § 641.140 of this part, activities or work that former participants perform for a public agency of a State, local government or intergovernmental agency, or for a charity or not-for-profit organization, including faith-based or community-based organizations, for civic, charitable, or for humanitarian reasons, and without promise, expectation, or receipt of compensation;

(2) For informational reporting purposes, volunteer work also can include similar activities that a former participant performs on his or her own that are not conducted through a formal organization or agency as long as those activities are not performed for a member of the former participant's family or of the individual's own household. These types of volunteer activities will not be included in the calculation of the ''entry into volunteer work'' indicator under § 641.140.

* * * * *

■ 3. Amend § 641.700 by adding paragraph (c)(4) to read as follows:

§ 641.700 What performance measures/indicators apply to SCSEP grantees?

* * * * *

(c) * * *

(4) The Secretary has designated entry into volunteer work as an additional indicator.

* * * * *

■ 4. Amend § 641.710 by adding paragraph (b)(3) to read as follows:

§ 641.710 How are the performance indicators defined?

* * * * *

(b) * * *

(3) ''Entry into volunteer work'' is defined by the formula: Of those not engaged in volunteer work at the time of entry into the SCSEP, the number of such participants who perform volunteer work in the first quarter after the exit quarter, divided by the number of such participants who exit during the quarter.

Signed at Washington, DC, this 18th day of January 2012.

Jane Oates,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2012–1324 Filed 1–30–12; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Revisions of Regulations Concerning Procedures for Filing Initial FOIA Requests

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board (NLRB or Board) is amending regulations concerning the procedures for filing initial Freedom of Information Act (FOIA) requests. The revisions require that all FOIA requests for records located in Washington, DC, be made to the NLRB FOIA Officer in Washington, DC.

DATES: *Effective date:* January 31, 2012.

FOR FURTHER INFORMATION CONTACT: Lester A. Heltzer, Executive Secretary, National Labor Relations Board, Room 1600, 1099 14th Street NW., Washington, DC 20570–00001, Telephone (202) 273–1067 (this is not a toll-free number), 1–866–315–6572 (TTY/TDD), email address *Lester.Heltzer@nlrb.gov.*

SUPPLEMENTARY INFORMATION:

I. Current Regulation

Section 102.117(c)(1) provides in part that ''If the request is made for records in a Regional or Subregional Office of the Agency, it should be made to that Regional or Subregional Office; if for records in the Office of the General Counsel and located in Washington, DC, it should be made to the Freedom of Information Officer, Office of the General Counsel, Washington, DC; if for records in the offices of the Board or the Inspector General in Washington, DC, to the Executive Secretary of the Board, Washington, DC.''

II. Revision

FOIA requesters seeking records that are located in Washington, DC may not know whether the requested records are in the Office of the General Counsel, the Offices of the Board, or the Office of the Inspector General, and, accordingly, may misdirect the request. Currently, when a request is misdirected, the receiving office forwards it to the appropriate office and notifies the requester that it has done so. This requires a response by both the receiving and the appropriate offices, and delays the final response to the FOIA requester. By requiring that all requests for records located in Washington, DC be made to the NLRB FOIA Officer, a newly-created position, requesters need not know in which office the records they seek are located, and their requests will be processed more efficiently and expeditiously.

III. Administrative Procedure Act

Because the change involves rules of agency organization, procedure, or practice, the Agency is not required to publish it for comment under Section 553 of the Administrative Procedure Act (5 U.S.C. 553).

IV. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these changes will not have a significant economic impact on small business entities since the changes make it easier for all FOIA requesters to file their requests.

V. Small Business Regulatory Enforcement Fairness Act

Because the rules relate to Agency procedure and practice and merely modify the Agency's existing procedures, the Board has determined that the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

VI. Paperwork Reduction Act

This revision does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

For the reasons set forth above, the NLRB amends 29 CFR part 102 as follows:

PART 102—RULES AND REGULATIONS

■ 1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended ((29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

■ 2. Amend § 102.117 by revising paragraphs (c)(1) and (c)(2)(iii) and (v) to read as follows:

§ 102.117 Freedom of Information Act Regulations: Board materials and formal documents available for public inspection and copying; requests for described records; time limit for response; appeal from denial of request; fees for document search and duplication; files and records not subject to inspection.

* * * * *

(c)(1) Requests for the inspection and copying of records other than those specified in paragraphs (a) and (b) of this section must be in writing and must reasonably describe the record in a manner to permit its identification and location. The envelope and the letter, or the cover sheet of any fax transmittal, should be clearly marked to indicate that it contains a request for records under the Freedom of Information Act (FOIA). The request must contain a specific statement assuming financial liability in accordance with paragraph (d)(2) of this section for the direct costs of responding to the request. If the request is made for records in a Regional or Subregional Office of the Agency, it should be made to that Regional or Subregional Office. If the request is for records located in Washington, DC (in the Office of the General Counsel, the Offices of the Board, or the Office of the Inspector General), it should be made to the NLRB FOIA Officer, Washington, DC. Requests made to other than the appropriate office will be forwarded to that office by the receiving office, but in that event the applicable time limit for response set forth in (c)(2)(i) of this section shall be calculated from the date of receipt by the appropriate office. FOIA requests made to an office other than to the office where the records were generated may be referred to the generating office for response. In the case of records generated by the Inspector General in the possession of another office, or in the possession of the Inspector General but generated by another office of the Agency, the request will be referred to the appropriate FOIA officer for the generating office for decision. If the Agency determines that a request does not reasonably describe records, it may contact the requester to inform the requester either what additional information is needed or why the request is insufficient. Requesters may be given an opportunity to discuss their request so that requests may be modified to meet the requirements of this section.

(2) * * *

(iii) Within 20 working days after receipt of a request by the appropriate office of the Agency, a determination shall be made whether to comply with such request, and the person making the request shall be notified in writing of that determination. In the case of requests made for Inspector General records, that determination shall be made by the Inspector General. In the case of all other requests, that determination shall be made by the NLRB FOIA Officer, or the Regional or Subregional Office, as the case may be. If the determination is to comply with the request, the records shall be made promptly available to the person making the request and, at the same time, a statement of any charges due in accordance with the provisions of paragraph (d)(2) of this section will be provided. If the determination is to deny the request in any respect, the requester shall be notified in writing of that determination. Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver or reduction or placement in a particular fee category; and a denial of a request for expedited treatment. For a determination to deny a request in any respect, the notification shall set forth the reasons therefor and the name and title or position of each person responsible for the denial, shall provide an estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation (this estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption), and shall notify the person making the request of the right to appeal the adverse determination under provisions of paragraph (c)(2)(v) of this section.

* * * * *

(v) An appeal from an adverse determination made pursuant to paragraph (c)(2)(iii) of this section must be filed within 28 calendar days of the service of the adverse determination, in whole or in part. If the adverse determination was made by the NLRB FOIA Officer concerning records located in the Office of the General Counsel, Washington, DC, or by a Regional Office or a Subregional Office concerning records located there, the appeal shall be filed with the General Counsel in Washington, DC. If the adverse determination was made by the NLRB FOIA Officer concerning records in the Offices of the Board, or by the Inspector General concerning records generated by that office, the appeal shall be filed with the Chairman of the Board in Washington, DC. As provided in paragraph (c)(2)(iii) of this section, an adverse determination will notify the requester of the right to appeal the adverse determination and will specify where such appeal shall be filed. Within 20 working days after receipt of an appeal, the General Counsel or the Chairman of the Board, as the case may be, shall make a determination with respect to such appeal and shall notify the person making the request in writing. If the determination is to comply with the request, the record shall be made promptly available to the person making the request upon receipt of payment of any charges due in accordance with the provisions of paragraph (d)(2) of this section. If on appeal the denial of the request for records is upheld in whole or in part, the person making the request shall be notified of the reasons for the determination, the name and title or

position of each person responsible for the denial, and the provisions for judicial review of that determination under the provisions of 5 U.S.C. 552(4)(B). Even if no appeal is filed from a denial in whole or in part of a request for records by the person making the request, the General Counsel or the Chairman of the Board may, without regard to the time limit for filing of an appeal, sua sponte initiate consideration of an adverse determination under this appeal procedure by written notification to the person making the request. In such event, the time limit for making the determination shall commence with the issuance of such notification. An adverse determination by the General Counsel or the Chairman of the Board, as the case may be, will be the final action of the Agency. If the requester wishes to seek review by a court of any adverse determination, the requester must first appeal it under this section.

* * * * *

Signed in Washington, DC, January 25, 2012.

Mark Gaston Pearce,

Chairman.

[FR Doc. 2012–2059 Filed 1–30–12; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF EDUCATION

34 CFR Subtitle B, Chapter II

[Docket ID ED–2011–OS–0005]

RIN 1894–AA02

Final Revisions to Certain Data Collection and Reporting Requirements, Final Priority; State Fiscal Stabilization Fund Program and Discretionary and Other Formula Grant Programs

AGENCY: Department of Education.

ACTION: Revisions to certain data collection and reporting requirements, and final priority.

SUMMARY: The Secretary of Education (Secretary) issues final revisions to certain data collection and reporting requirements, and a final priority, under the State Fiscal Stabilization Fund program.

DATES: Effective March 1, 2012.

FOR FURTHER INFORMATION CONTACT: James Butler, State Fiscal Stabilization Fund Program, U.S. Department of Education, 400 Maryland Ave. SW., room 7E214, Washington, DC 20202–0008. Telephone: (202) 260–9737 or by email: *State.Fiscal.Fund@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Purpose of Program: The State Fiscal Stabilization Fund (SFSF) program provided States approximately $48.6 billion in formula grants to help stabilize State and local budgets and minimize and avoid reductions in education and other essential services. In exchange, States committed to advance education reform in four key areas: (1) Achieving equity in the distribution of effective teachers; (2) improving the collection and use of data; (3) standards and assessments; and (4) supporting struggling schools.

Program Authority: American Recovery and Reinvestment Act of 2009 (ARRA), Division A, Title XIV—State Fiscal Stabilization Fund, Public Law 111–5; 20 U.S.C. 1221e–3 and 3474.

Summary of Final Revisions: In this notice, the Secretary (1) exempts certain States from collecting and reporting on Descriptors (a)(1) and (a)(2) and Indicators (a)(3) through (a)(7); (2) eliminates the requirement for States to report data annually for Indicators (c)(1) through (c)(9) and (d)(1) through (d)(6); (3) extends to December 31, 2013, upon submission of an approvable request by a State, the deadline for meeting the requirements under Indicators (b)(1) and (c)(12); (4) extends to December 31, 2013, upon submission of an approvable request by a State, the deadline for collecting and publicly reporting or developing the capacity to collect and publicly report student enrollment data under Indicator (c)(11) for high school graduates who enroll in an in-state public institution of higher education (IHE); and (5) applies an alternative standard, upon submission of an approvable request by a State, by which a State may meet the Indicator (c)(11) data collection and reporting requirements for high school graduates who enroll in in-state private, out-of-state private, or out-of-state public IHEs. The Secretary establishes December 31, 2013, as the deadline by which a State must meet the requirements of the Indicator (c)(11) alternative standard.

In addition, the Secretary establishes a priority that the Department may use in future discretionary grant competitions for States that have met the requirements of Indicator (b)(1) on or before the applicable deadline. Further, the Secretary establishes the authority to extend those sanctions to State educational agencies (SEAs) in States that have received an extension of the deadline to December 31, 2013, for Indicator (b)(1), (c)(11), or (c)(12) but fail to meet the revised deadline or that have received permission to use the alternative standard for Indicator (c)(11) but fail to meet the requirements of that standard by the deadline.

The Department also establishes the authority to take enforcement action against an SEA under certain circumstances where a State fails to meet the requirements of Indicators (b)(1), (c)(11), or (c)(12).

Background: Section 14005(d) of Division A of the ARRA required a State receiving funds under the SFSF program to provide assurances in four key areas of education reform: (1) Achieving equity in the distribution of effective teachers; (2) improving collection and use of data; (3) standards and assessments; and (4) supporting struggling schools.

In a notice of final requirements, definitions, and approval criteria published in the **Federal Register** on November 12, 2009 (74 FR 58436) (November 2009 Notice), the Department established specific data and information requirements (assurance indicators and descriptors) that a State had to meet to demonstrate compliance with the statutory assurances. We also established specific requirements for the plans that a State had to submit as part of its application for the second phase of funding under the SFSF program. These plans describe the steps a State would take to collect and publicly report, or to develop the capacity to collect and publicly report, the required data and other information.

As we explained in the November 2009 Notice, these two sets of requirements make transparent the extent to which a State is implementing the promised reforms. Increased access to and focus on these data better enable States and other stakeholders to identify strengths and weaknesses in education systems and to determine where concentrated reform effort is warranted.

We are taking the actions in this notice in response to the January 18, 2011, Executive Order 13563 entitled ''Improving Regulation and Regulatory Review'' and the February 28, 2011, memorandum from the President to executive departments and agencies entitled ''Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments.'' These documents direct each Federal executive department and agency to review periodically its existing significant regulations and determine whether any should be modified, streamlined, expanded, or repealed so as to make the department's or agency's regulatory program more effective or less burdensome. These modifications

address concerns raised by some States about the time necessary to meet the requirements in the November 2009 Notice.

As a result of our regulatory review of the SFSF program requirements, we also are publishing elsewhere in this issue of the **Federal Register** a notice of final requirement extending to January 31, 2012, the deadline for States to meet the data collection and reporting requirements of the SFSF indicators.

We note that in addition to the revised January 31, 2012, deadline for meeting the SFSF requirements, we are modifying certain other data collection and reporting requirements in this notice. All other SFSF requirements remain in effect as originally established.

In addition, we note that where the SFSF indicators make use of information in ''Existing Collections'' (see column 4 of the table in Section I of *State Fiscal Stabilization Fund: Summary of Final Requirements* at *http://www2.ed.gov/programs/statestabilization/summary-requirements.doc*), the modification of an SFSF indicator does not affect other Federal requirements for those collections that are established under separate legal authority. Some of the data that States submit through the Department's ED*Facts* system to meet requirements established under other authorities (e.g., Title I accountability data) are also reported publicly by States to meet the requirements of certain SFSF indicators. Those requirements established by other authorities are not affected by the modification of any SFSF indicator in this notice.

On September 23, 2011, we published a notice of proposed revisions to certain data collection and reporting requirements and proposed priority (NPR) in the **Federal Register** (76 FR 59074).

Public Comment: In response to our invitation in the NPR, we received comments from six entities. There are several differences between the NPR and these final requirements.

In the following section, we discuss substantive issues under the sections of the requirements to which they pertain. Generally, we do not address technical and other minor changes, or suggested changes the applicable statutory authority does not authorize us to make. In addition, we do not address general comments that raised concerns not directly related to the proposed provisions or the proposed priority.

Analysis of Comments and Changes: Deadline for Complying With Indicators (b)(1), (c)(11), AND (c)(12).

Comment: Three commenters expressed support for the Department's proposal to extend beyond January 31, 2012, the deadline for developing and implementing a statewide longitudinal data system (SLDS) under Indicator (b)(1) that includes all the 12 elements required under the America COMPETES Act. Further, five commenters supported the Department's proposal to extend beyond January 31, 2012, the deadline for complying with the requirements of Indicator (c)(11). One of these commenters stated that the need to establish a longer time frame for full compliance with Indicator (c)(11) seemed fair as it responded to comments that were discussed in the November 2009 Notice. In addition, one commenter expressed concerns about the cost of obtaining information on students who attend private and out-of-state IHEs.

Discussion: The Department appreciates the concerns expressed by commenters regarding the ability of States to fully comply with the requirements of Indicators (b)(1) and (c)(11) in a timely fashion. These concerns would also apply to Indicator (c)(12) because compliance with the requirements of that indicator is dependent upon the development and implementation of an SLDS. Because of these concerns, the Department believes that it is appropriate to extend the deadline for meeting the requirements of Indicators (b)(1), (c)(11), and (c)(12) to December 31, 2013 rather than December 31, 2012, as proposed in the NPR. An extension will be granted only to those States that submit an approvable extension request.

Change: The Department extends to December 31, 2013, upon submission of an approvable request by a State—

(a) The deadline for the development and implementation of an SLDS under Indicator (b)(1) that includes the 12 elements included in the America COMPETES Act;

(b) The deadline by which a State must collect and publicly report, or have the capacity to collect and publicly report, the required course completion data under Indicator (c)(12); and

(c) The deadline by which a State must collect and publicly report, or have the capacity to collect and publicly report, the student enrollment data required under Indicator (c)(11) for high school graduates who attend an in-state public IHE.

Under the alternative standard for Indicator (c)(11), the Department extends to December 31, 2013, the deadline by which a State must increase its current capacity to collect and publicly report the required student enrollment data for high school graduates who attend a private or an out-of-state public IHE.

Process for Requesting an Extension

Comment: One commenter suggested that the Department (1) create a streamlined and user-friendly form to request deadline extensions and use of the alternative standard; (2) approve extension requests for complying with the requirements of Indicators (b)(1), (c)(11), and (c)(12) before requiring a State to provide a revised plan for the applicable indicator; and (3) automatically grant an extension of the deadline for an indicator if the State has a later deadline for the same activity under another Department program.

Discussion: The Department is providing a streamlined and user-friendly form for requests to extend a deadline or use the alternative standard. The Department will approve these requests on the basis of assurances provided by the Governor and the Chief State School Officer. The State will have 60 days after submission of the request to provide the revised plan. If a State fails to meet the revised and approved State plan requirements, the Department will take appropriate enforcement actions. The Department's program offices do coordinate implementation of program requirements under various statutory or regulatory authorities. However, many programs have specific requirements that differ from the requirements of other programs. As a result, the Department often establishes program-specific requirements and deadlines and will not automatically extend the deadline for complying with the SFSF indicators and descriptors on the basis of a later deadline for another program.

Changes: None.

Elimination of Annual Reporting Requirements for Certain Indicators

Comment: One commenter supported the elimination of the annual reporting requirements for Indicators (c)(1) through (c)(9) and (d)(1) through (d)(6).

Discussion: The Department appreciates the support of the commenter and, as stated in the NPR, we do not believe that it is necessary to have States annually collect and publicly report these data given the availability of the data from other sources.

Changes: None.

Teacher and Principal Evaluation Systems

Comment: One commenter suggested that the Department extend beyond January 31, 2012, the deadline for

collecting and publicly reporting data related to teacher and principal evaluation systems. The commenter noted that the January 31, 2012, deadline is inconsistent with the timelines for the development and implementation of teacher and principal evaluation systems outlined in the September 23, 2011, ESEA Flexibility guidance.

Discussion: The Department agrees that a State with an approved ESEA Flexibility request should not have to report data and information on the current teacher and principal evaluation systems of its local educational agencies (LEAs) by the January 31, 2012, SFSF deadline because that State will have committed to developing, adopting, piloting, and implementing rigorous teacher and principal evaluation and support systems. The deadline for implementing rigorous teacher and principal evaluation systems under the ESEA Flexibility extends beyond the January 31, 2012, SFSF deadline. Therefore, the Department is eliminating the requirement for a State to collect and publicly report data under SFSF Descriptors (a)(1) and (a)(2) and Indicators (a)(3) through (a)(7) if that State has an approved ESEA Flexibility request.

Changes: We have modified the final requirements to provide that the collection and public reporting requirements under SFSF Descriptors (a)(1) and (a)(2) and Indicators (a)(3) through (a)(7) do not apply to a State that has an approved ESEA Flexibility request. Statewide Longitudinal Data System (Indicator (b)(1))

Comment: One commenter asked whether development and implementation of an SLDS may be predicated on the State's receiving an award under the Statewide Longitudinal Data Systems grant.

Discussion: ARRA requires all States, as a condition of receiving funds under the SFSF program, to develop and implement an SLDS that includes all 12 elements required under the America COMPETES Act. In its application for SFSF funding, each State assured that it would meet this requirement by the established deadline. Thus, a State must develop and implement such a system whether or not it receives an SLDS grant. A State could have used, among other funds, SFSF Government Services funds to meet this requirement.

Changes: None.

Comment: One commenter requested that the Department be flexible in determining whether a State has developed and implemented an SLDS that includes the 12 elements and that the Department share with States any expectations that it has for those elements.

Discussion: The Department understands that individual States' longitudinal data systems may vary and still meet the requirements of the America COMPETES Act. In addition, the Department acknowledges that State requirements and processes may affect the manner in which a State complies with ARRA's requirements. The Department will consider these factors when considering a State's compliance with the requirements of Indicator (b)(1). The Department intends to work collaboratively with States while reviewing State compliance with SFSF requirements, as it has done during the initial SFSF monitoring reviews.

Changes: None.

Comment: One commenter suggested that the Department require a State to provide, in its request for a further extension of the deadline for Indicator (b)(1), a description of the challenges that cause the need for the extension.

Discussion: During the Department's monitoring of State implementation of the SFSF program, a number of States indicated to us that competing challenges and diminished capacity have made it difficult for them to meet the previously established deadline for some of the more challenging indicators. In recognition of this, the Department has extended the deadline for meeting the requirements of all indicators from September 30, 2011, to January 31, 2012, and has established a process for States to request a further extension to December 31, 2013, of the deadline for the more challenging indicators (b)(1), (c)(11), and (c)(12). We believe that any benefits that might be derived from requiring a justification for this extension would not outweigh the additional burden placed on States to do so.

Changes: None. Postsecondary Student Enrollment Data (Indicator (c)(11)).

Comment: One commenter expressed concern about the expense associated with a State having to enter into multiple data-sharing agreements with IHEs to collect postsecondary student enrollment data. The commenter recommended that the Department consider extending its role to that of a broker of data-sharing agreements between public higher education consortia and other entities such as third-party companies and States. Alternatively, the commenter recommended that the Department eliminate the requirement that States collect enrollment data on high school graduates who attend private or out-of-state IHEs.

Discussion: The Department believes that because differences in State statutory and regulatory requirements could affect the nature and scope of data-sharing agreements between States and IHEs, it is appropriate that decisions regarding these matters be addressed at the State rather than the Federal level. The Department acknowledges that collecting enrollment data on high school graduates who attend private and out-of-state IHEs can be challenging and, therefore, is providing States with an alternative standard for meeting the requirements of Indicator (c)(11) for such students. However, we are not eliminating this data collection requirement because we believe that these data, together with the course completion data under Indicator (c)(12), provide stakeholders with critical information on the effectiveness of secondary education across States.

Changes: None.

Comment: One commenter requested that the Department clarify whether the alternative standard for collecting and publicly reporting data under Indicator (c)(11) applies to in-state and out-of-state private IHEs and out-of-state public IHEs. The same commenter inquired whether a State could propose an alternative standard or whether a State would only be permitted to use the standard established by the Department.

Discussion: The alternative standard, which was defined in the NPR, applies to in-state private IHEs, out-of-state private IHEs, and out-of-state public IHEs. To help ensure that all States are developing the capacity to collect and publicly report similar data, the Department has established an alternative standard that will be applied across all States. Thus a State may not propose its own alternative standard for complying with the requirements of Indicator (c)(11).

Changes: The Department has modified the alternative standard language to expressly state that the State must increase its capacity to collect and publicly report student enrollment data on high school graduates who attend in-state private IHEs, out-of-state private IHEs, and out-of-state public IHEs.

Comment: One commenter requested clarification on the requirements for the data analysis that a State must conduct regarding current capacity for reporting on students enrolled in private or out-of-state public IHEs in order to receive approval to use the Indicator (c)(11) alternative standard.

Discussion: In demonstrating that it has increased its capacity to collect and publicly report on student enrollment data for high school graduates who enroll in private or out-of-state IHEs, a

State could, among other things, enter into data reciprocity agreements with contiguous States or States with which it has tuition reciprocity agreements.

Changes: None.

Comment: One commenter questioned the relevance of the information that a State seeking to use the alternative standard would have to submit by December 31, 2012, to demonstrate that it had increased its capacity to report on the enrollment of high school graduates in private and out-of-state IHEs. That commenter also questioned the need to impose additional burden on States before providing additional flexibility and the Department's authority to collect the data under the alternative standard. The commenter recommended that the Department further extend the January 31, 2012, deadline by which States must report student enrollment data under Indicator (c)(11) without submitting additional information.

Discussion: The Department believes that whether a State funds or enters into a data-sharing agreement with a private or out-of-state public IHE is relevant. A State is more likely to fund or enter into data-sharing agreements with those IHEs that enroll relatively large numbers of that State's residents. Further, the Department believes that the burden of meeting the requirements under the alternative standard will be minimal.

The Department has the authority to impose reasonable conditions on States in exchange for providing them with additional flexibility in meeting programmatic requirements. Because in certain instances the deadline for States to comply with the requirements of Indicator (c)(11) may be extended 27 months beyond the initial September 30, 2011, deadline, the Department believes that it is essential to collect the additional information required under the extension request. Use of the alternative standard is voluntary. Only if a State chooses to take advantage of the additional flexibility afforded under the alternative standard does it have to provide this information.

Changes: None.

Comment: One commenter recommended that the Department require States requesting authority to use the Indicator (c)(11) alternative standard to indicate in their requests whether they have regulatory or other authority over in-state private IHEs.

Discussion: Under the requirements for requesting use of the Indicator (c)(11) alternative standard, States must indicate for each in-state private IHE whether that IHE receives funding from the State. The Department believes this information, together with information on whether the State has a data-sharing agreement with these IHEs, provides sufficient indication of whether a State has authority over in-state private IHEs.

Changes: None

Comment: One commenter suggested that the Department require States to provide the percentage of their high school graduates who enroll in an in-state IHE to ''help provide transparency around the extent of the challenge States face in tracking their students out-of-state.''

Discussion: Under Indicator (c)(11), a State must demonstrate that it has the capacity to collect and publicly report student enrollment data for high school graduates who enroll in in-state private, out-of-state private, and out-of-state public IHEs; however, a State is not required to actually collect and publicly report those data. Thus, it would impose a burdensome new requirement on States to require them to report by December 31, 2013, on the percentage of students who enroll in in-state IHEs.

Changes: None.

Postsecondary Course Completion Data

Comment: One commenter requested that the Department clarify for Indicator (c)(12) the following: (1) The categories of students for which a State should provide course completion data (degree-seeking or all students enrolled for credit; part-time and full-time students; students who remain enrolled in the same public IHE; and students who transfer to another public IHE); and (2) the starting point for calculating credits earned within ''two years of enrollment'' in Indicator (c)(12).

Discussion: States must have the capacity to report course completion data for those high school graduates who enroll for credit in a public IHE on a full-time or part-time basis within 16 months of their high school graduation. In determining whether a student has completed one year's worth of college credit applicable to a degree, as defined by the IHE, within two years of enrollment in an in-state public IHE, the State should consider the credits that the student earned at any in-state public IHE within two years of the date that the student initially enrolled in an in-state public IHE (as long as that initial enrollment was within 16 months of the student's high school graduation).

Changes: None.

Plan Requirements

Comment: One commenter asked the Department to clarify whether a Governor had to sign the revised plans that a State must submit to receive a further extension of the deadline for an indicator.

Discussion: In the request for an extension, the Governor and Chief State School Officer must sign an assurance that the State will submit a revised plan for Indicator (b)(1), (c)(11), or (c)(12), as applicable. The Governor and Chief are not required to sign the plan itself.

Changes: None.

Comment: One commenter inquired whether a State may use a plan adopted for other programs to meet the revised plan requirement for Indicators (b)(1), (c)(11), or (c)(12), as applicable.

Discussion: A State may use a plan adopted for another program so long as that plan meets the requirements established in this notice, including the requirement that the State meet the December 31, 2013, deadline.

Changes: None.

Comment: One commenter suggested that the Department make publicly available any revised plans submitted for Indicators (b)(1), (c)(11), and (c)(12).

Discussion: The Department will make the revised plans available on its Web site and encourages States to make them available on their Web sites as well.

Changes: None.

Priority

Comment: One commenter suggested the Department provide in future grant competitions a priority not only for States that meet the requirements of Indicator (b)(1) but also for States that meet the requirements of Indicators (c)(11) and (c)(12) by the applicable deadline.

Discussion: Although the Department recognizes the importance of a State being able to collect and publicly report the data required under Indicators (c)(11) and (c)(12), it wants to encourage States to focus on developing and implementing an SLDS that includes all of the elements required under the America COMPETES Act and, as a result, meets all of the requirements of Indicator (b)(1). The Department, therefore, is giving priority to those States that develop and implement an SLDS in a timely manner. We also note that if a State has developed and is implementing an SLDS that meets the statutory requirements, this will enable the State to comply with the requirements of Indicators (c)(11) and (c)(12).

Changes: None.

Revisions to Reporting Requirements:

Exemption From Reporting Requirements for Descriptors (a)(1) and (a)(2) and Indicators (a)(3) Through (a)(7)

A State that has an approved ESEA Flexibility request is exempt from the

collection and public reporting requirements under SFSF Descriptors (a)(1) and (a)(2) and Indicators (a)(3) through (a)(7).

Elimination of Annual Reporting Requirements for Indicators (c)(1) Through (c)(9) and (d)(1) Through (d)(6)

The Department requires each State to collect and publicly report, at least once, the data and other information required by Indicators (c)(1) through (c)(9) and (d)(1) through (d)(6). Any State that has already collected and publicly reported these data is not required to take any additional action for these indicators. Any State that has not already provided data under these indicators must do so by the January 31, 2012, deadline.

Extension of Deadline for Indicators (b)(1) and (c)(12)

The Department extends to December 31, 2013, upon submission of an approvable request by a State, the deadline for the development and implementation of an SLDS under Indicator (b)(1) that includes the 12 elements included in the America COMPETES Act. The Department also extends to December 31, 2013, upon submission of an approvable request by a State, the deadline by which a State must collect and publicly report, or have the capacity to collect and publicly report, the required course completion data under Indicator (c)(12).

An extension request must provide the specific information described under the heading *Requirements for Requests for Extensions to December 31, 2013, of Deadlines for Indicator (b)(1), (c)(11), or (c)(12) or Use of the Indicator (c)(11) Alternative Standard.*

Revisions to Requirements Under Indicator (c)(11)

The Department extends to December 31, 2013, upon submission of an approvable request by a State, the deadline by which a State must collect and publicly report, or have the capacity to collect and publicly report, the student enrollment data required under Indicator (c)(11) for high school graduates who attend an in-state public IHE.

An extension request must provide the specific information under the heading *Requirements for Requests for Extensions to December 31, 2013, of Deadlines for Indicator (b)(1), (c)(11), or (c)(12) or Use of the Indicator (c)(11) Alternative Standard.*

The Department also establishes an alternative standard by which a State may meet the Indicator (c)(11) data collection and reporting requirements with respect to high school graduates who enroll in in-state private, out-of-state private, or out-of-state public IHEs. Under the alternative standard, a State must increase, by December 31, 2013, its current capacity to collect and publicly report the required student enrollment data for high school graduates who attend an in-state private IHE, an out-of-state private IHE, or an out-of-state public IHE. A State will not be required to be fully capable of collecting and reporting these data by December 31, 2013.

For the purposes of the alternative standard, a State will be considered to be making acceptable progress in increasing its capacity to collect and publicly report student enrollment data for high school graduates who enroll in in-state private IHEs, out-of-state private IHEs, or out-of-state public IHEs through such activities as: (1) Entering into data reciprocity agreements with private in-state IHEs that receive any State funds, including those for student financial aid, research, or any other activities; (2) entering into data reciprocity agreements with private in-state IHEs over which the State exercises significant oversight, such as serving as an accrediting body; (3) entering into data reciprocity agreements with geographically contiguous States or States with which it has tuition reciprocity agreements; or (4) conducting a data analysis to determine the out-of-state IHEs where large numbers of the State's high school graduates enroll.

States that use the alternative standard for Indicator (c)(11) are required to publicly report, by December 31, 2013, the following—

(1) For each in-state private IHE—

(a) Whether the State provides funding to the IHE;

(b) Whether the State has a data-sharing agreement in place with the IHE and, if so, whether the data-sharing agreement enables the State to track its recent high school graduates; and

(2) For each out-of-state private or out-of-state public IHE with which the State has a data-sharing agreement—

(a) Whether the State provides funding to the IHE; and

(b) Whether the data-sharing agreement enables the State to track its recent high school graduates.

An extension request must include the specific information described under the heading *Requirements for Requests for Extensions to December 31, 2013, of Deadlines for Indicator (b)(1), (c)(11), or (c)(12) or Use of the Indicator (c)(11) Alternative Standard.*

Requirements for Requests for Extensions to December 31, 2013, of Deadlines for Indicator (b)(1), (c)(11), or (c)(12) or Use of the Indicator (c)(11) Alternative Standard

Any request for an extension to December 31, 2013, of the deadline for Indicator (b)(1), (c)(11), or (c)(12), as well as any request to use the alternative standard for Indicator (c)(11), must be submitted and signed by both the Governor and the Chief State School Officer. Further, an extension request or a request to use the alternative standard must be submitted by February 17, 2012, unless the Department permits a State to submit a request at a later date. The additional requirements for these requests are as follows:

A. Indicator (b)(1) Extension Requests

To receive an extension of the deadline for developing and implementing an SLDS that includes the 12 elements required by the America COMPETES Act under Indicator (b)(1), a State must provide the following information:

(1) An identification of the elements in the America COMPETES Act that the State has implemented to date as part of its SLDS.

(2) An assurance signed by the Governor and the Chief State School Officer that the State will—

(i) Incorporate the remaining elements into its SLDS by the December 31, 2013, deadline; and

(ii) Provide, within 60 days of submission of the request, a revised plan for incorporating those elements by the deadline.

B. Indicator (c)(11) Extension Requests

To receive an extension of the deadline for collecting and publicly reporting under Indicator (c)(11) student enrollment data for high school graduates who enroll in an in-state public IHE, a State must provide the following information:

(1) A description of the State's current capacity to collect and publicly report such student enrollment data.

(2) An assurance signed by the Governor and the Chief State School Officer that the State will—

(i)(A) Collect and publicly report by December 31, 2013, student enrollment data for high school graduates who attend an in-state public IHE; or

(B) Develop the capacity to collect and publicly report those data by December 31, 2013; and

(ii) Provide, within 60 days of submission of the request, a revised plan for how the State will—

(A) Collect and publicly report the data by December 31, 2013; or

(B) Develop the capacity to collect and publicly report those data by December 31, 2013.

C. Indicator (c)(12) Extension Requests

A State must provide the following information when requesting an extension of the deadline for collecting and publicly reporting under Indicator (c)(12) course completion data for high school graduates who enroll in an in-state public IHE:

(1) A description of the State's current capacity to collect and publicly report such course completion data.

(2) An assurance signed by the Governor and the Chief State School Officer that the State will—

(i)(A) Collect and publicly report, by December 31, 2013, course completion data required Indicator (c)(12) for high school graduates who attend an in-state public IHE; or

(B) Develop the capacity to collect and publicly report, by December 31, 2013, such data; and

(ii) Provide, within 60 days of submission of the request, a revised plan for how the State will—

(A) Collect and publicly report the data by December 31, 2012; or

(B) Develop the capacity to collect and publicly report such data by December 31, 2013.

D. Indicator (c)(11) Alternative Standard Requests

A State must provide the following information when requesting permission to use the alternative standard to satisfy the Indicator (c)(11) requirements to collect and publicly report student enrollment data for high school graduates who enroll in private or out-of-state public IHEs:

(1) A description of the State's current capacity to collect and publicly report such student enrollment data.

(2) An assurance signed by the Governor and the Chief State School Officer that the State will—

(i)(A) Collect and publicly report, by December 31, 2013, student enrollment data for high school graduates who enroll in in-state private, out-of-state private, or out-of-state public IHEs; or

(B) Increase its current capacity to collect and publicly report such data by December 31, 2013, and, by that date, publicly report, the following—

(*1*) For each in-state private IHE—

(a) Whether the State provides funding to the IHE;

(b) Whether the State has a data-sharing agreement in place with the IHE and, if so, whether the data-sharing agreement enables the State to track its recent high school graduates; and

(*2*) For each out-of-state private or out-of-state public IHE with which the State has a data-sharing agreement, individually or through a State agency or consortium—

(a) Whether the State provides funding to the IHE; and

(b) Whether the data-sharing agreement enables the State to track its recent high school graduates;

(ii) Provide, within 60 days of submission of the request, a revised plan for how the State will—

(A) Collect and publicly report the data by December 31, 2012; or

(B) Increase its current capacity to collect and report those data by December 31, 2013.

Requirements for Revised Plans for Indicator (b)(1), (c)(11), or (c)(12)

The revised plans for Indicator (b)(1), (c)(11), or (c)(12) must include the following information:

(a) A detailed description of the steps that the State will take to ensure that the requirements of the indicator will be met by December 31, 2013, including a reasonable timeline for those actions.

(b) Identification of the agency or agencies in the State responsible for the development and implementation of the revised plan.

(c) An overall budget, including the funding sources, that is sufficient to support the development and implementation of the revised plan.

Final Priority:

This notice contains one priority.

Priority—Developing and Implementing a Statewide Longitudinal Data System That Includes the 12 Required Elements

Priority: The Secretary gives priority to a State that has met the requirements of SFSF Indicator (b)(1) on or before the applicable deadline.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register.** The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Authority To Take Enforcement Action Against SEAs

If a State receives an extension of a deadline to December 31, 2013, or the authority to use the alternative standard for Indicator (c)(11) but fails to meet the extended deadline or alternative standard, the Department may take enforcement actions against the SEA, including designation as high risk. In such instances, the Department may also elect not to award funds in a future discretionary grant competition to the SEA.

The Department will take into account the specific circumstances of the grantee and the severity of the non-compliance.

Note: This notice does not solicit applications. In any year in which we choose to use the priority proposed in this notice, we invite applications through a notice in the **Federal Register.**

Executive Orders 12866 and 13563:

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

It has been determined that this regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order

13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final revisions only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these final revisions are consistent with the principles in Executive Order 13563.

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

In accordance with both Executive orders, the Department has assessed the potential costs and benefits of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities. In this regulatory impact analysis, we discuss the need for regulatory action, the regulatory alternatives we considered, and the potential costs and benefits of the action.

Need for Federal Regulatory Action:

The revisions in this notice are the result of a regulatory review [1] of the SFSF requirements established in the November 2009 Notice and also a response to concerns raised by States regarding their capacity to implement those requirements fully. The revisions eliminate requirements that have been identified through the regulatory review as overly burdensome or unnecessary for the achievement of the intended purposes of the SFSF program. The revisions also modify requirements that have been identified by certain States as not feasible to meet by the currently established deadline, by extending the deadline for establishing compliance or providing an alternative compliance standard for States that seek that flexibility. The Secretary believes that these revisions are needed in order for the Department to administer the SFSF program in a manner that enables States to provide sufficient transparency on the extent to which they are implementing education reform actions consistent with the assurances provided in their SFSF applications while affording them an appropriate amount of time and flexibility to implement those actions. The Secretary further believes that this notice's requirements for requesting an extension of the deadline for Indicator (b)(1), (c)(11), or (c)(12) or using the Indicator (c)(11) alternative standard, as well as the requirements for revising plans for those indicators, are necessary to ensure that States' actions are consistent with the requirements for those indicators.

Regulatory Alternatives Considered:

An alternative to promulgation of the revisions in this notice would be to take no regulatory action and, instead, take enforcement action, such as recovering or withholding Department funds or establishing compliance agreements, against States that fail to comply with the relevant SFSF requirements established in the November 2009 Notice. In general, the Secretary believes that the latter approach would unfairly punish States that the Department believes, based on available information on implementation of SFSF plans, are making a good-faith effort to fully develop their statewide longitudinal data systems and their capacity to collect and report data on student postsecondary enrollment and persistence, but need more time to comply with the SFSF requirements. That said, the Secretary believes that States must fully develop statewide longitudinal data systems and may place on high-risk status those States that fail to comply with the requirements of Indicator (b)(1) by the current or (if approved for the State) extended deadline.

With respect to Indicator (c)(11), the Department considered proposing only an extension of the deadline for collecting and reporting student enrollment data for high school graduates who attend IHEs, but concluded that extending the deadline for the public, in-state IHEs and providing additional flexibility with the alternative standard for collecting and publicly reporting student enrollment data for high school graduates who attend private and out-of-state public IHEs better addresses the capacity concerns raised by States.

Summary of Costs and Benefits:

Revisions to SFSF Indicator Requirements:

In the November 2009 Notice, the Department provided detailed estimates of the costs to States, LEAs, and IHEs of complying with the SFSF requirements. We have assessed the potential costs and benefits of the revisions to those requirements in this notice and determined that they impose no net additional costs to States, LEAs, or IHEs.

On the contrary, the revisions will produce potential net cost savings.[2] For instance, the exemption for certain States from the reporting requirements under Descriptors (a)(1) and (a)(2) and Indicators (a)(3) through (a)(7) and the elimination of the annual reporting requirements for Indicators (c)(1) through (c)(9) and (d)(1) through (d)(6) confer savings by reducing collection and reporting burden on States and LEAs. Although it confers some new cost (as discussed in more detail later in this section), the Indicator (c)(11) alternative standard confers net savings to States using the standard (and to affected LEAs and IHEs) by no longer

[1] As discussed elsewhere in this notice, the regulatory review was conducted in response to the January 18, 2011 Executive Order 13563 entitled ''Improving Regulation and Regulatory Review'' and the February 28, 2011 Memorandum from the President to executive departments and agencies entitled ''Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments.''

[2] We have not provided estimates of potential cost savings in this notice because we cannot reasonably estimate the amount of funds States have already spent to meet the applicable SFSF requirements.

requiring that those States, at a minimum, fully develop the capacity to collect and report, by September 30, 2011, enrollment data for high school graduates who enroll in private or out-of-state public IHEs. The extensions of the compliance deadlines for Indicators (b)(1), (c)(11), and (c)(12) will not add to the costs of complying with the associated requirements and might result in marginal savings (calculated on a present-value basis) as States will be able to spread the compliance costs over a longer period of time.

Apart from potential cost savings, the benefits of the revisions are, as discussed elsewhere in this notice, simplified and more streamlined SFSF requirements that still provide the Department and the public with useful information on whether States are implementing education reforms that are consistent with the statutorily required assurances.

States using the Indicator (c)(11) alternative standard will incur minimal new costs. Under the standard, a State must publicly report, by December 31, 2013, information on the extent to which it has data-sharing agreements with private and out-of-state public IHEs that enable the State to track its recent high school graduates and demonstrate certain concrete steps it has taken to increase its capacity to track its high school graduates who enrolled in private and out-of-state public IHEs. We estimate that a State will need, on average, 40 hours to collect and report this information. At $30 per hour, the average cost of doing so is an estimated $1,200.

Based on information available from States on implementation of their SFSF plans, we estimate that 43 States will request use of the Indicator (c)(11) alternative standard. The total estimated cost to States for complying with the Indicator (c)(11) alternative standard reporting requirements is accordingly $51,600 ($1,200 times 43 States).

Requirements for Requests for Extensions of Deadlines for Indicator (b)(1), (c)(11), or (c)(12) or Use of the Indicator (c)(11) Alternative Standard, and Requirements for Revised Plans for Indicator (b)(1), (c)(11), or (c)(12):

The costs for complying with these requirements will, in general, be minimal. Because States that do not meet the requirements associated with an SFSF indicator or descriptor were already required to submit a plan for achieving compliance that includes progress tracking and providing regular public progress reports, we do not believe that any new effort will be needed in order for a State to determine whether to request an extension of the deadline for Indicator (b)(1), (c)(11), or (c)(12) or use of the Indicator (c)(11) alternative standard.

In requesting a deadline extension or use of the alternative standard, a State must provide a description of its current capacity with respect to the applicable indicator and a signed assurance that it will comply with the revised requirements for the indicator and will submit its plan for doing so to the Department within 60 days of the request. The level of effort needed to meet these requirements is minimal. We estimate that a State will need, on average, eight hours to complete such a request. At $30 per hour, the average cost of completing a request is an estimated $240.

Based on information available from States on implementation of their SFSF plans, we estimate that 40 States will request an extension of the deadline for Indicator (b)(1), 43 States will request an extension of the deadline for Indicator (c)(11), 47 States will request an extension of the deadline for Indicator (c)(12), and 43 States will request use of the Indicator (c)(11) alternative standard. In total, States will complete an estimated 173 requests. At $240 per request, the total estimated cost to States for complying with the requirements for requests is $41,520 ($240 times 173 requests).

A State requesting a deadline extension or the use of the Indicator (c)(11) alternative standard must submit to the Department, within 60 days, a revised plan with respect to the applicable indicator that includes the specific steps the State will take to meet the revised requirements for the indicator, the budget for developing and implementing the revised plan, and the responsible agency or agencies. The cost of meeting these plan revision requirements should also be minimal. We estimate that a State will need, on average, eight hours to complete a plan revision consistent with the requirements. At $30 per hour, the average cost of completing a plan revision is an estimated $240.

As discussed above, States will complete an estimated 173 total requests for deadline extensions or for use of the Indicator (c)(11) alternative standard. Accordingly, we estimate that States will complete, at most, 173 plan revisions.[3] At $240 per revision, the total estimated cost to States for complying with the plan revision requirements is $41,520 ($240 per revision times 173 requests).

The total estimated cost for complying with the requirements for requests and for plan revisions is accordingly $83,040.

The November 2009 Notice detailed the cost of collecting and reporting the information and data associated with Indicators (b)(1), (c)(11), and (c)(12) on an annual basis. We expect that the cost of meeting these requirements will be reduced because most States have completed a substantial amount of the work related to collecting and reporting the required information. However, States requesting an extension of Indicator (b)(1), (c)(11), or (c)(12) will need to report the information and data for an additional year. We discuss the costs associated with reporting these indicators for an additional year below.

We estimate that, on average, a State will need one hour to collect and report the information associated with Indicator (b)(1). This is a one-hour reduction from the estimate in the November 2009 Notice because States have indicated that, on average, they have completed 50 percent of the work associated with collecting and reporting this information. Based on information available from States on implementation of their SFSF plans, we expect that 40 States will need to collect and report this information. At $30 per hour, the average cost for collecting and reporting this information is $30. The total estimated cost for complying with the Indicator (b)(1) reporting requirements is $1,200 ($30 per hour times 40 States).

As 9 States have already met the requirement for Indicator (c)(11), we expect that 43 States will need to collect and report the information associated with it, or provide evidence that they have developed the capacity to do so, for students who attend in-state, public IHEs. We estimate that, on average, a State will need 40 hours to meet this requirement. This is a reduction from the average hours per response in the November 2009 Notice because this estimate includes reporting only on students who attend in-state, public IHEs rather than all students enrolled in an IHE. The remaining students will be covered under the (c)(11) alternative standard. At $30 per hour, we estimate that the average cost of meeting this requirement is $1,200. The total estimated cost for States to comply with the requirements for Indicator (c)(11) is

[3] A State requesting both an extension of the deadline for Indicator (c)(11) (as it applies to data on student enrollment in in-state public IHEs) and use of the alternative standard for that indicator (as it applies to data on student enrollment in private and out-of-state public IHEs) could address both of these requests in a single plan revision for the indicator. Consequently, the total number of completed plan revisions will almost certainly be lower than this estimate.

$51,600 ($1,200 per State times 43 States).

The 13,409 LEAs located in those 43 States will need to provide information associated with Indicator (c)(11). Based on an estimate of the total number of students enrolled in public IHEs in their home State,[4] and based on the assumption that LEAs can provide this information at a rate of 20 students per hour, we estimate that these LEAs will require a total of 84,584 hours to comply with the requirements for Indicator (c)(11) at a total cost of $2,114,597. Divided by the total number of affected LEAs, we estimate that each LEA will require 6.31 hours to provide this information. This is a reduction from the average hours per response in the November 2009 Notice because the current estimate relates only to students who attend in-state, public IHEs rather than to all students attending an IHE. Information on the remaining students will be covered under the (c)(11) alternative standard. At $25 per hour, the average cost per LEA of meeting the requirements of this Indicator is approximately $158.

Again, based on our estimate of the total number of students enrolled in public IHEs in their home State and the assumption that IHEs can provide this information at a rate of 20 students per hour, we estimate that a total of 84,584 hours will be required for the 1,676 IHEs in the 43 affected States to respond to this requirement. On average, each IHE will need 50.47 hours to collect and report the information associated with Indicator (c)(11). This is an increase in the average hours per response in the November 2009 Notice because this estimate only relates to students who attend in-state public IHEs rather than all students attending an IHE. The remaining students will be covered under the (c)(11) alternative standard. The average burden per response increased from the burden estimated in the November 2009 Notice because the analysis now accounts for in-state public IHEs in the 43 States that have not yet met this requirement. Because 74 percent of freshmen attend in-state public IHEs, the burden in this notice is higher because it is no longer shared with private and out-of-state IHEs, which led to lower overall burden than we estimated for all IHEs in the November 2009 Notice. We expect that 1,676 IHEs will need to provide this information. At $25 per hour, the average cost per IHE for collecting and reporting this information is $1,261.75. The total estimated cost for IHEs to comply with the reporting requirements for Indicator (c)(11) is $2,114,597.

The total estimated cost for complying with the reporting requirements in Indicator (c)(11) is thus $4,280,794.

Based on information provided by the States, we expect that 47 States will need to collect and report the information associated with Indicator (c)(12). We estimate that, on average, a State will need 20 hours to collect and report the information. This represents a 20-hour reduction from our estimate in the November 2009 Notice because States have indicated that, on average, they have completed 50 percent of the work associated with this Indicator. At $30 per hour, the average cost for collecting and reporting this information is $600. The total estimated cost for States to comply with the reporting requirements for Indicator (c)(12) is $28,200 ($600 per State times 47 States).

The 1,555 IHEs located in these States must report information on the number of students who have completed at least one year's worth of college credit within two years of enrollment in the IHE. Based on data from the Digest of Education Statistics, we estimate that 1,140,855 first-time freshmen are enrolled in degree-granting in-state public IHEs in the 47 States that have not yet met this requirement. We estimate that IHEs can provide this information at a rate of 20 students per hour, which leads to approximately 57,043 hours of total effort across the affected IHEs at an estimated cost of $1,426,069. By dividing this total number of hours by the 1,555 public IHEs in the 47 States, we estimate that, on average, an IHE will need 36.68 hours to collect and report the information associated with Indicator (c)(12). This represents a reduction from the average hours per response that we estimated in the November 2009 Notice because some States with higher than average percentages of in-state students have already completed this work. We estimate a reduced average response time after excluding the IHEs from States that have completed the work from the calculation. At $25 per hour of IHE effort, we estimate that the average cost for collecting and reporting this information is $917 per IHE.

The total estimated cost for complying with the reporting requirements in Indicator (c)(12) is $1,454,269. The total estimated cost for complying with the collection and reporting requirements associated with Indicators (b)(1), (c)(11), and (c)(12) is accordingly $5,736,263.

The total estimated cost for complying with those collection and reporting requirements and the requirements in this notice is $5,870,903.

Regulatory Flexibility Act Certification:

The Secretary certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this regulatory action will affect are small LEAs receiving funds under this program and small IHEs.

This regulatory action will not have a significant economic impact on small LEAs because they will be able to meet the costs of compliance with this regulatory action using the funds provided under this program.

With respect to small IHEs, the U.S. Small Business Administration Size Standards define these institutions as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by small governmental jurisdictions, which are comprised of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. Based on data from the Department's Integrated Postsecondary Education Data System (IPEDS), up to 427 small IHEs with revenues of less than $5 million may be affected by these requirements; only 33 of these IHEs are public. The small IHEs represent only 13 percent of degree-granting IHEs. In addition, only 98,032 students (0.5 percent) enrolled in degree-granting IHEs in fall 2007 attended these small institutions; just 11,830 of these students are enrolled in small, degree-granting public IHEs. As the burden for indicators (c)(11) and (c)(12) is driven by the number of students for whom IHEs will be required to submit data, small IHEs will require significantly less effort to adhere to these requirements

[4] According to the Digest of Education Statistics, 2009, 2,240,414 first-time freshmen enrolled in public, degree-granting IHEs in fall 2008, which represented 74 percent of all first-time freshmen. See *http://nces.ed.gov/programs/digest/d09/tables/dt09_199.asp*. Also in fall 2008, 2,109,931 freshmen who graduated from high school within the last 12 months attended degree-granting IHEs in their home State, which represented 81 percent of all freshmen. See *http://nces.ed.gov/programs/digest/d09/tables/dt09_223.asp*. 1. An estimate of the number of first-time freshmen enrolled in public, degree-granting IHEs in their home State can be derived two ways. Applying the percentage of first-time freshmen attending public degree-granting IHEs to the number of first-time freshmen attending an IHE in their home State yields an estimate of 1,508,484, and applying the percentage of first-time freshmen attending an IHE in their home State to the number of first-time freshmen attending public degree-granting IHEs yields an estimate of 2,169,077. For the purposes of this estimate, the Department chooses the midpoint of these figures, which is 1,838,780. Applying the estimate (described earlier) that 94 percent of all first-time postsecondary students graduated from public schools, the Department estimates that 1,691,678 public high school graduates enroll in public degree-granting IHEs in their home State.

than will be the case for larger IHEs. Based on IPEDS data, the Department estimates that 1,873 of these students are first-time freshmen. As stated earlier in the *Summary of Costs and Benefits* section of this notice, the Department estimates that, as required by indicator (c)(11), IHEs will be able to confirm the enrollment of 20 first-time freshmen per hour. Applying this estimate to the estimated number of first-time freshmen at small IHEs, the Department estimates that these IHEs will need to spend 94 hours to respond to this requirement at a total cost of $2,350 (assuming a cost of $25 per hour).

The effort involved in reporting the number of students enrolling in a public IHE in their home State who complete at least one year's worth of college credit applicable toward a degree within two years as required by indicator (c)(12) will also apply to small IHEs, but will be limited to students who enroll in public IHEs in their home State. As discussed earlier in the *Summary of Costs and Benefits* section of this notice, the Department estimates that 81 percent of first-time freshmen who graduate from public high schools enroll in degree-granting IHEs in their home State. Applying this percentage to the estimated number of first-time freshmen enrolled in small public IHEs (1,873), the Department estimates that small IHEs will be required to report credit completion data for a total of 1,517 students. For this requirement, the Department also estimates that IHEs will be able to report the credit completion status of 20 first-time freshmen per hour. Again, applying this data entry rate to the estimated number of first-time freshmen at small public IHEs in their home State, the Department estimates that these IHEs will need to spend 76 hours to respond to this requirement at a total cost of $1,900. The total cost of these requirements for small IHEs is, therefore, $4,250; $2,068 of this cost will be borne by small private IHEs, and $2,182 of the cost will be borne by small public IHEs. Based on the total number of small IHEs across the Nation, the estimated cost per small private IHE is approximately $10, and the estimated cost per small public IHE is $66. The Department has, therefore, determined that the requirements will not represent a significant burden on small not-for-profit IHEs.

In addition, the Department believes the benefits provided under this regulatory action will outweigh the burdens on these institutions of complying with the requirements. One of these benefits will be the provision of better information on student success in postsecondary education to policymakers, educators, parents, and other stakeholders. The Department believes that the information gathered and reported as a result of these requirements will improve public accountability for performance; help States, LEAs, and schools learn from one another and improve their decision-making; and inform Federal policymaking.

A second major benefit is that better public information on State and local progress in the four reform areas will likely spur more rapid progress on those reforms, because States and LEAs that appear to be lagging in one area or another may see a need to redouble their efforts. The Department believes that more rapid progress on the essential educational reforms will have major benefits nationally, and that these reforms have the potential to drive dramatic improvements in student outcomes. The requirements that apply to IHEs should, in particular, spur more rapid implementation of pre-K–16 State longitudinal data systems.

Paperwork Reduction Act of 1995:

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

This notice of revisions contains information collection requirements previously approved under OMB control number 1810–0695.

A Federal agency cannot conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

Revisions to SFSF Indicator (c)(11) Requirements:

Under the Indicator (c)(11) alternative standard, a State must publicly report, by December 31, 2013, information on the extent to which it has data-sharing agreements with private and out-of-state public IHEs that enable the State to track its recent high school graduates. We estimate that a State will need, on average, 40 hours to collect and report this information.

Based on information available from States on implementation of their SFSF plans, we estimate that 43 States will request use of the Indicator (c)(11) alternative standard. The total estimated hours for States to comply with the Indicator (c)(11) alternative standard reporting requirements is accordingly an increase of 1,720 hours (40 hours per request times 43 requests) under collection 1810–0695.

Requirements for Requests for Extensions of Deadlines for Indicator (b)(1), (c)(11), or (c)(12) or Use of the Indicator (c)(11) Alternative Standard, and Requirements for Revised Plans for Indicators (b)(1), (c)(11), and (c)(12):

Because States that did not meet the requirements associated with an SFSF indicator or descriptor were required to submit a plan for achieving compliance that includes progress tracking and providing regular public progress reports, we do not believe that any new effort will be needed in order for a State to determine whether to request an extension of the deadline for Indicator (b)(1), (c)(11), or (c)(12) or use of the Indicator (c)(11) alternative standard.

In requesting a deadline extension or use of the alternative standard, a State must provide a description of its current capacity with respect to the applicable indicator and a signed assurance that it will comply with the revised requirements for the indicator and will submit its plan for doing so to the Department within 60 days of the request. The level of effort needed to meet these requirements should be minimal. We estimate that a State will need, on average, eight hours to complete such a request.

Based on information available from States on implementation of their SFSF plans, we estimate that 40 States will request an extension of the deadline for Indicator (b)(1), 43 States will request an extension of the deadline for Indicator (c)(11), 47 States will request an extension of the deadline for Indicator (c)(12), and 43 States will request use of the Indicator (c)(11) alternative standard. In total, States will complete an estimated 173 requests. The total estimated hours for States to comply with the requirements for requests is an increase of 1,384 hours (eight hours per request times 173 requests) under collection 1810–0695.

A State requesting a deadline extension or the use of the Indicator (c)(11) alternative standard will then be required to submit to the Department, within 60 days, a revised plan with respect to the applicable indicator that includes the specific steps the State will take to meet the revised requirements for the indicator, the budget for developing and implementing the revised plan, and the responsible agency or agencies. We estimate that a State will need, on average, eight hours to complete a plan revision consistent with the requirements.

As discussed above, States will complete an estimated 173 total requests for deadline extensions or for use of the Indicator (c)(11) alternative standard. Accordingly, we estimate that States will complete, at most, 173 plan revisions.[5] At eight hours per revision, the total estimated burden to States for complying with the plan revision requirements is an increase of 1,384 hours (eight hours per request times 173 requests) under collection 1810–0695.

The total estimated burden for complying with the requirements for requests and for plan revisions is accordingly 2,768 hours.

After requesting an extension and providing a plan, a State must collect and report the information associated with Indicators (b)(1), (c)(11), and (c)(12) by December 31, 2013. Based on information available from States on implementation of their SFSF plan, we estimate that 40 States will need to report and collect the information associated with Indicator (b)(1). At an estimated one hour per collection and report, the total estimated burden to States is an increase of 40 hours (one hour per State times 40 States) under collection 1810–0695. The average response time of one hour per collection is a one-hour reduction from the estimates we provided in the November 2009 Notice because States have indicated that, on average, they have completed 50 percent of the work associated with reporting on this indicator.

As 9 States have already met the requirement for Indicator (c)(11), we expect that 43 States will need to collect and report the information associated with Indicator (c)(11), or provide evidence that they have developed the capacity to do so, for students who attend in-state, public IHEs. We estimate that, on average, a State will need 40 hours to meet this requirement. This is a reduction from the average hours per response that we estimated in the November 2009 Notice because the current estimate only relates to students who attend in-state, public IHEs rather than all students enrolled in an IHE. The remaining students will be covered under the (c)(11) alternative standard. The current estimate will equal a 1,720 hour (40 hours per State times 43 States) increase under collection 1810–0695.

The 13,409 LEAs located in those 43 States will need to provide information associated with Indicator (c)(11). Based on an estimate of the total number of students enrolled in public IHEs in their home State,[6] and based on the assumption that LEAs can provide this information at a rate of 20 students per hour, we estimate that these LEAs will require a total of 84,584 hours to comply with the requirements for Indicator (c)(11). Divided by the total number of affected LEAs, we estimate that each LEA will require 6.31 hours to provide this information. This will be a reduction from the average hours per response estimated in the November 2009 Notice because the current estimate only relates to students who attend in-state, public IHEs rather than all students attending an IHE. Information on the remaining students will be covered under the (c)(11) alternative standard.

Again, based on our estimate of the total number of students enrolled in public IHEs in their home State and the assumption that IHEs could provide this information at a rate of 20 students per hour, we estimate that a total of 84,584 hours will be required for the 1,676 IHEs in the 43 affected States to respond to this requirement. On average, each IHE will need 50.47 hours to provide the information associated with Indicator (c)(11). This is an increase in the average hours per response estimated in the November 2009 Notice because this estimate only relates to students who attend in-state public IHEs rather than all students attending an IHE. The remaining students will be covered under the (c)(11) alternative standard. The average burden per response increased from the burden estimated in the November 2009 Notice because the analysis now accounts for in-state public IHEs in the 43 States that have not yet met this requirement. Because 74 percent of freshmen attend in-state public IHEs, the burden under these revisions is higher because it is no longer shared with private and out-of-state IHEs, which led to an estimate of a lower overall burden for all IHEs in the November 2009 Notice. We expect that 1,676 IHEs will need to provide this information.

The total estimated hours for complying with the requirements of Indicator (c)(11) is 170,888.

We estimate that the State burden for collecting and reporting the information associated with Indicator (c)(12), or providing evidence that the State has developed the capacity to do so, will be approximately 20 hours per State. This is a 20-hour reduction from the estimates in the November 2009 Notice because States have indicated that they have, on average, completed 50 percent of the work for this Indicator. Based on information provided by the States, we expect that 47 States will need to provide this information. Accordingly, the total burden to States is an increase of 940 hours (20 hours per State times 47 States) under collection 1810–0695.

The 1,555 IHEs located in these States must report information on the number of students who have completed at least one year's worth of college credit within two years of enrollment in the IHE. Based on data from the Digest of Education Statistics, we estimate that 1,140,855 first-time freshmen are enrolled in degree-granting in-state public IHEs in the 47 States that have not yet met this requirement. We estimate that IHEs can provide this information at a rate of 20 students per hour, which leads to approximately 57,043 hours of total effort across the affected IHEs. By dividing the this total number of hours by the 1,555 public IHEs in the 47 States, we estimate that, on average, an IHE will need 36.68 hours to collect and report the

[5] A State requesting both an extension of the deadline for Indicator (c)(11) (as it applies to data on student enrollment in in-state public IHEs) and use of the alternative standard for that indicator (as it applies to data on student enrollment in private and out-of-state public IHEs) could address both of these requests in a single plan revision for the indicator. Consequently, the total number of completed plan revisions will likely be lower than this estimate.

[6] According to the Digest of Education Statistics, 2009, 2,240,414 first-time freshmen enrolled in public, degree-granting IHEs in fall 2008, which represented 74 percent of all first-time freshmen. See *http://nces.ed.gov/programs/digest/d09/tables/dt09_199.asp.* Also in fall 2008, 2,109,931 freshmen who graduated from high school within the last 12 months attended degree-granting IHEs in their home State, which represented 81 percent of all freshmen. See *http://nces.ed.gov/programs/digest/d09/tables/dt09_223.asp.* 1. An estimate of the number of first-time freshmen enrolled in public, degree-granting IHEs in their home State can be derived two ways. Applying the percentage of first-time freshmen attending public degree-granting IHEs to the number of first-time freshmen attending an IHE in their home State yields an estimate of 1,508,484, and applying the percentage of first-time freshmen attending an IHE in their home State to the number of first-time freshmen attending public degree-granting IHEs yields an estimate of 2,169,077. For the purposes of this estimate, the Department chooses the midpoint of these figures, which is 1,838,780. Applying the estimate (described earlier) that 94 percent of all first-time postsecondary students graduated from public schools, the Department estimates that 1,691,678 public high school graduates enroll in public degree-granting IHEs in their home State.

information associated with Indicator (c)(12). The average hours per response is less than the estimate in the November 2009 Notice because some States with higher than average percentages of in-state students have already completed this work. Excluding the IHEs from these States from the calculations led to a reduced average response time.

The total estimated burden hours for complying with the collection and reporting requirements for Indicator (c)(12) is thus 57,983.

The estimated burden hours for complying with the collection and reporting requirements associated with the Indicator (c)(11) alternative standard is discussed above.

The total estimated burden hours for complying with the collection and reporting requirements associated with Indicators (b)(1), (c)(11) and (c)(12) is accordingly 228,911 hours.

The total estimated burden for complying with the requirements in this notice is an increase of 233,399 hours under collection 1810–0695.

COLLECTION OF INFORMATION

Information collection	OMB Control number and estimated change in burden.
This notice of revisions establishes an extension for collecting and reporting information associated with Indicators (b)(1), (c)(11), and (c)(12); an alternative standard for Indicator (c)(11); establishes requirements for requests for extensions of deadlines for Indicators (b)(1), (c)(11), and (c)(12); and establishes requirements for revised plans for Indicators (b)(1), (c)(11), and (c)(12).	OMB 1810–0695. The burden will increase by 233,399 hours.

Assessment of Educational Impact: In the NPR and in accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, we requested comments on whether the proposed requirements would require transmission of information that any other agency or authority of the United States gathers or makes available.

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

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

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

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.394 (Education Stabilization Fund) and 84.397 (Government Services Fund).

Dated: January 26, 2012.

Arne Duncan,

Secretary of Education.

[FR Doc. 2012–2125 Filed 1–30–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Subtitle B, Chapter II

[Docket ID ED–2011–OS–0010]

RIN 1894–AA03

State Fiscal Stabilization Fund Program

AGENCY: Department of Education.

ACTION: Notice of final requirement.

SUMMARY: The Secretary of Education (Secretary) is adopting as a final requirement, without change, the interim final requirement for the State Fiscal Stabilization Fund (SFSF) program that extended to January 31, 2012, the deadline by which States must collect and publicly report data and other information on various SFSF indicators and descriptors.

DATES: This final requirement is effective January 31, 2012.

FOR FURTHER INFORMATION CONTACT: James Butler, State Fiscal Stabilization Fund Program, U.S. Department of Education, 400 Maryland Ave. SW., room 7E214, Washington, DC 20202–0008. Telephone: (202) 260–9737 or by email: *State.Fiscal.Fund@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Background

On September 23, 2011, the Secretary published in the **Federal Register** (76 FR 59036) an interim final requirement extending, to January 31, 2012, the deadline for collecting and publicly reporting data and other information on various SFSF indicators and descriptors. The interim final requirement became effective on the date of its publication in the **Federal Register.** At the time the interim final requirement was published, the Secretary requested public comment on whether an extension of the SFSF deadline to January 31, 2012, was warranted.

As explained in the Summary section of the interim final requirement, the Secretary extended the deadline in response to the many challenges and competing priorities that States were facing in meeting the SFSF data collection and reporting requirements by the original September 30, 2011, deadline.

There are no differences between the interim final requirement and this final requirement.

Public Comment

In response to our request for public comments on the interim final requirement, two parties submitted comments. Specifically, two States commented on the efficacy of collecting student enrollment data to meet the requirements of SFSF Indicator (c)(11) and the Department's failure, in those States' view, to indicate that a specific third-party postsecondary data-matching company could be used to meet those requirements. These comments do not relate to the deadline extension established in the interim final requirement nor do they address the further extensions proposed in a separate SFSF notice that was published in the **Federal Register** on the same day as the interim final requirement (i.e., the notice of proposed revisions to certain data collection and reporting requirements, and proposed priority (76 FR 59074) (notice of proposed revisions)). Because these comments are outside the scope of the interim final requirement and notice of proposed revisions, we do not discuss them further in this preamble.

Final Requirement

Each State must collect and publicly report data and other information on the SFSF indicators and descriptors by January 31, 2012.

Waiver of Delayed Effective Date

The Administrative Procedure Act (5 U.S.C. 553) requires that a substantive rule be published at least 30 days before its effective date, unless the rule grants or recognizes an exemption or relieves a restriction. (5 U.S.C. 553(d)(1)). Because we are granting States an extension of the September 30, 2011, deadline, the 30-day delayed effective date is not required. Accordingly, this final requirement is effective on the day it is published.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is significant and, therefore, subject to the requirements of the Executive order and review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines ''significant regulatory action'' as an action likely to result in a rule that may (1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an economically significant rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

It has been determined that this regulatory action is significant under section 3(f)(4) of the Executive order.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

Summary of Costs and Benefits

In accordance with both Executive orders, we have assessed the potential costs and benefits of the regulatory action to extend the current deadline by which a State must meet the requirements of the SFSF indicators and descriptors and have determined that the final requirement will not impose additional costs to grantees or the Federal government. Additionally, the Department has determined that this requirement does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Benefits

The extension of the deadline by which States have to collect and publicly report data and other information on various SFSF indicators and descriptors helps States to balance competing priorities without any additional cost to the grantees or Federal government.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions; respondents can provide the requested data in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the Department can properly assess the impact of collection requirements on respondents.

A Federal agency cannot conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the SFSF Phase 2 application, the Department established indicators and descriptors that required States to collect and publicly report data and other information. The Office of Management and Budget approved that information collection under an emergency review (OMB Control Number 1810–0695). The Department's authority under that information collection expired and the Department attained approval from OMB to reinstate the collection under the same control number, OMB Control Number 1810–0695. As stated in this preamble, we are extending the deadline from September 30, 2011, to January 31, 2012, for collecting and publicly reporting data and other information on various SFSF indicators and descriptors. Please note that the paperwork burden under OMB Control Number 1810–0695 is not due to, or changed by, the extension of the deadline date. For a full discussion of the paperwork burden under this control number, please see the *Paperwork Reduction Act of 1995* section in the interim final requirement published in the **Federal Register** on September 23, 2011 (76 FR 59036, 59038).

Regulatory Flexibility Act Certification

The Secretary certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities. Small entities will not incur any additional costs due to the extension of the deadline by which States have to collect and publicly report data and other information on various SFSF indicators and descriptors.

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

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: American Recovery and Reinvestment Act of 2009, Division A, Title XIV—State Fiscal Stabilization Fund, Public Law 111–5; 20 U.S.C. 1221e–3 and 3474.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.394 (Education Stabilization Fund) and 84.397 (Government Services Fund).

Dated: January 26, 2012.

Arne Duncan,

Secretary of Education.

[FR Doc. 2012–2123 Filed 1–30–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 38

RIN 2900–AO12

Parents Eligible for Burial

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends existing regulations to reflect a new statutory authority to extend eligibility for burial in a national cemetery to include parents of certain veterans, as authorized by the Veterans' Benefits Act of 2010 (the Act), enacted on October 13, 2010. The Act authorizes the Secretary of Veterans Affairs to inter the biological or legally adoptive parents of a deceased veteran if the deceased veteran is a hostile casualty or dies from a training-related injury, is interred in a VA national cemetery in a gravesite with available space, and has no spouse or child who is buried, or surviving spouse or child who, upon death, may be eligible for burial, in a national cemetery.

DATES: *Effective Date:* This rule is effective January 31, 2012.

Applicability Date: In accordance with section 502(e) of the Act, this amendment applies to parents who die on or after October 13, 2010, of veterans who die on or after October 7, 2001.

FOR FURTHER INFORMATION CONTACT: For eligibility issues, contact Robert Morris, Office of Field Programs (41A), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington DC 20420. Telephone: (202) 461–6365 (this is not a toll-free number). For regulatory issues, contact Jane Kang, Program Analyst, Legislative and Regulatory Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. Telephone: (202) 461–6216 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The goal of the National Cemetery Administration is to ensure that the burial needs of veterans and eligible family members are met by providing burial and memorialization in VA national cemeteries.

Subsection (a)(9) of 38 U.S.C. 2402, as added by section 502 of the Veterans' Benefits Act of 2010, authorizes the interment of parents of certain deceased veterans interred in VA national cemeteries, if the Secretary determines there is available space at the gravesite where the deceased veteran is interred. 38 U.S.C. 2402(a)(9); Public Law 111–275, sec. 502(b), 124 Stat. 2864, 2882 (Oct. 13, 2010). Authority to inter is limited to the biological or legally adoptive parents of a veteran who: (1) Is a ''hostile casualty'' or died from a ''training-related injury''; (2) is interred in a VA national cemetery in a gravesite with available space; and (3) at the time of the parent's death has no spouse or child who is buried, or surviving spouse or child who, upon death, may be eligible for burial, in a VA national cemetery as the spouse, surviving spouse, or minor child of the veteran. For purposes of eligibility for burial in a national cemetery, the term ''veteran'' includes a person who died while in the active military, naval, or air service. 38 U.S.C. 2402(a)(1). Revision of 38 CFR 38.620 is necessary to reflect the new statutory authority for VA to inter qualifying parents of certain veterans in VA national cemeteries.

Under prior law, parents of veterans were not eligible for burial at a VA national cemetery unless they had attained eligibility through military service or marriage. However, recognizing the unique burden on the surviving parents of fallen servicemembers, the Act provides burial eligibility to those parents whose unmarried veteran son or daughter dies due to combat or training-related injuries. The Act also recognizes that national cemeteries are national shrines to honor eligible veterans and that gravesites should not be taken from those who have earned the right to burial in a national cemetery by serving their country. The Act accomplishes both goals by limiting the circumstances under which a parent is eligible for burial.

First, burial eligibility is limited to the biological or legally adoptive parents of a deceased veteran. The Act defines a

''parent'' as ''a biological father or a biological mother or, in the case of adoption, a father through adoption or a mother through adoption.'' 38 U.S.C. 2402(b)(1). This definition is intended not only to limit the type of parents who may be buried within the gravesite, but also to limit the number of parents who may be eligible for this benefit. *See* H. Rpt. No. 111–324, at 9 (2009) (''The [House Committee on Veterans' Affairs] also intends that no more than two parents may be eligible for this benefit.''). A veteran can have only two biological parents who may be eligible for interment. In the case of adoption, an adoptive parent may be eligible for interment in the place of a biological parent but not in addition to a biological parent. Thus, we interpret the statute to limit eligibility for parental interment to no more than two qualifying deceased parents within the gravesite of their deceased veteran child.

Second, at the time of the parent's death, the deceased veteran must not have a spouse or child who is buried, or a surviving spouse or child who, upon death, may be eligible for burial, in a VA national cemetery based on that individual's relationship to the veteran.

Third, under the Act, the Secretary must determine that space is available at the veteran's gravesite for a parent of that veteran to be eligible for burial. The Act itself provides a parent with eligibility for burial only ''if the Secretary determines that there is available space at the gravesite.'' 38 U.S.C. 2402(a)(9)(A). Accordingly, the Act requires the Secretary to determine whether there is sufficient room at the particular gravesite to accommodate the burial of a parent. If space is available, then a parent may be eligible for burial, but if space is not available, then a parent is not eligible for burial.

Finally, for a parent of a deceased veteran to be eligible for burial in a national cemetery, the deceased veteran must meet the statutory definition of a ''hostile casualty'' or have died from a ''training-related injury.'' The Act defines the term ''hostile casualty'' as ''a member of the Armed Forces [who] dies as the direct result of hostile action with the enemy, while in combat, while going to or returning from a combat mission if the cause of death was directly related to hostile action, or while hospitalized or undergoing treatment at the expense of the United States for injury incurred during combat, and includes a person killed mistakenly or accidentally by friendly fire directed at a hostile force or what is thought to be a hostile force.'' 38 U.S.C. 2402(b)(2). The term ''hostile casualty'' does not include ''a person who dies due to the elements, a self-inflicted wound, combat fatigue, or a friendly force while the person was in an absent-without-leave, deserter, or dropped-from-rolls status or was voluntarily absent from a place of duty.'' *Id.* The Act defines the term ''training-related injury'' as ''an injury incurred by a member of the Armed Forces while performing authorized training activities in preparation for a combat mission.'' 38 U.S.C. 2402(b)(3). The provisions of section 502 of the Act apply only to a qualifying parent who dies on or after October 13, 2010, and whose veteran child is a ''hostile casualty'' or dies from a ''training-related injury'' on or after October 7, 2001. Public Law 111–275, sec. 502(e), 124 Stat. at 2883. The above-mentioned definitions have been incorporated into the regulatory text of this rule.

Administrative Procedure Act

The changes made by this final rule merely reflect statutory provisions or VA's interpretation of statutory requirements. The primary purpose of the amendment is to conform § 38.620 to the statute and implement VA's interpretation of 38 U.S.C. 2402(a)(9) and (b). Section 553(b) of title 5, U.S. Code, does not apply to restatement of statutory terms, nor to interpretive rules. Accordingly, there is a basis for dispensing with prior notice and opportunity to comment. Moreover, under section 553(d), such rules do not require 30 days prior notice before they may become effective. Therefore, there is a basis for dispensing with the delayed effective date provisions of 5 U.S.C. 553(d).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the 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 effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

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

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will directly affect only individual beneficiaries and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

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

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Catalog of Federal Domestic Assistance Program Number

The Catalog of Federal Domestic Assistance program number for this document is 64.201, National Cemeteries.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and

submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on January 4, 2012, for publication.

List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Veterans cemeteries.

Dated: January 26, 2012.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 38 is amended as follows:

PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

■ 1. The authority citation for part 38 is revised to read as follows:

Authority: 38 U.S.C. 107, 501, 512, 2306, 2402, 2403, 2404, 2408, 2411, 7105.

■ 2. Amend § 38.620 to add paragraph (i) to read as follows:

§ 38.620 Persons eligible for burial.

* * * * *

(i)(1) Any biological or legally adoptive parent who dies on or after October 13, 2010, and whose deceased child:

(i) Is a veteran who dies on or after October 7, 2001, and

(A) Except as provided in paragraph (i)(2) of this section, dies as the direct result of hostile action with the enemy, while in combat, while in transit to or from a combat mission if the cause of death is directly related to hostile action, or while hospitalized or undergoing treatment at the expense of the United States for injury incurred during combat; or

(B) Is killed mistakenly or accidentally by friendly fire that was directed at a hostile force or what was thought to be a hostile force; or

(C) Died from a training-related injury while performing authorized training activities in preparation for a combat mission;

(ii) Is interred in a national cemetery; and

(iii) Has no spouse or child who is buried, or surviving spouse or child who, upon death, may be eligible for burial, in a national cemetery under paragraph (e) of this section.

(2) A parent is not eligible for burial if the veteran dies due to the elements, a self-inflicted wound, combat fatigue, or a friendly force while the veteran was in an absent-without-leave, deserter, or dropped-from-rolls status or was voluntarily absent from a place of duty.

(3)(i) A parent may be buried only within the veteran child's gravesite.

(ii) No more than two parents are eligible for burial per deceased veteran child.

(4) Parent burial eligibility is subject to a determination by the Secretary that there is available space within the veteran's gravesite.

[FR Doc. 2012–2043 Filed 1–30–12; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–9623–8]

Nonconformance Penalties for On-Highway Heavy Heavy-Duty Diesel Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is taking final action to make nonconformance penalties (NCPs) available to manufacturers of heavy heavy-duty diesel engines in model years 2012 and 2013 for emissions of oxides of nitrogen (NO_X). In general, the availability of NCPs allows a manufacturer of heavy-duty engines (HDEs) whose engines fail to conform to specified applicable emission standards, but do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty to the United States Government. The upper limit associated with these NCPs is 0.50 grams of NO_X per horsepower-hour.

DATES: This rule is effective January 31, 2012. We will accept comments on this interim final rule until April 4, 2012.

ADDRESSES: Submit your comments, to Docket EPA–HQ–OAR–2011–1000, by one of the following methods: *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

Email: a-and-r-docket@epa.gov.

Fax: EPA: (202) 566–9744.

Mail: EPA: Air Docket, Environmental Protection Agency, EPA Docket Center, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

Hand Delivery: EPA: EPA Docket Center, (Air Docket), U.S. Environmental Protection Agency, EPA West Building, 1301 Constitution Ave. NW., Room: 3334, Mail Code: 2822T, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2011–1000. See the **SUPPLEMENTARY INFORMATION** section on ''Public Participation'' for additional instructions on submitting written comments.

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.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy in the docket. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the following locations:

EPA: EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Chuck Moulis, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4826; Email *moulis.charles@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities

This action affects you if you produce or import new heavy heavy-duty diesel engines which are intended for use in highway vehicles such as trucks and buses or heavy-duty highway vehicles. The table below gives some examples of entities that may be affected by these regulations. But because these are only examples, you should carefully examine the regulations in 40 CFR part 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS [a] Codes	Examples of potentially regulated entities
Industry	336112 336120	Engine and truck manufacturers.

[a] North American Industry Classification System (NAICS).

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I. Statutory Authority and Regulatory Background

A. Statutory Authority

Section 206(g) of the Clean Air Act (the Act), 42 U.S.C. 7525(g), allows EPA to promulgate regulations permitting manufacturers of heavy-duty engines (HDEs) or heavy-duty vehicles (HDVs) to receive a certificate of conformity for HDEs or HDVs that exceed a federal emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays a nonconformance penalty (NCP) established by rulemaking. Congress adopted section 206(g) in the Clean Air Act Amendments of 1977 as a response to a concern with requiring technology-forcing emissions standards for heavy-duty engines. The concern was if strict technology-forcing standards were promulgated, then some manufacturers might be unable to comply initially and would be forced out of the marketplace. NCPs were intended to remedy this concern. The nonconforming manufacturers would have a temporary alternative that would permit them to sell their engines or vehicles by payment of a penalty. At the same time, conforming manufacturers would not suffer a competitive disadvantage compared to nonconforming manufacturers, because the NCPs would be based, in part, on money saved by the nonconforming manufacturer.

Under section 206(g)(1), NCPs may be offered for HDVs or HDEs. The penalty may vary by pollutant and by class or category of vehicle or engine. Section 206(g)(3) requires that NCPs:

- Account for the degree of emission nonconformity;
- Increase periodically to provide incentive for nonconforming manufacturers to achieve the emission standards; and
- Remove the competitive disadvantage to conforming manufacturers.

Section 206(g) authorizes EPA to require testing of production vehicles or engines in order to determine the emission level upon which the penalty is based. If the emission level of a vehicle or engine exceeds an upper limit of nonconformity established by EPA through regulation, the vehicle or engine would not qualify for an NCP under section 206(g) and no certificate of conformity could be issued to the manufacturer. If the emission level is below the upper limit but above the standard, that emission level becomes the ''compliance level,'' which is also the benchmark for warranty and recall liability. The manufacturer who elects to pay the NCP is liable for vehicles or engines that exceed the compliance level in use. The manufacturer does not have in-use warranty or recall liability for emissions levels above the standard but below the compliance level.

B. Background Regarding Nonconformance Penalty Rules

Since the promulgation of the first NCP rule in 1985, subsequent NCP rules generally have been described as continuing ''phases'' of the initial NCP rule. The first NCP rule (Phase I), sometimes referred to as the ''generic'' NCP rule, established three basic criteria for determining the eligibility of emission standards for nonconformance penalties in any given model year (50 FR 35374, August 30, 1985). As described in section IV.A.(1) of this Interim Final Rule, we have determined that these criteria have been met for one manufacturer. (For regulatory language, see 40 CFR 86.1103–87.) The first criterion is that the emission standard in question must become more difficult to meet. This can occur in two ways, either by the emission standard itself becoming more stringent, or due to its interaction with another emission standard that has become more stringent. Second, substantial work must be required in order to meet the emission standard. EPA considers ''substantial work'' to mean the application of technology not previously used in that vehicle or engine class/subclass, or a significant modification of existing technology, in order to bring that vehicle/engine into compliance. EPA does not consider minor modifications or calibration changes to be classified as substantial work. Third, EPA must find that a manufacturer is likely to be noncomplying for technological reasons (referred to in earlier rules as a ''technological laggard''). Prior NCP rules have considered such a technological laggard to be a manufacturer who cannot meet a particular emission standard due to technological (not economic) difficulties and who, in the absence of NCPs, might be forced from the marketplace. As described in section IV.A.(1) of this Interim Final Rule, we have determined that this criterion has been met for one manufacturer. This manufacturer notified us late in 2011 that it would not have enough emission credits for its model year 2012 heavy heavy-duty engines.

The criteria and methodologies established in the 1985 NCP rule have since been used to determine eligibility and to establish NCPs for a number of heavy-duty emission standards. Phases II, III, IV, V, and VI published in the period from 1985 to 2002, established NCPs that, in combination, cover the full range of heavy-duty—from heavy light-duty trucks (6,000–8,500 pounds gross vehicle weight) to the largest diesel truck and urban bus engines. NCPs have been established for hydrocarbons (HC), carbon monoxide (CO), nitrogen oxides (NO_X), and particulate matter (PM). The most recent NCP rule (67 FR 51464, August 8, 2002) established NCPs for the 2004 and later model year NO_X standard for heavy-duty diesel engines (HDDEs). The NCP rulemaking phases are summarized in greater detail in the Interim and Proposed Technical Support Document for this rulemaking.

C. 2007 and 2010 NO_X Standards

The 0.20 g/hp-hr NO_X standard that applies for current and future heavy-duty engines was adopted January 18, 2001 (66 FR 5001), and first applied in the 2007 model year. However, because of phase-in provisions adopted in that

rule and use of emission credits generated by manufacturers for early compliance, manufacturers have been able to continue to produce engines with NO_X emissions greater than 0.20 g/hp-hr. The phase-in provisions ended after model year 2009 so that the 0.20 g/hp-hr NO_X standard was fully phased-in for model year 2010. Equally important, the cap applicable to Family Emission Limits (FELs) [1] for credit using engine families was lowered to 0.50 g/hp-hr beginning in model year 2010. Because of these changes that occurred in model year 2010, the 0.20 g/hp-hr NO_X emission standard is often referred to as the 2010 NO_X emission standard, even though it applied to engines as early as model year 2007.

While some manufacturers retain NO_X emission credits that currently allow them to produce engines with NO_X emissions as high as 0.50 g/hp-hr, we expect that one of these manufacturers could exhaust its supply of heavy heavy-duty engine NO_X credits as early as this year.

II. Justification for This Interim Final Rule

EPA is taking this action as an interim final rule without prior proposal and public comment because EPA finds for good cause under section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* that notice-and-comment are impracticable, unnecessary or contrary to the public interest in this instance. Section 307(d) of the CAA states that in the case of any rule to which section 307(d) applies, notice of proposed rulemaking must be published in the **Federal Register** (CAA § 307(d)(3)). The promulgation or revision of regulations under section 206 of the CAA is generally subject to section 307(d). However, section 307(d) does not apply to any rule referred to in subparagraphs (A) or (B) of section 553(b) of the APA.

In reaching this determination, EPA considered several factors: (1) Taking interim final action avoids the possibility of an engine manufacturer from being unable to certify a complete product line of engines for model year 2012 and/or 2013; (2) the Agency is only amending limited provisions in existing NCP regulations in 40 CFR part 86; (3) the rule's duration is limited (see, *e.g., Small Refiner Lead Phase-Down Task Force* v. *EPA,* 705 F.2d 506 (D.C. Cir. 1983)); and (4) there is no risk to the public interest in allowing manufacturers to certify using NCPs before the point at which EPA could make them available through a full notice-and-comment rulemaking.

EPA is promulgating NCPs for heavy heavy-duty diesel engines in this Interim Final Rule because we have concluded that there is a significant likelihood that they will be needed during the 2012 model year. One manufacturer is currently using NO_X credits to certify all of its heavy heavy-duty diesel engines at nearly 0.50 g/hp-hr. Based on its current credit balance and projected sales for this service class, we do not expect this manufacturer to have sufficient credits to cover its entire model year 2012 production. Since we have not certified any of this manufacturer's model year 2012 heavy heavy-duty diesel engines without the need for emission credits, we believe it is possible that it may need NCPs during this model year. We have concluded that the very earliest we could make NCPs available through a full notice-and-comment rulemaking, would be late in model year 2012, which would likely be after the manufacturer's credit supply has been depleted. Thus, making NCPs available through this Interim Final Rule is the only way to ensure that the manufacturer's depletion of its NO_X credits will not force it to cease production of heavy heavy-duty engines this year.

The second reason for invoking the good cause exemption is that EPA is establishing NCPs based on the existing regulatory provisions in 40 CFR part 86, subpart L, and is only adding new penalty parameters to reflect the costs of compliance specific to the 2010 NO_X standard. In this Interim Final Rule, EPA is not revisiting the regulatory provisions that specify how to calculate penalties from the penalty parameters, how to determine a compliance level, or how to report to EPA. Since these provisions have been established through notice-and-comment rulemaking several times before, interested parties have had opportunity to comment on them. Thus, it is unnecessary to provide an additional opportunity to comment prior to issuing this interim final rule.

Third, at most, this interim final rule will address only heavy heavy-duty engines in model years 2012 and 2013, and by its own terms is applicable for less than two calendar years. It is thus limited in duration. EPA is publishing a parallel notice of proposed rulemaking simultaneously with this rule and EPA intends to take appropriate final action on that rule as soon as possible. With due consideration to comments, the interim NCPs being established in this IFR will cease to be applicable once the follow up Final Rule is effective.

Finally, it is important to note that NCPs are set at a level that is intended to ensure that manufacturers only use them when there is no other path to certification. Thus, should EPA be incorrect in its projection that NCPs will be needed during model year 2012, the fact that they will be available on an interim basis will have no practical significance because manufacturers will not use them.

For the reasons explained above, EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Nonetheless, EPA is providing until April 4, 2012 for submission of public comments following this action. EPA will consider all written comments submitted in the allotted time period in the context of the accompanying notice of proposed rulemaking.

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. APA section 553(d) excepts from this provision any action that grants or recognizes an exemption or relieves a restriction. Since today's action can be considered to either effectively grant an exemption from meeting the current applicable NO_X emission standard or relieve a restriction that would otherwise prevent a manufacturer from certifying, EPA is making this action effective immediately upon publication.

III. Notice of Proposed Rulemaking

EPA is also simultaneously publishing a parallel Notice of Proposed Rulemaking (NPRM) addressing NCPs for heavy-duty engines. Among other things, that NPRM seeks comment on NCPs for model year 2012 and later heavy heavy-duty diesel engines, as well as for medium heavy-duty diesel engines. The NCPs in the Final Rule for that NPRM will eventually supersede the NCPs being promulgated in this Interim Final Rule, especially for model year 2013 and later. For example, should the follow-up Final Rule be published by September 14, 2012, it would likely have an effective date of November 13, 2012. Should that Final Rule establish different NCPs for heavy heavy-duty engines, those new NCPs would be available for any engines produced on or after November 13, 2012, instead of the interim NCPs being finalized today.

Note that Docket Number EPA–HQ–OAR–2011–1000 is being used for both the Interim Final Rule and the parallel NPRM.

[1] FELs are emission levels specified by the manufacturer that serve as the applicable emission standard for engines participating in the emission averaging program. The FEL cap is the highest FEL to which a manufacturer may certify an engine using emission credits.

IV. Nonconformance Penalties for 2012 and Later Heavy-Duty Engines and Heavy-Duty Vehicles

A. NCP Eligibility: Emission Standards for Which NCPs Are Being Established in This Interim Final Rule

(1) Heavy Heavy-Duty Diesel NO_X Standard

As discussed in section I.B., EPA must determine that three criteria are met in order to determine that an NCP should be established in any given model year. For the 2010 NO_X standard, we believe these criteria have been met for heavy heavy-duty diesel engines, and it is therefore appropriate to establish NCPs for this standard for the current model year and later.

The first criterion requires that the emission standard in question must become more difficult to meet. This is the case with the 2010 NO_X standard. The previous emission standard for this category is a combined NMHC + NO_X standard of 2.4 g/hp-hr, or optionally a 2.5 g/hp-hr NMHC + NO_X with a limit of 0.5 g/hp-hr NMHC.[2] The 2010 (*i.e.,* current) standards are 0.20 g/hp-hr for NO_X and 0.14 g/hp-hr for NMHC. When promulgated, the Agency concluded that the 0.20 g/hp-hr NO_X standard was a technology forcing standard. Second, all heavy heavy-duty diesel engines currently certified to the 0.20 g/hp-hr standard without using credits are using new aftertreatment systems to meet this standard.[3] It is therefore logical to conclude the standard is more difficult to meet and that substantial work was required to meet the emission standard.

Third, EPA is promulgating NCPs for heavy heavy-duty diesel engines because we have concluded that there is a significant likelihood that they will be needed by an engine manufacturer that has not yet met the requirements for technological reasons. One manufacturer is currently using NO_X credits to certify all of its heavy heavy-duty diesel engines at nearly the FEL cap level of 0.50 g/hp-hr. Based on its current credit balance and projected sales for this service class, we do not expect this manufacturer to have sufficient credits to cover its entire model year 2012 production. This manufacturer intends to use a different technology to meet the NO_X standard but has not yet submitted an application for the 2012 model year with NO_X emissions at or below the 0.20 g/hp-hr standard. Since it has not yet submitted an application for certification for any model year 2012 heavy heavy-duty diesel engines that would not require emission credits, we believe it is a reasonable possibility that this manufacturer may not be able to comply for technological reasons with respect to the 2010 NO_X standards for heavy heavy-duty diesel engines in the 2012 and 2013 model years. This manufacturer notified us late in 2011 that it would not have enough emission credits for its model year 2012 heavy heavy-duty engines.

B. NCP Eligibility: Emission Standards for Which We Are Not Establishing NCPs in This Interim Final Rule

This section identifies the emission standards for which we are not establishing NCPs in this Interim Final Rule. Note that EPA is issuing a parallel Notice of Proposed Rulemaking (NPRM) proposing and/or seeking comment on NCPs for certain other emission standards.

(1) Light and Medium Heavy-Duty Diesel NO_X Standards

EPA believes that the first two NCP criteria have been met for the 2010 NO_X standard for light and medium heavy-duty diesel engines. However, we have not determined that any manufacturer of light or medium heavy-duty diesel engines will be unable to certify to the 2010 NO_X standard for the 2012 and 2013 model years. We believe that any manufacturer unable to achieve 0.20 g/hp-hr will have sufficient NO_X emission credits to continue certifying light heavy-duty and medium heavy-duty engines through the 2013 model year. (See the parallel NPRM.)

(2) Heavy-Duty Gasoline Engine Standards

In a final rule published on January 18, 2001 (66 FR 5001), EPA established more stringent emission standards for all heavy-duty gasoline (or ''Otto-cycle'') vehicles and engines. These standards took two forms: A chassis-based set of standards for complete vehicles under 14,000 pounds GVWR (the chassis-based program), and an engine-based set of standards for all other Otto-cycle heavy-duty engines (the engine-based program). Each of the two programs has an associated averaging, banking, and trading (ABT) program. The new standards generally took effect starting with the 2008 model year, and all manufacturers are in compliance with them.

(3) Heavy-Duty Diesel Engine NMHC, CO, and PM Standards

EPA adopted new NMHC and PM for model year 2007 and later heavy-duty engines in the same rule that set the 2010 NO_X emission standard (66 FR 5001, January 18, 2001). The CO standard was not changed. We are not considering NCPs for any of these other standards because all manufacturers are already fully compliant with them.

(4) Heavy-Duty CO_2 Standards

In a final rule published on September 15, 2011 (76 FR 57106), EPA established new CO_2 emission standards for all heavy-duty vehicles and engines. We are not considering NCPs for any of these standards at this time because we currently do not have a basis to conclude that a technological laggard is likely to develop.

We are adding a new regulatory provision related to these CO_2 emission standards. The provision prohibits generating CO_2 emission credits from engines paying NCPs for NO_X. Given the general tradeoff between CO_2 and NO_X emissions, we were concerned that a manufacturer capable of meeting the 0.20 g/hp-hr NO_X emission standard could choose to pay an NCP in order to generate CO_2 credits by recalibrating its engines for higher NO_X emissions and lower CO_2. There are two reasons this would be inappropriate. First, emission credits are supposed to provide an incentive for a manufacturer to go beyond what is normally required to meet emission standards. However, allowing manufacturers to generate CO_2 credits while paying NCPs would actually create an incentive for manufacturers to do less than is required to meet the emission standards. Equally important, NCPs have always been intended for manufacturers that cannot meet an emission standard for technological reasons rather than manufacturers choosing not to comply.

V. Penalty Rates

This rulemaking is the most recent in a series of NCP rulemakings. These are referred to as Phases and are referenced below.[4] The discussions of penalty rates

[2] NMHC stands for non-methane hydrocarbons, which is a measure of total hydrocarbons with the methane emissions subtracted out. For typical on-highway diesel fueled heavy-duty engines, methane emissions are on the order of 10 percent of the total hydrocarbon emissions.

[3] For this notice, EPA describes those manufacturers that have achieved the 0.20 g/hp-hr emission standard as ''conforming'', ''compliant'' or ''complying'' manufacturers, and those that have not as the ''nonconforming'', ''noncompliant'' or ''noncomplying'' manufacturers. However, it is important to clarify that manufacturers certifying above the 0.20 g/hp-hr NO_X emission standard using emission credits are in compliance with regulations as long as they have enough emission credits to offset their total NO_X emissions above the standard.

[4] The previous NCP rules include: The Phase VI rulemaking (67 FR 51464, August 8, 2002), Phase IV rulemaking (58 FR 68532, December 28, 1993), Phase III rulemaking (55 FR 46622, November 5, 1990), the Phase II rulemaking (50 FR 53454,

Continued

in those rulemakings are incorporated by reference. This section briefly reviews the penalty rate formula originally promulgated in the Phase I rule (currently found at 40 CFR 86.1113–87) and discusses how EPA arrived at the penalty rates in this Interim Final Rule.

The penalty rates being established in this rule rely on the existing NCP regulatory structure. Thus, the only changes being made to the regulations are updates to the cost parameters to reflect the compliance costs for the 2010 standards, setting of the upper limit, and clarifying in § 86.1104–91 that EPA may set the upper limit at a level below the previous standard if we determine that the lower level is achievable by all engines.

Because these penalties are being adopted in an Interim Final Rule, we are limiting their applicability to model years 2012 and 2013. Prior to model year 2014, we will promulgate a Final Rule addressing NCPs following notice and comment. Note that we may promulgate the Final Rule as soon as later this calendar year, and as applicable, it would supersede the provisions of this Interim Final Rule after it becomes effective.

The NCP rates being adopted in this IFR are specified for model year 2012. As required by the Clean Air Act, the existing regulations include a formula that increases the penalty rates with each new model year. We will apply this annual adjustment formula to the NCPs by setting the 2012 model year as year number one. Traditionally, NCPs are available the first year of the new emission standard and that becomes year one for purposes of the annual escalator. However, EPA believes the 2012 model year is the correct year for the first year of the escalator calculation even though the NO_X emission standard began in 2010.

A. Parameters

As in the previous NCP rules, we are specifying the NCP formula for each standard using the following parameters: COC_{50}, COC_{90}, MC_{50}, F, and UL. The NCP formula is the same as that promulgated in the Phase I rule. As was done in previous NCP rules, costs consider additional manufacturer costs and additional owner costs, but do not consider certification costs because both complying and noncomplying manufacturers must incur certification costs. COC_{50} is an estimate of the industry-wide average incremental cost per engine (references to engines are intended to include vehicles as well) associated with meeting the standard for which an NCP is offered, compared with meeting the upper limit. COC_{90} is an estimate of the 90th percentile incremental cost per-engine associated with meeting the standard for which an NCP is offered, compared with meeting the associated upper limit. Conceptually, COC_{50} represents costs for a typical or average manufacturer, while COC_{90} represents costs for the manufacturers with the highest compliance costs.

MC_{50} is an estimate of the industry-wide average marginal cost of compliance per unit of reduced pollutant associated with the least cost effective emission control technology installed to meet the new standard. MC_{50} is measured in dollars per g/hp-hr for heavy-duty engines. F is a factor used to derive MC_{90}, the 90th percentile marginal cost of compliance with the NCP standard for engines in the NCP category. MC_{90} defines the slope of the penalty rate curve near the standard and is equal to MC_{50} multiplied by F. UL is the upper limit above which no engine may be certified.

The derivation of the cost parameters is described in a support document entitled ''Interim and Proposed Technical Support Document: Nonconformance Penalties for 2012 and later Highway Heavy-Duty Diesel Engines,'' which is available in the public docket for this rulemaking. All costs are presented in 2011 dollars.

(1) Upper Limit

We are revising the regulations in § 86.1104–91 to clarify that EPA may set (during rulemaking) the upper limit at a level below the previous standard if we determine that the lower level is achievable by all engines. As described below, we are also establishing the upper limit for this NCP rule at 0.50 g/hp-hr. These are the only regulatory changes being made with respect to the upper limit.

The upper limit is the emission level established by regulation above which NCPs are not available and a heavy duty engine cannot be certified or introduced into commerce. CAA section 206(g)(2) refers to the upper limit as a percentage above the emission standard, set by regulation, that corresponds to an emission level EPA determines to be ''practicable.'' The upper limit is an important aspect of the NCP regulations not only because it establishes an emission level above which no engine may be certified, but it is also a critical component of the cost analysis used to develop the penalty rates. The regulations specify that the relevant costs for determining the COC_{50} and the COC_{90} factors are the difference between an engine at the upper limit and one that meets the applicable standards (see 40 CFR 86.1113–87).

The regulatory approach adopted under the prior NCP rules sets the default Upper Limit (UL) at the prior emission standard when a prior emission standard exists and is then changed to become more stringent. EPA concluded that the upper limit should be reasonably achievable by all manufacturers with vehicles in the relevant class. It should be within reach of all manufacturers of HDEs or HDVs that are currently allowed so that they can, if they choose, pay NCPs and continue to sell their engines and vehicles while finishing their development of fully complying engines. A manufacturer of a previously certified engine or vehicle should not be forced to immediately remove an HDE or HDV from the market when an emission standard becomes more stringent. The prior emissions standard generally meets these goals because manufactures have already certified their vehicles to that standard.

In the past, EPA has rejected suggestions that the upper limit should be more stringent than the prior emission standard because it would be very difficult to identify a limit that could be met by all manufacturers. For this rule, however, all manufacturers are currently certifying all of their engines at or below the 0.50 g/hp-hr FEL cap. Thus, since NCPs were not intended to allow manufacturers to increase emissions, we are setting the upper limit for this NCP rule at 0.50 g/hp-hr NO_X. This will conform to the purpose of NCPs, which is to allow manufacturers to continue selling engines they are producing, but not to allow backsliding.

(2) Cost Parameter Values

The regulations being adopted specify that the values in Table 1 (in 2011 dollars) be used in the NCP formula for the 2012 and later model year NO_X standard of 0.20 g/hp-hr for diesel heavy heavy-duty engines. The basis is summarized here. The complete derivation of these parameters is described in the Interim Technical Support Document for this rulemaking.

We also considered other methodologies for estimating the incremental compliance costs between the upper limit and the standard. We rejected these alternatives because we are not confident that we could estimate the costs with sufficient accuracy or describe our basis without revealing confidential business information. Moreover, we have no reason to believe

December 31, 1985) as well as the Phase I rulemaking (50 FR 35374, August 30, 1985).

that these alternative methodologies would have been better with respect to the statutory requirement to remove the competitive disadvantage of the complying manufacturers.

(a) General Methodology

Based on our review of the various hypothetical baseline engine designs, we selected a straightforward ''baseline engine'' technology package with associated costs that were determinable within a reasonably high degree of certainty. This approach best limited the sensitivity of the penalty rate versus small variations in any of the ''baseline engine'' technology package elements. This cost stability mitigated the hypothetical nature of the ''baseline engine'' technology package, which, in turn, led to a penalty rate that we believe is reasonable. As is described in the TSD, we believe estimating costs by this approach is the least speculative method to determine compliance costs.

We selected a baseline engine technology package that would employ the same basic emission controls used to meet the 2007 NO_X and PM emission standards (*e.g.* cooled exhaust gas recirculation), optimized turbo-charging, optimized fuel injection, diesel particulate filters), plus liquid urea based Selective Catalytic Reduction (SCR) NO_X emissions control technology with an appropriately sized tank for the diesel exhaust fluid (DEF). Further details are provided in this rule's TSD. While EPA selected the baseline engine (or upper limit engine) to be a fully optimized, SCR-equipped engine that complies with all other emission standards and requirements, the NCPs may be used for engines using other technologies.

This approach differs slightly from that used in previous NCP rules, where EPA based the NCPs directly on an average of actual compliance costs for all manufacturers. This was appropriate in those prior rules because each of the manufacturers had actually produced engines at the upper limit (which was usually the previous emission standard). It was relatively straightforward for them to provide us with a confidential engineering analysis of the costs they actually incurred: The real costs of additional hardware and fluids and the differences in performance characteristics. We have always sought full understanding of the manufacturers' inputs, and for previous NCP rules it was also reasonable for EPA to conclude that the manufacturers' input accurately reflected the manufacturers' actual costs because the costs were derived directly from actual in-production engine information. In the case of this NCP rule, however, compliant manufacturers have not designed and optimized in-production engines for the U.S. market at 0.50 g/hp-hr NO_X (the upper limit). Thus, a compliance cost estimate based directly on actual experience for in-production engines was not available for this NCP rule.

Instead of averaging actual costs (because none were available), the NCP penalty formulas for this rule are based primarily on EPA's estimate of the cost difference between an engine emitting at the upper limit (the ''baseline engine'') and one emitting at the standard (the ''compliant engine''). We requested cost of compliance information from several engine manufacturers and used that information to inform our own analysis of compliance costs, as described in the Interim and Proposed Technical Support Document. The engine manufacturers we contacted approached this cost analysis in the same way we did. That is, the scenarios we and the manufacturers considered were all based upon hypothetical baseline engine designs that were intended to meet the 0.50 g/hp-hr NO_X upper limit.

It is worth noting that each of the five engine manufacturers we contacted considered hypothetical baseline engines with different technology packages. Two complying manufacturers based their compliance costs on a baseline engine equipped with similar (but not identical) hardware as EPA; another on an SCR-equipped engine without exhaust gas recirculation, and a fourth on its estimation of the non-complying engines produced by a competitor. All four manufacturers meeting the 0.20 g/hp-hr NO_X standard compared the costs for their hypothetical baseline engines to the costs for their actual compliant engines. The one non-SCR manufacturer we contacted (that has not yet certified any engines with NO_X emissions at 0.20 g/hp-hr) provided its projections of what it will spend to bring its current 2011 engine into compliance without the use of emission credits.

(b) Calculated Values

The most significant of the NCP parameters is the 90th percentile costs of compliance, COC_{90}, which defines the penalty for engines emitting at the upper limit. The value of COC_{50} only matters when EPA estimates that marginal compliance costs change as the compliance level approaches the standard. In such cases, COC_{50} defines that point on the curve at which the slope changes. We estimated COC_{90} and COC_{50} by assuming the baseline engine would have been an SCR equipped engine with NO_X emissions at 0.50 g/hp-hr and that it looked very similar to an engine with NO_X emissions at 0.20 g/hp-hr. However, the higher NO_X emissions of the baseline engine would allow the use of less expensive hardware and would require less consumption of liquid urea (also known as diesel emission fluid or ''DEF'').

We estimated the marginal costs of compliance as being equal to the total incremental costs of compliance divided by 0.30 g/hp-hr (the difference between the upper limit and the standard). This assumes that the cost to reduce emissions from 0.30 g/hp-hr to 0.20 g/hp-hr is not significantly different from the cost to reduce emissions from 0.50 g/hp-hr to 0.40 g/hp-hr. This results in a penalty curve that is a straight line, which in turn makes our estimate of the average cost of compliance irrelevant to the calculation of the penalty. In other words, the COC_{50} point lies directly between zero cost at 0.20 g/hp-hr and COC_{90} at the Upper Limit of 0.50 g/hp-hr NO_X. The penalty paid for engines at the upper limit would be equal to EPA's estimate of the highest marginal cost paid by a complying manufacturer for the same emission range.

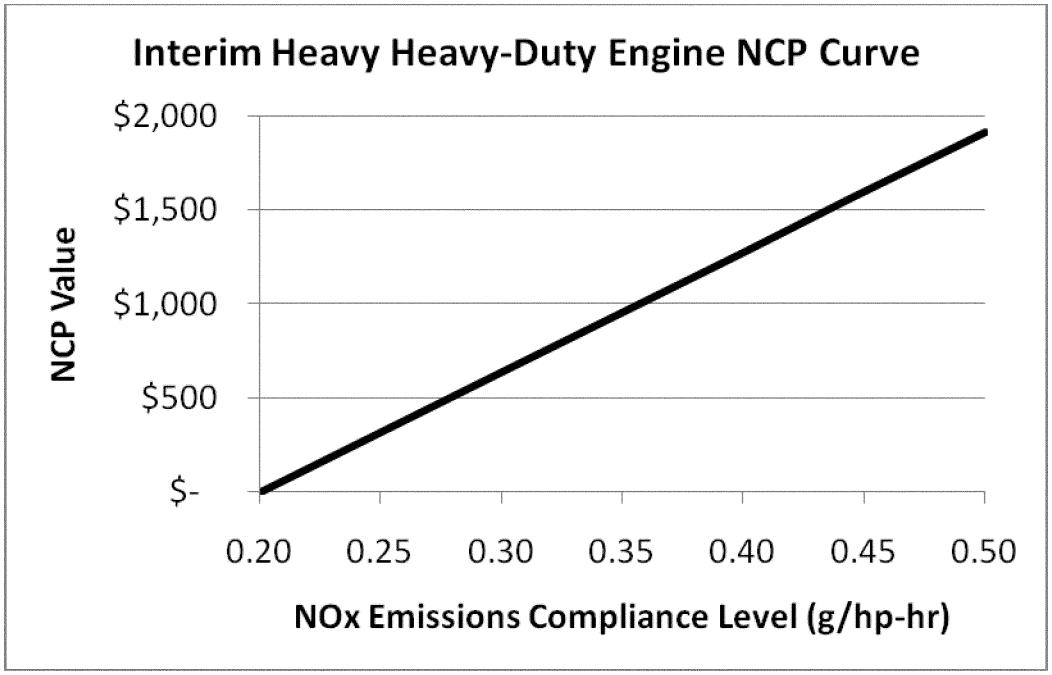
TABLE 1—INTERIM NCP CALCULATION PARAMETERS

Parameter	Heavy heavy-duty diesel engines
COC_{50}	$1,561.
COC_{90}	$1,919.
MC_{50}	$5,203 per gram per horse-power-hour.
F	1.23.
UL	0.50 g/hp-hr.

(3) Resulting Penalties

The calculation parameters listed in Table 1 are used to calculate the penalty rate. These parameters are used in the penalty rate formulas which are defined in the existing NCP regulations (See 40 CFR 86.1113(a)(1) and (2)). Using the parameters in Table 1, and the equations in the existing NCP regulations, we have plotted penalty rates versus compliance levels in Figure 1 below. This penalty curve is for the first year of use of the NCPs (*i.e.,* the annual adjustment factors specified in the existing NCP regulations have been set equal to one).

Figure 1



The Clean Air Act NCP provisions require that the penalty be set at such a level that it removes any competitive disadvantage a complying manufacturer by requiring non-complying manufacturers to pay NCPs. Our methodology for developing the NCP is detailed in the Interim and Proposed Technical Support Document. Our technology approach includes relatively minor hardware upgrades, calibration changes, and increased use of DEF. For the reasons described in the Interim and Proposed Technical Support Document, we believe that the NCPs being established in this rulemaking will remove any competitive disadvantage that complying manufacturers may face.

VI. Economic Impact

Because the use of NCPs is optional, manufacturers have the flexibility and will likely choose whether or not to use NCPs based on their ability to comply with emissions standards. If no manufacturer elects to use NCPs, these manufacturers and the users of their products will not incur any additional costs related to NCPs. NCPs remedy the potential problem of having a manufacturer forced out of the marketplace due to that manufacturer's inability to conform to new, strict emission standards in a timely manner. Without NCPs, a manufacturer which has difficulty certifying HDEs in conformance with emission standards or whose engines fail a Selective Enforcement Audit (SEA) has only two alternatives: fix the nonconforming engines, perhaps at a prohibitive cost, or prevent their introduction into commerce. The availability of NCPs provides manufacturers with a third alternative: continue production and introduce into commerce upon payment of a penalty an engine that exceeds the standard until an emission conformance technique is developed. Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers to have increased flexibility. A decision to use NCPs may be a manufacturer's only way to continue to introduce its products into commerce.

VII. Environmental Impact

When evaluating the environmental impact of this rule, one must keep in mind that, under the Act, NCPs are a consequence of enacting new, more stringent emissions requirements for heavy duty engines. Emission standards are set at a level that most, but not necessarily all, manufacturers can achieve by the model year in which the standard becomes effective. Following *International Harvester* v. *Ruckelshaus,* 478 F. 2d 615 (DC Cir. 1973), Congress realized the dilemma that technology-forcing standards could potentially cause, and allowed manufacturers of heavy-duty engines to certify nonconforming vehicles/engines upon the payment of an NCP, under certain terms and conditions. This mechanism was intended to allow manufacturer(s) who cannot meet technology-forcing standards immediately to continue to manufacture nonconforming engines while they tackle the technological problems associated with meeting new emission standard(s). Thus, as part of the statutory structure to force technological improvements without driving manufacturers or individual engine models out of the market, NCPs provide a flexibility that fosters long-term emissions improvement through the setting of lower emission standards at an earlier date than could otherwise be feasible. Because NCPs are designed to increase with time, manufacturers using NCPs are likely to reduce emission levels to meet the standard as quickly as possible, which minimizes the environmental impact.

As is always the case with NCPs, the potential exists for there to be more extensive use of NCPs beyond what may be expected to be used by the manufacturer that we believe will need them. For example, depending upon the penalty rate and other factors, some otherwise fully compliant manufacturers could elect to pay the NCP in order to reconfigure their 0.20 g/hp-hr NO_X compliant engines to emit up to 0.50 g/hp-hr so that they can re-optimize engine hardware and vehicle operating costs. This potential action is not without R&D and other financial costs to the manufacturer and thus is not a decision which would be

taken lightly, given the short-term nature of the NCPs allowed for in this interim final rule. Furthermore, we believe that any such impacts would be short-term and self-limiting in nature because the NCP annual adjustment factor, established via prior NCP rules, increases the levels of the penalties over time and based on the extent of the use of NCPs by all manufacturers. In other words the NCP program is structured such that the incentives to produce engines that meet the standard increase year-by-year and increase upon NCP use. The practical impact of this adjustment factor is that the NCPs will rapidly become an undesirable option for all manufacturers that may elect to use them. However, while we expect their use to be limited, we have no way of predicting at this time how many manufacturers will make use of the NCPs, or how many engine families would be subject to the NCP program. Because of these uncertainties we are unable to accurately quantify the potential impact the NCPs might have on emission inventories, although, as stated above, any impacts are expected to be short-term and self-limiting in nature.

VIII. Public Participation

We are opening a formal comment period by publishing this document. We will accept comments for the period indicated under **DATES** above. If you have an interest in the program described in this document, we encourage you to comment on any aspect of this rulemaking.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. If you disagree with parts of the interim program, we encourage you to suggest and analyze alternate approaches to meeting the goals described in this Interim Final Rule. You should send all comments, except those containing proprietary information, to our Air Docket (see **ADDRESSES**) before the end of the comment period.

If you submit proprietary information for our consideration, you should clearly separate it from other comments by labeling it ''Confidential Business Information.'' You should also send it directly to the contact person listed under **FOR FURTHER INFORMATION CONTACT** instead of the public docket. This will help ensure that no one inadvertently places proprietary information in the docket. We will disclose information covered by a claim of confidentiality only through the application of procedures described in 40 CFR part 2. If you do not identify information as confidential when we receive it, we may make it available to the public without notifying you.

IX. 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. It only updates the penalty amounts to correspond to the current emission standards. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR part 86, subpart L under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0132. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

(1) Overview

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

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

(2) Summary of Potentially Affected Small Entities

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

When these emission standards were established, the final rulemaking (66 FR 5001, January 18, 2001) noted that we were not aware of ''any manufacturers of heavy-duty engines that meet SBA's definition of a small business.'' Based on an updated assessment, EPA has identified a total of about 14 manufacturers that produce diesel cycle heavy-duty motor vehicle engines. Of these, none of these are small businesses that are producing engines with NO_X emissions above 0.20 g/hp-hr. Based on this, we are certifying that this rule will not have a significant economic impact on a substantial number of small entities.

(3) Conclusions

I therefore certify that this Interim Final Rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The agency has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for the private sector in any one year. Because the use of NCPs is optional, manufacturers have the flexibility and will likely choose whether or not to use NCPs based on their ability to comply with emissions standards. The availability of NCPs provides manufacturers with a third alternative: To continue production and introduce into commerce upon payment of a penalty an engine that exceeds the standard until an emission conformance technique is developed. Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers to have increased flexibility. Thus, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in

the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

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 rules will apply to manufacturers of on-highway engines and not to State or local governments. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This IFR does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will be implemented at the Federal level and impose compliance costs only on engine manufacturers who elect to use the NCP regulatory flexibility to comply with emissions standards. Tribal governments would be affected only to the extent they purchase and use engines and vehicles to which an NCP has been applied. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62FR19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule 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 (Energy Effects)

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 Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the agencies 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 EPA decides not to use available and applicable voluntary consensus standards.

This rule 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 action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. The overall environmental impacts of this action are expected to be small and of limited duration. Moreover, there is no reason to believe that trucks using NCP engines will be more likely to operate near any minority or low-income populations than other trucks.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously in Section II above, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of January 31, 2012. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

X. Statutory Provisions and Legal Authority

Statutory authority for the vehicle controls in these rules is found in CAA section 206(g), of the CAA, 42 U.S.C. 7525(g).

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Confidential business information, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: January 20, 2012.

Lisa P. Jackson,

Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency is amending 40 CFR chapter I of the Code of Federal Regulations as follows:

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart L—[Amended]

■ 2. Section 86.1104–91 is revised to read as follows:

§ 86.1104–91 Determination of upper limits.

EPA shall set a separate upper limit for each phase of NCPs and for each service class.

(a) The provisions of this section specify a default approach for determining the upper limit values.

(1) The default upper limit applicable to a pollutant emission standard for a subclass of heavy-duty engines or heavy-duty vehicles for which an NCP is established in accordance with § 86.1103–87, shall be the previous pollutant emission standard for that subclass.

(2) If a manufacturer participates in any of the emissions averaging, trading, or banking programs, and carries over certification of an engine family from the prior model year, the upper limit for that engine family shall be the family emission limit of the prior model year, unless the family emission limit is less than the upper limit determined in paragraph (a) of this section.

(b) If no previous standard existed for the pollutant under paragraph (a) of this section, the upper limit will be developed by EPA during rulemaking.

(c) EPA may set the upper limit during rulemaking at a level below the default level specified in paragraph (a) of this section if we determine that a lower level is achievable by all engines.

■ 3. Section 86.1105–87 is amended by revising paragraph (e) and adding paragraph (j) to read as follows:

§ 86.1105–87 Emission standards for which nonconformance penalties are available.

* * * * *

(e) The values of COC50, COC90, and MC50 in paragraphs (a) and (b) of this section are expressed in December 1984 dollars. The values of COC50, COC90, and MC50 in paragraphs (c) and (d) of this section are expressed in December 1989 dollars. The values of COC50, COC90, and MC50 in paragraph (f) of this section are expressed in December 1991 dollars. The values of COC50, COC90, and MC50 in paragraphs (g) and (h) of this section are expressed in December 1994 dollars. The values of COC50, COC90, and MC50 in paragraph (i) of this section are expressed in December 2001 dollars. The values of COC50, COC90, and MC50 in paragraph (j) of this section are expressed in December 2011 dollars. These values shall be adjusted for inflation to dollars as of January of the calendar year preceding the model year in which the NCP is first available by using the change in the overall Consumer Price Index, and rounded to the nearest whole dollar in accordance with ASTM E29–67 (reapproved 1980), Standard Recommended Practice for Indicating Which Places of Figures are to be Considered Significant in Specified Limiting Values. This method was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document is available from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, and is also available for inspection as part of Docket A–91–06, located at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room 3334, EPA West Building, Washington, DC 20004, (202) 202–1744or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.* These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**.

* * * * *

(j) Effective in the 2012 and 2013 model years, NCPs will be available for the following emission standard:

(1) Diesel heavy-duty engine oxides of nitrogen standard of 0.20 grams per brake horsepower-hour in § 86.007–11(a)(1)(i).

(i) [Reserved].

(ii) For heavy heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC50: $1,561.

(*2*) COC90: $1,919.

(*3*) MC50: $5,203 per gram per brake horsepower-hour NO_X.

(*4*) F: 1.23.

(*5*) UL: 0.50 grams per brake horsepower-hour NO_X.

(B) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.007–11(a)(1)(i) in accordance with § 86.1113–87(h): 0.004.

(2) Manufacturers may not generate emission credits for any pollutant from engines for which the manufacturer pays an NCP.

(3) The penalty shall be adjusted annually as specified in § 86.1113–87 with 2012 as the first year. Note that this means AAF_{2012} is equal to 1.

[FR Doc. 2012–1937 Filed 1–30–12; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 77, No. 20
Tuesday, January 31, 2012

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 245 and 272

RIN 0584–AE10

National School Lunch Program: Direct Certification Continuous Improvement Plans Required by the Healthy, Hunger-Free Kids Act of 2010

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the National School Lunch Program (NSLP) regulations to incorporate provisions of the Healthy, Hunger-Free Kids Act of 2010 designed to encourage States to improve direct certification efforts with the Supplemental Nutrition Assistance Program (SNAP). The provisions would require State agencies to meet certain direct certification performance benchmarks and to develop and implement continuous improvement plans if they fail to do so. This rule also proposes to amend NSLP and SNAP regulations to provide for the collection of data elements needed to compute each State's direct certification performance rate to compare with the new benchmarks.

DATES: Comments on rule provisions must be received on or before April 2, 2012 to be assured of consideration.

Comments on the information collection requirements associated with this rule must be received by April 2, 2012.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit comments on this proposed rule. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to Vivian Lees, Chief, State Systems Support Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 639, Alexandria, Virginia 22302–1594.
- *Hand Delivery or Courier:* Deliver comments to 3101 Park Center Drive, Room 639, Alexandria, Virginia 22302–1594, during normal business hours of 8:30 a.m.–5 p.m.

All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. The Food and Nutrition Service will make the comments publicly available on the Internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Address any questions to Vivian Lees or Patricia B. von Reyn, State Systems Support Branch, at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

A. Legislative History Leading Up to This Rulemaking

Section 104 of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265) amended section 9(b) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1758(b)) to require all local educational agencies (LEAs) that participate in the NSLP and/or School Breakfast Program to establish, by school year (SY) 2008–2009, a system to directly certify as eligible for free school meals children who are members of households receiving assistance under SNAP.

Section 4301 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) (42 U.S.C. 1758a) requires the Secretary of Agriculture, beginning in 2008, to assess the effectiveness of State and local efforts to directly certify such children for free school meals and to provide annual reports to Congress.

Section 101(b) of Public Law 111–296, the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), amended section 9(b)(4) of the NSLA (42 U.S.C. 1758(b)(4)) to establish and define required percentage benchmarks for directly certifying children who are members of households receiving assistance under SNAP. Section 101(b) further amended the NSLA to require that, beginning with SY 2011–2012, each State that does not meet the benchmark for a particular school year must develop, submit, and implement a continuous improvement plan (CIP) aimed at fully meeting the benchmarks and improving direct certification for the following school year. It also requires that the Secretary provide technical assistance to States agencies in developing and implementing CIPs.

These provisions of Section 101(b) of the HHFKA, which were effective October 1, 2010, were implemented through USDA Food and Nutrition Service (FNS) Memorandum SP 32–2011—*Child Reauthorization 2010: Direct Certification Benchmarks and Continuous Improvement Plans,* dated April 28, 2011, available at *http://www.fns.usda.gov/cnd/governance/Policy-Memos/2011/SP32-2011.pdf.* This rule proposes to incorporate these provisions into NSLP regulations.

B. New Requirements for Direct Certification Performance Benchmarks and Continuous Improvement Plans

Section 9(b)(4) of the NSLA, as amended by the HHFKA, sets specific State performance benchmarks for directly certifying for free school meals those children who are members of households receiving assistance under SNAP. States must directly certify for free school meals the following percentages of school-aged children from SNAP households:

- 80% for SY 2011–2012;
- 90% for SY 2012–2013; and
- 95% for SY 2013–2014 and for each school year thereafter.

Additionally, for each school year beginning with SY 2011–2012, the NSLA requires that FNS identify any State that directly certifies less than the required percentage of the total number of school-aged children in the State who are members of households receiving assistance under SNAP. This rule proposes that FNS would identify these States by calculating direct certification rates for each State and comparing them with the required benchmark. (See the next section, ''Data elements needed to compute States' direct certification rates for comparison to the benchmarks.'')

This proposed rule provides that after FNS notifies a State agency that its State did not meet the direct certification performance benchmark, the State agency would have 60 days to submit its

CIP to FNS for approval. The NSLA requires that CIPs include, at a minimum:

1. Specific measures that the State will use to identify more children who are eligible for direct certification, including improvements or modifications to technology, information systems, or databases;
2. A timeline for the State to implement these measures; and
3. Goals for the State to improve direct certification results for the following school year.

This proposal would add the word ''multiyear'' to the second component above, so that the CIP would include a multiyear timeline for the State to implement these measures. This is in acknowledgement of the possibility that by the time a State agency's CIP is submitted to FNS and approved, the new school year may already be underway.

In addition, we are proposing to add a fourth component to the minimum requirements for a CIP:

4. Information about the State's progress toward implementing other direct certification requirements.

This fourth component to the minimum requirements for a CIP would help ensure that States are in compliance with other direct certification requirements, such as the new provisions required by the Interim Rule, *Direct Certification and Certification of Homeless, Migrant and Runaway Children for Free School Meals* (76 FR 22785, April 25, 2011) at *http://www.fns.usda.gov/cnd/governance/regulations/2011-04-25.pdf.* State agencies would need, for example, to include information regarding their State's success at conducting direct certification efforts at least three times per year as well as their progress at phasing out the ''Letter Method'' as a form of direct certification with SNAP. For more guidance on the phase-out of the ''Letter Method,'' refer to FNS Memorandum SP 13–2011, *Child Nutrition Reauthorization 2010: Letter Method for Direct Certification,* dated January 14, 2011, and FNS Memorandum SP 32–2011, *Child Nutrition Reauthorization 2010: Direct Certification Benchmarks and Continuous Improvement Plans,* dated April 28, 2011, both available at *http://www.fns.usda.gov/cnd/governance/policy.htm.*

This rule proposes to amend 7 CFR Part 245 by redesignating §§ 245.12 and 245.13 as §§ 245.13 and 245.14, respectively, and adding a new § 245.12 to set the required direct certification performance benchmarks, to require CIPs of any State that fails to meet a given benchmark, and to define the minimum required components of a CIP.

C. Data Elements Needed To Compute States' Direct Certification Rates for Comparison to the Benchmarks

Each year since 2008, FNS has computed direct certification rates for each State to include in the annual report to Congress required by section 4301 of the Food, Conservation, and Energy Act of 2008. (See the *Direct Certification in the National School Lunch Program: State Implementation Progress* (Report to Congress) for 2008, 2009, 2010, and 2011 at *http://www.fns.usda.gov/ora/menu/Published/CNP/cnp.htm.*) To formulate these direct certification rates, we have used a variety of data sources and a complex system of estimations and adjustments to approximate each of three component statistics required by section 4301:

1. The number of school-aged children who were directly certified as eligible for free school meals based on SNAP as of October;
2. The number of school-aged children who were members of a household receiving SNAP assistance at any time in July, August, or September; and
3. The number of school-aged children attending special provision schools (in a non-base year) who were members of a household receiving SNAP assistance at any time in July, August, or September.

We are proposing with this rulemaking to collect single data elements which would replace, wherever possible, the complex estimates we have had to make for each of these component statistics. Using these new data elements would allow for a timelier and a more straightforward, accurate, and transparent methodology for calculating States' direct certification rates. In addition, State agencies would have early access to these data elements and would be able to track their own performance as the data becomes available, using the same methodology that FNS uses—something currently not possible. This also would allow State agencies to better evaluate whether certain refinements to their direct certification systems or improvements outlined in their CIPs are effectual. It could even preclude the need for a CIP if data errors were to be identified and then corrected by SAs as LEAs report in.

The new data elements needed to better meet the requirements of this mandate and to better serve the needs of State agencies as they endeavor to meet and maintain these new direct certification benchmarks are proposed as follows:

Data Element #1—SNAP Children Directly Certified for Free School Meals

Data Element #1 is the count of the number of children who are members of households receiving assistance under SNAP and who were directly certified for free school meals as of the last operating day in October. This is to be a count of SNAP direct certifications only. Direct certification with other programs, such as with the Temporary Assistance to Needy Families (TANF) program, the Food Distribution Program on Indian Reservations (FDPIR), or with any of the other categorically eligible programs, would not be included. Additionally, only direct certifications are to be included, not certifications by application using a SNAP case number or through the ''Letter Method.'' The form FNS–742, *Verification Summary Report,* (OMB #0584–0026) has for years collected the broader count (one that includes TANF, FDPIR, ''Letter Method,'' etc.), but this data element, which is needed to selectively identify SNAP direct certifications, would be separately collected on the FNS–742 that is currently undergoing revision.

Data Element #2—Universe of School-Aged Children in SNAP Households

Data Element #2 is the unduplicated count of children ages 5 to 17 years old who are members of households receiving assistance under SNAP at any time during the months of July, August, or September. The best source for this count is the SNAP State agency, which maintains an existing collection of program participation data that is used for the direct certification matching with SNAP. This dataset includes birthdates, making it possible to query for the target age-range of 5 to 17 year olds. This count from the SNAP State agency would be far more accurate than what could be estimated from other sources. For this reason, the proposed rule would require the SNAP State agency to provide Data Element #2 both to FNS and to the State agency administering the NSLP, by December 1st each year, on the proposed new form, the FNS–834, *State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report,* which is being submitted to OMB for approval. This Data Element #2 would represent the universe of school-aged children who could be directly certified with SNAP to receive free school meals.

We recognize that even though this data element is a strong one, it is not exact. The count coming from SNAP for

this data element may include children who are not actually attending school in the State come September or who are attending a school that does not participate in the NSLP. As a result, the direct certification rate may be negatively impacted. Conversely, there may be students attending school in the State who are not represented in the count coming from SNAP, particularly when a State has, for instance, a mandatory pre-K program or a large special education program with children up to age 22. We have chosen to ask SNAP for the number of children 5 to 17 years old because that age range can be used across the board for all States, it is the usual age range for children in schools across the United States, and it is the age range that we have used in the past for the Reports to Congress to represent ''school-aged.'' When States run their matches on a wider age-range than that which represents the ages of students typically participating in the NSLP and are able to match these younger than 5-year-olds or older than 17-year-olds, the direct certification rate may be inflated. As structured, however, this data element would be more accurate than what FNS has been able to use in the past. See the ''Special Circumstances'' section below that invites public comments.

Data Element #3—SNAP Children in Special Provision Schools Operating in a Non-Base Year

Data Element #3 is a count of the number of children from households receiving assistance under SNAP that attend schools operating in a non-base year under the special assistance provisions of Section 11(a)(1) of the NSLA (42 U.S.C. 1759a(a)(1)) and 7 CFR 245.9. These are typically referred to as Provision 2 and Provision 3 schools, but will also include such schools as the Community Eligibility option schools that were added to Section 9(b) of the NSLA, 42 U.S.C. 1758(b), by Section 103 of the HHFKA and which will be addressed in future rulemaking. These special provision schools do not collect applications or directly certify children for free school meals every year; instead, they typically serve all children free meals, but are reimbursed based on the number of children who were determined to be eligible for free or reduced-price meals through application and/or direct certification in some prior year, called the base year.

When a special provision school is operating in a base year, application processing and/or direct certification would occur as it does in other schools, and the counts of children directly certified with SNAP would be reported by the LEA through the normal verification report (the FNS–742) described for Data Element #1 above.

When a special provision school is operating in a non-base year, however, the direct certification counts from the school, as reported by the LEA for the FNS–742, would be zero—no child from that school, whether from a household receiving SNAP benefits or not, would be directly certified that year because children already receive free meals through the special provision. Since the direct certification rate for a State is determined by the number of school-aged SNAP children directly certified as compared to the universe of school-aged SNAP children, States would show a lower direct certification rate whenever their special provision schools were in a non-base year unless some adjustment were made. For the Report to Congress, we have adjusted for this by estimating the number of SNAP children in special provision schools and offsetting the universe of school-aged SNAP children by this estimate. One of the difficulties with this methodology is that if the number of SNAP-children has increased significantly in a particular State since a special provision school's most recent base year, then the estimate for the offset might be too low and the State's direct certification rate may drop.

To get a better measure for this adjustment, we propose to require that States run a match between SNAP records and student enrollment records from special provision schools each non-base year and count—for these schools only—the number of children for whom a match is found and who theoretically could have been directly certified from that match had it occurred in a base year. Note that this is not a requirement to directly certify during the non-base year—LEAs still would not directly certify children since the children already get free meals through the special provision. A match in and of itself does not constitute a direct certification, and this matching process—which more often than not could be done at the State level—would be employed for the express purpose of getting a more-accurate count with which to make adjustments to the direct certification rate for the State. Under the proposed rule, all such SNAP matches in special provision schools operating in a non-base year would be included in the count for this data element. The resulting adjustment would more closely track the fluctuations in the number of SNAP children actually in these schools, would yield a more-accurate direct certification rate, and would give a better preview of the competency of the direct certification system before its use when the school is again in a base year.

We propose to require that these matching efforts for special provision schools operating in a non-base year occur in or close to October, but no later than the last operating day in October. This Data Element #3 would be reported by the State agency administering the NSLP on the proposed new form, the FNS–834, *State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report,* by December 1st each school year.

Special Circumstances

We would be interested in learning about any special circumstances that would affect a State's direct certification rate in a quantifiable way not captured by the formula below or the three data elements above. We would also be interested in any suggested methodology to quantify the effect, supportable by published Federal or State data sources.

Formula—for Calculating Direct Certification Rates With SNAP

We propose to calculate States' direct certification rates with SNAP (the percent of children in households receiving assistance under SNAP that are directly certified for free school meals) using Data Elements #1–#3 as described above:

$$\text{Percent of SNAP children directly certified for free school meals} = \frac{\text{SNAP children directly certified for free school meals} + \text{SNAP children in special provision schools operating in a non-base year}}{\text{School-aged children in SNAP households during the months of July, August, and September}} = \frac{\#1 + \#3}{\#2}$$

These new data elements for calculating direct certification effectiveness would be reported both by the SNAP State agency and by the State agency that administers the NSLP, as described in the next two sections. It is critical that these data elements be available starting with SY 2012–2013 so that FNS and State agencies have the tools to monitor performance under this mandate.

The proposed new § 245.12(c) would require the reporting of the new data elements for computing direct certification rates to assess State progress in meeting the mandated direct certification performance benchmarks.

This rule also proposes to amend SNAP's regulations at 7 CFR 272.8 to add the requirement for the SNAP State agency to provide Data Element #2 to FNS and to the State agency administering the NSLP.

D. Collection of Data Element #1, and the Effect of This Rule on Form FNS–742, Verification Summary Report

As described above, this rule proposes to collect Data Element #1 on the FNS–742, *Verification Summary Report,* which is under revision at this time. The proposed rule would change the date this report is due so that Data Element #1 can be available as soon as possible for FNS and State agencies to use in calculating direct certification rates with SNAP.

Currently, § 245.6a(b) requires LEAs to complete verification efforts by November 15th each year (unless approved for an extension until December 15th by the State agency for reasons outlined in § 245.6a(b)(2)). In addition, State agencies currently must collect this annual verification data from each LEA no later than March 1st, and must submit it to FNS no later than April 15th of each year. Earlier availability of this data would enable FNS and State agencies earlier calculation of direct certification rates. The current FNS–742, however, requires State agencies to report the aggregate number of students who were terminated as a result of verification but who were reinstated for free or reduced price meal benefits as of February 15th each year based on regulatory provisions at § 245.11(i). Those provisions reference a contingency on ''new funding'' that has not been appropriated since the rule's codification. As such, we propose to remove the requirement to report those students who were reinstated and to adjust the deadlines for the FNS–742, as follows:

1. LEAs would continue to be required to complete verification efforts by November 15th (or, if approved for an extension by the State agency for reasons outlined in § 245.6a(b)(2), by December 15th).

2. State agencies would be required to collect the annual verification data from each LEA by February 1st (instead of March 1st).

3. State agencies would be required to submit the FNS–742 to FNS by March 15th (instead of April 15th).

The earlier submission of the FNS–742, as proposed in this rule, would allow State agencies and FNS timelier access to data elements important for the direct certification rate calculation and for the annual report to Congress. Additionally, it would allow State agencies to take ameliorative actions early on, before notification of a need for a CIP, providing more time for developing CIPs.

This proposed rule would remove the February 15th data element requirement by amending § 245.11(i) to remove the language, ''Contingent upon new funding to support this purpose, FNS will also require each State agency to report the aggregate number of students who were terminated as a result of verification but who were reinstated as of February 15th.'' It would also amend § 245.6a(h) and § 245.11(i) to change the dates for State agency collection of verification data from LEAs and for State agency reporting to FNS on the FNS–742, effective beginning with SY 2012–2013.

E. Collection of Other New Data Elements.

For collecting Data Elements #2 and #3, FNS is proposing a new data reporting instrument which is being cleared along with this proposed rule. This instrument, the proposed FNS–834, *State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report,* is an interagency form that would be used by both the SNAP State agencies and the State agencies administering the NSLP.

This new data collection instrument, whose information collection burden is being cleared with this proposed rule, is described in the Paperwork Reduction Act section of this preamble. It is provided as Appendix A to this proposed rule for informational purposes only.

F. States Affected by This Rule

All States, except those that have statewide universal free lunch, are affected by this rule. At this time, the States affected by this rule are the 50 States, District of Columbia, and Guam.

Procedural Matters

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has been designated non-significant under section 3(f) of Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980, (5 U.S.C. 601–612). Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

This proposed rule affects the NSLP and SNAP.

The NSLP is listed in the Catalog of Federal Domestic Assistance Programs

under No. 10.555. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. Since the NSLP is State-administered, Federally-funded program, FNS headquarters staff and FNS Regional Office staff have formal and informal discussions with State and local officials on an ongoing basis regarding program requirements and operation. This structure allows FNS to receive regular input which contributes to the development of meaningful and feasible Program requirements.

SNAP is listed in the Catalog of Federal Domestic Assistance under 10.551. For the reasons set forth in the final rule at 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), SNAP is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under Section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule, when published as a final rule, is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, Civil Rights Impact Analysis, to identify any major civil rights impacts the rule might have on children on the basis of race, color, national origin, sex, age or disability.

This rule requires State agencies to develop and implement CIPs if they do not meet certain percentage performance benchmarks for directly certifying for free school meals children in households receiving SNAP benefits. LEAs have for years been required to directly certify for free school meals those children in households receiving assistance under SNAP, and FNS has been required to assess State and local efforts to directly certify these children. This rule codifies the benchmarks and CIP requirements set by the HHFKA. After a careful review of the rule's intent and provisions, FNS has determined that this rule is technical in nature and affects State agencies only. This rule will not affect children in the NSLP, except to continue to encourage States to increase efforts to have more eligible children directly certified for free meals.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

USDA is unaware of any current Tribal laws that could be in conflict with the requirements of this proposed rule. However, we have made special efforts to reach out to Tribal communities. In the spring of 2011, FNS offered opportunities for consultation with Tribal officials or their designees to discuss the impact of the Healthy, Hunger-Free Kids Act of 2010 on tribes or Indian Tribal governments. The consultation sessions were coordinated by FNS and held on the following dates and locations:

1. HHFKA Webinar & Conference Call—April 12, 2011
2. Mountain Plains—HHFKA Consultation, Rapid City, SD—March 23, 2011
3. HHFKA Webinar & Conference Call—June 22, 2011
4. Tribal Self-Governance Annual Conference in Palm Springs, CA—May 2, 2011
5. National Congress of American Indians Mid-Year Conference, Milwaukee, WI—June 14, 2011

There were no comments about this regulation during any of the aforementioned Tribal Consultation sessions.

Reports from these consultations are part of the USDA annual reporting on Tribal consultation and collaboration. FNS will respond in a timely and meaningful manner to Tribal government requests for consultation concerning this rule. Currently, FNS provides regularly scheduled quarterly consultation sessions through the end of FY2012 as a venue for collaborative conversations with Tribal officials or their designees.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320), requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number. This is a new collection.

One of the new provisions in this rule—the requirement for the development and submission of continuous improvement plans by any State that fails to meet certain mandated direct certification performance benchmarks—annually increases State agency reporting burden by 54 hours and the recordkeeping burden by 9 hours, for a total of 63 additional burden hours. FNS intends to merge these 63 hours into the Determining Eligibility for Free and Reduced Price Meals, OMB Control #0584–0026, expiration date March 31, 2013. The current collection burden inventory for the Determining Eligibility for Free and Reduced Price Meals (7 CFR 245) is 960,367.

Another provision, requiring the collection of data elements on a new, interagency form (FNS–834, *State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report,* being cleared with this proposed rule), involves changes in both NSLP and SNAP regulations and would increase burden hours on State agencies by an additional 53 hours annually. These 53 burden hours would remain with the newly established OMB Control Number until such time as the FNS–834 is incorporated into the Food Programs Reporting System (FPRS) and the system is approved by OMB.

These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection requirements have been approved, FNS will publish a separate action in the **Federal Register** announcing OMB's approval.

Comments on the information collection in this proposed rule must be received by April 2, 2012. Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC

20503. Please also send a copy of your comments to Lynn Rodgers-Kuperman, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, 3101 Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection requirements, please contact Lynn Rodgers-Kuperman at the address indicated above. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the proposed information collection burden, 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 use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this request for comments will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: National School Lunch Program: Direct Certification Continuous Improvement Plans Required by the Healthy, Hunger-Free Kids Act of 2010.

OMB Number: 0584–NEW.

Expiration Date: Not Yet Determined.

Type of Request: New Collection.

Abstract: (A) Continuous Improvement Plans—The new requirements of Section 101(b) of the HHFKA necessitate the submission of a continuous improvement plan (CIP) by any State that fails to meet the new percentage performance benchmarks (80% for SY 2011–12; 85% for SY 2012–13; and 95% for SY 2013–14 and for each school year thereafter) for directly certifying for free school meals children who are members of households receiving assistance under SNAP. CIPs are required to include: Specific measures that the State will use to identify more children who are eligible for direct certification, including improvements or modifications to technology, information systems, or databases; a multiyear timeline for the State to implement these measures; goals for the State to improve direct certification results for the following school year; and information about the State's progress toward implementing other direct certification requirements.

(B) Collecting New Data Elements—In addition, FNS must calculate the direct certification rates for States and compare them to the benchmarks to determine which States will need to submit CIPs. To calculate these direct certification rates, FNS proposes to annually collect specific direct certification data elements from SNAP State agencies and NSLP State agencies on a new interagency form, the proposed FNS–834, *State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report* being cleared with this proposed rule.

(C) State agencies must report data to show progress toward improving direct certification with SNAP. Such improvement will ultimately lead to fewer households having to complete an application form to receive free school meals. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow.

Estimated Annual Reporting and Recordkeeping Burden for 0584–NEW, Direct Certification Requirements, 7 CFR 245

Respondents for this Proposed Rule: State Agencies.

Estimated Number of Respondents for this Proposed Rule: 18.

Estimated Number of Responses per Respondent for this Proposed Rule: 2.

Estimated Total Annual Responses: 36.

Average Hours Per Response: 1.75.

Estimated Total Annual Burden on Respondents for this Proposed Rule: 63.

ESTIMATED ANNUAL REPORTING BURDEN FOR 0584–NEW, DIRECT CERTIFICATION REQUIREMENTS, 7 CFR 245

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours
Reporting (State Agencies)						
State agencies that fail to meet the direct certification benchmark must develop and submit a *Continuous Improvement Plan* within 60 days of notification.	7 CFR 245.12(e) and (g)	18	1	18	3	54
Total Reporting for Proposed Rule.	.....	18	1	18	3	54
Total Existing Reporting Burden for Part 245.	.....	.....	.....	.....	.....	954,317
Total Reporting Burden for Part 245 with Proposed Rule.	.....	.....	.....	.....	.....	954,371
Recordkeeping (State Agencies)						
State agencies that fail to meet the direct certification benchmark must maintain a *Continuous Improvement Plan*.	7 CFR 245.12(e) and (g)	18	1	18	0.5	9

ESTIMATED ANNUAL REPORTING BURDEN FOR 0584–NEW, DIRECT CERTIFICATION REQUIREMENTS, 7 CFR 245—Continued

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours
Total Recordkeeping for Proposed Rule.		18	1	18	0.5	9
Total Existing Recordkeeping Burden for Part 245.						6,050
Total Recordkeeping Burden for Part 245 with Proposed Rule.						6,059

SUMMARY OF REPORTING AND RECORDKEEPING BURDEN (OMB #0584–NEW) 7 CFR 245

TOTAL NO. RESPONDENTS	18
AVERAGE NO. RESPONSES PER RESPONDENT	2
TOTAL ANNUAL RESPONSES	36
AVERAGE HOURS PER RESPONSE	1.75
TOTAL BURDEN HOURS FOR PART 245 WITH PROPOSED RULE	960,430
CURRENT OMB INVENTORY FOR PART 245	960,367
DIFFERENCE (NEW BURDEN REQUESTED WITH PROPOSED RULE)	63

* These 63 hours will be merged with OMB #0584–0026.

Estimated Annual Burden for 0584–NEW, Direct Certification Requirements, 7 CFR 245 and 272

Respondents for this Proposed Rule: State Agencies.

Estimated Number of Respondents for this Proposed Rule: 106.

Estimated Number of Responses per Respondent for this Proposed Rule: 1.

Estimated Total Annual Responses: 106.

Average Hours per Response: .5.

Estimated Total Annual Burden on Respondents for this Proposed Rule: 53.

ESTIMATED ANNUAL BURDEN FOR 0584–NEW, DIRECT CERTIFICATION REQUIREMENTS 7 CFR 245 AND 272

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours
Reporting (State Agencies)						
NSLP State agencies must annually report data to FNS for calculating direct certification rates.	7 CFR 245.12(c)	54	1	54	0.5	27
SNAP State agencies must annually report data to FNS for calculating direct certification rates.	7 CFR 272.8(a)(5)	52	1	52	0.5	26
Total Reporting for Proposed Rule.		106	1	106	0.5	53
Total Existing Reporting Burden.						0
Total Reporting Burden for Parts 245 and 272 with Proposed Rule.						53

SUMMARY OF BURDEN (OMB #0584–NEW) 7 CFR 245 AND 272

TOTAL NO. RESPONDENTS	106
AVERAGE NO. RESPONSES PER RESPONDENT	1
TOTAL ANNUAL RESPONSES	106
AVERAGE HOURS PER RESPONSE	.5
TOTAL BURDEN HOURS FOR PART 245 and 272 WITH PROPOSED RULE *	53
CURRENT OMB INVENTORY FOR PART 245 and 272	0

SUMMARY OF BURDEN (OMB #0584–NEW) 7 CFR 245 AND 272—Continued

DIFFERENCE (NEW BURDEN REQUESTED WITH PROPOSED RULE)	53

* Represents increase of 53 hours from existing reporting burden; no additional recordkeeping burden. These 53 hours will remain with the newly established OMB Control Number.

E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Appendix A to This Proposed Rule

Appendix A attached to this proposed rule is a sample completed form FNS–834, *State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report,* currently pending OMB approval and published for informational purposes only.

List of Subjects

7 CFR Part 245

Civil rights, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 272

Alaska, Civil rights, Claims, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements, Unemployment compensation, wages.

Accordingly, 7 CFR Parts 245 and 272 are proposed to be amended as follows:

PART 245—DETERMIMING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for 7 CFR Part 245 continues to read as follows:

Authority: 42 U.S.C. 1752, 1758, 1759a, 1772, 1773, and 1779.

2. Section 245.6a is amended in paragraph (h) by removing the word ''March'' and adding in its place the word ''February''.

3. Paragraph 245.11(i) is revised to read as follows:

§ 245.11 Action by State agencies and FNSROs.

* * * * *

(i) No later than February 1, 2013, and by February 1st each year thereafter, each State agency must collect annual verification data from each local educational agency as described in § 245.6a(h) and in accordance with guidelines provided by FNS. Each State agency must analyze these data, determine if there are potential problems, and formulate corrective actions and technical assistance activities that will support the objective of certifying only those children eligible for free or reduced price meals. No later than March 15, 2013, and by March 15th each year thereafter, each State agency must report to FNS, in a consolidated electronic file by local educational agency, the verification information that has been reported to it as required under § 245.6a(h), as well as any ameliorative actions the State agency has taken or intends to take in local educational agencies with high levels of applications changed due to verification. State agencies are encouraged to collect and report any or all verification data elements before the required dates.

* * * * *

4. Redesignate §§ 245.12 and 245.13 as §§ 245.13 and 245.14, respectively.

5. Section 245.12 is added to read as follows:

§ 245.12 State agencies and direct certification requirements.

(a) *Direct certification requirements.* State agencies are required to meet the direct certification performance benchmarks set forth in paragraph (b) of this section for directly certifying children who are members of households receiving assistance under SNAP. A State agency that fails to meet the benchmark must develop and submit to FNS a continuous improvement plan (CIP) to fully meet the requirements of this paragraph and to improve direct certification for the following school year in accordance with the provisions in paragraphs (e), (f), and (g) of this section.

(b) *Direct certification performance benchmarks.* State agencies must meet performance benchmarks for directly certifying for free school meals children who are members of households receiving assistance under SNAP. The performance benchmarks are as follows:

(1) 80% for the school year beginning July 1, 2011;

(2) 90% for the school year beginning July 1, 2012; and

(3) 95% for the school year beginning July 1, 2013, and for each school year thereafter.

(c) *Data elements required for direct certification rate calculation.* Each State agency must provide FNS with specific data elements each year, as follows:

(1) *Data Element #1*—The number of children who are members of households receiving assistance under SNAP that are directly certified for free school meals as of the last operating day in October, collected and reported in the same manner and timeframes as specified in § 245.11(i).

(2) *Data Element #2*—The unduplicated count of children ages 5 to 17 years old who are members of households receiving assistance under SNAP at any time during the months of July, August, or September. This data element must be provided by the SNAP State agency, per 7 CFR 272.8(a)(5), and reported to FNS and to the State agency administering the NSLP in the State by December 1st each year, in accordance with guidelines provided by FNS.

(3) *Data Element #3*—The count of the number of children who are members of households receiving assistance under SNAP who attend a school operating under the provisions of 7 CFR 245.9 in a year other than the base year. The proxy for this data element must be established each school year through the State's data matching efforts between SNAP records and student enrollment records for these special provision schools operating in a non-base year. Such matching efforts must occur in or close to October each year, but no later than the last operating day in October. State agencies must report this data element to FNS by December 1st each year, in accordance with guidelines provided by FNS.

(d) *State notification.* For each school year, FNS will notify State agencies that fail to meet the direct certification performance benchmark.

(e) *Continuous improvement plan required.* A State agency having a direct certification rate with SNAP that is less than the direct certification performance benchmarks set forth in paragraph (b) of this section must submit to FNS for approval, within 60 days of notification, a CIP in accordance with paragraph (f) of this section.

(f) *Continuous improvement plan required components.* CIPs must include, at a minimum:

(1) The specific measures that the State will use to identify more children who are eligible for direct certification,

including improvements or modifications to technology, information systems, or databases;

(2) A multiyear timeline for the State to implement these measures;

(3) Goals for the State to improve direct certification results for the following school year; and

(4) Information about the State's progress toward implementing other direct certification requirements, as provided in FNS guidance.

(g) *Continuous improvement plan implementation.* A State must implement its CIP according to the timeframes in the approved plan.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

5. The authority citation for 7 CFR Part 272 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

6. Section 272.8 is amended by adding a new paragraph (a)(5) to read as follows:

§ 272.8 State income and eligibility verification system.

* * * * *

(a) * * *

(5) State agencies must provide information to FNS and to the State agencies administering the National School Lunch Program for the purpose of direct certification of children for school meals as described in § 245.12(c)(2) of this chapter. In addition, State agencies must execute a data exchange and privacy agreement in accordance with § 272.8(a)(4) and § 272.1(c).

* * * * *

Note: Appendix A, a sample of a completed copy of the proposed form FNS–834, *State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report,* will not be published in the *Code of Federal Regulations.* It is published here for informational purposes only.

Dated: January 17, 2012.

Audrey Rowe,

Administrator, Food and Nutrition Service.

BILLING CODE 3410–30–P

Appendix A: Sample of Completed FNS–834, State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report. For Informational Purposes Only

OMB APPROVED NO. 0584-0000
Expiration Date: XX/XX/XXXX

U.S. DEPARTMENT OF AGRICULTURE

FOOD AND NUTRITION SERVICE

STATE AGENCY (NSLP/SNAP) DIRECT CERTIFICATION RATE DATA ELEMENT REPORT

This annual interagency report collects data elements from the State agencies that administer the Supplemental Nutrition Assistance Program (SNAP) and from the State agencies that administer the National School Lunch Program (NSLP).

A separate, completed FNS-834 report must be submitted to the Food and Nutrition Service (FNS) no later than December 1st each school year by:

- the SNAP State agency, providing Data Element #2 below; and
- each State agency that administers the NSLP, providing Data Element #3 below.

These data elements are needed to compute the Direct Certification Rate with SNAP that is required by the Food, Conservation, and Energy Act of 2008 (Public Law 110-246) and by the Richard B. Russell National School Lunch Act, as amended by the Healthy, Hunger-Free Kids Act of 2010 (Public Law 111-296) and promulgated by the regulations published on [insert date], the *National School Lunch Program: Direct Certification Continuous Improvement Plans required by the Healthy, Hunger-Free Kids Act of 2010*, which added a new section 7 CFR 245.12 to NSLP regulations and amended SNAP regulations at 7 CFR 272.5 to allow for this collection.

For an understanding of the formula to calculate NSLP direct certification rate with SNAP, and to see how these data elements come into play, please refer to the reverse side of this form.

State	YS (2-letter abbr.)
School Year	20 1 2 - 20 1 3

State Agency Name and Address:	Your State, Child Nutrition Programs, Department of Education, Post Office Box 1234, YS, 98765
Contact Information: (Name, Title, Email, Phone)	John C. Doe, State Director john.doe@ys.gov 888-555-5555

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number. The valid OMB number for this collection is 0584-XXXX . The time required to complete this information collection is 30 minutes per response, including the time to review instructions, to search existing data resources, to gather the data needed, and to complete and review the information collection.

SNAP State agency completes this section

Data Element #2 – The number of school-aged children in SNAP households during the months of July, August, and September.

Please enter, in the box provided below, the unduplicated count of the number of children ages 5 to 17 years at any time during the months of July, August, or September of this school year who were members of households receiving assistance under SNAP at any time during the months of July, August, or September of this school year. See reverse side for specific instructions.

Data Element #2 [ ]

NSLP State agency completes this section

Data Element # 3 – The number of SNAP Children in Special Provision Schools Operating in a Non-Base Year.

Please enter, in the box provided below, the number of children from households receiving SNAP benefits that attend schools operating under the provisions of 7 CFR 245.9, if such schools were reporting in a year other than the base year. See reverse side for specific instructions.

Data Element #3 3,102

FORM FNS-834 (11-11) Previous Editions Obsolete SBU Electronic Form Version Designed in Adobe 9.1 Version

STATE AGENCY (NSLP/SNAP) DIRECT CERTIFICATION RATE DATA ELEMENT REPORT (continued)

PURPOSE - This report collects data elements necessary to compute direct certification rates for comparison with certain benchmarks required by 7 CFR 245.12(b). The benchmark for school year (SY) 2012-13 is 90%, and the benchmark for SY 2013-14 and every school year thereafter is 95%.

To promote transparency and to strengthen the direct certification process so that States can monitor their own performance using the same measures and methodology that FNS will use, this report identifies each of the data elements and its role in the formula to calculate a State's NSLP Direct Certification Rate with SNAP, even if, like Data Element #1, it is not collected on this form.

Direct Certification Rate Formula:

$$\text{Percent of SNAP children directly certified for free school meals} = \frac{\text{SNAP children directly certified for free school meals} + \text{SNAP children in special provision schools operating in a non-base year}}{\text{School-aged children in SNAP households during the months of July, August, and September}} = \frac{\#1 + \#3}{\#2}$$

Data Element	Instructions and additional information
# 1	**SNAP CHILDREN DIRECTLY CERTIFIED FOR FREE SCHOOL MEALS:** This is the number of children directly certified with SNAP for free school meals as of the last operating day in October. **THIS DATA ELEMENT #1 DOES NOT COME IN ON THIS FORM; it comes in instead on the FNS-742, line 3(a). It is due to the NSLP State agency no later than February 1st and to FNS no later than March 15th each school year.**
# 2	**SCHOOL-AGED CHILDREN IN SNAP HOUSEHOLDS:** For our direct certification rate formula, we define "school-aged" as 5 to 17 years old. A query on the database must yield any child in a household receiving assistance under SNAP during the months of July, August, or September and whose birthdate is between July 1st (of the SY-minus-18) and September 30th (of the SY-minus-5). For example, for SY 2012-2013, that would be children born between July 1, 1994 (2012 minus 18) and September 30, 2007 (2012 minus 5); and for SY 2013-14, that would be children born between July 1, 1995 (2013 minus 18) and September 30, 2008 (2013 minus 5). So long as the child's birthday falls within the birthdate age-range listed for the given school year, include the child in the count. Be careful, however, that you do not count the same child more than once. We are looking for the unduplicated count, so even if the child is in a SNAP household for each of the three months, s/he is counted only once. We need only the counts, not the list of names of such children. **THIS DATA ELEMENT #2 IS REPORTED ON THE FRONT OF THIS FORM BY THE SNAP STATE AGENCY in the space provided. It is due to FNS as soon as possible, but no later than December 1st of each school year.** In addition to submitting a completed report to FNS, you, as the SNAP State agency, must also send a copy of this completed report to the State agency that administers the NSLP in your State so that they will know the data element you are reporting to FNS. Reporting this data element as soon as it is available will allow these NSLP State agencies to better monitor their own performance.
# 3	**SNAP CHILDREN IN SPECIAL PROVISION SCHOOLS OPERATING IN A NON-BASE YEAR -** To get this count, run a match between SNAP records and school enrollment records from schools operating under the provisions of 7 CFR 245.9 (special provision schools) in a year other than the base year. Although you will not actually directly certify children attending these schools in a non-base year, this process will provide a measure for the count of the number of children who could have been directly certified with SNAP had it been a base year when direct certification with SNAP is conducted. Such special provision school matching efforts should occur in or close to October, but must occur no later than the last operating day in October. **THIS DATA ELEMENT #3 IS REPORTED ON THE FRONT OF THIS FORM BY THE NSLP STATE AGENCY in the space provided. It is due by December 1st of each school year.** [Note: In a base year, actual SNAP direct certifications will be reported on the FNS-742, line 3(a) and included in Data Element #1. If your State does not have any special provision schools operating in a non-base year for this school year, enter "0" in the box on the front of this form.]
Please note that although this is an interagency form, it is not a shared form. FNS expects separate forms to come in from each State agency. The SNAP State agency is to fill out the front of this form, completing Data Element #2 and leaving Data Element #3 blank. The State agency that administers the NSLP in the State is to complete the front of a separate form, completing Data Element #3 and leaving Data Element #2 blank. (If more than one State agency administers the NSLP in the State, they each are to submit separate forms.)	

[FR Doc. 2012–1835 Filed 1–30–12; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2011–BT–NOA–0067]

RIN 1904–AC52

Energy Conservation Program: Test Procedure and Energy Conservation Standard for Set-Top Boxes and Network Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: This document announces an extension of the time period for submitting comments on the request for information pertaining to the development of test procedures and energy conservation standards for set-top boxes and network equipment. The comment period is extended to March 15, 2012.

DATES: The comment period for the request for information relating to set-top boxes and network equipment

published on December 16, 2011 (76 FR 78174) is extended to March 15, 2012.

ADDRESSES: Any comments submitted must identify the request for information for set-top boxes and network equipment and provide docket number EERE–2011–BT–NOA–0067 and/or RIN number 1904–AC52. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal:* at *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email:* to *STB-RFI-2011-NOA-0067@ee.doe.gov*. Include EERE–2011–BT–NOA–0067 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Request for Information for Set-top boxes and Network Equipment, EERE–2011–BT–NOA–0067, 1000 Independence Avenue SW., Washington, DC 20585– 0121. Phone: (202) 586–2945. Please submit one signed paper original.
- *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.

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Dommu, 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) 586–9870. Email: *Jeremy.Dommu@ee.doe.gov*.

In the office of the General Counsel, contact Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: On December 16, 2011, The U.S. Department of Energy (DOE) published a request for information (RFI) in the **Federal Register** (76 FR 71874) to initiate a rulemaking and data collection process to develop a potential test procedure and energy conservation standard for set-top boxes and network equipment. The RFI requested public comment from interested parties regarding specific as well as general questions and provided for the submission of comments by February 14, 2012. Thereafter, AT&T Inc., on behalf of itself and its affiliates, requested an extension of the public comment period by a minimum of 30 days. AT&T stated that the additional time is necessary in order to fully evaluate and prepare the information requested in the RFI. AT&T noted that the information requested is complex and requires significant and essential input from AT&T engineering, product and technical personnel. Thus, AT&T asserted additional time is warranted to ensure quality responses to DOE's requests.

Based on AT&T's request, DOE believes that extending the comment period to allow additional time for interested parties to submit comments is appropriate. Therefore, DOE is extending the comment period until March 15, 2012 to provide interested parties additional time to prepare and submit comments. Accordingly, DOE will consider any comments received by March 15, 2012 to be timely submitted.

Issued in Washington, DC, on January 25, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2012–2060 Filed 1–30–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0018; Directorate Identifier 2011–CE–042–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; correction.

SUMMARY: The FAA is correcting a Notice of Proposed Rulemaking (NPRM) that was published in the **Federal Register**. That NPRM applies to certain Pilatus Aircraft Ltd. Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes. The Docket Number in the heading, in the Supplementary Information section, and in the Part 39—Airworthiness Directive section is incorrect. This document corrects that error. In all other respects, the original document remains the same.

DATES: The last date for submitting comments to the NPRM (77 FR 2238, January 17, 2012) remains March 2, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (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: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov*.

SUPPLEMENTARY INFORMATION: Notice of Proposed Rulemaking (NPRM), Directorate Identifier 2011–CE–042–AD (77 FR 2238, January 17, 2012), currently proposes to require the installation of a new locking screw and the modification of the installation of the hinge bolt for certain Pilatus Aircraft Ltd. Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes.

As published, the Docket Number in the heading, in the **SUPPLEMENTARY INFORMATION** section, and in the Part 39—Airworthiness Directive section is incorrect.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the NPRM is being published in the **Federal Register.**

The last date for submitting comments to the NPRM remains March 2, 2012.

Correction of Non-Regulatory Text

In the **Federal Register** of January 17, 2012, Directorate Identifier 2011–CE–042–AD is corrected as follows:

On page 2238, in the first column, on line 4 under the heading DEPARTMENT OF TRANSPORTATION, change Docket No. FAA–2011–0018 to ''Docket No. FAA–2012–0018.''

On page 2238, in the third column, on line 12 under the heading

SUPPLEMENTARY INFORMATION, change Docket No. FAA–2011–0018 to ''Docket No. FAA–2012–0018.''

Correction of Regulatory Text

§ 39.13 [Corrected]

In the **Federal Register** of January 17, 2012, on page 2239, in the second column, under the heading **PART 39—AIRWORTHINESS DIRECTIVES** of Directorate Identifier 2011–CE–042–AD is corrected to read as follows:

* * * * *

Pilatus Aircraft Ltd.: Docket No. FAA–2012–0018; Directorate Identifier 2011–CE–042–AD.

* * * * *

Issued in Kansas City, Missouri, on January 25, 2012.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–1991 Filed 1–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0901; Airspace Docket No. 11–ASW–12]

Proposed Establishment of Class E Airspace; Freer, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Freer, TX. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Seven C's Ranch Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: 0901 UTC. Comments must be received on or before March 16, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0901/Airspace Docket No. 11–ASW–12, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–(800) 647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0901/Airspace Docket No. 11–ASW–12.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Seven C's Ranch Airport, Freer, TX. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Seven C's Ranch Airport, Freer, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

ASW TX E5 Freer, TX [New]

Seven C's Ranch Airport, TX
(Lat. 27°59′49″ N., long. 98°52′56″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Seven C's Ranch Airport, and within 2 miles each side of the 153° bearing from the airport extending from the 6.7-mile radius to 11.1 miles southeast of the airport, excluding that airspace within Restricted Area R–6312.

Issued in Fort Worth, TX, on January 12, 2012.

Walter L. Tweedy,

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

[FR Doc. 2012–2020 Filed 1–30–12; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1403; Airspace Docket No. 11–ASW–29]

Proposed Amendment of Class E Airspace; Baraboo, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Baraboo, WI. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Reedsburg Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport. The airport's geographic coordinates also would be adjusted.

DATES: 0901 UTC. Comments must be received on or before March 16, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–1403/Airspace Docket No. 11–ASW–29, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–(800) 647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–1403/Airspace Docket No. 11–ASW–29.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Reedsburg Municipal Airport, Baraboo, WI. Geographic coordinates would also be amended to coincide with the FAA's aeronautical database. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will

only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Reedsburg Municipal Airport, Baraboo, WI.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

AGL WI E5 Baraboo, WI [Amended]

Baraboo Wisconsin Dells Airport, WI
(Lat. 43°31′18″ N., long. 89°46′15″ W.)
Reedsburg Municipal Airport, WI
(Lat. 43°31′33″ N., long. 89°59′00″ W.)
Portage Municipal Airport, WI
(Lat. 43°33′37″ N., long. 89°28′58″ W.)

That airspace extending upward from 700 feet above the surface within a 9.6-mile radius of Baraboo Wisconsin Dells Airport, and within a 9.6-mile radius of Reedsburg Municipal Airport, and within 2 miles each side of the 180° bearing from Reedsburg Municipal Airport extending from the 9.6-mile radius to 10.5 miles south of the airport, and within an 8.7-mile radius of Portage Municipal Airport.

Issued in Fort Worth, TX, on January 13, 2012.

Walter L. Tweedy,

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

[FR Doc. 2012–2085 Filed 1–30–12; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0608; Airspace Docket No. 11–ASW–6]

Proposed Amendment of Class E Airspace; Leesville, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Leesville, LA. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Leesville Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: 0901 UTC. Comments must be received on or before March 16, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0608/Airspace Docket No. 11–ASW–6, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1 (800) 647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0608/Airspace Docket No. 11–ASW–6.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate

new standard instrument approach procedures at Leesville Airport, Leesville, LA. Geographic coordinates would also be amended to coincide with the FAA's aeronautical database. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Leesville Airport, Leesville, LA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

ASW LA E5 Leesville, LA [Amended]

Leesville Airport, LA
(Lat. 31°10′06″ N., long. 93°20′33″ W.)
Leesville NDB
(Lat. 31°06′08″ N., long. 93°20′31″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Leesville Airport, and within 3.6 miles each side of the 345° bearing from the airport extending from the 6.5-mile radius to 12.2 miles north of the airport, and within 2.5 miles each side of the 000° bearing of the Leesville NDB extending from the 6.5-mile radius to 7.3 miles north of the airport, excluding that airspace within the Fort Polk, LA, Class D airspace area, and excluding that airspace within restricted area R–3803A.

Issued in Fort Worth, TX, on January 13, 2012.

Walter L. Tweedy,

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

[FR Doc. 2012–2049 Filed 1–30–12; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0434; Airspace Docket No. 11–ACE–9]

Proposed Amendment of Class E Airspace; Maryville, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Maryville, MO. Decommissioning of the Emville non-directional beacon (NDB) at Northwest Missouri Regional Airport, Maryville, MO, has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at Northwest Missouri Regional Airport. The airport's geographic coordinates also would be adjusted.

DATES: 0901 UTC. Comments must be received on or before March 16, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0434/Airspace Docket No. 11–ACE–9, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1 (800) 647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0434/Airspace Docket No. 11–ACE–9.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by modifying Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Northwest Missouri Regional Airport, Maryville, MO. Airspace reconfiguration is necessary due to the decommissioning of the Emville NDB and the cancellation of the NDB approach. Geographic coordinates would also be updated to coincide with the FAA's aeronautical database. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Northwest Missouri Regional Airport, Maryville, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

ACE MO E5 Maryville, MO [Amended]

Maryville, Northwest Missouri Regional Airport, MO
(Lat. 40°21′12″ N., long. 94°55′00″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Northwest Missouri Regional Airport.

Issued in Fort Worth, TX, on January 13, 2012.

Walter L. Tweedy,

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

[FR Doc. 2012–2078 Filed 1–30–12; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1400; Airspace Docket No. 11–ASW–15]

Proposed Amendment of Class E Airspace; Monahans, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Monahans, TX. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Roy Hurd Memorial Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport. The airport's geographic coordinates also would be adjusted.

DATES: 0901 UTC. Comments must be received on or before March 16, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–1400/Airspace Docket No. 11–ASW–15, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–(800) 647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort

Worth, TX 76137; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–1400/Airspace Docket No. 11–ASW–15.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Roy Hurd Memorial Airport, Monahans, TX. Geographic coordinates would also be adjusted to coincide with the FAA's aeronautical database. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Roy Hurd Memorial Airport, Monahans, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

ASW TX E5 Monahans, TX [Amended]

Roy Hurd Memorial Airport, TX
(Lat. 31°34′57″ N., long. 102°54′33″ W.)
Wink VORTAC
(Lat. 31°52′29″ N., long. 103°14′38″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Roy Hurd Memorial Airport, and within 1.9 miles each side of the 127° bearing from the airport extending from the 6.4-mile radius to 9.8 miles southeast of the airport, and within 2 miles each side of the 307° bearing from the airport extending from the 6.4-mile radius to 9.6 miles northwest of the airport, and within 1.6 miles each side of the 136° radial of the Wink VORTAC extending from the 6.4-mile radius to 11 miles northwest of the airport.

Issued in Fort Worth, TX, on January 13, 2012.

Richard J. Kervin,

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

[FR Doc. 2012–2077 Filed 1–30–12; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0607; Airspace Docket No. 11–AGL–15]

Proposed Amendment of Class E Airspace; New Philadelphia, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at New Philadelphia, OH. Additional controlled airspace is necessary to accommodate

new Standard Instrument Approach Procedures (SIAP) at Harry Clever Field. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport. Also, the geographic coordinates of the airport would be amended.

DATES: 0901 UTC. Comments must be received on or before March 16, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0607/Airspace Docket No. 11–AGL–15, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1 (800) 647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0607/Airspace Docket No. 11–AGL–15.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Harry Clever Field, New Philadelphia, OH. The airport's geographic coordinates also would be amended to coincide with the FAA's aeronautical database. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Harry Clever Field, New Philadelphia, OH.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

AGL OH E5 New Philadelphia, OH [Amended]

Harry Clever Field Airport, OH
(Lat. 40°28′13″ N., long. 81°25′12″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Harry Clever Field Airport, and within 2 miles each side of the 319° bearing

from the airport extending from the 6.4-mile radius to 11.2 miles northwest of the airport.

Issued in Fort Worth, TX, on January 12, 2012.

Walter L. Tweedy,

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

[FR Doc. 2012–2083 Filed 1–30–12; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0847; Airspace Docket No. 11–ASW–11]

Proposed Amendment of Class E Airspace; Springhill, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Springhill, LA. Decommissioning of the Springhill non-directional beacon (NDB) at Springhill Airport, Springhill, LA, has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at Springhill Airport. The geographic coordinates of the airport also would be amended.

DATES: 0901 UTC. Comments must be received on or before March 16, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0847/Airspace Docket No. 11–ASW–11, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0847/Airspace Docket No. 11–ASW–11.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd. Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by modifying Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Springhill Airport, Springhill, LA. Airspace reconfiguration is necessary due to the decommissioning of the Springhill NDB and the cancellation of the NDB approach. This action would also amend the geographic coordinates of the airport to coincide with the FAA's aeronautical database. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Springhill Airport, Springhill, LA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

ASW LA E5 Springhill, LA [Amended]

Springhill Airport, LA
(Lat. 32°59′00″ N., long. 93°24′33″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Springhill Airport.

Issued in Fort Worth, TX, on January 12, 2012.

Walter L. Tweedy,

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

[FR Doc. 2012–2046 Filed 1–30–12; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1338; Airspace Docket No. 11–ANM–27]

Proposed Amendment of Class E Airspace; Tobe, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Tobe, CO. Decommissioning of the Tobe Tactical Air Navigation System (TACAN) has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations in the vicinity of the Tobe Very High Frequency Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME).

DATES: Comments must be received on or before March 16, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2011–1338; Airspace Docket No. 11–ANM–27, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–1338 and Airspace Docket No. 11–ANM–27) and be submitted in triplicate to the Docket Management System (see ''**ADDRESSES**'' section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2011–1338 and Airspace Docket No. 11–ANM–27.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 8,500 feet Mean Sea Level (MSL) in the vicinity of the Tobe VOR/DME. Airspace reconfiguration is necessary due to the decommissioning to the Tobe TACAN. This action would enhance the safety and management of aircraft operations in the vicinity of the Tobe VOR/DME, CO.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when

promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Tobe, CO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

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

* * * * *

ANM CO E5 Tobe, CO [Modified]

Tobe VOR/DME

(Lat. 37°15′31″ N., long. 103°36′00″ W.)

That airspace north of the Tobe VOR/DME extending upward from 8,500 feet MSL, bounded on the north by V–210, on the southeast by V–263, and on the west by V–389.

Issued in Seattle, Washington, on January 23, 2012.

Robert Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–2088 Filed 1–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0749; Airspace Docket No. 11–ACE–15]

Proposed Establishment of Class E Airspace; Branson West, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Branson West, MO. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Branson West Municipal—Emerson Field Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: 0901 UTC. Comments must be received on or before March 16, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0749/Airspace Docket No. 11–ACE–15, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–(800) 647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0749/Airspace Docket No. 11–ACE–15.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see ''**ADDRESSES**'' section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Branson West Municipal—Emerson Field Airport, Branson West, MO.

Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Branson West Municipal-Emerson Field Airport, Branson West, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

ACE MO E5 Branson West, MO [New]

Branson West Municipal—Emerson Field Airport, MO
(Lat. 36°41′55″ N., long. 93°24′08″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Branson West Municipal—Emerson Field Airport.

Issued in Fort Worth, TX, on January 12, 2012.

Walter L. Tweedy,

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

[FR Doc. 2012–2080 Filed 1–30–12; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1104; Airspace Docket No. 11–ACE–21]

Proposed Establishment of Class E Airspace; Eldon, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Eldon, MO. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Eldon Model Airpark. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: 0901 UTC. Comments must be received on or before March 16, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–1104/Airspace Docket No. 11–ACE–21, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–(800) 647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–1104/Airspace Docket No. 11–ACE–21.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in

person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Eldon Model Airpark, Eldon, MO. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Eldon Model Airpark, Eldon, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

ACE MO E5 Eldon, MO [New]

Eldon Model Airpark, MO

(Lat. 38°21′38″ N., long. 92°34′17″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Eldon Model Airpark.

Issued in Fort Worth, TX, on January 12, 2012.

Walter L. Tweedy,

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

[FR Doc. 2012–2057 Filed 1–30–12; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0903; Airspace Docket No. 11–ACE–20]

Proposed Establishment of Class E Airspace; Houston, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Houston, MO. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Houston Memorial Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: 0901 UTC. Comments must be received on or before March 16, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0903/Airspace Docket No. 11–ACE–20, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1 (800) 647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic,

environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0903/Airspace Docket No. 11–ACE–20.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by establishing Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Houston Memorial Airport, Houston, MO. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Houston Memorial Airport, Houston, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

ACE MO E5 Houston, MO [New]

Houston Memorial Airport, MO
(Lat. 37°19′49″ N., long. 91°58′23″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Houston Memorial Airport.

Issued in Fort Worth, TX, on January 12, 2012.

Walter L. Tweedy,

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

[FR Doc. 2012–2051 Filed 1–30–12; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1103; Airspace Docket No. 11–ACE–14]

Proposed Establishment of Class E Airspace; Pender, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Pender, NE. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Pender Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: 0901 UTC. Comments must be received on or before March 16, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–1103/Airspace Docket No. 11–ACE–14, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center,

Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–1103/Airspace Docket No. 11–ACE–14.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Pender Municipal Airport, Pender, NE. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Pender Municipal Airport, Pender, NE.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

ACE NE E5 Pender, NE [New]

Pender Municipal Airport, NE
(Lat. 42°06′48″ N., long. 96°43′40″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Pender Municipal Airport.

Issued in Fort Worth, TX, on January 19, 2012.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012–2050 Filed 1–30–12; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0426; Airspace Docket No. 11–ACE–7]

Proposed Establishment of Class E Airspace; Red Cloud, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Red Cloud, NE. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Red Cloud Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: 0901 UTC. Comments must be received on or before March 16, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of

Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0426/Airspace Docket No. 11–ACE–7, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1 (800) 647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0426/Airspace Docket No. 11–ACE–7.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Red Cloud Municipal Airport, Red Cloud, NE. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9V, dated August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Red Cloud Municipal Airport, Red Cloud, NE.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

ACE NE E5 Red Cloud, NE [New]

Red Cloud Municipal Airport, NE
(Lat. 40°04′56″ N., long. 98°32′29″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Red Cloud Municipal Airport.

Issued in Fort Worth, TX, on January 12, 2012.

Walter L. Tweedy,

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

[FR Doc. 2012–2087 Filed 1–30–12; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 518

RIN 3141–AA44

Self-Regulation of Class II Gaming

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend the NIGC's self-regulation regulations to tailor the self-regulating qualifying criteria to a tribe's regulation of class II gaming activity and more clearly define and streamline the self-regulation certification process. By tailoring the self-regulating qualifying criteria to the capabilities of a tribe's regulatory body, and by clarifying and streamlining the certification process, more tribes may become self-regulating.

DATES: The agency must receive comments on or before April 2, 2012.

ADDRESSES: You may submit comments by any one of the following methods, but please note that comments sent by electronic mail are strongly encouraged.

- *Email comments to: reg.review@nigc.gov.*
- *Mail comments to:* Katherine Zebell, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005.
- *Hand deliver comments to:* 1441 L Street NW., Suite 9100, Washington, DC 20005.
- *Fax comments to:* Katherine Zebell, National Indian Gaming Commission at (202) 632–7066.

FOR FURTHER INFORMATION CONTACT: Katherine Zebell, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005. Telephone: (202) 632–7003; email: *reg.review@nigc.gov.*

SUPPLEMENTARY INFORMATION:

I. Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments which provide a factual basis in support of the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal.

II. Background

On November 18, 2010, the Commission issued a Notice of Inquiry and Notice of Consultation (''NOI'') advising the public that the NIGC was conducting a comprehensive review of its regulations and requesting public comment on which of its regulations were most in need of revision, in what order the NIGC should review its regulations, and the process the NIGC should utilize to make revisions. 75 FR 70680 (Nov. 18, 2010). On April 4, 2011, after holding eight consultations and reviewing all of the comments, the Commission published a Notice of Regulatory Review Schedule, setting out a consultation schedule and process for review. 76 FR 18457. Part 518 is included in one of the regulation groups that are part of this regulatory review.

III. Development of the Proposed Rule

The Commission conducted numerous tribal consultations as part of its review of part 518—Self-Regulation of Class II Gaming. Tribal consultations were held in every region of the country and were attended by many tribal leaders or their representatives. In addition to tribal consultations, on August 16, 2011, the Commission requested public comment on a Preliminary Draft of part 518. After considering the comments received from the public, and through tribal consultations, the Commission proposes to amend part 518 to (a) tailor the self-regulating criteria to a tribe's regulation of class II gaming activity; and (b) clearly define and streamline the process by which a self-regulation petition is reviewed and a final determination is made by the Commission.

IV. Overview of the Proposed Rule

During the regulation review process, the Commission received comments that the existing self-regulation regulation discourages participation because the burdens imposed by the regulation outweigh the benefits. Specifically, comments stated that the current process is confusing, and the submission requirements, and continuing compliance requirements, are redundant and intrusive. The Commission also received comments that the current process is misfocused by placing greater emphasis on a tribe's gaming operation than on the effectiveness of a tribe's regulatory system. Therefore, the Commission is proposing amendments to streamline and clarify the process, as well as to ensure an effective regulatory framework for self-regulating tribes.

The proposed rule amends the petition and approval process to focus on the capability of the tribal regulatory body. To this end, the proposed rule requires information necessary for the Commission to evaluate the strength and effectiveness of a tribe's regulation of its gaming activity.

The proposed rule clarifies both the initial eligibility requirements and the petition submission requirements. Further, the proposed rule eliminates the need to resubmit information already provided to either the NIGC or the Bureau of Indian Affairs (''BIA''), such as gaming regulations, constitutions, revenue allocation plans, and facility licenses. The proposed rule creates distinct stages and timelines for the certification process, and accelerates the timeline for the Commission to issue a final decision. The proposed rule provides for a streamlined process by involving the Commission in the certification review process. Under the proposed rule, the Commission will issue both the preliminary findings and final determination as to whether a tribe meets the approval criteria for self-regulation. The Commission will also hold a hearing, if requested by a tribe upon receipt of the Commission's preliminary findings.

Once certified, the only annual submission requirements under the proposed rule are the submission of independent audits and the resumes of all employees hired and licensed by the tribe's gaming regulatory body. The Commission believes that the annual self-regulation report currently required provides duplicative information already available to the agency and therefore proposes to eliminate that requirement. Additionally, the proposed rule requires self-regulating tribes to notify the NIGC within three business days of any change in circumstances that is material to the requirements for issuance of a certificate of self-regulation. This self-reporting requirement will provide the Commission with essential information in a more timely manner than the annual report mechanism in the current regulations.

Finally, the proposed rule corrects and clarifies the existing rule by referencing IGRA's post-certification limitations regarding the NIGC's authority over self-regulating tribes.

A. General Comments

Responses to the NOI and the Preliminary Draft of part 518 were generally positive. Many commenters stated that, in its current form, part 518 should be reviewed and revised to facilitate self-regulation while maintaining stringent standards. A commenter stated that the self-regulation regulations should be about evaluating a tribe's regulatory agency, not the gaming operation. Another commenter agreed, stating the focus should be on the tribal regulatory agency, not the gaming operation. Other commenters noted that the current financial benefits of waived fees do not outweigh the paperwork burdens of the current regulations. One commenter noted that the promise of self-regulation contemplated by the Act is not fulfilled by the NIGC's current regulations. Another commenter stated that the fact that only two tribes are self-regulating means something is wrong with the

regulations. As noted above, the Commission's proposed changes attempt to address many of these concerns.

B. Eligibility and Submission Requirements for Petition

The statute identifies who is eligible to petition for a certificate of self-regulation, and those criteria are contained in § 518.2 of the current regulation. The proposed rule attempts to clearly identify what a tribe is required to include in its petition at the time it is submitted to the NIGC, including evidence that the tribe meets the statutory eligibility requirements.

The requirement that a tribe must have continuously conducted class II gaming activity for the 3-year period immediately preceding the date of the petition raised concerns by several commenters. Commenters stated that this requirement could make ineligible those tribes conducting both class II and class III gaming, but which have not continuously conducted class II gaming for a 3-year period prior to submitting a petition. Commenters stated that if a tribe has conducted, and successfully regulated class II and/or class III gaming for three years, then it should be eligible to petition for a certificate of self-regulation. Further, there are instances in which tribes operate their gaming facilities seasonally or in which tribes have to temporarily close their facilities. While the Commission understands the perspective of the commenters, IGRA requires a tribe to continuously conduct class II gaming activity for three years before submitting a petition for self-regulation. Accordingly, and in light of the comments received, the Commission will continue to interpret the phrase ''continuously conducted'' in a way consistent with the common-sense interpretation found in the preamble to the existing rule at 63 FR 41961 (August 6, 1998). Likewise, this Commission does not intend to preclude a tribe from obtaining a certificate of self-regulation if its gaming operation is closed for temporary or seasonal closures, and will evaluate each situation on a case-by-case basis. Commenters noted that the current rule requires submission of information that is more focused on the gaming operation than the gaming regulatory framework. The Commission agrees with this comment and has attempted to strengthen the submission requirements that would indicate whether a tribe was successfully regulating its gaming activities, such as the criteria used for hiring tribal regulatory agency employees and a list of the gaming activity internal controls in place at the gaming operation. Under the proposed rule, tribes will be required to provide a list of their internal controls as part of the petition. Additionally, tribes must only submit the gaming regulations with the petition if the gaming regulations are not part of the gaming ordinance previously submitted and approved by the Chair.

Further, commenters also noted that requiring information such as a tribe's constitution, revenue allocation plan or facility license is duplicative, as these documents have already been submitted to the NIGC or the BIA. The Commission agrees with this observation and has attempted to streamline the certification process by removing the requirements to resubmit documents previously provided to the NIGC or the BIA.

C. Criteria That Must Be Met To Receive a Certificate of Self-Regulation

The statute establishes criteria that must be met by a tribe before a certificate of self-regulation can be issued. The current rule identifies those criteria and provides a list of ''indicators'' that a tribe may use to demonstrate they have met the criteria. The proposed rule clarifies that the examples listed are not all-inclusive and that a tribe can provide other evidence to satisfy the criteria. As discussed above, the proposed rule focuses on evidence related to the tribe's regulation of the gaming activity. The proposed rule also streamlines criteria addressed by other NIGC regulations, such as compliance with applicable building, health and safety codes and procedures for resolving disputes between the gaming public and the tribe. Those requirements are addressed in Parts 559 and 522, respectively.

D. Process for Petition Review and Certification of Tribes

Several tribes commented that the timing and process for certification needs clarification. In response, the proposed rule attempts to simplify and streamline the certification process, including how petitions are submitted, reviewed and approved, and the timelines for each stage. The proposed rule also attempts to clarify the respective roles and responsibilities of the Commission and the Office of Self-Regulation (''OSR''). The current regulation authorizes the OSR to administer the self-regulation program and receive, review and approve petitions. Commenters stated that IGRA requires the Commission itself to consider petitions and certify qualifying tribes. The proposed rule modifies the roles of the OSR and the Commission by requiring the full Commission to make the final determination as to whether a tribe meets the approval criteria for self-regulation, based on information presented in the tribe's petition, supplemental documentation and a hearing, if held. The proposed rule also streamlines the process by requiring the Commission to issue preliminary findings to the tribe and provide the tribe with an opportunity for a hearing before the Commission issues a final determination. This change allows a tribe to respond to a preliminary adverse finding before a final determination by the Commission. This proposed process is intended to facilitate collaboration with the NIGC to meet the approval criteria. Finally, the proposed rule provides for judicial review in a more timely manner than the current regulations.

E. Post-Certification Rights and Responsibilities

IGRA requires a tribe which has been issued a certificate of self-regulation to submit an independent annual audit and a complete resume on all employees hired and licensed by the tribe. The proposed rule requires self-regulating tribes to submit, on an annual basis, an independent audit and the resumes of employees hired and licensed by the tribal gaming regulatory body. Some commenters requested the regulation include a definition of ''tribal regulator.'' The proposed rule does not define ''tribal regulator'' because tribal law may vary on how it defines a tribal regulator. In order to account for all persons responsible for the regulation of a tribes' class II gaming activity, without interfering with the tribe's interpretation of a ''tribal regulator,'' the proposed rule requires self-regulating tribes to submit, on an annual basis, the resumes of all employees hired and licensed by the tribal gaming regulatory body. The Commission invites comment on this approach and comment on potential definitions of ''tribal regulator.''

Part 518 currently requires the tribe to submit an annual report to establish that the tribe has continuously met the eligibility and approval requirements. The proposed rule reduces this paperwork burden. The proposed rule requires a tribe to notify the NIGC within three business days of any change in circumstances that is material to meeting the requirements for issuance of the certificate. This approach will ensure timely reporting to maintain the integrity of Indian gaming while reducing paperwork requirements for the regulated community.

Finally, commenters stated that the current regulations concerning the NIGC's enforcement powers over self-

regulating tribes were unclear and overbroad. Consistent with public comments, the proposed rule corrects and clarifies § 518.9 by referencing the powers of the NIGC that are limited by statute once a tribe is issued a certificate of self-regulation

Regulatory Matters

Regulatory Flexibility Act

This proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Indian tribes are not considered to be small entities for purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions, and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency within the Department of the Interior, is exempt from compliance with the Unfunded Mandates Reform Act. 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that this proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

National Environmental Policy Act

The Commission has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

Paperwork Reduction Act

This proposed rule requires information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.,* and is, therefore, subject to review by the Office of Management and Budget.

List of Subjects in 25 CFR 518

Gambling, Indian—lands, Indian—tribal government, Reporting and recordkeeping requirements.

Accordingly, for the reasons discussed in the preamble, the Commission proposes to revise 25 CFR part 518 to read as follows:

PART 518—SELF-REGULATION OF CLASS II GAMING

Sec.

518.1 What does this part cover?
518.2 Who will administer the self-regulation program for the Commission?
518.3 Who is eligible to petition for a certificate of self-regulation?
518.4 What must a tribe submit to the Commission as part of its petition?
518.5 What criteria must a tribe meet to receive a certificate of self-regulation?
518.6 What are the responsibilities of the Office of Self-Regulation in the certification process?
518.7 What process will the Commission use to review and certify petitions?
518.8 What is the hearing process?
518.9 When will a certificate of self-regulation become effective?
518.10 What must a self-regulating tribe provide the Commission to maintain its self-regulatory status?
518.11 Does a tribe that holds a certificate of self-regulation have a continuing duty to advise the Commission of any additional information?
518.12 Which investigative or enforcement powers of the Commission are inapplicable to self-regulating tribes?
518.13 When may the Commission revoke a certificate of self-regulation?
518.14 May a tribe request a hearing on the Commission's proposal to revoke its certificate of self-regulation?

Authority: 25 U.S.C. 2706(b)(10); E.O. 13175.

§ 518.1 What does this part cover?

This part sets forth requirements for obtaining a certificate of self-regulation of class II gaming operations under 25 U.S.C. 2710(c). When the Commission issues a certificate of self-regulation, the certificate is issued to the tribe, not to a particular gaming operation. The certificate applies to all class II gaming activity conducted by the tribe holding the certificate.

§ 518.2 Who will administer the self-regulation program for the Commission?

The self-regulation program will be administered by the Office of Self-Regulation. The Chair shall appoint one Commissioner to administer the Office of Self-Regulation.

§ 518.3 Who is eligible to petition for a certificate of self-regulation?

A tribe is eligible to petition the Commission for a certificate of self-regulation of class II gaming if, for a three (3)-year period immediately preceding the date of its petition:

(a) The tribe has continuously conducted such gaming;

(b) All gaming that the tribe has engaged in, or has licensed and regulated, on Indian lands within the tribe's jurisdiction, is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), in accordance with 25 U.S.C. 2710(b)(1)(A);

(c) The governing body of the tribe has adopted an ordinance or resolution that the Chair has approved, in accordance with 25 U.S.C. 2710(b)(1)(B);

(d) The tribe has otherwise complied with the provisions of 25 U.S.C. 2710; and

(e) The gaming operation and the tribal regulatory body have, for the three (3) years immediately preceding the date of the petition, maintained all records required to support the petition for self-regulation.

§ 518.4 What must a tribe submit to the Commission as part of its petition?

A petition for a certificate of self-regulation is complete under this part when it contains:

(a) Two copies on 8½″ x 11″ paper of a petition for self-regulation approved by the governing body of the tribe and certified as authentic by an authorized tribal official;

(b) A description of how the tribe meets the eligibility criteria in § 518.3, which may include supporting documentation; and

(c) The following information with supporting documentation:

(i) A brief history of each gaming operation(s), including the opening dates and periods of voluntary or involuntary closure;

(ii) An organizational chart of the tribal regulatory body;

(iii) A brief description of the criteria tribal regulators must meet before being eligible for employment as a tribal regulator;

(iv) A brief description of the process by which the tribal regulatory body is

funded, and the funding level for the three years immediately preceding the date of the petition;

(v) A list of the current regulators and employees of the tribal regulatory body, their complete resumes, their titles, the dates they began employment, and, if serving limited terms, the expiration date of such terms;

(vi) A brief description of the accounting system(s) at the gaming operation which tracks the flow of the gaming revenues;

(vii) A list of gaming activity internal controls at the gaming operation(s);

(viii) A description of the record keeping system(s) for all investigations, enforcement actions, and prosecutions of violations of the tribal gaming ordinance or regulations, for the three (3)-year period immediately preceding the date of the petition; and

(ix) The tribe's current set of gaming regulations, if not included in the approved tribal gaming ordinance.

§ 518.5 What criteria must a tribe meet to receive a certificate of self-regulation?

(a) The Commission shall issue a certificate of self-regulation if it determines that for a three (3)-year period, the tribe has:

(1) Conducted its gaming activity in a manner that:

(i) Has resulted in an effective and honest accounting of all revenues;

(ii) Has resulted in a reputation for safe, fair, and honest operation of the activity; and

(iii) Has been generally free of evidence of criminal or dishonest activity;

(2) Conducted its gaming operation on a fiscally and economically sound basis;

(3) Conducted its gaming activity in compliance with the IGRA, NIGC regulations in this chapter, and the tribe's gaming ordinance and gaming regulations; and

(4) Adopted and is implementing adequate systems for:

(i) Accounting of all revenues from the gaming activity;

(ii) Investigating, licensing and monitoring of all employees of the gaming activity;

(iii) Investigating, enforcing, prosecuting, or referring for prosecution violations of its gaming ordinance and regulations; and

(iv) Prosecuting criminal or dishonest activity or referring such activity for prosecution.

(b) A tribe may illustrate that it has met the criteria listed in paragraph (a) of this section by addressing factors such as those listed below. The list of factors is not all-inclusive; other factors not listed here may also be addressed and considered.

(1) The tribe adopted and is implementing minimum internal control standards which are at least as stringent as those promulgated by the Commission;

(2) The tribe requires tribal gaming regulators to meet the same suitability requirements as those required for key employees and primary management officials of the gaming operation(s);

(3) The tribe's gaming operation utilizes an adequate system for accounting of all gaming revenues from class II gaming activity;

(4) The tribe has a dispute resolution process for gaming operation customers and has taken steps to ensure that the process is adequately implemented;

(5) The tribe has a gaming regulatory body which:

(i) Monitors gaming activities to ensure compliance with Federal and tribal laws and regulations;

(ii) Monitors the gaming revenues accounting system for continued effectiveness;

(iii) Performs routine operational or other audits of the class II gaming activities;

(iv) Routinely receives and reviews gaming revenue accounting information from the gaming operation(s);

(v) Has access to and may inspect, examine, photocopy and audit all papers, books, and records of the gaming operation(s) and class II gaming activities;

(vi) Monitors compliance with minimum internal control standards for the gaming operation;

(vii) Has adopted and is implementing an adequate system for investigating, licensing, and monitoring of all employees of the gaming activity;

(viii) Maintains records on licensees and on persons denied licenses, including persons otherwise prohibited from engaging in gaming activities within the tribe's jurisdiction;

(ix) Establishes standards for, and issues, vendor licenses or permits to persons or entities who deal with the gaming operation, such as manufacturers and suppliers of services, equipment and supplies;

(x) Establishes or approves the rules governing class II games, and requires their posting;

(xi) Has adopted and is implementing an adequate system for the investigation of possible violations of the tribal gaming ordinance and regulations, and takes appropriate enforcement actions; and

(xii) Takes testimony and conducts hearings on regulatory matters, including matters related to the revocation of primary management officials, key employee and vendor licenses;

(6) The tribe allocates and appropriates a sufficient source of permanent and stable funding for the tribal regulatory body;

(7) The tribe has adopted and is implementing a conflict of interest policy for the regulators/regulatory body and their staff;

(8) The tribe has adopted and is implementing a system for adequate prosecution of violations of the tribal gaming ordinance and regulations or referrals for prosecution; and

(9) The tribe demonstrates that the operation is being conducted in a manner which adequately protects the environment and the public health and safety.

(c) The tribe assists the Commission with access and information-gathering responsibilities during the certification process.

(d) The burden of establishing self-regulation is upon the tribe filing the petition.

§ 518.6 What are the responsibilities of the Office of Self-Regulation in the certification process?

The Office of Self-Regulation shall be responsible for directing and coordinating the certification process. It shall provide a written report and recommendation to the Commission as to whether a certificate of self-regulation should be issued or denied, and a copy of the report and recommendation to the petitioning tribe.

§ 518.7 What process will the Commission use to review and certify petitions?

(a) Petitions for self-regulation shall be submitted by tribes to the Office of Self-Regulation.

(1) Within 30 days of receipt of a tribe's petition, the Office of Self-Regulation shall conduct a review of the tribe's petition to determine whether it is complete under § 518.4.

(2) If the tribe's petition is incomplete, the Office of Self-Regulation shall notify the tribe by letter, certified mail or return receipt requested, of any obvious deficiencies or significant omissions in the petition. A tribe with an incomplete petition may submit additional information and/or clarification within 30 days of receipt of notice of an incomplete petition.

(3) If the tribe's petition is complete, the Office of Self-Regulation shall notify the tribe in writing.

(b) Once a tribe's petition is complete, the Office of Self-Regulation shall conduct a review to determine whether the tribe meets the eligibility criteria in § 518.3 and the approval criteria in § 518.5. During its review, the Office of Self-Regulation:

(1) May request from the tribe any additional material it deems necessary to assess whether the tribe has met the criteria for self-regulation.

(2) Will coordinate an on-site review and verification of the information submitted by the petitioning tribe.

(c) Within 120 days of notice of a complete petition under § 518.4, the Office of Self-Regulation shall provide a recommendation and written report to the full Commission and the petitioning tribe.

(1) If the Office of Self-Regulation determines that the tribe has satisfied the criteria for a certificate of self-regulation, it shall recommend to the Commission that a certificate be issued to the tribe.

(2) If the Office of Self-Regulation determines that the tribe has not met the criteria for a certificate of self-regulation, it shall recommend to the Commission that it not issue a certificate to the tribe.

(3) The Office of Self-Regulation shall make all information on which it relies in making its recommendation and report available to the tribe, subject to the confidentiality requirements in 25 U.S.C. 2716(a), and shall afford the tribe an opportunity to respond.

(4) The report shall include:

(i) Findings as to whether each of the eligibility criteria is met, and a summary of the basis for each finding;

(ii) Findings as to whether each of the approval criteria is met, and a summary of the basis for each finding;

(iii) A recommendation to the Commission as to whether it should issue the tribe a certificate of self-regulation; and

(iv) A list of any documents and other information received in support of the tribe's petition.

(5) A tribe shall have 30 days from the date of issuance of the report to submit to the Office of Self-Regulation a response to the report.

(d) After receiving the Office of Self-Regulation's recommendation and report, and a tribe's response to the report, the Commission shall issue preliminary findings as to whether the eligibility and approval criteria are met. The Commission's preliminary findings will be provided to the tribe within 30 days of receipt of the report.

(e) Upon receipt of the Commission's preliminary findings, the tribe can request, in writing, a hearing before the Commission, as set forth in § 518.8. Hearing requests shall be made to the Office of Self-Regulation and shall specify the issues to be addressed by the tribe at the hearing, and any proposed oral or written testimony the tribe wishes to present.

(f) The Commission shall issue a final determination 30 days after issuance of its preliminary findings or after the conclusion of a hearing, if one is held. The decision of the Commission to approve or deny a petition shall be a final agency action.

(g) A tribe may withdraw its petition and resubmit it at any time prior to the issuance of the Commission's final determination.

§ 518.8 What is the hearing process?

(a) Within 10 days of receipt of the request for a hearing, the Office of Self-Regulation shall notify the tribe of the date and place of the hearing. The notice shall also set a hearing schedule, the time allotted for testimony and oral argument, and the order of the presentation. To the extent possible, the hearing will be scheduled not later than 60 days after the notice is issued, and the hearing schedule will be issued at least 30 days prior to the hearing.

(b) The Commission shall issue a decision on the petition within 30 days after the hearing's conclusion. The decision shall set forth, with particularity, findings regarding the tribe's satisfaction of the self-regulation standards in this part. If the Commission determines that a certificate will issue, it will do so in accordance with § 518.11.

(c) The decision of the Commission to approve or deny a petition shall be a final agency action.

§ 518.9 When will a certificate of self-regulation become effective?

A certificate of self-regulation shall become effective on January 1 of the year following the year in which the Commission determines that a certificate will issue. Petitions will be reviewed in chronological order based on the date of receipt of a complete petition.

§ 518.10 What must a self-regulating tribe provide the Commission to maintain its self-regulatory status?

(a) Each tribe that holds a certificate of self-regulation shall be required to submit the following information on April 15 of each year following the first year of self-regulation or within 120 days after the end of each fiscal year of the gaming operation, as required by 25 CFR 571.13:

(1) An annual independent audit, to be filed with the Commission, as required by 25 U.S.C. 2710(b)(2)(c); and

(2) A complete resume for all employees of the tribal regulatory body hired and licensed by the tribe subsequent to its receipt of a certificate of self-regulation, to be filed with the Office of Self-Regulation.

(b) Failure to submit the information required by this section may result in revocation of a certificate of self-regulation.

§ 518.11 Does a tribe that holds a certificate of self-regulation have a continuing duty to advise the Commission of any additional information?

Yes. A tribe that holds a certificate of self-regulation has a continuing duty to advise the Commission within three (3) business days of any changes in circumstances that are material to the approval criteria in § 518.5 and may reasonably cause the Commission to review and revoke the tribe's certificate of self-regulation. Failure to do so is grounds for revocation of a certificate of self-regulation. Such circumstances may include, but are not limited to, a change in management contractor; a change of primary regulatory official; financial instability; or any other factors that are material to the decision to grant a certificate of self-regulation.

§ 518.12 Which investigative or enforcement powers of the Commission are inapplicable to self-regulating tribes?

During any time in which a tribe has a certificate of self-regulation, the powers of the Commission, as set forth in 25 U.S.C. 2706(b)(1)–(4), shall be inapplicable.

§ 518.13 When may the Commission revoke a certificate of self-regulation?

The Commission may, after an opportunity for a hearing, revoke a certificate of self-regulation by a majority vote of its members if it determines that the tribe no longer meets the eligibility criteria of § 518.3, the approval criteria of § 518.5, the requirements of § 518.10 or the requirements of § 518.11. The Commission shall provide the tribe with prompt notice of the Commission's intent to revoke a certificate of self-regulation under this part. Such notice shall state the reasons for the Commission's action and shall advise the tribe of its right to a hearing under part 584 or right to appeal under part 585. The decision to revoke a certificate is a final agency action and is appealable to Federal District Court pursuant to 25 U.S.C. 2714.

§ 518.14 May a tribe request a hearing on the Commission's proposal to revoke its certificate of self-regulation?

Yes. A tribe may request a hearing regarding the Commission's proposal to revoke a certificate of self-regulation. Such a request shall be filed with the Commission pursuant to part 584. Failure to request a hearing within the time provided by part 584 shall

constitute a waiver of the right to a hearing.

Tracie L. Stevens,
Chairwoman.
Steffani A. Cochran,
Vice-Chairwoman.
Daniel J. Little,
Associate Commissioner.

[FR Doc. 2012–1763 Filed 1–27–12; 11:15 am]
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DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Parts 524, 539, 577, 580, 581, 582, 583, 584, and 585

RIN 3141–AA47

Appeal Proceedings Before the Commission

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission proposes to add a new subchapter to its regulations to create a clear process for appeal proceedings before the Commission. It would, among other things, define certain terms, set forth the burden of proof and standard of review, explain what information a Commission decision will contain, and what happens if the Commission does not issue a majority decision, and provide that an appeal of the Chair's decision does not stay the effect of that decision. The proposed regulations set forth rules for motion practice in appeals before the Commission, addresses how an entity other than a tribe would request to participate on a limited basis in ordinance appeals, how parties file motions to intervene, to supplement the record, and for reconsideration, and how to file motions before the presiding official. Additionally, the proposed regulation sets forth more specific rules for different types of appeals. Rules for appeals of ordinance disapprovals, management contract approvals and disapprovals, appeals before a presiding official, and appeals before the Commission on written submission only each receive somewhat different treatment.

DATES: The agency must receive comments on or before April 2, 2012.

ADDRESSES: You may submit comments by any one of the following methods, however, please note that comments sent by electronic mail are strongly encouraged.

- *Email comments to:* *reg.review@nigc.gov.*
- *Mail comments to:* Maria Getoff, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005.
- *Hand deliver comments to:* 1441 L Street NW., Suite 9100, Washington, DC 20005.
- *Fax comments to:* Maria Getoff, National Indian Gaming Commission at (202) 632–0045.

FOR FURTHER INFORMATION CONTACT: Maria Getoff, National Indian Gaming Commission, 1441 L Street NW., Suite 9100 Washington, DC 20005. Telephone: (202) 632–7003; email: *reg.review@nigc.gov.*

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I. Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal.

II. Background

On November 18, 2010, the National Indian Gaming Commission (NIGC) issued a Notice of Inquiry and Notice of Consultation (NOI) advising the public that the NIGC was conducting a comprehensive review of its regulations and requesting public comment on which of its regulations were most in need of revision, in what order the Commission should review its regulations, and the process NIGC should utilize to make revisions. 75 FR 70680 (Nov. 18, 2010). On April 4, 2011, after holding eight consultations and reviewing all comments, NIGC published a Notice of Regulatory Review Schedule (NRR) setting out a consultation schedule and process for review. 76 FR 18457. The Commission's regulatory review process established a tribal consultation schedule with a description of the regulation groups to be covered at each consultation. Part 519—Service; Part 524—Appeals; Part 539—Appeals; and Part 577—Appeals before the Commission were included in this regulatory review. The Commission will address changes to part 519—Service in a separate rulemaking action because part 519 sets forth rules for service of actions and decisions by the Chair and therefore does not implicate the appellate review process.

III. Development of the Proposed Rule

The Commission conducted a total of 10 tribal consultations as part of its review of Part 519—Service; Part 524—Appeals; Part 539—Appeals; and Part 577—Appeals before the Commission. Tribal consultations were held in every region of the country and were attended by numerous tribes and tribal leaders or their representatives. In addition to tribal consultations, on July 22, 2011, the Commission requested public comment on a Preliminary Draft of new Subchapter H. After considering the comments received from the public and through tribal consultations, the Commission will remove Part 524—Appeals; Part 539—Appeals; and Part 577—Appeals before the Commission and will add a new subchapter H—Appeal Proceedings before the Commission.

Currently, rules for appeals before the Commission are found in three separate places: Part 524 governs appeals of ordinance actions; part 539 addresses appeals of management contract actions; and part 577 sets forth procedures for appeals of enforcement actions and actions to void an approved management contract. The Commission believes that consolidating all appellate procedures in a new subchapter promotes clarity and effectiveness for the regulated community.

Proposed subchapter H consists of six parts: 580—Rules of general application in appellate proceedings before the Commission; 581—Motions in appellate proceedings before the Commission ; 582—Appeals of disapprovals of gaming ordinances, resolutions, or amendments.; 583—Appeals of approvals or disapprovals of management contracts or amendments to management contracts; 584—Appeals before a presiding official of notices of violation, proposed civil fine assessments, orders of temporary closure, the Chair's decision to void or modify a management contracts, the Commission's proposal to remove a certificate of self-regulation, and notices of late fees and late fee assessments; and 585—Appeals to the Commission on written submissions of notices of violation, proposed civil fine assessments, orders of temporary closure, the Chair's decision to void or modify management contracts, the Commission's proposal to remove a certificate of self regulation, and notices of late fees and late fee assessments.

Part 580—Rules of General Application in Appeal Proceedings Before the Commission

This new part sets forth rules that are generally applicable to all appellate proceedings before the Commission. First, it defines terms used throughout the subchapter. Several commenters

suggested that the terms ''limited participant'' and ''presiding official'' be defined. The Commission has defined those terms. Other terms commenters suggested be defined are ''petition'', ''leave'', ''motion'', ''movant'', and ''brief.'' The Commission believes that these terms are generally understood and has chosen not to define them. The Commission has also defined the terms ''day'', ''de novo review'', ''preponderance of the evidence'', ''proceeding'', and ''summary proceeding.''

In the Preliminary Draft, several of these generally applicable sections were repeated throughout the regulations. One commenter suggested that, to reduce redundancy, those sections should be stated only once. The Commission agrees and has removed the redundancies and grouped those generally applicable sections here.

A commenter suggested that the Commission utilize a tribal advisory committee to develop these regulations. While the Commission has used advisory committees in the past, it choose not to do so here. Advisory committees are best utilized for technical issues or where tribes might have particular experience or a unique perspective. The Commission acknowledges that Tribes and their representatives have valuable information to contribute to this regulation, as repeatedly demonstrated during the consultation process. We believe, though, that the best way to ensure that all of the comments throughout Indian country, as well as the public at large, are considered, is to develop the regulations through notice and comment rulemaking.

Part 580 includes a section entitled ''When may the Commission suspend, revoke, amend, or waive its rules governing proceedings before the Commission?'', and provides that the Commission may do so in certain circumstances for good cause shown, if the interest of justice so requires. This provision allows flexibility in situations where adherence to the rules would work an injustice or would impair the orderly conduct of the proceedings.

Part 580 also includes a section which explains who may appear before the Commission. One commenter suggested the language in the Preliminary Draft was too restrictive and did not allow for representation by an advocate who was not an attorney admitted to practice in a Federal court. The Commission revised the language to allow for representation by an attorney or other authorized representative, and included attorneys licensed to practice in tribal courts.

Existing section 577.6 addresses service of documents by appellants in appeals before the Commission regarding notices of violation, civil fines, temporary closure orders, and decisions to void or modify a management contracts. There are currently no rules of service by appellants in actions other than those governed by section 577.6. As a result, appellants in ordinance disapprovals and management contract actions have in practice relied on the existing service rules for all appeals. Proposed part 580 improves the rules of services and makes them generally applicable.

Proposed part 580 requires that copies of the notice of appeal and appeal brief shall be filed personally or by registered or certified mail, return receipt requested. All subsequent documents shall be served personally, by facsimile, by email to an address designated by a Commission employee, or by first class mail. This is a change from § 577.6, which allows notices of appeal and appeal briefs to be filed via these methods and also via fax. The Commission has removed fax service as an option for these filings and has added email service as a option for the filing of all subsequent documents.

One commenter proposes the Commission amend the service rule so that service on parties by fax or email is only effective if prior consent is given to be served in such ways. Another commenter suggests that email is acceptable as a method of service if there is agreement between the parties. Yet another commenter proposes that if email or fax are used, a hard copy should follow. First, part 580 applies to parties, not the Commission. Furthermore, fax and email service is available only after the initial notice of appeal and brief are filed personally or by registered or certified mail. If a party does not wish to serve subsequent documents via email or fax, it can utilize the other methods of service (personal service or first class mail). One benefit of email filing is that the filer can request a ''read receipt'' email from their email service and have proof that the email was received. The Commission declines to require that a hard copy follow, but parties are free to send follow-up hard copies if they wish, however the date of filing will be the date service was first accomplished.

The Commission proposes to refer to all parties who file appeals as ''appellants.'' Part 577 refers to those who file appeals of actions governed by that section ''respondents'', while parts 524 and 539 do not assign a name to those who file appeals. The Commission believes it makes sense to refer to all appellants consistently and to use ''appellant'' rather than ''respondent.'' This proposed change has been made throughout the subchapter.

The Preliminary Draft provided that in computing any period of time prescribed for filing and serving a document, the first day of the period so computed shall not be included. The last day shall be included unless it is a Saturday, Sunday, or Federal legal holiday, in which case the period shall run until the end of the next business day. The Proposed rule adds that except for appeals of temporary closure orders, when the period of time prescribed allowed is less than 11 days, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded in the computation.

The Preliminary Draft included a section prohibiting ex parte communications. Several commenters questioned the reach and application of the prohibition, and expressed concern that it could stifle otherwise lawful communications. The Commission has not included the provision in this proposed rulemaking and invites comment on how to address ex parte communications.

One commenter suggested that the Commission should include a section on recusal. The Commission disagrees. Commission members must follow ethical rules applicable to all government employees as set forth in Federal law. *See* 5 CFR 2635.501 *et seq.*

Proposed § 580.5 provides that failure to file an appeal and brief within the time provided shall result in a waiver of the right to appeal and failure to meet any deadline for the filing of any motion or response thereto shall also result in a waiver of the right to file.

Proposed part 580 includes several additional sections designed to improve the appellate practice process. The Commission explains what is the burden of proof and standard of review, what a final decision will contain, the effective date of a decision, the finality of Commission decisions, what happens if the Commission does not issue a majority decision, and that an appeal of a Chair's decision does not stay the effect of that decision.

One commenter suggested that the filing of an appeal to the Commission should stay the effect of the Chair's decision. The Commission disagrees. The Commission believes that effective regulation of the industry will be fostered by requiring compliance with decisions of the Chair pending the resolution of an appeal to the Commission. Accordingly, the filing of a motion shall not stay the effect of any decision or order nor shall it affect the

finality of any decision or order for purposes of judicial review.

Section 580.10 provides that in the absence of a decision by a majority of the Commission within the time provided, the Chair's decision shall constitute the final decision of the Commission. The Preliminary Draft included the presiding official's recommended decision would also become final in the absence of a majority decision in the time provided. This was removed because the recommended decision is just that, a recommendation, and does not constitute a decision that would become final upon inaction.

Part 582 also explains what the final decision will contain, what the effective date of the decision will be, and that the decision is final for purposes of judicial review. It also sets forth the standard of review, which is *de novo.*

Part 581—Motions in Appeal Proceedings Before the Commission

Existing regulations do not set forth motion practice other than motions to intervene in appellate proceedings before a presiding official and motions for limited participation in ordinance appeals. Of course, during the course of an appeal appellants file typical appellate litigation motions and the Commission rules on those motions. Part 581 sets forth rules for this routine practice. This proposal is consistent with comments suggesting the Commission provide more rules governing appellate practice.

In the Preliminary Draft, motions to intervene were allowed in appeals before the presiding official, and motions for limited participation were allowed in appeals before the Commission on written submission. Proposed part 581 provides for the right to intervene in cases before the Commission on written submission as well as cases before the presiding official. Because intervention affords more process to litigants than limited participation, the Commission has removed limited participation from written submission appeals.

Proposed part 581, then, sets forth the procedure for filing a motion in an appeal on written submissions, a motion to supplement the record, and a motion for reconsideration. For requests for limited participation in ordinance appeals, motions to appeal before a presiding official and on written submissions before the Commission, and other motions before a presiding official, part 581 refers to the sections that govern those actions, where the process is set forth in detail: §§ 582.6, 584.6, and 584.5, and 585.5 respectively.

One commenter suggested that the Commission should clarify whether leave is required to file a motion to intervene. Motions to intervene are made only in appeals before a presiding official, governed by part 584, and proceedings on written submission before the Commission, governed by part 585. Part 584 does not require that leave be made to file a motion to intervene. The Commission believes the regulations are sufficiently clear in this regard.

One commenter noted that the terms ''motion for reconsideration'' and ''petition for reconsideration'' were used interchangeably throughout this part. The Commission has changed the language so that only ''motion for reconsideration'' is used.

The Commission believes that a full record enhances due process and effective decisionmaking. Consequently, in past matters the Commission has allowed the submission of additional evidence. No rules currently govern this area however. Thus, the Commission proposes that part 581 provide that parties may file motions to supplement the record at any time prior to a final Commission decision. The Commission may also supplement the record on its own motion.

One commenter proposed that the Commission should define the record and guarantee that parties have access to the record prior to filing an appeal. The Commission does not believe it necessary to include a definition of the record. The record is generally understood to include all documents relied on by the decisionmaker in arriving at the decision. The Commission believes that the current process of providing the record after an appeal has been filed conserves agency resources given that only a small number of decisions are appealed.

On occasion, the Commission has received and ruled upon motions for reconsideration of its decisions. Proposed part 581 sets forth rules for these motions. Under the proposed rule, motions for reconsideration may be made only in extraordinary circumstances, and a party may file only one such motion. The motion shall be filed within 30 days of the date of the final decision. Opposition briefs shall be filed within 10 days after the motion is filed. A reply brief must be filed within 5 days of service of the opposition brief. The Commission shall issue a decision within 30 days of the filing of the reply brief or the time to file a reply expires.

Part 582—Appeals of Disapprovals of Gaming Ordinances, Resolutions, or Amendments

The existing regulations governing appeals of disapprovals of gaming ordinances are set forth in part 524. The Commission proposes to repeal part 524, and replace it with part 582. Part 582 would be substantially similar to part 524, however some significant changes are proposed to improve the regulation. The existing rule does not provide a deadline by which one may request limited participation. Part 582 provides a deadline of 10 days after the filing of a notice of appeal. In addition, proposed part 582 requires the filing of a submission which shall state the entity's interest in the proceeding and why the Chair's decision should be upheld or reversed. In addition, part 582 provides that parties to the appeal may file briefs in opposition to the request for limited participation. New part 582 also requires the Commission rule on the request within 10 days of the last filing, or the expiration of the time to file.

Additionally, together, proposed §§ 582.3 and 582.6 provide that the record on which the Chair relied will be provided within 10 days of the filing of the notice of appeal, where practicable, and the appeal brief shall be filed within 15 days of service of the record.

Existing part 524 provides that the Commission will issue its decision within 90 days after receiving the appeal. Proposed part 582 provides that the Commission will issue its decision within 90 days of receiving the appeal brief, or within 90 days of its ruling on a request for limited participation. This affords the Commission sufficient time to allow full briefing of a request for limited participation while also allowing itself enough time to consider and rule on the merits of the matter.

One commenter noted that § 582.3 assumes that the Commission will always grant an appeal and asks whether the Commission could refuse to hear any appeal. No, the Commission may not refuse to hear an appeal. IGRA requires that the Commission provide an opportunity for an appeal and hearing for fines levied and for temporary closure orders. *See* 25 U.S.C. 2713(a)(2) and (b)(2).

Part 583—Appeals From Approvals or Disapprovals of Management Contracts or Amendments to Management Contracts

Existing part 539 provides that a party may appeal the approval or disapproval of a management contract or amendment. The appeal shall be filed

within 30 days after the Chair serves his or her determination. The appeal shall specify why the party believes the Chair's determination was erroneous, and the Commission shall issue a decision within 30 days unless the appellant elects to provide the Commission an additional 30 days. In the absence of a decision within the time provided, the Chair's decision shall constitute a final decision.

Proposed part 583 clarifies that only a party to the management contract or amendment may appeal pursuant to this part. It further requires a brief as well as a notice of appeal. The Commission amended the filing requirements of an appellant to demonstrate ''why the appellant believes the Chair's approval or disapproval should be reversed.'' This change was made because the word ''erroneous'' in the current rule could be interpreted to mean that the standard of proof is ''erroneous'', a common standard of proof but not one that is applicable here.

Proposed §§ 583.3 and 583.6, together, provide that the record on which the Chair relied will be provided within 10 days of the filing of the notice of appeal, where practicable, and the appeal brief shall be filed within 15 days of service of the record. Proposed part 583 further provides that another party to the contract may oppose the appeal by filing an opposition brief within 20 days after service of the notice and brief. The appellant may file a reply brief within 10 days. The Commission will issue a final decision within 90 days after receipt of a notice of appeal and brief or within 90 days after the conclusion of briefing by the parties, whichever is later.

A commenter questioned why a party would wish to appeal an approval, and that appeals should be limited to disapprovals. The overwhelming majority of appeals in management contract cases are appeals of disapprovals. The Commission has, however, heard an appeal of an approval in a matter where two tribal factions were at odds. One faction argued that the other faction did not have authority to submit the management contract, and, based on that argument, appealed the approval of the contract.

Part 584—Appeals Before a Presiding Official of Notices of Violation, Proposed Civil Fine Assessments, Orders of Temporary Closure, the Chair's Decision To Void or Modify a Management Contracts, the Commission's Proposal To Remove a Certificate of Self-Regulation, and Notices of Late Fees and Late Fee Assessments

Existing part 577 governs appeals of enforcement actions and actions to void an approved management contract. Proposed part 584 provides that a party may appeal the issuance of a notice of violation, proposed civil fine assessment, order of temporary closure, decision to void or modify a management agreement, the Commission's removal of a certificate of self regulation, and late fee notifications and assessments.

Part 584 clarifies that appeals may be initiated by a tribe or the recipient of the action that is the subject of an appeal or in matters involving a management contract by a party to that contract.

The deadlines contained in proposed part 584 are substantially the same as in existing part 577. Appeals under part 584 must be brought within 30 days of the Chair or Commissions action or decision. The appeal must reference the action or decision that is being appealed. Part 584 provides that within 10 days after filing a notice of appeal the appellant must file a list of names of proposed witnesses, what they are expected to testify about, and whether a closed hearing is requested. Additionally, an appellant must submit a brief stating what relief they are seeking and why they think it should be granted. The brief may include supporting documentation including evidence in the form of affidavits.

Part 584 allows a party to waive the right to an oral hearing and instead elect to have the matter decided on the basis of written submissions. If a party elects to have the matter decided on written submissions, the proposed part 585 will govern the process by which the Commission reviews those appeals.

As with existing part 577, proposed part 584 allows an entity to intervene in the appeal if the presiding official finds that a final decision could directly or adversely affect it or the class it represents, it may contribute materially to the disposition of the proceedings, its interest is not adequately represented by existing parties, and the intervention would not prejudice the existing parties or delay the proceedings. As with existing part 577, proposed part 584 allows a tribe with jurisdiction over lands that are the subject of the appeal to intervene as a matter of right if they are not already a party. Proposed § 584.5(c) provides that such motions must be filed within 10 days of the notice of appeal. The Commission plans to quickly post appeals to its Web site to inform the public.

Part 584 allows the Chair to file a list of witnesses and their expected testimony and request that a hearing be closed. The Chair must make this request within 10 days after it has been served the appellants brief. Part 584 requires that a presiding official be named and a hearing take place within 30 days after the Commission receives a timely notice of appeal.

Part 584 requires that if the subject of the appeal is whether an order of temporary closure should be made permanent or be dissolved then a hearing must be concluded within 30 days or receiving a timely notice of appeal unless the appellant waives this right.

Proposed part 584 establishes procedures for requesting that information be treated as confidential. If the presiding official determines that confidential treatment is not warranted a party will be given the opportunity to withdraw a document before it is considered by the presiding official or disclose it voluntarily to all parties.

As with existing part 577, part 584 allows the parties to defer the hearing to negotiate a settlement or consent decree.

Part 584 requires the presiding official to issue a recommended decision within 30 days after the record has closed. The recommended decision will include findings of fact and conclusions of law and a recommended grant or denial of relief. Within 10 days after the recommended decision has issued the parties may file an objection to the recommended decision with the Commission.

Part 584 requires the Commission to issue a decision within 90 days after the recommended decision has been issued. In cases of temporary closure orders the Commission must issue its decision within 30 days.

Part 585—Appeals to the Commission on Written Submissions of Notices of Violation, Proposed Civil Fine Assessments, Orders of Temporary Closure, the Chair's Decision To Void or Modify a Management Contracts, the Commission's Proposal To Remove a Certificate of Self Regulation, and Notices of Late Fees and Late Fee Assessments

Existing part 577 combines procedures for both appeals where an oral hearing is requested and appeals where a decision on written

submissions has been requested. The proposed changes to the existing regulation separates oral hearing procedures from written submission decisions. Part 585 allows a tribe or the recipient to appeal an action based on written submissions instead of an oral hearing. The Commission believes that this option can benefit some parties because it can shorten the time period between when an action is taken and when a final decision is issued.

Part 585 allows an entity other than one of the parties to participate in the appeal on a limited basis. The proposed part 585 requirements for intervention mirror the current requirements contained in existing part 577.

Proposed §§ 585.3 and 585.6, together, provide that the record on which the Chair relied will be provided within 10 days of the filing of the notice of appeal, where practicable, and the appeal brief shall be filed within 15 days of service of the record. Regarding motions to intervene, proposed § 585.5(c) provides that such motions must be filed within 10 days of the notice of appeal. The Commission plans to quickly post appeals to its Web site to inform the public.

Proposed § 585.4 was expanded to permit motions other than those specifically set out at the discretion of the Commission. This mirrors language in part 584 regarding motions before a Presiding Official.

Existing part 577 allows the parties to suspend a hearing so that a settlement or consent decree may be negotiated. Since proposed part 585 segregates appeals based on written submissions from oral hearings such procedures are not necessary.

Part 585 requires the Commission to issues its decision within 90 days of receiving a notice of appeal and appeal brief. For appeals of temporary closure orders, the Commission must issue its decision within 60 days.

A commenter expressed concern about Commission and staff turnover and the impact of such turnover on how appeals are handled and decided. This commenter argued that turnover leads to inconsistent outcomes. First, the terms of Commissioners are for a substantial period of time. Under the Act, the Chairman and one of the Commissioners have terms of 3 years. The other Commissioner has a term of one year. However, Commissioners can serve after the expiration of their term until his or her successor has been appointed. That being said, changes in personnel, whether Commissioners after their term or Commission staff, are inevitable in any decision-making forum. The fact that Commission members and staff change, however, should not lead to inconsistent results. Commission decisions establish precedent that the Commission must either follow or must provide a reasonable basis for its departure from.

Regulatory Matters

Regulatory Flexibility Act

This proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency within the Department of the Interior, is exempt from compliance with the Unfunded Mandates Reform Act. 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that this proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

National Environmental Policy Act

The Commission has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

Paperwork Reduction Act

This proposed rule does not require information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.,* and is therefore not subject to review by the Office of Management and Budget.

List of Subjects

25 CFR Parts 524, 539, and 577

Administrative practice and procedure, Gambling, Indians—lands, Reporting and recordkeeping requirements.

25 CFR Parts 580, 581, 582, 583, 584, and 585

Appeals, Gambling, Indians—lands.

For the reasons stated in the preamble, and under the authority of the Indian Gaming Regulatory Act, 25 U.S.C. 2701–2712, the National Indian Gaming Commission proposes to amend 25 CFR chapter III by removing 25 CFR parts 524, 539, and 577, and adding subchapter H, consisting of parts 580 through 585, as follows:

PART 524—[REMOVED]

1. Remove part 524.

PART 539—[REMOVED]

2. Remove part 539.

PART 577—[REMOVED]

3. Remove part 577.

4. Add subchapter H, consisting of parts 580 through 585 to read as follows:

Subchapter H—Appeal Proceedings before the Commission

PART 580—RULES OF GENERAL APPLICATION IN APPEAL PROCEEDINGS BEFORE THE COMMISSION
PART 581—MOTIONS IN APPEAL PROCEEDINGS BEFORE THE COMMISSION
PART 582—APPEALS OF DISAPPROVALS OF GAMING ORDINANCES, RESOLUTIONS, OR AMENDMENTS
PART 583—APPEALS FROM APPROVALS OR DISAPPROVALS OF MANAGEMENT CONTRACTS OR AMENDMENTS TO MANAGEMENT CONTRACTS
PART 584—APPEALS BEFORE A PRESIDING OFFICIAL OF NOTICES OF VIOLATION, PROPOSED CIVIL FINE ASSESSMENTS, ORDERS OF TEMPORARY CLOSURE, THE CHAIR'S DECISION TO VOID OR MODIFY A MANAGEMENT CONTRACTS, THE COMMISSION'S PROPOSAL TO REMOVE A CERTIFICATE OF SELF-REGULATION, AND NOTICES OF LATE FEES AND LATE FEE ASSESSMENTS
PART 585—APPEALS TO THE COMMISSION ON WRITTEN SUBMISSIONS OF NOTICES OF VIOLATION, PROPOSED CIVIL FINE ASSESSMENTS, ORDERS OF

TEMPORARY CLOSURE, THE CHAIR'S DECISION TO VOID OR MODIFY A MANAGEMENT CONTRACTS, THE COMMISSION'S PROPOSAL TO REMOVE A CERTIFICATE OF SELF-REGULATION, AND NOTICES OF LATE FEES AND LATE FEE ASSESSMENTS

PART 580—RULES OF GENERAL APPLICATION IN APPEAL PROCEEDINGS BEFORE THE COMMISSION

Sec.
580.1 What definitions apply?
580.2 When may the Commission suspend, revoke, amend, or waive its rules governing proceedings before the Commission?
580.3 Who may appear before the Commission?
580.4 How do I effect service?
580.5 What happens if I file late or fail to file?
580.6 What is the burden of proof and standard of review?
580.7 What will the Commission's final decision contain?
580.8 What is the effective date of the Commission's final decision?
580.9 Is the Commission's decision final agency action?
580.10 What if the Commission does not issue a majority decision?
580.11 Does an appeal of a Chair's decision stay the effect of that decision?

Authority: 25 U.S.C. 2706, 2713, 2715.

§ 580.1 What definitions apply?

Day: A calendar day.

De novo review: A standard of review where the Commission reviews the matter anew, as if it had not been reviewed by the Chair.

Limited participant: A party who successfully petitions the Commission to participate on a limited basis in either an ordinance appeal under § 582.5, or an appeal on written submissions under § 585.5.

Preponderance of the evidence: The degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.

Presiding official: The individual who presides over the hearing and issues the recommended decision under part 584.

Proceeding: All or part of an appeal heard by a presiding official or the Commission, and decided by the Commission.

Summary proceeding: A proceeding in which the appeal is on paper only, with no hearing.

§ 580.2 When may the Commission suspend, revoke, amend, or waive its rules governing proceedings before the Commission?

The procedural provisions of subchapter H of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, on motion to the Commission, or on its own motion, if the interest of justice so requires, except that the Commission may not extend the time for filing a notice of appeal.

§ 580.3 Who may appear before the Commission?

In any appeal proceeding under parts 582 through 585 of this subchapter, a party or limited participant may appear in person or by an attorney or other authorized representative. An attorney must be in good standing and admitted to practice before any Court of the United States, the District of Columbia, any tribal court, or the highest court of any state, territory, or possession of the United States. Any person appearing as an attorney or authorized representative shall file with the Commission a written notice of appearance. The notice must state his or her name, address, telephone number, facsimile number and email address, if any; and the name and address of the person or entity on whose behalf he or she appears.

§ 580.4 How do I effect service?

(a) An appellant shall serve its notice of appeal on the Commission at the address indicated in the decision or notice that is the subject of the appeal.

(b) Copies of the notice of appeal shall be filed personally or by registered or certified mail, return receipt requested. All subsequent documents shall be served personally, by facsimile, by email to an address designated by a Commission employee, or by first class mail. In matters where a hearing has been requested, all filings shall be made with the Commission until a presiding official is designated and the parties are so notified, after which all filings shall be made with the presiding official.

(c) All documents filed after the notice of appeal shall be served on the Commission and copies simultaneously served on all parties, intervenors or limited participants.

(d) Service of copies of all documents is complete at the time of personal service or, if service is made by mail, facsimile, or email, upon transmittal.

(e) When a representative (including an attorney) has entered an appearance for a party, limited participant or intervenor in a proceeding initiated under any provision of parts 581 through 585 of this subchapter, service thereafter shall be made upon the representative.

(f) In computing any period of time prescribed for filing and serving a document, the first day of the period so computed shall not be included. The last day shall be included unless it is a Saturday, Sunday, or Federal legal holiday, in which case the period shall run until the end of the next business day. Except for appeals of temporary closure orders, when the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded in the computation.

(g) The Commission may extend the time for filing or serving any document except a notice of appeal.

(1) A request for an extension of time must be filed within the time originally allowed for filing.

(2) For good cause, the Commission may grant an extension of time on its own motion.

(h) Rules governing service of documents by the Chair or Commission are governed by part 519 of this chapter.

§ 580.5 What happens if I file late or fail to file?

(a) Failure to file an appeal within the time provided shall result in a waiver of the right to appeal.

(b) Failure to meet any deadline for the filing of any motion or response thereto shall result in a waiver of the right to file.

§ 580.6 What is the burden of proof and standard of review?

(a) The Chair bears the burden of proof to support his or her action or decision by a preponderance of the evidence.

(b) The Commission shall review the Chair's actions or decisions *de novo.*

§ 580.7 What will the Commission's final decision contain?

The Commission may affirm, modify, or reverse, in whole or in part, the Chair's decision or presiding official's recommended decision, or may remove a certificate of self-regulation, and will state the bases of its decision. The final decision will be in writing and will include:

(a) A statement of findings and conclusions, with the bases for them on all material issues of fact, law, or discretion;

(b) A ruling on each material issue; and

(c) An appropriate grant or denial of relief.

§ 580.8 What is the effective date of the Commission's final decision?

The Commission's final decision is effective immediately unless the Commission provides otherwise in the decision.

§ 580.9 Is the Commission's decision final agency action?

The Commission's final decision is a final agency action for purposes of judicial review.

§ 580.10 What if the Commission does not issue a majority decision?

In the absence of a decision of a majority of the Commission within the time provided, the Chair's decision shall constitute the final decision of the Commission except that, if the subject of the appeal is a temporary closure order, the order shall be dissolved.

§ 580.11 Does an appeal of a Chair's decision stay the effect of that decision?

An appeal does not stay the effect of a Chair's decision. The appellant must comply with the Chair's decision pending the outcome of the appeal.

PART 581—MOTIONS IN APPEAL PROCEEDINGS BEFORE THE COMMISSION

Sec.

581.1 What is the scope of this part?
581.2 How does an entity other than a tribe request to participate on a limited basis in an ordinance appeals?
581.3 How do I file a motion to intervene in appeals?
581.4 How do I file a motion before a presiding official?
581.5 How do I file a motion to supplement the record?
581.6 How do I file a motion for reconsideration?

Authority: 25 U.S.C. 2706, 2713, 2715.

§ 581.1 What is the scope of this part?

(a) This part governs motion practice under:

(1) Part 582 of this chapter, appeals of disapprovals of gaming ordinances, resolutions, or amendments;

(2) Part 583 of this chapter, appeals of the approval or disapproval of management contracts or amendments to a management contract;

(3) Part 584 of this chapter, appeals before a presiding official of notices of violation, orders of temporary closure, proposed civil fine assessments, the Chair's decision to void or modify a management contracts, the Commission's proposal to remove a certificate of self-regulation, and notices of late fees and late fee assessments; and

(4) Part 585 of this chapter, appeals to the Commission on written submissions of, notices of violation, orders of temporary closure, proposed civil fine assessments, the Chair's decision to void or modify a management contracts, the Commission's proposal to remove a certificate of self-regulation, and notices of late fees and late fee assessments.

(b) This part also governs motion practice in hearings under § 535.3 of this chapter to review the Chair's decision to void or modify a management contract.

§ 581.2 How does an entity other than a tribe request to participate on a limited basis in an ordinance appeals?

Requests for limited participation in ordinance appeals are governed by § 582.5.

§ 581.3 How do I file a motion to intervene in appeals?

Motions to intervene in appeals before a presiding official are governed by § 584.5.

Motions to intervene in appeals before the Commission are governed by § 585.5.

§ 581.4 How do I file a motion before a presiding official?

Motion practice before a presiding official on appeals of notices of violation, orders of temporary closure, proposed civil fine assessments, the Chair's decision to void or modify a management contracts, and notices of late fees and late fee assessments is governed by § 584.4.

§ 581.5 How do I file a motion to supplement the record?

Upon its own motion or the motion of a party, the Commission may allow the submission of additional evidence. A party may file a motion for leave to submit additional evidence at any time prior to issuance of a final decision by the Commission. Such motion shall show with particularity that such additional evidence is material and that there were reasonable grounds for failure to submit such evidence previously. The Commission may adjust its time for issuing a final decision accordingly, unless the subject of the appeal is a temporary closure order.

§ 581.6 How do I file a motion for reconsideration?

(a) Motions for reconsideration may be made only for final decisions on appeal and only in extraordinary circumstances.

(b) A motion for reconsideration and accompanying brief shall be filed within 30 days of the date of the Commission's final decision and shall be served on all parties, limited participants, and intervenors, if any. A motion for reconsideration shall explain the extraordinary circumstances requiring reconsideration.

(c) A party may file only one motion and accompanying brief for reconsideration.

(d) Opposition briefs shall be filed within 10 days after the motion is filed.

(e) A reply brief to the brief in opposition shall be filed within 5 days of service of the brief in opposition.

(f) The Commission shall issue a decision on reconsideration within 30 days of the filing of the reply brief or the time to file a reply brief expires, whichever is later. The Commission shall issue a brief statement of the reasons for its decision.

(g) If the Commission grants the motion, it may reverse or modify the decision, in whole or in part, from which reconsideration is sought or may remand to the Chair for further consideration.

(h) The filing of a motion will not stay the effect of any decision or order and will not affect the finality of any decision or order for purposes of judicial review, unless so ordered by the Commission.

PART 582—APPEALS OF DISAPPROVALS OF GAMING ORDINANCES, RESOLUTIONS, OR AMENDMENTS

Sec.

582.1 What does this part cover?
582.2 Who may appeal the disapproval of a gaming ordinance?
582.3 How do I appeal the disapproval of a gaming ordinance?
582.4 Are motions permitted?
582.5 How does an entity other than a tribe request to participate on a limited basis?
582.6 When will I receive a copy of the record on which the Chair relied?
582.7 When will the Commission issue its final decision?

Authority: 25 U.S.C. 2706, 2710, 2713, 2715.

§ 582.1 What does this part cover?

This part applies to appeals from the Chair's decision to disapprove a gaming ordinance, resolution, or amendment under part 522 of this chapter.

§ 582.2 Who may appeal the disapproval of a gaming ordinance?

Only the tribe whose gaming ordinance, resolution, or amendment is disapproved by the Chair may appeal.

§ 582.3 How do I appeal the disapproval of a gaming ordinance?

Within 30 days after the Chair serves his or her disapproval, the appellant must file with the Commission a notice of appeal. The notice of appeal must reference the decision from which the appeal is taken. Unless the Commission has extended the time for filing an appeal brief pursuant to § 580.4(g), the appeal brief must be filed within 15 days of service of the record pursuant to § 582.6. The appeal brief shall state succinctly why the appellant believes the Chair's disapproval should be

reversed and may include supporting documentation.

§ 582.4 Are motions permitted?

Ordinance appeals are summary proceedings. Only motions for extension of time, motions for limited participation, motions to supplement the record under § 581.5, and motions for reconsideration under § 581.6 are permitted.

§ 582.5 How does an entity other than a tribe request to participate on a limited basis?

(a) An entity other than the tribe identified in § 582.2 may request to participate in an appeal of an ordinance disapproval on a limited basis by filing a submission with the Commission within 10 days of the filing of the notice of appeal.

(b) The submission may contain supporting documentation, and shall state:

(1) The entity's property, financial, or other interest at stake in the proceeding; and

(2) Why the Chair's decision should be upheld or reversed. The submission shall address the ordinance requirements under §§ 522.4, 522.5, 522.6, and 522.7 of this chapter.

(c) The submission shall simultaneously be served on the tribe consistent with § 580.4. Failure to properly serve the tribe may be a basis for denying limited participation.

(d) Within 10 days after service of the submission, any party to the appeal may file a brief and supporting material in response to the submission.

(e) Within 10 days of the filing of a response pursuant to paragraph (d) of this section, the Commission will notify the submitter in writing of its decision whether to accept and consider the submission and will state the basis for its decision, which it shall serve on the submitter and the tribe.

§ 582.6 When will I receive a copy of the record on which the Chair relied?

Within 10 days of the filing of a notice of appeal, or as soon thereafter as practicable, the record on which the Chair relied will be transmitted to the tribe.

§ 582.7 When will the Commission issue its final decision?

(a) Within 90 days after it receives the appeal brief or within 90 days of its ruling on a request for limited participation brought under § 582.5, whichever is later, the Commission shall issue its final decision.

(b) The Commission shall notify the tribe and any limited participant of its final decision and the reasons supporting it.

PART 583—APPEALS FROM APPROVALS OR DISAPPROVALS OF MANAGEMENT CONTRACTS OR AMENDMENTS TO MANAGEMENT CONTRACTS

Sec.

583.1 What does this part cover?
583.2 Who may appeal the approval or disapproval of a management contract or amendment to a management contract?
583.3 How do I appeal the approval or disapproval of a management contract or amendment to a management contract?
583.4 Are motions permitted?
583.5 When will I receive a copy of the record on which the Chair relied?
583.6 When will the Commission issue its final decision?

Authority: 25 U.S.C. 2706, 2711, 2712, 2713, 2715.

§ 583.1 What does this part cover?

This part applies to appeals from the Chair's decision to approve or disapprove a management contract or amendment to a management contract under parts 533 and 535 of this chapter.

§ 583.2 Who may appeal the approval or disapproval of a management contract or amendment to a management contract?

Only a party to the management contract or amendment approved or disapproved by the Chair may appeal.

§ 583.3 How do I appeal the approval or disapproval of a management contract or amendment to a management contract?

(a) Within 30 days after the Chair serves his or her determination, the appellant must file with the Commission, and serve on all parties to the management contract, a notice of appeal. The notice of appeal must reference the decision from which the appeal is taken. Unless the Commission has extended the time for filing an appeal brief pursuant to § 580.4(g), the appeal brief must be filed within 15 days of service of the record pursuant to § 583.5. The brief shall state succinctly why the appellant believes the Chair's approval or disapproval should be reversed and may include supporting documentation.

(b) Another party to the management contract may oppose the appeal by:

(1) Filing an opposition brief with the Commission within 20 days after service of the appellant's brief. The opposition brief shall state succinctly why the party believes the Chair's approval or disapproval should be upheld and may include supporting documentation.

(c) The appellant may file a reply brief within 10 days.

§ 583.4 Are motions permitted?

Management contract and amendment appeals are summary proceedings. Only motions for extension of time under § 580.4(g), motions to supplement the record under § 581.6, and motions for reconsideration under § 581.7 are permitted.

§ 583.5 When will I receive a copy of the record on which the Chair relied?

Within 10 days of the filing of a notice of appeal, or as soon thereafter as practicable, the record on which the Chari relied will be transmitted to all parties.

§ 583.6 When will the Commission issue its final decision?

(a) The Commission shall issue its final decision within 90 days after service of the appeal brief, or within 90 days after the conclusion of briefing by the parties, whichever is later.

(b) The Commission shall notify the tribe and management contractor of its final decision and the reasons supporting it.

PART 584—APPEALS BEFORE A PRESIDING OFFICIAL OF NOTICES OF VIOLATION, PROPOSED CIVIL FINE ASSESSMENTS, ORDERS OF TEMPORARY CLOSURE, THE CHAIR'S DECISION TO VOID OR MODIFY A MANAGEMENT CONTRACTS, THE COMMISSION'S PROPOSAL TO REMOVE A CERTIFICATE OF SELF-REGULATION, AND NOTICES OF LATE FEES AND LATE FEE ASSESSMENTS

Sec.

584.1 What does this part cover?
584.2 Who may appeal?
584.3 How do I appeal a notice of violation, proposed civil fine assessment, order of temporary closure, the Chair's decision to void or modify a management contract, the Commission's proposal to remove a certificate of self-regulation, and notices of late fees and late fee assessments?
584.4 Are motions permitted?
584.5 How do I file a motion to intervene?
584.6 When will the hearing be held?
584.7 When will I receive a copy of the record on which the Chair relied?
584.8 What is the hearing process?
584.9 How may I request to limit disclosure of confidential information?
584.10 What is the process for pursuing settlement or a consent decree?
584.11 Will the hearing be transcribed?
584.12 What happens after the hearing?
584.13 May I file an objection to the recommended decision?
584.14 When will the Commission issue its final decision?

Authority: 25 U.S.C. 2706, 2710, 2711, 2712, 2713, 2715, 2717.

§ 584.1 What does this part cover?

(a) This part applies to appeals of the following where the appellant elects a hearing before a presiding official:

(1) A violation alleged in a notice of violation under § 573.3;

(2) Proposed civil fine assessments under part 575 of this chapter;

(3) Orders of temporary closure under § 573.6;

(4) The Chair's decision to void or modify a management contract under part 535 of this chapter subsequent to initial approval;

(5) The Commission's proposal to remove a certificate of self regulation under part 515 of this chapter; and

(6) Late fee notifications and assessments under part 514 of this chapter.

(b) Appeals identified in paragraph (a) of this section brought directly before the Commission on the written record and without a hearing are filed pursuant to part 585 of this chapter.

§ 584.2 Who may appeal?

(a) Appeals of notices of violation, proposed civil fine assessments, orders of temporary closure, proposals to remove a certificate of self-regulation and late fee notifications and assessments may only be brought by the tribe or the recipient of the action that is the subject of the appeal.

(b) Appeals of the Chair's decision to void or modify a management contract after approval may only be brought by a party to the management contract.

§ 584.3 How do I appeal a notice of violation, proposed civil fine assessment, order of temporary closure, the Chair's decision to void or modify a management contract, the Commission's proposal to remove a certificate of self-regulation, and notices of late fees and late fee assessments?

(a) Within 30 days after the Chair serves his or her action or decision, or the Commission serves its intent to remove a certificate of self-regulation, the appellant must file a notice of appeal with the Commission. The notice of appeal must reference the action or decision from which the appeal is taken.

(b) Within 10 days after filing the notice of appeal, the appellant shall file with the Commission:

(1) A list of the names of proposed witnesses who would present oral testimony at the hearing, the general nature of their expected testimony, and whether a closed hearing is requested and why;

(2) A brief that states succinctly the relief desired and the grounds in support thereof; and which may include supporting documentation and evidence in the form of affidavits.

(c) A party that has filed a notice of appeal may waive the right to an oral hearing before a presiding official and instead elect to have the matter determined by the Commission solely on the basis of written submissions. Appeals based on written submissions are governed by part 585 of this subchapter. If there is more than one party that has filed a notice of appeal, and any party that has filed a notice of appeal elects a hearing before a presiding official, the entire matter will proceed before a presiding official.

(d) The Chair may file a response brief and a list of the names of proposed witnesses who will present oral testimony at the hearing, the general nature of their expected testimony, and whether a closed hearing is requested and why within 10 days after service of the appellate brief.

§ 584.4 Are motions permitted?

Yes. Motions to intervene under § 584.5 are permitted. Motions for an extension of time that are filed before the appointment of a presiding official shall be decided by the Commission. All other motions may be scheduled and heard at the discretion of the presiding official.

§ 584.5 How do I file a motion to intervene?

(a) An entity not permitted to appeal may be permitted to participate as a party if the presiding official finds that:

(1) The final decision could directly and adversely affect it or the class it represents;

(2) It may contribute materially to the disposition of the proceedings;

(3) Its interest is not adequately represented by existing parties; and

(4) Intervention would not unfairly prejudice existing parties or delay resolution of the proceeding.

(b) A tribe with jurisdiction over the lands on which there is a gaming operation that is the subject of a proceeding under this part may intervene as a matter of right if the tribe is not already a party.

(c) A motion to intervene shall be submitted to the presiding official within 10 days of the notice of appeal. The motion shall be filed with the presiding official and served on each person who has been made a party at the time of filing. The motion shall state succinctly:

(1) The moving party's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for the moving party;

(4) The issues on which the moving party wishes to participate; and

(5) Whether the moving party wishes to present witnesses.

(d) Objections to the motion must be filed by any party within ten days after service of the motion.

(e) A reply brief to the brief in opposition may be filed within 5 days of service of the brief in opposition.

(f) When motions to intervene are made by individuals or groups with common interests, the presiding official may request all such movants to designate a single representative, or he or she may recognize one or more movants.

(g) The presiding official shall give each movant and party written notice of his or her decision on the motion. For each motion granted, the presiding official shall provide a brief statement of the basis for the decision. If the motion is denied, the presiding official shall briefly state the grounds for denial. The presiding official may allow the movant to participate as amicus curiae, if appropriate.

§ 584.6 When will the hearing be held?

(a) The Commission shall designate a presiding official who shall commence a hearing within 30 days after the Commission receives a timely notice of appeal. At the request of the appellant, the presiding official may waive the 30 day hearing requirement upon designation.

(b) If the subject of an appeal is whether an order of temporary closure should be made permanent or be dissolved, the hearing shall be concluded within 30 days after the Commission receives a timely notice of appeal, unless the appellant waives this right. Notwithstanding any other provision of this part, the presiding official shall conduct such a hearing in a manner that will enable him or her to conclude the hearing, including any period the record is kept open following the hearing, within the period required by this paragraph consistent with any due process rights of the parties.

§ 584.7 When will I receive a copy of the record on which the Chair relied?

Upon designation by the presiding official, the Commission shall transmit the agency record on which the Chair relied to the presiding official and the parties.

§ 584.8 What is the hearing process?

(a) Once designated by the Commission, the presiding official shall set the matter for hearing. The appellant may appear at the hearing personally, through counsel, or by an authorized

representative consistent with the requirements of § 580.3 of this subchapter. The appellant, the Chair, and any intervenor shall have the right to introduce relevant written materials and to present an oral argument. At the discretion of the presiding official, a hearing under this section may include an opportunity to submit oral and documentary evidence and cross-examine witnesses.

(b) When holding a hearing under this part, the presiding official shall:

(1) Administer oaths and affirmations;

(2) Issue subpoenas authorized by the Commission;

(3) Rule on offers of proof and receive relevant evidence;

(4) Authorize exchanges of information (including depositions and interrogatories in accordance with 25 CFR part 571, subpart C) among the parties when to do so would expedite the proceeding;

(5) Establish and administer the course of the hearing;

(6) When appropriate, hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) At any conference held pursuant to paragraph (b)(6) of this section, require the attendance of at least one representative of each party who has authority to negotiate the resolution of issues in controversy;

(8) Dispose of procedural requests or similar matters;

(9) Recommend decisions in accordance with § 584.12; and

(10) Take other actions authorized by the Commission consistent with this part.

(c) The presiding official may order the record to be kept open for a reasonable period following the hearing (normally ten days), during which time the parties may make additional submissions to the record. Thereafter, the record shall be closed and the hearing shall be deemed concluded. Within 30 days after the record closes, the presiding official shall issue a recommended decision in accordance with § 584.12.

§ 584.9 How may I request to limit disclosure of confidential information?

(a) If any person submitting a document in a proceeding claims that some or all of the information contained in that document is:

(1) Exempt from the mandatory public disclosure requirements under the Freedom of Information Act (5 U.S.C. 552);

(2) Information referred to in 18 U.S.C. 1905 (disclosure of confidential information); or

(3) Otherwise exempt by law from public disclosure, the person shall:

(i) Indicate that the document in its entirety is exempt from disclosure or identify and segregate information within the document that is exempt from disclosure; and

(ii) Request that the presiding official not disclose such information to the parties to the proceeding (other than the Chair, whose actions regarding the disclosure of confidential information are governed by § 571.3) except pursuant to paragraph (b) of this section, and shall serve the request upon the parties to the proceeding. The request to the presiding official shall include:

(A) A copy of the document, group of documents, or segregable portions of the documents marked ''Confidential Treatment Requested''; and

(B) A statement explaining why the information is confidential.

(b) If the presiding official determines that confidential treatment is not warranted with respect to all or any part of the information in question, the presiding official shall so inform all parties. The person requesting confidential treatment then shall be given an opportunity to withdraw the document before it is considered by the presiding official or to disclose the information voluntarily to all parties.

(c) If the presiding official determines that confidential treatment is warranted, the presiding official shall so inform all parties.

(d) If the presiding official determines that confidential treatment is warranted, a party to a proceeding may request that the presiding official direct the person submitting the confidential information to provide that information to the party. The presiding official may so direct if the party requesting the information agrees under oath and in writing:

(1) Not to use or disclose the information except directly in connection with the hearing; and

(2) To return all copies of the information at the conclusion of the proceeding to the person submitting the information under paragraph (a) of this section.

(e) If a person submitting documents in a proceeding under this part does not claim confidentiality under paragraph (a) of this section, the presiding official may assume that there is no objection to disclosure of the document in its entirety.

(f) When a decision by a presiding official is based in whole or in part on evidence not included in the record, the decision shall so state, specifying the nature of the evidence and the provision of law under which disclosure was denied, and the evidence so considered shall be retained under seal as part of the official record.

§ 584.10 What is the process for pursuing settlement or a consent decree?

(a) *General.* At any time after the commencement of a proceeding, but at least five days before the date set for hearing under § 584.6, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding.

(b) *Content.* Any agreement containing consent findings and an order disposing of the whole or any part of a proceeding shall also provide:

(1) A waiver of any further procedural steps before the Commission;

(2) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(3) The presiding official's certification of the findings and agreement shall constitute dismissal of the appeal and final agency action.

(c) *Submission.* Before the expiration of the time granted for negotiations, the parties or their authorized representatives may:

(1) Submit to the presiding official a proposed agreement containing consent findings and an order;

(2) Notify the presiding official that the parties have reached a full settlement or partial settlement and have agreed to dismissal of the action or part thereof, subject to compliance with the terms of the settlement; or

(3) Inform the presiding official that agreement cannot be reached.

(d) *Disposition.* In the event a full or partial settlement agreement containing consent findings and an order is submitted within the time granted, the presiding official shall certify such findings and agreement within 30 days after his or her receipt of the submission. Such certification shall constitute full or partial dismissal of the appeal, as applicable, and final agency action.

§ 584.11 Will the hearing be transcribed?

Yes. Hearings under this part that involve oral presentations shall be recorded verbatim and transcripts thereof shall be provided to parties upon request. Each party shall pay its own fees for transcripts.

§ 584.12 What happens after the hearing?

(a) Within 30 days after the record closes, the presiding official shall issue his or her recommended decision.

(b) The recommended decision shall be in writing, based on the whole record, and include:

(1) Recommended findings of fact and conclusions of law upon each material issue of fact or law; and

(2) A recommended grant or denial of relief.

(c) The presiding official's recommended decision is reviewed by the Commission. The Commission issues the final decision.

§ 584.13 May I file an objection to the recommended decision?

Yes. Within 10 days after service of the presiding official's recommended decision, any party may file with the Commission objections to any aspect of the decision, and the reasons therefore.

§ 584.14 When will the Commission issue its decision?

(a) The Commission shall issue its decision within 90 days after the date of the recommended decision, unless the recommended decision is to dissolve or make permanent a temporary closure order issued under § 573.6 of this chapter, in which case the Commission shall issue its decision within 30 days.

(b) The Commission shall serve the final decision upon the parties.

PART 585—APPEALS TO THE COMMISSION ON WRITTEN SUBMISSIONS OF NOTICES OF VIOLATION, PROPOSED CIVIL FINE ASSESSMENTS, ORDERS OF TEMPORARY CLOSURE, THE CHAIR'S DECISION TO VOID OR MODIFY A MANAGEMENT CONTRACTS, THE COMMISSION'S PROPOSAL TO REMOVE A CERTIFICATE OF SELF REGULATION, AND NOTICES OF LATE FEES AND LATE FEE ASSESSMENTS

Sec.

585.1 What does this part cover?
585.2 Who may appeal?
585.3 How do I appeal a notice of violation, proposed civil fine assessment, order of temporary closure, the Chair's decision to void or modify a management contract, the Commission's proposal to remove a certificate of self regulation, and notices of late fees and late fee assessments?
585.4 Are motions permitted?
585.5 How do I file a motion to intervene?
585.6 When will I receive a copy of the record on which the Chair relied?
585.7 When will the Commission issue its decision?

Authority: 25 U.S.C. 2706, 2710, 2711, 2712, 2713, 2715, 2717.

§ 585.1 What does this part cover?

(a) This part applies to appeals of the following where the appellant does not elect a hearing before a presiding official and instead elects to have the matter decided by the Commission solely on the basis of written submissions:

(1) A violation alleged in a notice of violation under § 573.3;

(2) Proposed civil fine assessments under part 575 of this chapter;

(3) Orders of temporary closure under § 573.6;

(4) The Chair's decision to void or modify a management contract under part 535 of this chapter subsequent to initial approval;

(5) The Commission's proposal to remove a certificate of self-regulation under part 585 of this chapter; and

(6) Late fee notifications and assessments under part 514 of this chapter.

(b) Appeals from these actions involving a hearing before a presiding official are brought under part 584 of this chapter.

§ 585.2 Who may appeal?

(a) Appeals of notices of violation, proposed civil fine assessments, orders of temporary closure, proposals to remove certificates of self-regulation, and late fee notifications and assessments may only be brought by the tribe or the recipient that is the subject of the action.

(b) Appeals of the Chair's decision to void or modify a management contract after approval may only be brought by a party to the management contract.

§ 585.3 How do I appeal a notice of violation, proposed civil fine assessment, order of temporary closure, the Chair's decision to void or modify a management contract, the Commission's proposal to remove a certificate of self regulation, and notices of late fees and late fee assessments?

(a) Within 30 days after the Chair serves his or her action or decision, or the Commission serves notice of its intent to remove a certificate of self-regulation, appellant must file a notice of appeal with the Commission. The notice of appeal must reference the action or decision from which the appeal is taken and shall include a written waiver of the right to an oral hearing before and an election to have the matter determined by the Commission solely on the basis of written submissions. Unless the Commission has extended the time for filing an appeal brief pursuant to § 580.4(g), the appeal brief must be filed within 15 days of service of the record pursuant to § 585.7. The appeal brief shall state succinctly the relief desired and the supporting grounds thereof and may include supporting documentation.

(b) Hearings before a presiding official are governed by part 584.

§ 585.4 Are motions permitted?

(a) Motions for extension of time, motions to supplement the record under § 581.6, motions to intervene under § 585.5, and motions for reconsideration under § 581.7 are permitted. All other motions may be considered at the discretion of the Commission.

(b) The Chair shall not, either individually or through counsel, file or respond to motions.

§ 585.5 How do I file a motion to intervene?

(a) An entity not permitted to appeal may be permitted to participate as a party to a pending appeal if the Commission finds that:

(1) The final decision could directly and adversely affect it or the class it represents;

(2) It may contribute materially to the disposition of the proceedings;

(3) Its interest is not adequately represented by existing parties; and

(4) Intervention would not unfairly prejudice existing parties or delay resolution of the proceeding.

(b) A tribe with jurisdiction over the lands on which there is a gaming operation that is the subject of a proceeding under this part may intervene as a matter of right if the tribe is not already a party.

(c) A motion to intervene shall be submitted to the Commission within ten days of the notice of appeal. The motion shall be filed with the Commission and served on each person who has been made a party at the time of filing. The motion shall state succinctly:

(1) The moving party's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for the moving party;

(4) The issues on which the moving party wishes to participate; and

(5) Whether the moving party wishes to present witnesses.

(d) Objections to the motion must be filed by any party within ten days after service of the motion.

(e) A reply brief to the brief in opposition may be filed within 5 days of service of the brief in opposition.

(f) When motions to intervene are made by individuals or groups with common interests, the Commission may request all such movants to designate a single representative, or the Commission may recognize one or more movants.

(g) The Commission shall give each movant and party written notice of the decision on the motion. For each motion granted, the Commission shall provide a

brief statement of the basis for the decision. If the motion is denied, the Commission shall briefly state the grounds for denial. The Commission may allow the movant to participate as amicus curiae, if appropriate.

§ 585.6 When will I receive a copy of the record on which the Chair relied?

Within 10 days of the filing of an appeal brief, or as soon thereafter as practicable, the record on which the Chair relied will be transmitted to the appellant.

§ 585.7 When will the Commission issue its decision?

(a) The Commission shall issue its decision within 90 days after it receives the appeal brief, or its ruling on a request for intervention, if applicable, unless the subject of the appeal is whether to dissolve or make permanent a temporary closure order issued under § 573.6 chapter, in which case the Commission shall issue its decision within 60 days.

(b) The Commission shall serve the final decision upon the appellants, and any limited participant.

Dated: January 23, 2012, Washington, DC.

Tracie L. Stevens,

Chairwoman.

Steffani A. Cochran,

Vice-Chairwoman.

Daniel J. Little,

Commissioner.

[FR Doc. 2012–1767 Filed 1–27–12; 11:15 am]

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DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 559

RIN 3141–AA48

Review and Submittal of a Tribe's Facility License Information

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Indian Gaming Commission is proposing revisions to its regulations that would provide for an expedited review of a tribe's facility license information and streamline the submittal of information relating to a proposed facility license. The proposed rule also provides for tribes to submit a certification attesting that the gaming operation is being conducted in a manner that adequately protects the environment and the public health and safety. Further, the proposed rule requires a facility license to be submitted before the opening of any new place, facility, or location on Indian lands where class II or III gaming will occur. Likewise, a tribe must notify the Chair if a facility license is terminated, expires, or if a gaming place, facility, or location closes or reopens, unless the closure is seasonal or temporary.

DATES: The agency must receive comments on or before April 2, 2012.

ADDRESSES: You may submit comments by any one of the following methods, however, please note that comments sent by electronic mail are strongly encouraged.

- *Email comments to: reg.review@nigc.gov.*
- *Mail comments to:* Armando J. Acosta, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005.
- *Hand deliver comments to:* 1441 L Street NW., Suite 9100, Washington, DC 20005.
- *Fax comments to:* Armando J. Acosta, National Indian Gaming Commission at (202) 632–0045.

FOR FURTHER INFORMATION CONTACT: Armando J. Acosta, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005. Telephone: (202) 632–7009; email: *reg.review@nigc.gov*

SUPPLEMENTARY INFORMATION:

I. Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposed rules.

II. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* was signed into law on October 17, 1988. The Act establishes the National Indian Gaming Commission (''Commission'') and sets out a comprehensive framework for the regulation of gaming on Indian lands. The purposes of IGRA include: providing a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments; ensuring that the Indian tribe is the primary beneficiary of the gaming operation; and declaring that the establishment of independent federal regulatory authority for gaming on Indian lands, the establishment of federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission, are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue. 25 U.S.C. 2702.

The Act provides for tribal gaming on Indian lands within such tribe's jurisdiction. 25 U.S.C. 2710. The Act further provides the Chair and the Commission with civil regulatory authority for any violation of any provision of IGRA, Commission regulations, or approved tribal gaming ordinances. 25 U.S.C 2713. The Act requires ''a separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II (and class III) gaming is conducted.'' 25 U.S.C. 2710(b)(1) and (d)(1)(A)(iii). Further, IGRA requires that tribal ordinances provide that ''the construction and maintenance of the gaming facilities, and the operation of that gaming is conducted in a manner which adequately protects the environment and public health and safety.'' 25 U.S.C. 2710(b)(2)(E).

Part 559 serves three purposes. The first is to receive information from tribes about the Indian lands status of each gaming facility. The second is to obtain information from tribal governments certifying that the construction, maintenance, and operation of the gaming facilities are conducted in a manner that adequately protects the environment and the public health and safety, as required by the IGRA. Finally, Part 559 serves to inform the Commission of those places, facilities, or locations at which Indian gaming is presently being conducted.

On November 18, 2010, the Commission issued a Notice of Inquiry and Notice of Consultation (NOI) advising the public that the Commission was conducting a comprehensive review of its regulations and requesting public comment on which of its regulations were most in need of revision, in what order the Commission should review its regulations, and the process the Commission should utilize to make revisions. 75 FR 70680 (Nov. 18, 2010). Part 559 was included in the first group of regulations reviewed in consultation.

II. Development of the Proposed Rule

The Commission conducted multiple tribal consultations as part of its review of part 559. Tribal consultations were held in every region of the country and were attended by numerous tribal leaders or their representatives. In addition to tribal consultations, on June 11, 2011, the Commission requested

public comment on a preliminary draft of amendments to part 559.

A. General Issues

In response to the NOI, several comments stated that the current facility licensing regulations exceeded the Commission's authority under IGRA. However, many comments also stated that the June 11, 2011 draft facility licensing regulations more closely tracked the text and purpose of IGRA. Another commentator suggested that self-regulating tribes be exempted from this requirement. However, facility licenses are a statutory requirement and even self-regulating tribes must issue facility licenses. Therefore, the proposed rule does not exempt self-regulating tribes from the facility license requirement.

B. Submission of Indian lands information

The June 11, 2011 preliminary discussion draft amended the timeframe for submittal of the facility license from 120 days to 60 days. It also added a subsection that required the Commission to quickly verify the status of the Indian lands of the place, facility, or location where class II or class III gaming will occur. However, commentators objected to this change, noting that the draft created a new process committing the Chair to act while the tribe waited for the Chair's action. Comments pointed out that there is no legal requirement for an Indian lands determination prior to gaming on that land. The Commission agrees with the comments and has attempted to address this issue in the proposed regulation. The proposed regulation reinstates the 120-day timeframe for submittal of the facility license information to the Commission, while allowing a tribe to request an expedited 60-day review to confirm that the Tribe has submitted the materials required under part 559. The proposed regulation also allows a tribe to request a written confirmation from the Chair that the tribe has submitted the materials required under part 559. Similar to existing part 559, the proposed rule does not require the issuance of a written opinion that the site on which Indian gaming is proposed is Indian lands eligible for gaming, as that term is defined by IGRA.

Several commentators requested that the regulation be clarified to state that tribal governments possess authority to independently issue facility licenses and may open new facilities while the Commission's ''verification process'' is pending. The Commission agrees that IGRA preserves a tribe's authority to issue facility licenses. The proposed rule further clarifies that the notification process does not require the Commission to verify the Indian lands status within the 120-day timeframe. IGRA limits gaming to Indian lands eligible for gaming under IGRA. If a tribe opens a new facility on lands not eligible for gaming, it does so at the risk of violating IGRA and other applicable laws. Additional comments suggested that the proposed regulation clarify that after the passage of 120 days, there is a presumption that the tribe has provided the required information and that the Commission has verified the Indian land status, unless it notifies the tribe otherwise. The Commission disagrees with such a presumption because Commission action or inaction cannot change IGRA's limitations on which Indian lands are eligible for gaming. Accordingly, the proposed regulation does not require a verification or action on whether the land is Indian land eligible for gaming, as that term is defined in IGRA.

The Commission received comments suggesting that the notice requirements include copies of relevant treaties, statutes, executive orders, court orders, or other documentation, while other comments stated that tribes should not be required to provide documents that should already be in the federal government's possession. The proposed regulation does not change the submission requirements for new facilities. While the Commission agrees that tribes should not be required to submit copies of documents that should already be in the federal government's possession, maintaining this requirement will help to provide certainty to tribes and the Commission that it has all of the relevant information.

C. Notification Requirements for Facility Openings and Closures

Part 559 requires tribes to renew or reissue a facility license at least once every three years. Proposed part 559 eliminates this requirement. The Commission's view is that unless a change to the facility has been made that changes the legal land description, tribes may establish the duration of their facility licenses through tribal law. The preliminary draft regulation still required the tribe to provide the Commission with notice of a facility opening or closing and to provide a copy of each renewed facility license. The proposed rule maintains the approach set forth in the preliminary draft. The proposed rule continues to require submittal of reissued facility licenses whenever they are issued by the tribe.

Comments were varied in their recommendation for the number of days a facility must be closed before notification should be sent to the Commission. Some supported no notification to the Commission for seasonal closures, while others suggested 60 days, 90 days, and 180 days. The proposed rule retains the requirement of notification when a facility license is terminated or not renewed, or when a facility closes or reopens so that the Commission has accurate, up-to-date records of which facilities are operating at any given point in time. However, the proposed rule does not require a tribe to notify the Commission of a seasonal closure or a temporary closure of less than 180 days.

D. Environmental and Public Health and Safety Submission Requirements

In response to the NOI, the Commission received comments which stated that requiring the submittal of EPHS information was onerous, duplicative, and outside the authority and expertise of the Commission. Commentators noted that EPHS issues were already addressed in tribal, state, and federal laws, tribal-state compacts, and inter-governmental agreements. Comments stated that, in addition to tribal governmental departments that regulate such matters, federal agencies already regulate the EPHS issues in Indian country. The Commission agrees that in any particular situation, multiple governmental entities may already regulate EPHS issues at gaming facilities. The proposed rule streamlines the current submittal requirements in part 559 by requiring the submittal of a certification by the tribe attesting that it has determined that the construction, maintenance, and operation of the gaming facility is conducted in a manner that adequately protects the environment and the public health and safety. The proposed rule maintains the Chair's discretion to request additional EPHS information from a tribe. Some comments requested that the proposed rule identify the circumstances under which the Chair could request such information. The proposed draft does not do so, as it is not possible to identify every possible scenario under which the Chair would exercise this discretion.

E. Consolidation of § 502.22 Into § 559.4

Responses to the NOI indicated that the Commission should review § 502.22 in conjunction with the review of part 559. In response to these comments, the Commission proposes incorporating § 502.22 into § 559.4 and repealing

§ 502.22. This amendment is intended to promote clarity and effectiveness for the regulated community.

Regulatory Matters

Regulatory Flexibility Act

The proposed rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). This rule does not have an annual effect on the economy of $100 million or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies or geographic regions and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency is exempt from compliance with the Unfunded Mandates Reform Act. 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

National Environmental Policy Act

The Commission has determined that the proposed rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 3141–0012, which expired on January 31, 2011. The NIGC is in the process of reinstating that Control Number.

Text of the Proposed Rules

For the reasons discussed in the preamble, the Commission proposes to revise part 559 to read as follows:

PART 559—FACILITY LICENSE NOTIFICATIONS, RENEWALS, AND SUBMISSIONS

Sec.

559.1 What is the scope and purpose of this part?
559.2 When must a tribe notify the Chair that it is considering issuing a new facility license?
559.3 When must a tribe submit a copy of a newly issued or renewed facility license to the Chair?
559.4 What must a tribe submit to the Chair with the copy of each facility license that has been issued or renewed?
559.5 Does a tribe need to notify the Chair if a facility license is terminated or expires or if a gaming place, facility, or location closes or reopens?
559.6 May the Chair require a tribe to submit applicable and available Indian lands or environmental and public health and safety documentation regarding any gaming place, facility, or location where gaming will occur?
559.7 May a tribe submit documents required by this part electronically?

Authority: 25 U.S.C. 2701, 2702(3), 2703(4), 2705, 2706(b)(10), 2710, 2719.

§ 559.1 What is the scope and purpose of this part?

(a) The purpose of this part is to ensure that each place, facility, or location where class II or III gaming will occur is located on Indian lands eligible for gaming and obtain an attestation certifying that the construction and maintenance of the gaming facility, and the operation of that gaming, is conducted in a manner that adequately protects the environment and the public health and safety, pursuant to the Indian Gaming Regulatory Act.

(b) Each gaming place, facility, or location conducting class II or III gaming pursuant to the Indian Gaming Regulatory Act or on which a tribe intends to conduct class II or III gaming pursuant to the Indian Gaming Regulatory Act is subject to the requirements of this part.

§ 559.2 When must a tribe notify the Chair that it is considering issuing a new facility license?

(a) A tribe shall submit to the Chair a notice that a facility license is under consideration for issuance at least 120 days before opening any new place, facility, or location on Indian lands where class II or III gaming will occur.

(1) A tribe may request an expedited review of 60 days and the Chair shall respond to the tribe's request, either granting or denying the expedited review, within 30 days.

(2) Although not necessary, a tribe may request written confirmation from the Chair.

(b) The notice shall contain the following:

(1) The name and address of the property;

(2) A legal description of the property;

(3) The tract number for the property as assigned by the Bureau of Indian Affairs, Land Title and Records Offices, if any;

(4) If not maintained by the Bureau of Indian Affairs, Department of the Interior, a copy of the trust or other deed(s) to the property or an explanation as to why such documentation does not exist; and

(5) If not maintained by the Bureau of Indian Affairs, Department of the Interior, documentation of the property's ownership.

(c) A tribe does not need to submit to the Chair a notice that a facility license is under consideration for issuance for occasional charitable events lasting not more than one week.

§ 559.3 When must a tribe submit a copy of a newly issued or renewed facility license to the Chair?

A tribe must submit to the Chair a copy of each newly issued or renewed facility license within 30 days of issuance.

§ 559.4 What must a tribe submit to the Chair with the copy of each facility license that has been issued or renewed?

A tribe shall submit to the Chair with each facility license an attestation certifying that by issuing the facility license, the tribe has determined that the construction and maintenance of the gaming facility, and the operation of that gaming, is conducted in a manner which adequately protects the environment and the public health and safety. This means that a tribe has identified and enforces laws, resolutions, codes, policies, standards or procedures applicable to each gaming place, facility, or location that protect the environment and the public health and safety, including standards under a tribal-state compact or Secretarial procedures.

§ 559.5 Does a tribe need to notify the Chair if a facility license is terminated or expires or if a gaming place, facility, or location closes or reopens?

A tribe must notify the Chair within 30 days if a facility license is terminated or expires or if a gaming place, facility, or location closes or reopens. A tribe need not provide a notification of seasonal closures or temporary closures with a duration of less than 180 days.

§ 559.6 May the Chair require a tribe to submit applicable and available Indian lands or environmental and public health and safety documentation regarding any gaming place, facility, or location where gaming will occur?

A tribe shall provide applicable and available Indian lands or environmental and public health and safety documentation requested by the Chair.

§ 559.7 May a tribe submit documents required by this part electronically?

Yes. Tribes wishing to submit documents electronically should contact the Commission for guidance on acceptable document formats and means of transmission.

Dated: January 23, 2012.

Tracie L. Stevens,

Chairwoman.

Steffani A. Cochran,

Vice-Chairwoman.

Dated: January 23, 2012.

Daniel J. Little,

Associate Commissioner.

[FR Doc. 2012–1915 Filed 1–27–12; 11:15 am]

BILLING CODE 7565–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 9

RIN 2900–AO30

Servicemembers' Group Life Insurance—Stillborn Child Coverage

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its Servicemembers' Group Life Insurance (SGLI) regulations in order to provide that, if a stillborn child is otherwise eligible to be insured by the SGLI coverage of more than one member, the child would be insured by the coverage of the child's SGLI-insured mother.

DATES: Comments must be received by VA on or before April 2, 2012.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AO30—Servicemembers' Group Life Insurance—Stillborn Child Coverage.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll free number.) In addition, during the comment period, comments are available online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Gregory C. Hosmer, Senior Attorney-Advisor, Department of Veterans Affairs Regional Office and Insurance Center (310/290B), P.O. Box 8079, Philadelphia, Pennsylvania 19101, (215) 842–2000, ext 4280. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Veterans' Survivor Benefits Improvements Act of 2001, Public Law 107–14, established a program of family insurance coverage under Servicemembers' Group Life Insurance (SGLI) through which a SGLI-insured service member's insurable dependents could also be insured. Section 1965(10) of title 38, United States Code, defined ''insurable dependent'' as a service member's spouse or child. Under 38 U.S.C. 1967(a), the child of a SGLI-insured member is automatically insured for $10,000.

Section 1967(a)(4)(B) prohibits an insurable dependent who is a child from being insured at any time under the SGLI coverage of more than one member, i.e., more than one SGLI-insured parent. If a child is otherwise eligible to be insured by the coverage of more than one member, under section 1967(a)(4)(B) the child is insured by the coverage of the member whose eligibility for SGLI occurred first, ''except that if that member does not have legal custody of the child, the child shall be insured by the coverage of the member who has legal custody of the child.'' Which parent has legal custody of a child is determined in accordance with applicable State law.

Section 402 of the Veterans' Benefits Improvement Act of 2008, Public Law 110–389, expanded the definition of ''insurable dependent'' for SGLI purposes to include a ''member's stillborn child.'' On November 18, 2009, VA added paragraph (k) to 38 CFR 9.1 to define the term ''member's stillborn child'' for purposes of SGLI coverage. 74 FR 59479.

Our research has determined that the law of the 50 States is silent as to which parent of a stillborn child has legal custody of the stillborn child. VA would not be able to determine the legal custodian of a stillborn child in accordance with State law. Therefore, we propose that a stillborn child of two SGLI-covered parents will always be insured under the mother's coverage.

Ease of application is just one reason for adopting such a simple rule. VA proposes this rule also because a stillborn child was exclusively in the mother's physical custody. Furthermore, if the paternity of a stillborn child were in issue, it would be particularly onerous to require a stillborn's father to establish paternity of the stillborn child. It would be more compassionate under such circumstances to simply apply a standing rule that obviates the need for such determinations. We therefore propose a rule to amend 38 CFR 9.5 by adding paragraph (e) to provide that, if a stillborn child is otherwise eligible to be insured by the coverage of more than one member, the stillborn child would be insured by the coverage of the SGLI-insured mother.

This rule would apply to claims filed on or after the publication of the final rule.

Unfunded Mandates

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

Paperwork Reduction Act

This proposed rule contains no provision constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct 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 effects, and other advantages; distributive impacts; and equity).

Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

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

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This proposed rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The catalog of Federal Domestic Assistance Program number and the title for this regulation is 64.103, Life Insurance for Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on January 22, 2012, for publication.

List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Dated: January 26, 2012.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 9 as follows:

PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

1. The authority citation for part 9 continues to read as follows:

Authority: 38 U.S.C. 501, 1965–1980A, unless otherwise noted.

2. Section 9.5 is amended by adding paragraph (e) and revising the authority citation at the end of the section to read as follows:

§ 9.5 Payment of proceeds.

* * * * *

(e) If a stillborn child is otherwise eligible to be insured by the Servicemembers' Group Life Insurance coverage of more than one member, the child shall be insured by the coverage of the child's insured mother.

(Authority: 38 U.S.C. 501(a), 1965(10), 1967(a)(4)(B))

[FR Doc. 2012–1990 Filed 1–30–12; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2011–0729; FRL–9624–4]

RIN 2060–AR05

Regional Haze: Revisions to Provisions Governing Alternatives to Source-Specific Best Available Retrofit Technology (BART) Determinations, Limited SIP Approvals, and Federal Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Extension of Public Comment Period.

SUMMARY: On December 30, 2011, the EPA published in the **Federal Register** our proposal to revise rules that pertain to the regional haze program. In the proposal, the EPA stated that public comments were to be submitted by February 13, 2012. In order to ensure that the public has a sufficient time to analyze our proposed rule, the EPA is extending the public comment period until February 28, 2012.

DATES: *Comments.* Comments on the proposed rule published December 30, 2011 (76 FR 82219) must be received on or before February 28, 2012.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0729, by one of the following methods:

- *www.regulations.gov*: Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Attention Docket ID No. EPA–HQ–OAR–2011–0729, U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue NW., Mail code: 6102T, Washington, DC 20460. Please include a total of 2 copies.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room 3334, Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2011–0729. 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–2011–0729. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

Docket. All documents in the docket are listed in the *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 *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For information on this proposed rule, contact Ms. Martha Keating, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–9407; fax number: (919) 685–3700; email address: *keating.martha@mailto:epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2011–0729.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

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

In addition to being available in the docket, an electronic copy of this notice will be available on the World Wide Web (WWW). Following signature, a copy of this notice will be posted at *http://www.epa.gov/ttn/oargpg/new.html.*

Dated: January 20, 2012.

Jennifer Noonan-Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2012–2070 Filed 1–30–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–9623–9]

Nonconformance Penalties for On-Highway Heavy-Duty Diesel Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to make nonconformance penalties (NCPs) available to manufacturers of heavy-duty diesel engines in model years 2012 and later for emissions of oxides of nitrogen (NOx). In general, the availability of NCPs allows a manufacturer of heavy-duty engines (HDEs) whose engines fail to conform to specified applicable emission standards, but do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty to the United States Government. The proposed upper limit associated with these NCPs is 0.50 grams of NOx per horsepower-hour.

DATES: *Comments:* Comments on all aspects of this proposal must be received on or before April 4, 2012. See the **SUPPLEMENTARY INFORMATION** section on ''Public Participation'' for more information about written comments.

Public Hearings: EPA will hold a public hearing on the following date: March 5, 2012. The hearing will start at 10 a.m. local time and continue until 5 p.m. or until everyone has had a chance to speak. See ''How Do I Participate in the Public Hearings?'' below at VII. B. under the **SUPPLEMENTARY INFORMATION** section on ''Public Participation'' for more information about the public hearings.

ADDRESSES: Submit your comments to Docket EPA–HQ–OAR–2011–1000, by one of the following methods: *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

Email: a-and-r-docket@epa.gov.

Fax: EPA: (202) 566–9744.

Mail: EPA: Air Docket, Environmental Protection Agency, EPA Docket Center, Mailcode: 2822T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Hand Delivery: EPA: EPA Docket Center, (Air Docket), U.S. Environmental Protection Agency, EPA West Building, 1301 Constitution Avenue NW., Room: 3334, Mail Code 2822T, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2011–1000. See the **SUPPLEMENTARY INFORMATION** section on ''Public Participation'' for additional instructions on submitting written comments.

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.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy in the docket. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the following locations:

EPA: EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Chuck Moulis, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4826; Email *moulis.charles@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities

This proposed action would affect you if you produce or import new heavy-duty diesel engines which are intended for use in highway vehicles such as trucks and buses or heavy-duty highway vehicles. The table below gives some examples of entities that may have to follow the proposed regulations. But because these are only examples, you should carefully examine the proposed and existing regulations in 40 CFR part 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS [a] Codes	Examples of potentially regulated entities
Industry	336112 336120	Engine and truck manufacturers.

[a] North American Industry Classification System (NAICS).

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IX. Statutory Provisions and Legal Authority

I. Statutory Authority and Regulatory Background

A. Statutory Authority

Section 206(g) of the Clean Air Act (the Act), 42 U.S.C. 7525(g), allows EPA to promulgate regulations permitting manufacturers of heavy-duty engines (HDEs) or heavy-duty vehicles (HDVs) to receive a certificate of conformity for HDEs or HDVs that exceed a federal emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays a nonconformance penalty (NCP) established by rulemaking. Congress adopted section 206(g) in the Clean Air Act Amendments of 1977 as a response to a concern with requiring technology-forcing emissions standards for heavy-duty engines. The concern was if strict technology-forcing standards were promulgated, then some manufacturers might be unable to comply initially and would be forced out of the marketplace. NCPs were intended to remedy this concern. The nonconforming manufacturers would have a temporary alternative that would permit them to sell their engines or vehicles by payment of a penalty. At the same time, conforming manufacturers would not suffer a competitive disadvantage compared to nonconforming manufacturers, because the NCPs would be based, in part, on money saved by the nonconforming manufacturer.

Under section 206(g)(1), NCPs may be offered for HDVs or HDEs. The penalty may vary by pollutant and by class or category of vehicle or engine. Section 206(g)(3) requires that NCPs:

- Account for the degree of emission nonconformity;
- Increase periodically to provide incentive for nonconforming manufacturers to achieve the emission standards; and
- Remove the competitive disadvantage to conforming manufacturers.

Section 206(g) authorizes EPA to require testing of production vehicles or engines in order to determine the emission level upon which the penalty is based. If the emission level of a vehicle or engine exceeds an upper limit of nonconformity established by EPA through regulation, the vehicle or engine would not qualify for an NCP under section 206(g) and no certificate of conformity could be issued to the manufacturer. If the emission level is below the upper limit but above the standard, that emission level becomes the ''compliance level,'' which is also the benchmark for warranty and recall liability. The manufacturer who elects to pay the NCP is liable for vehicles or engines that exceed the compliance level in use. The manufacturer does not have in-use warranty or recall liability for emissions levels above the standard but below the compliance level.

B. Background Regarding Nonconformance Penalty Rules

Since the promulgation of the first NCP rule in 1985, subsequent NCP rules generally have been described as continuing ''phases'' of the initial NCP rule. The first NCP rule (Phase I), sometimes referred to as the ''generic'' NCP rule, established three basic criteria for determining the eligibility of emission standards for nonconformance penalties in any given model year (50 FR 35374, August 30, 1985). As described in section III. A. of this notice,

we have determined that these criteria have been met for one manufacturer. (For regulatory language, see 40 CFR 86.1103–87.) The first criterion is that the emission standard in question must become more difficult to meet. This can occur in two ways, either by the emission standard itself becoming more stringent, or due to its interaction with another emission standard that has become more stringent. Second, substantial work must be required in order to meet the emission standard. EPA considers ''substantial work'' to mean the application of technology not previously used in that vehicle or engine class/subclass, or a significant modification of existing technology, in order to bring that vehicle/engine into compliance. EPA does not consider minor modifications or calibration changes to be classified as substantial work. Third, EPA must find that a manufacturer is likely to be noncomplying for technological reasons (referred to in earlier rules as a ''technological laggard''). Prior NCP rules have considered such a technological laggard to be a manufacturer who cannot meet a particular emission standard due to technological (not economic) difficulties and who, in the absence of NCPs, might be forced from the marketplace. As described in section III. A. of this notice, we have determined that this criterion has been met for one manufacturer. This manufacturer notified us late in 2011 that it would not have enough emission credits for its model year 2012 heavy heavy-duty engines.

The criteria and methodologies established in the 1985 NCP rule have since been used to determine eligibility and to establish NCPs for a number of heavy-duty emission standards. Phases II, III, IV, V, and VI published in the period from 1985 to 2002, established NCPs that, in combination, cover the full range of heavy-duty—from heavy light-duty trucks (6,000–8,500 pounds gross vehicle weight) to the largest diesel truck and urban bus engines. NCPs have been established for hydrocarbons (HC), carbon monoxide (CO), nitrogen oxides (NO_X), and particulate matter (PM). The most recent NCP rule (67 FR 51464, August 8, 2002) established NCPs for the 2004 and later model year NO_X standard for heavy-duty diesel engines (HDDEs). The NCP rulemaking phases are summarized in greater detail in the Interim and Proposed Technical Support Document for this rulemaking.

C. 2007 and 2010 NO_X Standards

The 0.20 g/hp-hr NO_X standard that applies for current and future heavy-duty engines was adopted January 18, 2001 (66 FR 5001), and first applied in the 2007 model year. However, because of phase-in provisions adopted in that rule and use of emission credits generated by manufacturers for early compliance, manufacturers have been able to continue to produce engines with NO_X emissions greater than 0.20 g/hp-hr. The phase-in provisions ended after model year 2009 so that the 0.20 g/hp-hr NO_X standard was fully phased-in for model year 2010. Equally important, the cap applicable to Family Emission Limits (FELs) [1] for credit using engine families was lowered to 0.50 g/hp-hr beginning in model year 2010. Because of these changes that occurred in model year 2010, the 0.20 g/hp-hr NO_X emission standard is often referred to as the 2010 NO_X emission standard, even though it applied to engines as early as model year 2007.

While some manufacturers retain NO_X emission credits that currently allow them to produce engines with NO_X emissions as high as 0.50 g/hp-hr, we expect that one of these manufacturers could exhaust their supplies of credits in the near future.

II. Interim Final Rule

EPA is also publishing an Interim Final Rule (IFR) addressing NCPs for heavy heavy-duty engines. The NCPs in the Final Rule for this NPRM are expected to supersede the NCPs being promulgated in that Interim Final Rule. For example, if the Final Rule is published September 14, 2012, it would likely have an effective date of November 13, 2012. Should the Final Rule establish different NCPs for heavy heavy-duty engines than the interim NCPs, we could apply those new NCPs to any engines produced on or after November 13, 2012, instead of the interim NCPs.

Note that Docket Number EPA–HQ–OAR–2011–1000 is being used for both the Interim Final Rule and this NPRM.

III. Nonconformance Penalties for 2012 and Later Heavy-Duty Engines and Heavy-Duty Vehicles

A. NCP Eligibility: Emission Standards for Which NCPs Are Being Established in This Interim Final Rule

(1) Heavy Heavy-Duty Diesel NO_X Standard

As discussed in section I.B., EPA must determine that three criteria are met in order to determine that an NCP should be established in any given model year. For the 2010 NO_X standard, we believe these criteria have been met for heavy heavy-duty diesel engines and it is therefore appropriate to establish NCPs for this standard beginning in the current model year.

The first criterion requires that the emission standard in question must become more difficult to meet. This is the case with the 2010 NO_X standard. The previous emission standard for this category is a combined NMHC+NO_X standard of 2.4 g/hp-hr, or optionally a 2.5 g/hp-hr NMHC+NO_X with a limit of 0.5 g/hp-hr NMHC.[2] The 2010 (*i.e.,* current) standards are 0.20 g/hp-hr for NO_X and 0.14 g/hp-hr for NMHC. When promulgated, the Agency concluded that the 0.20 g/hp-hr NO_X standard was a technology forcing standard. Second, all heavy heavy-duty diesel engines currently certified to the 0.20 g/hp-hr standard without using credits are using new aftertreatment systems to meet this standard.[3] It is therefore logical to conclude the standard is more difficult to meet and that substantial work was required to meet the emission standard.

Third, EPA is promulgating NCPs for heavy heavy-duty diesel engines because we have concluded that there is a significant likelihood that they will be needed by an engine manufacturer that has not yet met the requirements for technological reasons. One manufacturer is currently using NO_X credits to certify all of its heavy heavy-duty diesel engines at nearly the FEL cap level of 0.50 g/hp-hr. Based on its current credit balance and projected sales for this service class, we do not expect this manufacturer to have sufficient credits to cover its entire model year 2012 production. This manufacturer intends to use a different technology to meet the NO_X standard but has not yet submitted an application for the 2012 model year with NO_X emissions at or below the 0.20 g/hp-hr standard. Since it has not yet submitted an application for certification for any model year 2012 heavy heavy-duty

[1] FELs serve are emission levels specified by the manufacturer that serve as the applicable emission standard for engines participating in the emission averaging program. The FEL cap is the highest FEL to which a manufacturer may certify an engine using emission credits.

[2] NMHC stands for non-methane hydrocarbons, which is a measure of total hydrocarbons with the methane emissions subtracted out. For typical on-highway diesel fueled heavy-duty engines, methane emissions are on the order of 10 percent of the total hydrocarbon emissions.

[3] For this proposed rule, EPA describes those manufacturers that have achieved the 0.20 g/hp-hr emission standard as ''compliant'' or ''complying'' manufacturers, and those that have not as the ''noncompliant'' or ''noncomplying'' manufacturers. However, it is important to clarify that manufacturers certifying above the 0.20 g/hp-hr NO_X emission standard using emission credits are in compliance with regulations as long as they have enough emission credits to offset their total NO_X emissions above the standard.

diesel engines that would not require emission credits, we believe it is a reasonable possibility that this manufacturer may not be able to comply for technological reasons with respect to the 2010 NO_X standards for heavy heavy-duty diesel engines. This manufacturer notified us late in 2011 that it would not have enough emission credits for its model year 2012 heavy heavy-duty engines.

(2) Medium Heavy-Duty Diesel NO_X Standard

EPA believes that the first two NCP criteria have also been met for medium heavy-duty diesel engines. We have also determined that there is a significant chance that NCPs will be needed by an engine manufacturer that has not yet met the 2010 NO_X standards for medium heavy-duty diesel engines for technological reasons. As is true for heavy heavy-duty engine, one manufacturer is currently using NO_X credits to certify all of its medium heavy-duty diesel engines above 0.20 g/hp-hr. This manufacturer intends to use a different technology to meet the NO_X standard but has not yet submitted an application for any upcoming model year with NO_X emissions at or below the 0.20 g/hp-hr standard. Since it has not yet submitted an application for certification for any model year medium heavy-duty diesel engines that would not require emission credits, we believe it is prudent to promulgate NCPs given the possibility that this manufacturer may not be able to comply for technological reasons with respect to the 2010 NO_X standards for medium heavy-duty diesel engines before it exhausts its supply of emission credits for medium heavy-duty engines.

B. NCP Eligibility: Emission Standards for Which NCPs Are Not Proposed

(1) Light Heavy-Duty Diesel NO_X Standard

EPA believes that the first two NCP criteria have been met for the 2010 NO_X standard for light heavy-duty diesel engines. However, we have not determined that any manufacturer of light heavy-duty diesel engines will be unable to certify to the 2010 NO_X standard through use of emission credits until it develops emissions controls that allow its light heavy-duty diesel engines to achieve NO_X emissions at or below 0.20 g/hp-hr.

(2) Heavy-Duty Gasoline Engine Standards

In a final rule published on January 18, 2001 (66 FR 5001), EPA established more stringent emission standards for all heavy-duty gasoline (or ''Otto-cycle'') vehicles and engines. These standards took two forms: a chassis-based set of standards for complete vehicles under 14,000 pounds GVWR (the chassis-based program), and an engine-based set of standards for all other Otto-cycle heavy-duty engines (the engine-based program). Each of the two programs has an associated averaging, banking, and trading (ABT) program. The new standards generally took effect starting with the 2008 model year, and all manufacturers are in compliance with them.

(3) Heavy-Duty Diesel Engine NMHC, CO, and PM Standards

EPA adopted new NMHC and PM for model year 2007 and later heavy-duty engines in the same rule that set the 2010 NO_X emission standard (66 FR 5001, January 18, 2001). The CO standard was not changed. We are not considering NCPs for any of these other standards because all manufacturers are already fully compliant with them.

(4) Heavy-Duty CO_2 Standards

In a final rule published on September 15, 2011 (76 FR 57106), EPA established new CO_2 emission standards for all heavy-duty vehicles and engines. We are not considering NCPs for any of these standards at this time because we currently do not have a basis to conclude that a technological laggard is likely to develop.

We are proposing to add a new regulatory provision related to these CO_2 emission standards. The provision would prohibit generating CO_2 emission credits from engines paying NCPs for NO_X. Given the general tradeoff between CO_2 and NO_X emissions, we were concerned that a manufacturer capable of meeting the 0.20 g/hp-hr NO_X emission standard could choose to pay an NCP in order to generate CO_2 credits by recalibrating its engines for higher NO_X emissions and lower CO_2. There are two reasons this would be inappropriate. First, emission credits are supposed to provide an incentive for a manufacturer to go beyond what is normally required to meet emission standards. However, allowing manufacturers to generate CO_2 credits while paying NCPs would actually create an incentive for manufacturers to do less than is required to meet the emission standards. Equally important, NCPs have always been intended for manufacturers that cannot meet an emission standard for technological reasons rather than manufacturers choosing not to comply.

IV. Penalty Rates

This proposed rule is the most recent in a series of NCP rulemakings. These are referred to as Phases and are referenced below.[4] The discussions of penalty rates in those rulemakings are incorporated by reference. This section briefly reviews the penalty rate formula originally promulgated in the Phase I rule (currently found at 40 CFR 86.1113–87) and discusses how EPA arrived at the proposed penalty rates.

The penalty rates being established in this rule rely on the existing NCP regulatory structure. Thus, the only changes being made to the regulations are updates to the cost parameters to reflect the compliance costs for the 2010 standards, setting of the upper limit, and clarifying in § 86.1104–91 that EPA may set the upper limit at a level below the previous standard if we determine that the lower level is achievable by all engines.

The NCP rates being proposed are specified for model year 2012. As required by the Clean Air Act, the existing regulations include a formula that increases the penalty rates with each new model year. We proposed to apply this annual adjustment formula to the NCPs by setting the 2012 model year as year number one. Traditionally, NCPs are available the first year of the new emission standard and that becomes year one for purposes of the annual escalator. However, EPA believes the 2012 model year is the correct year for the first year of the escalator calculation even though the NO_X emission standard began in 2010.

A. Parameters

As in the previous NCP rules, we are specifying the NCP formula for each standard using the following parameters: COC_{50}, COC_{90}, MC_{50}, F, and UL. The NCP formula is the same as that promulgated in the Phase I rule. As was done in previous NCP rules, costs consider additional manufacturer costs and additional owner costs, but do not consider certification costs because both complying and noncomplying manufacturers must incur certification costs. COC_{50} is an estimate of the industry-wide average incremental cost per engine (references to engines are intended to include vehicles as well) associated with meeting the standard for which an NCP is offered, compared with

[4] The previous NCP rules include: the Phase VI rulemaking (67 FR 51464, August 8, 2002), Phase V rulemaking (61 FR 6949, February 23, 1996), Phase IV rulemaking (58 FR 68532, December 28, 1993), Phase III rulemaking (55 FR 46622, November 5, 1990), the Phase II rulemaking (50 FR 53454, December 31, 1985) as well as the Phase I rulemaking (50 FR 35374, August 30, 1985).

meeting the upper limit. COC_{90} is an estimate of the 90th percentile incremental cost per-engine associated with meeting the standard for which an NCP is offered, compared with meeting the associated upper limit. Conceptually, COC_{50} represents costs for a typical or average manufacturer, while COC_{90} represents costs for the manufacturers with the highest compliance costs.

MC_{50} is an estimate of the industry-wide average marginal cost of compliance per unit of reduced pollutant associated with the least cost effective emission control technology installed to meet the new standard. MC_{50} is measured in dollars per g/hp-hr for heavy-duty engines. F is a factor used to derive MC_{90}, the 90th percentile marginal cost of compliance with the NCP standard for engines in the NCP category. MC_{90} defines the slope of the penalty rate curve near the standard and is equal to MC_{50} multiplied by F. UL is the upper limit above which no engine may be certified.

The derivation of the cost parameters is described in a support document entitled ''Interim and Proposed Technical Support Document: Nonconformance Penalties for 2012 and later Highway Heavy-Duty Diesel Engines,'' which is available in the public docket for this rulemaking. All costs are presented in 2011 dollars.

(1) Upper Limit

We are proposing to revise the regulations in § 86.1104–91 to clarify that EPA may set (during rulemaking) the upper limit at a level below the previous standard if we determine that the lower level is achievable by all engines. We would also specify that EPA could set the upper limit at a level above the previous standard in unusual circumstances, such as those that occurred for heavy heavy-duty engines with the 2004 standards. As described below, we are also establishing the upper limit for this NCP rule at 0.50 g/hp-hr. These are the only regulatory changes being made with respect to the upper limit.

The upper limit is the emission level established by regulation above which NCPs are not available and a heavy duty engine cannot be certified or introduced into commerce. CAA section 206(g)(2) refers to the upper limit as a percentage above the emission standard, set by regulation, that corresponds to an emission level EPA determines to be ''practicable.'' The upper limit is an important aspect of the NCP regulations not only because it establishes an emission level above which no engine may be certified, but it is also a critical component of the cost analysis used to develop the penalty rates. The regulations specify that the relevant costs for determining the COC_{50} and the COC_{90} factors are the difference between an engine at the upper limit and one that meets the applicable standards (see 40 CFR 86.1113–87).

The regulatory approach adopted under the prior NCP rules sets the default Upper Limit (UL) at the prior emission standard when a prior emission standard exists and is then changed to become more stringent. EPA concluded that the upper limit should be reasonably achievable by all manufacturers with vehicles in the relevant class. It should be within reach of all manufacturers of HDEs or HDVs that are currently allowed so that they can, if they choose, pay NCPs and continue to sell their engines and vehicles while finishing their development of fully complying engines. A manufacturer of a previously certified engine or vehicle should not be forced to immediately remove an HDE or HDV from the market when an emission standard becomes more stringent. The prior emissions standard generally meets these goals because manufactures have already certified their vehicles to that standard.

In the past, EPA has rejected suggestions that the upper limit should be more stringent than the prior emission standard because it would be very difficult to identify a limit that could be met by all manufacturers. For this rule, however, all manufacturers are currently certifying all of their engines at or below the 0.50 g/hp-hr FEL cap. Thus, since NCPs were not intended to allow manufacturers to increase emissions, we are setting the upper limit for this NCP rule at 0.50 g/hp-hr NO_X. This will conform to the purpose of NCPs, which is to allow manufacturers to continue selling engines they are producing, but not to allow backsliding.

(2) Cost Parameter Values

The regulations being adopted specify that the values in Table 1 (in 2011 dollars) be used in the NCP formula for the 2012 and later model year NO_X standard of 0.20 g/hp-hr for diesel heavy-duty engines. The basis is summarized here. The complete derivation of these parameters is described in the Interim and Proposed Technical Support Document for this rulemaking. We request comment on our estimates of these parameters.

We also considered other methodologies for estimating the incremental compliance costs between the upper limit and the standard. We rejected these alternatives because we are not confident that we could estimate the costs with sufficient accuracy or describe our basis without revealing confidential business information. Moreover, we have no reason to believe that these alternative methodologies would have been better with respect to the statutory requirement to remove the competitive disadvantage of the complying manufacturers.

(a) General Methodology

Based on our review of the various hypothetical baseline engine designs, we selected a straightforward ''baseline engine'' technology package with associated costs that were determinable within a reasonably high degree of certainty. This approach best limited the sensitivity of the penalty rate versus small variations in any of the ''baseline engine'' technology package elements. This cost stability mitigated the hypothetical nature of the ''baseline engine'' technology package, which, in turn, led to a penalty rate that we believe is reasonable. As is described in the TSD, we believe estimating costs by this approach is the least speculative method to determine compliance costs.

We selected a baseline engine technology package that would employ the same basic emission controls used to meet the 2007 NO_X and PM emission standards (*e.g.* cooled exhaust gas recirculation), optimized turbo-charging, optimized fuel injection, diesel particulate filters), plus liquid urea based Selective Catalytic Reduction (SCR) NO_X emissions control technology with an appropriately sized tank for the diesel exhaust fluid (DEF). Further details are provided in this rule's TSD. While EPA selected the baseline engine (or upper limit engine) to be a fully optimized, SCR-equipped engine that complies with all other emission standards and requirements, the NCPs may be used for engines using other technologies.

This approach differs slightly from that used In previous NCP rules, where EPA based the NCPs directly on an average of actual compliance costs for all manufacturers. This was appropriate in those prior rules because each of the manufacturers had actually produced engines at the upper limit (which was usually the previous emission standard). It was relatively straightforward for them to provide us with a confidential engineering analysis of the costs they actually incurred: the real costs of additional hardware and fluids and the differences in performance characteristics. We have always sought full understanding of the manufacturers' inputs, and for previous NCP rules it was also reasonable for EPA to conclude

that the manufacturers' input accurately reflected the manufacturers' actual costs because the costs were derived directly from actual in-production engine information. In the case of this NCP rule, however, compliant manufacturers have not designed and optimized in-production engines for the U.S. market at 0.50 g/hp-hr NO_X (the upper limit). Thus, a compliance cost estimate based directly on actual experience for in-production engines was not available for this NCP rule.

Instead of averaging actual costs (because none were available), the NCP penalty formulas for this rule are based primarily on EPA's estimate of the cost difference between an engine emitting at the upper limit (the ''baseline engine'') and one emitting at the standard (the ''compliant engine''). We requested cost of compliance information from several engine manufacturers and used that information to inform our own analysis of compliance costs, as described in the Interim and Proposed Technical Support Document. The engine manufacturers we contacted approached this cost analysis in the same way we did. That is, the scenarios we and the manufacturers considered were all based upon hypothetical baseline engine designs that were intended to meet the 0.50 g/hp-hr NO_X upper limit.

It is worth noting that each of the five engine manufacturers we contacted considered hypothetical baseline engines with different technology packages. Two complying manufacturers based their compliance costs on a baseline engine equipped with similar (but not identical) hardware as EPA; another on an SCR-equipped engine without exhaust gas recirculation, and a fourth on its estimation of the non-complying engines produced by a competitor. All four manufacturers meeting the 0.20 g/hp-hr NO_X standard compared the costs for their hypothetical baseline engines to the costs for their actual compliant engines. The one non-SCR manufacturer we contacted (that has not yet certified any engines with NO_X emissions at 0.20 g/hp-hr) provided its projections of what it will spend to bring its current 2011 engine into compliance without the use of emission credits.

(b) Calculated Values

The most significant of the NCP parameters is the 90th percentile costs of compliance, COC_{90}, which defines the penalty for engines emitting at the upper limit. The value of COC_{50} only matters when EPA estimates that marginal compliance costs change as the compliance level approaches the standard. In such cases, COC_{50} defines that point on the curve at which the slope changes. We estimated COC_{90} and COC_{50} by assuming the baseline engine would have been an SCR equipped engine with NO_X emissions at 0.50 g/hp-hr and that it looked very similar to an engine with NO_X emissions at 0.20 g/hp-hr. However, the higher NO_X emissions of the baseline engine would allow the use of less expensive hardware and would require less consumption of liquid urea (also known as diesel emission fluid or ''DEF'').

We estimated the marginal costs of compliance as being equal to the total incremental costs of compliance divided by 0.30 g/hp-hr (the difference between the upper limit and the standard). This assumes that the cost to reduce emissions from 0.30 g/hp-hr to 0.20 g/hp-hr is not significantly different from the cost to reduce emissions from 0.50 g/hp-hr to 0.40 g/hp-hr. This results in a penalty curve for heavy heavy-duty engines that is a straight line, which in turn makes our estimate of the average cost of compliance irrelevant to the calculation of the penalty. In other words, the COC_{50} point lies directly between zero cost at 0.20 g/hp-hr and COC_{90} at the Upper Limit of 0.50 g/hp-hr NO_X. The penalty paid for engines at the upper limit would be equal to EPA's estimate of the highest marginal cost paid by a complying manufacturer for the same emission range.

TABLE 1—PROPOSED NCP CALCULATION PARAMETERS

Parameter	Medium heavy-duty diesel engines	Heavy heavy-duty diesel engines
COC_{50}	$462	$1,561.
COC_{90}	$682	$1,919.
MC_{50}	$1,540 per gram per horsepower-hour	$5,203 per gram per horsepower-hour.
F	1.30	1.23.
UL	0.50 g/hp-hr	0.50 g/hp-hr.

(3) Resulting Penalties

The calculation parameters listed in Table 1 are used to calculate the penalty rate. These parameters are used in the penalty rate formulas which are defined in the existing NCP regulations (See 40 CFR 86.1113(a)(1) and (2)). Using the parameters in Table 1, and the equations in the existing NCP regulations, we have plotted penalty rates versus compliance levels in Figure 1 and Figure 2 below. This penalty curve is for the first year of use of the NCPs (*i.e.,* the annual adjustment factors specified in the existing NCP regulations have been set equal to one).

The Clean Air Act NCP provisions require that the penalty be set at such a level that it removes any competitive disadvantage to a complying manufacturer by requiring non-complying manufacturers to pay NCPs. Our methodology for developing the NCP is detailed in the Interim and Proposed Technical Support Document. Our technology approach includes relatively minor hardware upgrades, calibration changes, and increased use of DEF. For the reasons described in the Interim and Proposed Technical Support Document, we believe that the NCPs being established in this rulemaking will remove any competitive disadvantage that complying manufacturers may face.

Figure 1

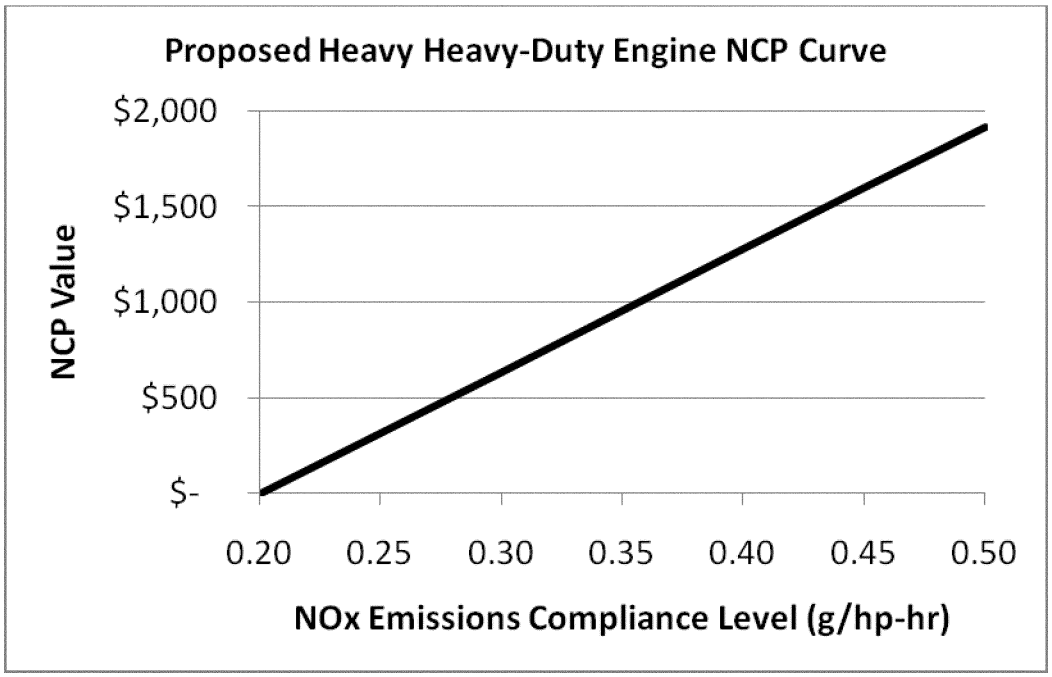
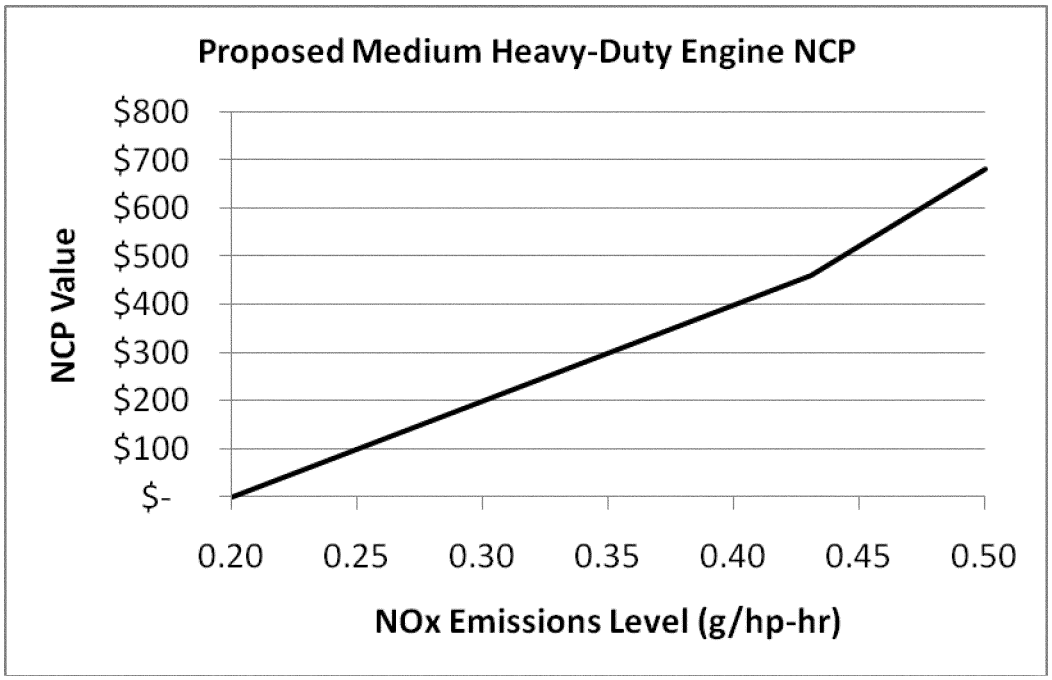


Figure 2



B. Issues and Alternatives for NCPs

The analysis presented in detail in the Interim and Proposed Technical Support Document deals with an assessment of the cost of compliance, using essentially the same methodology that has historically been used to establish NCPs. We believe that our estimates of the costs are appropriate and that the methodology is sound. As noted earlier, section 206(g)(3) specifies certain requirements for NCPs. The requirements for the NCP to account for the degree of emission nonconformity, and to increase periodically have been built into the regulatory structure such that they are automatically achieved with each new phase of NCPs. However, the Clean Air Act also requires EPA to set the NCPs ''to remove any competitive disadvantage to

manufacturers whose engines or vehicles achieve the required degree of emission reduction.'' This section discusses several issues and alternatives that we have evaluated, especially in the context of this third requirement.

(1) Competitive Advantage for Non-Complying Manufacturers

In establishing prior NCP rules, we have frequently made it clear that satisfying the statutory objective of protecting the complying manufacturer was paramount. The generic NCP rule established an approach which attempts to remove any competitive disadvantage to complying manufacturers by assessing a cost to the manufacturer of a non-complying engine in the form of an NCP, with the expectation that this cost is at least equivalent to or exceeds the value of the competitive benefit gained by building a noncomplying engine. Imposing such a cost is a way to level the playing field without interfering in the actual marketing or pricing of the engines. However, since the issue of competitive advantage involves many subjective factors, the regulatory structure cannot by itself ensure that no competitive advantage remains.

A manufacturer of a non-complying engine generally gains a competitive advantage or benefit of two types. The first typically involves production expenses saved by not producing a complying engine, such as fixed costs and hardware costs. The second category involves, in some cases, the competitive benefits gained by producing an engine that has some convenience or better performance characteristics compared to a complying engine.

The first category is easier to quantify, as it involves considering costs directly incurred by the industry, and it is generally easier to get a fuller quantification of amounts in categories such as hardware costs. The second category is much harder to quantify with certainty. As discussed with respect to DEF and fuel consumption, the actual amount of costs or savings to the operator will vary based on several factors. An even harder to quantify competitive advantage is the benefit in the marketplace from producing an engine that is, or may be perceived to be, more convenient to operate.

The factors that affect the issue of whether the proposed NCP would remove competitive disadvantage involve the purchase price, operating cost, and purchaser perception. Even with an NCP set at a level which addresses quantifiable cost differences between complying and non-complying engines, in the eyes of the purchaser there still may be an advantage to paying the higher first cost for an engine (including the NCP) with known performance.

It is clear that producing engines that comply with a 0.20 g/hp-hr NO_X emission standard is more difficult than producing comparable engines with NO_X emissions at 0.50 g/hp-hr. Thus it can be presumed that allowing a manufacturer to produce engines with NO_X emissions at 0.50 g/hp-hr without paying an NCP would bestow some competitive advantage. The question for this rulemaking is how significant is that advantage? To answer this question, we included an analysis of the heavy-duty truck and engine sales over the past four years. As described in the Interim and Proposed Technical Support Document, the available data do not directly answer this question because of a number of confounding factors. Nevertheless, since these data do not show any substantial shift in market share, it seems unlikely that the competitive advantage that exists is very large. This analysis supports our conclusion that the penalty being adopted is large enough to meet the statutory requirement to remove any competitive disadvantage for complying manufacturers. We request comment on this conclusion.

(2) Baseline Engine Technology

Most manufacturers generally have never had production engines at 0.50 g/hp-hr (the upper limit). Therefore, EPA considered different types of baseline engines. As already noted, we are assuming the baseline engine is already equipped with SCR. Conceptually, what we are doing in this rule is to imagine what would have happened if the prior standard had been 0.50 g/hp-hr. Conversations with manufacturers have generally supported our assumption that had there been a 0.50 g/hp-hr standard, most manufacturers would have chosen to rely on SCR to reduce NO_X emissions, especially in the context of the recently adopted greenhouse gas emission standards.

Another important reason we are not assuming a non-SCR baseline engine is that there is only one manufacturer producing such an engine. We are concerned that we would need to rely on confidential business information (CBI) from that one non-SCR manufacturer in order to accurately calculate costs differences, but could not reliably protect such data from disclosure. Normally when we rely on CBI, we collect it from multiple manufacturers and protect the CBI by disclosing only an aggregated summary of the data. Public commenters can comment on the summary, which frequently serves the basis of the rule.

Another disadvantage of assuming a non-SCR baseline engine is that the complying manufacturers did not produce such an engine. Thus they would be unable to provide accurate data for the difference in operating costs between their complying engines and the theoretical baseline engine. Nevertheless, while they generally did not sell SCR engines at 0.50 g/hp-hr, they have development data that allow them to estimate differences in operating costs between a theoretical SCR-equipped baseline engine and their compliant engines.

Another advantage of assuming the baseline engine is equipped with SCR is that it results in a penalty curve that is consistent with the marginal costs of compliance for all NO_X values between 0.50 g/hp-hr and 0.20 g/hp-hr.

We request comment on our assumption of a baseline engine with SCR that is calibrated to have NO_X emissions at 0.50 g/hp-hr. Commenters should address whether assuming a different baseline engine would result in higher or lower penalties, and whether they would better protect the complying manufacturers from a competitive disadvantage.

(3) Costs Not Included

By basing the NCP primarily on the differences in amount of DEF used to reduce emissions and minor hardware costs, the analysis excludes certain other costs, which are described below. Commenters supporting the inclusion of any of these costs should discuss them in the context of the statutory requirement to eliminate competitive disadvantage and whether the costs are associated with other savings or benefits.

Perhaps the most obvious cost not included in the analysis is the significant cost of the SCR hardware itself. However, including this cost would be inconsistent with the baseline engine. Commenters supporting the inclusion of the total hardware costs should do so in the context of changing the baseline engine. For example, it would be important to consider the extent to which SCR hardware cost is offset by significantly lower fuel costs for engines equipped with SCR. We do not believe that we could base the NCP on the cost of SCR hardware without also accounting for the fuel savings.

We are also not including significant fixed costs for research and development (R&D). As noted earlier, the analysis assumes the baseline engine

is a fully optimized engine that complies with all other emission standards and requirements. We do not believe that there would be significant R&D costs to recalibrate the SCR system on such an engine to further reduce NO_X emission to 0.20 g/hp-hr.

(4) Projected Fuel and DEF Costs

Two of the most significant categories of potential cost are the impact of the standards on DEF and/or fuel consumption rates. However, such cost elements are challenging to estimate because actual DEF and fuel costs will vary based on prices and on the vehicle operation. We, therefore, are requesting comment on our estimates. Specifically, we are requesting comments on the following aspects of our analysis of fuel and DEF costs:

- Projected fuel and DEF prices.
- Estimated changes in fuel and DEF consumption rates.
- Projected annual mileage accumulation rates and miles per gallon.
- Discounting of future costs (discussed in the following section).

For the NCP analysis, we used the Energy Information Administration's (EIA) Annual Energy Outlook 2011 (AEO2011) to project fuel prices through 2035.[5] AEO2011 contains diesel fuel price projections for the transportation sector through 2035. These fuel prices include federal and state taxes, but do not include county or local taxes. Fuel price varies with time and with location. This is compounded by differences in state and local taxes. This regional variability could potentially impact our analysis. Some trucks may operate locally in an area that has fuel prices significantly higher than the national average. However, we believe that the number of these trucks will be relatively small, and thus did not include a regional fuel price component in our analysis. Nevertheless, we request comment on this issue.

AEO2011 includes five price scenarios—a reference, high oil price, low oil price, high economic growth and low economic growth case. Typically, EPA uses the reference case in our analysis of mobile source rules, and we used that scenario in this proposal, but we welcome comment supporting the use of one of the alternative scenarios.

The annual diesel price per gallon values used in this analysis were adjusted from 2009 dollars (as supplied in AEO2011) to 2011 dollars based on the Consumer Price Index. The annual fuel price projections are included in Appendix A of the Technical Support Document.

DEF prices vary depending on the geography and whether it is purchased by the bottle, by the gallon, or in bulk. Unlike the case for fuel prices, we are not aware of a source which projects a national average DEF cost into the future. For this analysis we used a DEF cost of $2.99 per gallon based on the national retail pump average in November 2011.[6] We are using a constant value for the DEF price throughout the analysis because we are not aware of any reliable projections that the price will change significantly in the coming years. We welcome comment on our DEF cost projections.

A change in fuel consumption due to the reduction in NO_X emissions would drive a change in fuel costs for this rule. However, as discussed in the Interim and Proposed Technical Support Document, we are estimating that the 0.50 g/hp-hr baseline engine and the fully compliant engine will have the same fuel consumption rates. The two primary reasons for this are the relative importance operators place on keeping fuel consumption rates low for the customer and the upcoming GHG emission standards. The Heavy-Duty GHG rule requires that manufacturers reduce their CO_2 emissions/fuel consumption starting in 2014 model year by an average of three to five percent from a baseline 2010 model year engine. Thus, a pathway to reduce NO_X that leads to an increase in fuel consumption in 2012 model year would require the manufacturer to apply technologies to recover the increase by 2014 model year. Therefore, our analysis is based on a technology path that does not change the engine-out NO_X emissions, and therefore does not impact the fuel consumption of the engine.

Our cost analysis is based on a technology path that reduces tailpipe NO_X emissions from the baseline engine with 0.50 g/hp-hr NO_X to 0.20 g/hp-hr NO_X by increasing DEF consumption. In the Interim and Proposed Technical Support Document, we detail the calculation of the ideal DEF consumption rate change required to reduce NO_X emissions by 0.30 g/hp-hr. For the proposal, we calculated an ideal DEF rate increase of 0.38 gallons per 100 gallons of fuel consumed and increased it by five percent to account for overdosing. The proposed NCP costs include DEF consumption costs based on an increase in DEF consumption of 0.40 gallons per 100 gallons of fuel consumed.

Another important factor in estimating DEF and fuel cost is how much fuel a model year 2012 vehicle will use over its lifetime. This is most important for heavy-heavy duty engines. Some vehicles may be scrapped after their useful life (435,000 miles) while others may be rebuilt more than once and not be scrapped until after 2 million miles. Thus, the fuel cost could vary by a factor of four from one vehicle to another. For this analysis, we used the projected mileage accumulation rates generated by the Motor Vehicle Emissions Simulator, more commonly called MOVES, EPA's official mobile source emission inventory model.[7] These annual vehicle miles travelled (VMT) projections are shown in Appendix A of the Interim and Proposed Technical Support Document and include a projection of vehicle survival fractions that are based on scrappage rates. The lifetime mileage estimates that we used in our analysis are shown in Table 2 below. The Interim and Proposed Technical Support Document contains more information about how we used these mileage estimates. We welcome comments on the lifetime mileage of trucks used in our analysis.

TABLE 2—LIFETIME VEHICLE MILES TRAVELLED

	Lifetime VMT for average vehicle
Medium Heavy-Duty Vehicle	372,684
Heavy Heavy-Duty Vehicle ...	965,095

Finally, our methodology for calculating the cost of changes in fuel and DEF consumption uses estimates of average miles driven per gallon of fuel used. The estimates used in this proposal are 9.71 and 4.93 miles per gallon (mpg) for medium and heavy-heavy duty, respectively.[8] We used these same estimates for both the COC_{50} and COC_{90} analyses. Using different estimates could significantly change the projected costs. We request comment on these mpg estimates.

[5] U.S. Energy Information Administration. Annual Energy Outlook 2011. Last accessed on November 18, 2011 at *http://38.96.246.204/forecasts/aeo/*.

[6] DieselExhaustFluid.com. Last accessed on November 14, 2011 at *http://www.dieselexhaustfluid.com/*.

[7] Information regarding the MOVES model can be found at *http://www.epa.gov/otaq/models/moves/index.htm*.

[8] U.S. EPA. Final Rulemaking to Establish Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Regulatory Impact Analysis. Page 6–2. The baseline fuel efficiency for HHD is 20.3 gal/100 mile and vocational diesel vehicles equal 10.3 gal/100 mile.

(5) Discounting Future Costs

All of the compliance costs in this analysis are presented in terms of net present value (NPV) for calendar year 2012. This means that costs that occur before 2012 are adjusted upward, and costs that occur after 2012 are adjusted downward to reflect the time or opportunity value of the money involved. (*i.e.,* discounted).

The NPV analysis requires that all in-use operating costs be adjusted downward to reflect the time value of money for future costs. More specifically, the stream of operating costs must be discounted to make them equivalent to costs incurred at the time of purchase. Truck purchasers would use this approach before purchase when comparing future operating costs of two or more engines before purchase. We used a seven percent discount rate for these costs as well. However, there is evidence in other contexts that users might apply a different discount rate than seven percent when considering future operating costs during a purchase decision. We request comment on whether there is evidence to support the application of such an alternative discount rate to operating costs in the various segments of the heavy duty engine market. Your comments in support of an alternative discount rate should include a discussion of the supporting economic and business rationale for the alternative rate.

It is commonly stated that truck purchasers only consider operating costs that will occur in the first five years (or less) of the truck's life. We also request comment on whether we should include discounted costs for all future years. For example, should we limit our consideration of operating costs to only those that will occur within the first five years?

(6) F Factor

The parameter F is defined in the existing regulations as a value from 1.1 to 1.3 that describes the ratio of the 90th percentile marginal cost (MC_{90}) to MC_{50}. For this proposal, we calculated F by first calculating an MC_{90} in the same way that we calculated MC_{50}. We then calculated the value of F that would give these values of MC_{90}, and then set F equal to MC_{90} divided by MC_{50}. This led to F values of 1.48 for medium heavy-duty and 1.23 for heavy heavy-duty. However, since F is capped at 1.3 under the regulations, we were required to set F equal to 1.3 for medium heavy-duty engines. This resulted in a penalty curve that is inverted from the normal shape. For most NCP curves, the slope of the penalty rate is greater for compliance levels less than X than it is for compliance levels greater than X. However for the proposed medium heavy-duty NCP curve, the opposite is true; the slope of the penalty rate is less for compliance levels less than X than it is for compliance levels greater than X. We request comment on whether this should be allowed. More specifically, should we modify the regulations to specify that the product of MC_{50} and F cannot be less than COC_{90} divided by the difference between the upper limit and the standard. In the case of the proposed NCPs, this would mean setting F at 1.48 for medium heavy-duty.

(7) First Year of the Escalator Adjustment Factor for NCP Calculation

As required by the Clean Air Act, the existing regulations include a formula that increases the penalty rates with each new model year. We have proposed to apply this formula to the NCPs beginning with the 2013 model year by setting the 2012 model year as year number one. Traditionally, NCPs are available the first year of the new emission standard and that becomes year one for purposes of the annual escalator. However, due to the availability of emission credits for 2010 and 2011, it did not become apparent that there might be a manufacturer who might need NCPs until late in the 2011 model year. Under these circumstances, EPA believes the 2012 model year is the correct year for the first year of the escalator calculation even though the NO_X emission standard began in 2010. However, there may be reasons to consider model year 2010 or some other model year as the first year for this annual escalator. We welcome comments on alternative first year model years.

(8) Alternative Penalties

Historically, NCPs are defined solely in terms of a dollar amount, with payment of the NCP in the form of cash payments paid directly to the U.S. Treasury. We are asking for comment on whether we could or should also include a non-monetary value as an option in the definition of the noncompliance penalty. For example, assume a manufacturer's penalty would be $1,919 per engine for 10,000 engines ($19,190,000 total), based on certification of engines to an FEL of 0.50 g/bhp-hr, 0.30 g/bhp-hr above the standard. Should there be an option where the penalty could be defined as the amount of NO_X emission reductions that would not be achieved by the engine compared to the applicable standard? Achieving these reductions would then be the payment of the NCP as defined under this option. The Agency is considering including this option in the Final Rule as a way to recover the environmental loss due to the higher emissions of the NCP engines.

One example of such an approach would be to require a manufacturer to comply with all of the provisions of the NCP regulations but to define the penalty that must be paid in terms of recouping environmental loss of a defined amount of tons of NO_X reduction, rather than a penalty that must be paid in terms of a cash payment. The manufacturer would need to:

- Calculate the total excess NO_X emissions expected from the NCP engines over their lifetimes, including emissions that would occur beyond the useful life period. This calculation would be done consistent with the analyses described in the Interim and Proposed Technical Support Document for this rulemaking.
- Develop a plan to offset these NO_X tons. The plan must demonstrate that the emissions reduction would not have otherwise occurred.
- Obtain EPA approval of the plan prior to production of the NCP engines.
- Demonstrate to EPA that the emission reductions actually occur.
- Demonstrate that the cost to the manufacturer of achieving the emissions reductions is at least as great as the dollar amount of the NCP that would otherwise be applicable.

The certificate issued for such engines would be conditioned on the manufacturer fulfilling all of these requirements. We could void a certificate *ab initio* if a manufacturer failed to fulfill these requirements.

We welcome comment on any legal, practical, competitive, or other concerns regarding using such an approach and how such an approach could be implemented in the regulations. Commenters supporting this option should address how to determine the equivalent amount of NO_X reductions. Based on uncertainty in determining actual tons of NO_X that are reduced, should they be set slightly above the excess tons of expected lifetime NO_X emissions that will occur from the engines certified using NCPs? We believe that, in order to meet the statutory requirement to remove the competitive disadvantage for complying manufacturers, it would be necessary to require that the burden associated with providing NO_X tons must be at least as large as the cash payment that would otherwise be required. Thus we would not approve an alternative in which it

was cheaper for a manufacturer to obtain NO_X tons than to pay the cash penalty, unless the manufacturer could demonstrate that there was some other non-financial burden that offset any competitive advantage.

V. Economic Impact

Because the use of NCPs is optional, manufacturers have the flexibility and will likely choose whether or not to use NCPs based on their ability to comply with emissions standards. If no manufacturer elects to use NCPs, these manufacturers and the users of their products will not incur any additional costs related to NCPs. NCPs remedy the potential problem of having a manufacturer forced out of the marketplace due to that manufacturer's inability to conform to new, strict emission standards in a timely manner. Without NCPs, a manufacturer which has difficulty certifying HDEs in conformance with emission standards or whose engines fail a Selective Enforcement Audit (SEA) has only two alternatives: fix the nonconforming engines, perhaps at a prohibitive cost, or prevent their introduction into commerce. The availability of NCPs provides manufacturers with a third alternative: continue production and introduce into commerce upon payment of a penalty an engine that exceeds the standard until an emission conformance technique is developed. Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers to have increased flexibility. A decision to use NCPs may be a manufacturer's only way to continue to introduce its products into commerce.

VI. Environmental Impact

When evaluating the environmental impact of this rule, one must keep in mind that, under the Act, NCPs are a consequence of enacting new, more stringent emissions requirements for heavy duty engines. Emission standards are set at a level that most, but not necessarily all, manufacturers can achieve by the model year in which the standard becomes effective. Following International Harvester v. Ruckelshaus, 478 F. 2d 615 (DC Cir. 1973), Congress realized the dilemma that technology-forcing standards could potentially cause, and allowed manufacturers of heavy-duty engines to certify nonconforming vehicles/engines upon the payment of an NCP, under certain terms and conditions. This mechanism was intended to allow manufacturer(s) who cannot meet technology-forcing standards immediately to continue to manufacture nonconforming engines while they tackle the technological problems associated with meeting new emission standard(s). Thus, as part of the statutory structure to force technological improvements without driving manufacturers or individual engine models out of the market, NCPs provide a flexibility that fosters long-term emissions improvement through the setting of lower emission standards at an earlier date than could otherwise be feasible. Because NCPs are designed to increase with time, manufacturers using NCPs are likely to reduce emission levels to meet the standard as quickly as possible, which minimizes the environmental impact.

As is always the case with NCPs, the potential exists for there to be more extensive use of NCPs beyond what may be expected to be used by the manufacturer that we believe will need them. For example, depending upon the penalty rate and other factors, some otherwise fully compliant manufacturers could elect to pay the NCP in order to reconfigure their 0.20 g/hp-hr NO_X compliant engines to emit up to 0.50 g/hp-hr so that they can re-optimize engine hardware and vehicle operating costs. This potential action is not without R&D and other financial costs to the manufacturer and thus is not a decision which would be taken lightly, given the short-term nature of the NCPs allowed for in this interim final rule. Furthermore, we believe that any such impacts would be short-term and self-limiting in nature because the NCP annual adjustment factor, established via prior NCP rules, increases the levels of the penalties over time and based on the extent of the use of NCPs by all manufacturers. In other words the NCP program is structured such that the incentives to produce engines that meet the standard increase year-by-year and increase upon NCP use. The practical impact of this adjustment factor is that the NCPs will rapidly become an undesirable option for all manufacturers that may elect to use them. However, while we expect their use to be limited, we have no way of predicting at this time how many manufacturers will make use of the NCPs, or how many engine families would be subject to the NCP program. Because of these uncertainties we are unable to accurately quantify the potential impact the NCPs might have on emission inventories, although, as stated above, any impacts are expected to be short-term and self-limiting in nature.

VII. Public Participation

We request comment by April 4, 2012.on all aspects of this proposal. This section describes how you can participate in this process.

A. How do I submit comments?

We are opening a formal comment period by publishing this document. We will accept comments through April 4, 2012. If you have an interest in the program described in this document, we encourage you to comment on any aspect of this rulemaking. We request comment on various topics throughout this proposal.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. If you disagree with parts of the proposed program, we encourage you to suggest and analyze alternate approaches to meeting the goals described in this proposal. You should send all comments, except those containing proprietary information, to our Air Docket (see **ADDRESSES**) before the end of the comment period.

If you submit proprietary information for our consideration, you should clearly separate it from other comments by labeling it ''Confidential Business Information.'' You should also send it directly to the contact person listed under **FOR FURTHER INFORMATION CONTACT** instead of the public docket. This will help ensure that no one inadvertently places proprietary information in the docket. If you want us to use your confidential information as part of the basis for the final rule, you should send a non-confidential version of the document summarizing the key data or information. We will disclose information covered by a claim of confidentiality only through the application of procedures described in 40 CFR part 2. If you do not identify information as confidential when we receive it, we may make it available to the public without notifying you.

B. Will there be a public hearing?

We will hold a public hearing at the National Vehicle and Fuels Emission Laboratory in Ann Arbor, Michigan on March 5, 2012. The hearings will start at 10:00 am and continue until everyone has had a chance to speak.

If you would like to present testimony at a public hearing, we ask that you notify the contact person listed above at least ten days before the hearing. You should estimate the time you will need for your presentation and identify any needed audio/visual equipment. We suggest that you bring copies of your statement or other material for the EPA panel and the audience. It would also be helpful if you send us a copy of your statement or other materials before the hearing.

We will make a tentative schedule for the order of testimony based on the notifications we receive. This schedule will be available on the morning of the hearing. In addition, we will reserve a block of time for anyone else in the audience who wants to give testimony. We will conduct the hearing informally, and technical rules of evidence won't apply. We will arrange for a written transcript of the hearing and keep the official record of the hearing open for 30 days to allow you to submit supplementary information. You may make arrangements for copies of the transcript directly with the court reporter.

VIII. 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. It only updates the penalty amounts to correspond to the current emission standards. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR part 86, subpart L under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0132. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

(1) Overview

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

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

(2) Summary of Potentially Affected Small Entities

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

When these emission standards were established, the final rulemaking (66 FR 5001, January 18, 2001) noted that we were not aware of ''any manufacturers of heavy-duty engines that meet SBA's definition of a small business.'' Based on an updated assessment, EPA has identified a total of about 14 manufacturers that produce diesel cycle heavy-duty motor vehicle engines. Of these, none of these are small businesses that are producing engines with NO_X emissions above 0.20 g/hp-hr. Based on this, we are certifying that this proposed rule will not have a significant economic impact on a substantial number of small entities.

(3) Conclusions

I therefore certify that this proposal will not have a significant economic impact on a substantial number of small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The agency has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for the private sector in any one year. Because the use of NCPs is optional, manufacturers have the flexibility and will likely choose whether or not to use NCPs based on their ability to comply with emissions standards. The availability of NCPs provides manufacturers with a third alternative: to continue production and introduce into commerce upon payment of a penalty an engine that exceeds the standard until an emission conformance technique is developed. Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers to have increased flexibility. Thus, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed 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 proposed rules will apply to manufacturers of on-highway engines and not to state or local governments. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between the agency and State and local governments, the agency specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This proposed rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This proposal will be implemented at the Federal level and impose compliance costs only on engine manufacturers who elect to use the NCP regulatory flexibility to comply with emissions standards. Tribal governments would be affected only to the extent they purchase and use engines and vehicles to which an NCP has been applied. Thus, Executive Order 13175 does not apply to this proposed rule.

EPA specifically solicits additional comment on this proposed action from tribal officials.

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

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule 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 (Energy Effects)

This proposed 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 Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the agencies 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 EPA 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 action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. The overall environmental impacts of this action are expected to be small and of limited duration. Moreover, there is no reason to believe that trucks using NCP engines will be more likely to operate near any minority or low-income populations than other trucks.

IX. Statutory Provisions and Legal Authority

Statutory authority for the vehicle controls in these rules is found in CAA section 206(g) of the CAA, 42 U.S.C. 7525(g).

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Confidential business information, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: January 20, 2012.

Lisa P. Jackson,

Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency proposes to amend 40 CFR chapter I of the Code of Federal Regulations as follows:

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart L—[Amended]

2. Section 86.1104–91 is revised to read as follows:

§ 86.1104–91 Determination of upper limits.

EPA shall set a separate upper limit for each phase of NCPs and for each service class.

(a) The provisions of this section specify a default approach for determining the upper limit values.

(1) The default upper limit applicable to a pollutant emission standard for a subclass of heavy-duty engines or heavy-duty vehicles for which an NCP is established in accordance with § 86.1103–87, shall be the previous pollutant emission standard for that subclass.

(2) If a manufacturer participates in any of the emissions averaging, trading, or banking programs, and carries over certification of an engine family from the prior model year, the upper limit for that engine family shall be the family emission limit of the prior model year, unless the family emission limit is less than the upper limit determined in paragraph (a) of this section.

(b) If no previous standard existed for the pollutant under paragraph (a) of this section, the upper limit will be developed by EPA during rulemaking.

(c) EPA may set the upper limit during rulemaking at a level below the default level specified in paragraph (a) of this section if we determine that a lower level is achievable by all engines.

(d) In unusual circumstances, EPA may set the upper limit during rulemaking at a level above the default level specified in paragraph (a) of this section if we determine that the default level will not be achievable by all engines. For example, this may apply where a new standard for a different pollutant effectively increases the stringency of the standard for which NCPs would apply.

3. Section 86.1105–87 is amended by revising paragraph (e) and paragraph (j) to read as follows:

§ 86.1105–87 Emission standards for which nonconformance penalties are available.

* * * * *

(e) The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (a) and (b) of this section are expressed in December 1984 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (c) and (d) of this section are expressed in December 1989 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraph (f) of this section are expressed in December 1991 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraphs (g) and (h) of this section are expressed in December 1994 dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraph (i) of this section are expressed in December 2001

dollars. The values of COC_{50}, COC_{90}, and MC_{50} in paragraph (j) of this section are expressed in December 2011 dollars. These values shall be adjusted for inflation to dollars as of January of the calendar year preceding the model year in which the NCP is first available by using the change in the overall Consumer Price Index, and rounded to the nearest whole dollar in accordance with ASTM E29–67 (reapproved 1980), Standard Recommended Practice for Indicating Which Places of Figures are to be Considered Significant in Specified Limiting Values. This method was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document is available from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, and is also available for inspection as part of Docket A–91–06, located at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave. NW., Room 3334, EPA West Building, Washington, DC 20004, (202) 202–1744 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.* This incorporation by reference was approved by the Director of the **Federal Register** on January 13, 1992. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**.

* * * * *

(j) Effective in the 2012 and later model years, NCPs will be available for the following emission standard:

(1) Diesel heavy-duty engine oxides of nitrogen standard of 0.20 grams per brake horsepower-hour in § 86.007–11(a)(1)(i).

(i) For medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $462.

(*2*) COC_{90}: $682.

(*3*) MC_{50}: $1,540 per gram per brake horsepower-hour.

(*4*) F: 1.30.

(*5*) UL: 0.5 grams per brake horsepower-hour.

(B) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.007–11(a)(1)(i) in accordance with § 86.1113–87(h): 0.009.

(ii) For heavy heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $1,561.

(*2*) COC_{90}: $1,919.

(*3*) MC_{50}: $5,203 per gram per brake horsepower-hour.

(*4*) F: 1.23.

(*5*) UL: 0.5 grams per brake horsepower-hour.

(B) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.007–11(a)(1)(i) in accordance with § 86.1113–87(h): 0.004.

(2) Manufacturers may not generate emission credits for any pollutant from engines for which the manufacturer pays an NCP.

(3) The penalty shall be adjusted annually as specified in § 86.1113–87 with 2012 as the first year. Note that this means AAF_{2012} is equal to 1.

[FR Doc. 2012–1936 Filed 1–30–12; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Parts 1606, 1618, and 1623

Termination, Limited Reductions in Funding, and Debarment Procedures; Recompetition; Enforcement; Suspension Procedures

AGENCY: Legal Services Corporation.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes amendments to the Legal Services Corporation's regulations on termination procedures, enforcement, and suspension procedures.

DATES: Comments on the NPRM are due April 2, 2012.

FOR FURTHER INFORMATION CONTACT: Mattie Cohan, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street NW., Washington DC 20007; (202) 295–1624 (ph); (202) 337–6519 (fax); *mcohan@lsc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Introduction

The Legal Services Corporation (LSC) Act (the Act) provides general authority to the Corporation ''to insure the compliance of recipients and their employees with the provisions of [the Act] and the rules, regulations, and guidelines promulgated pursuant to [the Act].'' [1] LSC's principal regulation discussing general enforcement authority and procedures is the Enforcement Procedures regulation at 45 CFR part 1618. In accordance with the requirements of part 1618, LSC uses a variety of enforcement tools, formal and informal, to ensure compliance. Among these are informal consultations and compliance training, on-site Case Service Report/Case Management System reviews, the imposition of Required Corrective Actions (RCAs), and the imposition of Special Grant Conditions (SGCs) at the beginning of a grant year. Several additional enforcement tools are provided for in LSC-adopted regulations and are available to the Corporation to address significant non-compliance by a recipient. In particular, LSC has adopted suspension procedures (45 CFR part 1623) and questioned-cost procedures (45 CFR part 1630). LSC has also adopted grant termination procedures (45 CFR part 1606) that provide for the termination of funding in whole or part in cases of a recipient's substantial noncompliance with LSC statutory or regulatory requirements and other policies, instructions, or grant terms and conditions. Under the grant-termination provisions, a reduction of five percent or more of a recipient's funding is considered a termination and can be implemented only in compliance with the termination procedures.[2] Reductions of funding of less than five percent are not considered terminations. In order to reduce a recipient's funding by less than five percent without using the 1606 termination procedures, additional procedures have to be established by rulemaking.[3] LSC has not yet adopted regulations establishing such standards and procedures. LSC also has the authority under Part 1606 to debar recipients from eligibility to receive future grants.

The majority of LSC recipients are in substantial compliance with LSC requirements most of the time. When non-compliance occurs, recipients almost always work diligently and cooperatively with LSC staff to come promptly into compliance, but there have been exceptions. LSC is now considering adding enforcement tools to increase LSC's flexibility in addressing compliance issues.

LSC's consideration of the adoption of additional enforcement tools responds to concerns expressed by the Government Accountability Office

[1] LSC Act, section 2996e(b)(1)(A); 42 U.S.C. 1006(b)(1)(A).

[2] 45 CFR 1606.2(d).

[3] 45 CFR 1606.2(d)(2)(v).

(GAO) in its report, *Legal Services Corporation: Improved internal controls needed in grants management and oversight,* GAO–08–37 (December 2007). In that report, the GAO noted that LSC has ''limited options for sanctioning or replacing poor-performing recipients.'' GAO–08–37 at 17. Indeed, as discussed at further length below, the existing enforcement mechanisms available to LSC are best suited to situations involving numerous and/or very significant violations, or to situations in which compliance issues are technical or minor. Consequently, several of LSC's most potent existing enforcement mechanisms are not practicable in most instances and are therefore rarely used. Other, less onerous mechanisms are more practicable, but are largely dependent on the recipient's cooperation. LSC does not have enforcement mechanisms well suited to violations or compliance issues in an intermediate range—material but not extreme, or multiple but not profuse, in situations where a recipient does not voluntarily take corrective action in a timely manner.

Existing Enforcement Mechanisms

LSC relies primarily on RCAs to remedy compliance problems. The LSC Office of Compliance and Enforcement (OCE) estimates that in approximately 90 percent of cases in which RCAs are imposed, recipients implement the RCAs on a timely and satisfactory basis. In approximately ten percent of the cases, however, a recipient fails to implement the required corrective actions in a timely or satisfactory manner.

In some instances in which recipients have failed to implement RCAs in a timely or satisfactory manner, LSC has imposed SGCs. Although SGCs may be substantively identical to the measures contained in RCAs, SGCs elevate the matter by formally incorporating the conditions into the recipient's grant documents and ensure that the recipient's Board Chair, who has to sign the SGCs, is aware of an ongoing problem. Although LSC has had some success with SGCs, LSC has also encountered instances in which a recipient that has failed to comply with an RCA has also failed to comply with an SGC. Moreover, SGCs have thus far only been imposed at the beginning of a grant year, impacting their availability and utility depending on the timing of a particular compliance situation.

In recent years, LSC has increasingly used short-term funding, that is, providing a grant for less than a year (e.g., month-to-month), to encourage compliance. But short-term funding can be invoked only when a recipient is at the end of a grant term and competing for a new grant. Short-term funding can be destabilizing for a recipient, particularly if the recipient does not have significant non-LSC funding sources. Thus, although short-term funding can be a powerful enforcement mechanism, it is likely to be used only in limited situations.

Suspension of funding is another existing enforcement mechanism of limited utility. Suspension of funding is most effective to get a recipient to perform a specific action in a discrete period of time, such as providing access to records or adopting a new policy or procedure. Because suspension of funding can have significant effects on client service, it is generally not appropriate when the violation at issue cannot be ''remedied'' by future action (for example, the representation of an ineligible client in a closed matter cannot be ''undone''). Even when suspension might be an appropriate tool, the current regulations cap the suspension period at 30 days, except for violations involving failure to provide the Office of Inspector General with an acceptable audit. In situations where LSC might otherwise have considered imposing a suspension, LSC has determined that the resources required to pursue the suspension process would not be well invested given that, under the current regulations, any funds withheld would have to be released to the recipient at the end of the 30-day suspension period, regardless of whether the violation had been remedied.

LSC has rarely invoked its most serious enforcement tools, termination and debarment. There are several reasons for this. First, in most instances termination and debarment are not warranted. But even in situations where such sanctions might be warranted, these tools are rarely used because of the protracted process and the extensive resources, both for LSC and the recipient, that these sanctions entail. In addition, LSC must carefully consider the disruption that termination would cause to client service in the recipient's service area, particularly because a number of recipients have statewide service areas. Finding new providers is a significant challenge and serves as a disincentive for the Corporation to eliminate or disqualify existing grantees except under the most extreme circumstances.

The practical limitations on the suspension, termination, and debarment remedies have other important implications. Some violations are serious and significant even if the recipient takes timely steps to ensure that the violations do not recur. In these situations, imposition of suspension, termination, or debarment may not be appropriate, but the imposition of a RCA may result in a perception that the recipient ''got away with'' the violation without a commensurate penalty.

In light of its experience with the existing enforcement mechanisms, LSC is proposing to amend its regulations at 45 CFR parts 1606, 1618, and 1623 to adopt standards and procedures for limited reductions in funding, to allow for the imposition of SGCs during a grant year, and to amend the maximum suspension period from 30 to 90 days. The proposed changes are discussed in greater detail below.

Amending Part 1606 To Include Standards and Procedures for Limited Reductions in Funding

The adoption of standards for a reduction in funding of less than five percent would provide LSC with additional flexibility in fashioning appropriate enforcement responses and obtaining recipient compliance. And when a reduction in funding of less than five percent is proposed, LSC should be able to use a less cumbersome process than the existing termination process, which applies to any funding reduction of five percent of more. In a few cases, a recipient has violated restrictions but a 1606 termination would have been excessive, and LSC has been without an available sanction commensurate with the nature of the violation. Recovery of expended funds through a questioned-cost proceeding, although a necessary and useful mechanism to ensure that recipient funds are used only as permitted, is in the nature of restitution and serves an essentially different purpose than a sanction such as a limited reduction in funding. Moreover, the amount of funds improperly expended may bear no relation to the seriousness of the violation and simply recovering them may, therefore, not be a remedy commensurate with the violation. In such cases, an intermediate sanction, such as a limited reduction in funding, could provide LSC with a meaningful and appropriate sanction to use to address the infraction. The option to impose a reduction in funding of less than five percent would also reduce the risk that a recipient's client services or ability to implement corrective action would suffer due to a significant lack of resources.

Accordingly, LSC is proposing to add a new section to Part 1606 to implement procedures for the reduction of a recipient's funding in an amount less than five percent of the recipient's

current annual level of financial assistance. The proposed procedure is modeled on the suspension procedure in Part 1623, because those procedures provide a significant opportunity for recipient input and due process without being unduly complex.

Authority and Responsibility

The proposed § 1606.15(a)[4] is an introductory paragraph setting forth a statement of LSC's authority to impose limited reductions in funding and LSC's responsibility to follow the procedures and requirements set forth in the section before doing so. LSC believes it is clear from the language of the proposed text that any reduction would be only for the particular grant year in which the reduction of funding is imposed. For example, if a recipient were in the second year of a three-year grant term and LSC imposed a two percent reduction in funding for that grant year, the reduction would affect the recipient's funds for that second year of the grant term only, and there would be no effect on the recipient's level of funding for the third year of the grant term.

Grounds and Criteria for Limited Reductions in Funding

Proposed paragraphs (b) and (c) address the permissible grounds and criteria for the imposition of a limited (less than five percent) reduction in funding. The proposed grounds for a limited reduction in funding are the same as those for both terminations and suspensions, although, as explained below, the procedures for a limited reduction would be less onerous. The proposed language also makes clear that the magnitude of a limited reduction in funding in a particular situation (e.g., one percent or three percent) will also be determined with reference to the same criteria. Any limited reduction in funding should be tailored to and commensurate with to the nature of the violation, and the proposed language is intended to reflect this expectation.

The Process for Limited Reductions in Funding

Proposed paragraphs (d) through (g) set forth the process LSC would follow to impose a limited (less than five percent) reduction in funding on a recipient and are based on the process set forth in § 1623.4 of the suspension rule. As noted above, LSC believes that the suspension procedures provide a straightforward procedure with a significant opportunity for recipient input and due process. The provisions guarantee recipients written notice of proposed limited reductions in funding, include an explanation of the basis for the proposed reduction, along with the opportunity to provide a formal, written response. Recipients would also have an opportunity to request an informal, in-person meeting to resolve issues. LSC believes that the proposed procedures provide significant process protections to recipients without being nearly as resource-intensive and time-consuming as the formal hearing process used for terminations, and that the proposed protections are commensurate with the sanction of a funding reduction of less than five percent.

Other Conforming Amendments to Part 1606

LSC is proposing to amend the title of part 1606 to reference limited reductions in funding. Because a limited reduction in funding is not a termination, LSC believes that adding the reference to limited reductions in funding to the title of part 1606 is necessary for accuracy and will assist readers in locating the limited reduction in funding procedures in LSC's regulations. LSC is also proposing amendments to §§ 1606.2, ''Definitions,'' and 1606.13, ''Interim and termination funding; reprogramming,'' to harmonize these sections with the proposed new section.

First, LSC is proposing to amend § 1606.2(d)(2)(v), which specifies that a reduction in a recipient's funding of less than five percent is not a termination. That section currently provides that no such reduction shall be imposed except in accordance with regulations promulgated by the Corporation. Because LSC is now proposing to promulgate such regulations, LSC proposes to delete this sentence and substitute a cross-reference to the proposed new § 1606.15.

Second, LSC proposes to amend § 1606.3(b) to make clear that the magnitude of a termination of funding in a particular situation (e.g., five percent or twenty percent or a termination in whole) will be determined with reference to the criteria listed in this section. LSC believes that this expectation in implicit in the current regulation, and that any termination of funding should be tailored to and commensurate with the nature of the violation. LSC believes that the clarifying language reinforces this expectation and should be inserted here to be consistent with the proposed language in proposed new § 1606.15.

Third, LSC proposes to amend paragraphs (a), (b), and (d) of § 1606.13, ''Interim and termination funding; reprogramming.''[5] Section 1606.13 currently addresses issues related to funding during and upon the conclusion of termination procedures and Corporation's use of funds recovered through a termination proceeding. LSC believes these provisions should be equally applicable in cases involving a limited reduction in funding. Accordingly, LSC proposes to amend paragraphs (a), (b), and (d) of § 1606.13 to include references to limited reduction in funding procedures pursuant to § 1606.15.

With respect to proposed paragraph (d), LSC is also proposing a substantive change. The current provision reflects the Corporation's longstanding policy that recovered funds are generally to be used in the service area which the funds originally supported, unless the Corporation exercises its discretion to reallocate the funds for some other basic field purpose, such as for making emergency or other special grants. Although this policy is appropriate in many cases involving recovered funds, in the case of limited reductions in funding and terminations, especially terminations in part, the funds are being recovered as a sanction against the recipient. As most service areas only have one recipient operating within them, a presumption or expectation that funds be returned to the same service area would imply a presumption toward or expectation of returning funds to the very recipient from which they had been taken as a sanction. It is highly likely that in such cases LSC would choose to exercise its discretion to reallocate the funds, so as to avoid returning the funds to the recipient from which they had been taken.[6] It is therefore more appropriate for this section not to reflect any presumption or expectation and, instead, simply to give the Corporation discretion to reallocate the funds for basic field purposes.

Amending Part 1618 To Permit the Imposition of Special Grant Conditions During a Grant Year

LSC's current standard grant assurances (applicable to all recipients)

[4] In accordance with **Federal Register** requirements, LSC is not quoting the proposed regulatory text language in this preamble. Readers are referred to the regulatory text section *supra.*

[5] Amendment of paragraph (c) is not necessary because that paragraph addresses close-out funding, which applies only to circumstances involving a termination in whole.

[6] It is more likely that in the case of a termination in whole that the Corporation would choose to exercise its discretion to return the recovered funds to the original service area to fund services by an interim or new recipient. In such a case, however, LSC would presumably be providing the funds to an entity other than the terminated recipient.

provide that SGCs may be imposed on a recipient prior to the awarding of a new grant or at the beginning of a new year of a multi-year grant term. The Corporation's experience has been that imposing SGCs is a particularly effective way of capturing a recipient's attention and securing compliance with LSC requirements. LSC believes it would be helpful to be able to impose SGCs on a recipient during the course of a grant year when a recipient has been found to be in violation of an applicable requirement. Such authority would make SGCs available whenever they might be necessary, rather than only at the beginning of a grant year, which may or may not correspond to the timing of the matter occasioning the SGC. Although this is an action LSC might be able to take without rulemaking, LSC is invoking the rulemaking process to provide an opportunity for public comment on this proposal.

Accordingly, LSC proposes to amend 45 CFR 1618.5 to add language providing that whenever there is substantial reason to believe that a recipient has persistently or intentionally violated the Act, or, after notice, has failed to take the appropriate remedial or disciplinary action to ensure compliance by its employees with the Act, and attempts at informal resolution have been unsuccessful, the Corporation may impose SGCs on the recipient during the grant year.

Amending Part 1623 To Increase Maximum Period of Suspension of Funding Pending Corrective Action

LSC is proposing to change the current maximum suspension limitation from 30 days to 90 days. Although section 1011(2) of the LSC Act provides that a suspension of financial assistance shall not be continued for longer than 30 days unless the recipient has been afforded reasonable notice and opportunity for a timely, full, and fair hearing conducted, when requested, by an independent hearing examiner, section 501(b) of LSC's FY 1998 appropriation legislation (which has been carried forth in each subsequent appropriation) expressly renders that provision inoperative. LSC is thus within its current statutory authority to increase the maximum suspension period through regulatory action. (Although it may appear irregular to adopt a regulation implementing a provision of law appearing in an appropriations act which, by its terms, is time-limited, there is ample precedent for this in the LSC context. LSC's authorizing legislation has not been amended since 1977, and since 1996 a significant number of substantive restrictions and provisions superseding those in the LSC Act have been contained on a recurring basis in LSC's annual appropriations legislation. In order to comply with these provisions in a practical manner, LSC has adopted implementing regulations. This was the case with 1998 amendments to the suspension rule that LSC now proposes to further amend. See 63 FR 64646 (November 23, 1998).) As with limited reductions in funding, LSC believes that a longer potential maximum suspension period can be a useful option because of its expected deterrent effect (thereby enhancing the efficacy of non-monetary enforcement mechanisms) and as a meaningful enforcement tool in itself in the infrequent situations in which it would be needed.

The preamble to the current version of part 1606 explains that the 30-day limit was chosen to:

> Reflect[ ] the presumption that a suspension of too long a duration would likely endanger a recipient's ability to continue service to its clients. A suspension is intended to be used for extraordinary circumstances when prompt intervention is likely to bring about immediate corrective action. The Corporation, therefore, should act quickly to determine that the problem is solved and is unlikely to reoccur, the appropriate corrective action has been taken, or initiate a termination process under part 1606.

63 FR 64646 at 64648 (Nov. 23, 1998). However, although the Corporation originally anticipated that proceeding to termination if a 30-day suspension was not successful in obtaining corrective action would be a practicable option, in practice that has not turned out to be the case (for the reasons discussed above). In addition because of the short duration of the current maximum suspension period, LSC has rarely actually imposed a suspension.[7] Having the option of a longer term would make suspension a more practical option, and a 90-day cap would mitigate the concern about the potential effects of ''a suspension of too long a duration'' on client service expressed in the preamble quoted above. For example, a more practical suspension option would have been useful in a few situations in which recipients refused to provide LSC access to certain records. LSC believes that having had a more credible suspension option may have provided an incentive to those recipients to be more cooperative in producing these records.

LSC anticipates that the maximum 90-day suspension would be warranted only in rare cases, and would only seek to apply the minimum suspension period it believes would be necessary to result in the required corrective action being taken. Moreover, a recipient facing or subject to a suspension can forestall implementation or shorten the length of a suspension by taking the necessary actions to come into compliance. As is currently the case, full funding would be restored upon the timely and satisfactory implementation of all required corrective actions, or earlier at LSC's discretion if circumstances warranted (such as if the recipient were making regular and reasonable progress toward the implementation of corrective actions, even if not all actions had been completed, and if LSC determined that lifting the suspension was appropriate). Thus, although extending the maximum suspension period is an option with potentially significant consequences, LSC believes that the due process procedures that apply to the suspension process, combined with the fact that the recipient can take action that will terminate the suspension, provide adequate protection to recipients. LSC is of the opinion, however, that in situations where a suspension of longer than 90 days might be warranted, LSC other available sanctions (such as a reduction in funding as proposed herein or termination) would likely be as or more effective. LSC notes that Federal grant-making agencies are not limited to applying suspensions of funding to any particular maximum day limit.

For reasons set forth above, and under the authority of 42 U.S.C. 2996g(e), LSC proposes to amend 45 CFR chapter XVI as follows:

PART 1606—TERMINATION, LIMITED REDUCTION IN FUNDING, AND DEBARMENT PROCEDURES; RECOMPETITION

1. The authority citation for part 1606 continues to read as follows:

Authority: 42 U.S.C. 2996e(b)(1) and 2996f(a)3); Pub. L. 105–199, 111 Stat 2440, Secs. 501(b) and (c) and 504; Pub. L. 104–134, 110 Stat. 1321.

2. The heading for part 1606 is revised to read as set forth above.

3. Amend § 1606.2 by revising paragraph (c) and adding paragraph (e) to read as follows:

§ 1606.2 Definitions.

* * * * *

[7] The exception to this is in cases involving a recipient's failure to provide the Office of Inspector General with an acceptable audit. However, in these cases, the suspension term runs, as required by statute, until an audit is completed.

(c) *Limited reduction in funding* means a reduction in funding of less than 5 percent of a recipient's current annual level of financial assistance imposed by the Corporation in accordance with § 1606.15 of this Part.

* * * * *

(e)(1) *Termination* means that a recipient's level of financial assistance under its grant or contract with the Corporation will be reduced in whole or in part prior to the expiration of the term of a recipient's current grant or contract. A partial termination will affect only the recipient's current year's funding, unless the Corporation provides otherwise in the final termination decision.

(2) A termination does not include:

(i) A reduction of funding required by law, including a reduction in or rescission of the Corporation's appropriation that is apportioned among all recipients of the same class in proportion to their current level of funding;

(ii) A reduction or deduction of LSC support for a recipient under the Corporation's fund balance regulation at 45 CFR part 1628;

(iii) A recovery of disallowed costs under the Corporation's regulation on costs standards and procedures at 45 CFR part 1630;

(iv) A withholding of funds pursuant to the Corporation's Private Attorney Involvement rule at 45 CFR part 1614; or

(v) A limited reduction of funding as defined in this paragraph.

4. Amend § 1603.3 by revising paragraph (b) introductory text to read as follows:

§ 1606.3 Grounds for a termination.

* * * * *

(b) A determination of whether there has been a substantial violation for the purposes of paragraph (a)(1) of this section, and the magnitude of any termination in whole or in part, will be based on consideration of the following criteria:

* * * * *

5. Amend § 1606.13 by revising paragraphs (a), (b), and (d) to read as follows:

§ 1606.13 Interim and termination funding; reprogramming.

(a) Pending the completion of termination or limited reduction in funding proceedings under this part, the Corporation shall provide the recipient with the level of financial assistance provided for under its current grant or contract with the Corporation.

(b) After a final decision has been made to terminate a recipient's grant or contract or to impose a limited reduction in funding, the recipient loses all rights to the terminated or reduced funds.

* * * * *

(d) Funds recovered by the Corporation pursuant to a termination or limited reduction in funding shall be reallocated by the Corporation for basic field purposes at its sole discretion.

6. Add a § 1606.15 to read as follows:

§ 1606.15 Limited reductions of funding.

(a) The Corporation may, in accordance with the procedures and requirements set forth in this section, impose a limited reduction of funding by reducing a recipient's funding in an amount less than 5% of the recipient's current annual level of financial assistance.

(b) Grounds for limited reduction in funding. A limited reduction of funding may be imposed when the Corporation determines that termination in whole or in part of the recipient's grant is not warranted, but that there nevertheless has been a substantial violation by the recipient of an applicable provision of law, or a rule, regulation, guideline or instruction issued by the Corporation, or a term or condition of the recipient's current grant or contract with the Corporation.

(c) A determination whether there has been a substantial violation for the purposes of paragraph (b) of this section, and the magnitude of the limited reduction in funding, will be based on consideration of the criteria set forth in § 1606.3(b).

(d) When the Corporation has made a determination to impose a limited reduction in funding in accordance with this section, the Corporation shall provide a written determination to the recipient and the Chair of the recipient's governing body. The determination shall:

(1) State the grounds, the amount, and the effective date for the limited reduction in funding;

(2) Identify, with reasonable specificity, any facts or documents relied on as justification for the limited reduction in funding;

(3) Specify what, if any, corrective action the recipient can take to avoid the limited reduction in funding;

(4) Advise the recipient that it may request, within five business days of receipt of the determination, an informal meeting with the Corporation at which it may attempt to show that the limited reduction in funding should not be imposed; and

(5) Advise the recipient that, within 10 days of its receipt of the determination and without regard to whether it requests an informal meeting, it may submit written materials in opposition to the limited reduction in funding.

(e) If the recipient requests an informal meeting with the Corporation, the Corporation shall designate the time and place for the meeting. The meeting shall occur within five business days after the recipient's request is received.

(f) If the recipient neither requests an informal meeting nor submits any written materials in opposition to the determination, the determination will be deemed effective at the end of the 10-day period following recipient's receipt of the determination.

(g) If an informal meeting is conducted and/or written materials are submitted by the recipient, the Corporation shall consider any written materials submitted by the recipient in opposition to the limited reduction in funding and any oral presentation or written materials submitted by the recipient at an informal meeting. After considering such materials, the Corporation shall decide within 30 days whether the limited reduction in funding should become effective and shall notify the recipient and the recipient's Board Chair in writing of its decision.

PART 1618—ENFORCEMENT PROCEDURES

7. The authority citation for Part 1618 continues to read as follows:

Authority: Secs. 1007(a)(8); 1006(b)(6); 1006(b)(4) (42 U.S.C. 2996f(a)(8); 2996e(b)(6); 29963(b)(4)).

8. Amend § 1618.5 by revising paragraph (b) to read as follows:

§ 1618.5 Duties of the Corporation.

* * * * *

(b) Whenever there is substantial reason to believe that a recipient has persistently or intentionally violated the Act, or, after notice, has failed to take the appropriate remedial or disciplinary action to ensure compliance by its employees with the Act, and attempts at informal resolution have been unsuccessful, the Corporation may proceed to suspend or terminate financial support to the recipient pursuant to the procedures set forth in parts 1623 and 1606, respectively; may impose Special Grant Conditions on the recipient during the grant year; or may take other action to enforce compliance with the Act.

PART 1623—SUSPENSION PROCEDURES

9. The authority citation for Part 1623 continues to read as follows:

Authority: 42 U.S.C. 2996e(b)(1); Pub. L. 104–134, 110 Stat. 1321, Sec. 509; Pub. L. 105–119, 111 Stat. 2440, Sec. 501(b).

10. Amend § 1623.4 by revising paragraph (e) to read as follows:

§ 1623.4 Suspension procedures.

* * * * *

(e) The Corporation may at any time rescind or modify the terms of the final determination to suspend and, on written notice to the recipient, may reinstate the suspension without further proceedings under this part. Except as provided in paragraph (f) of this section, the total time of a suspension shall not exceed 90 days, unless the Corporation and the recipient agree to a continuation of the suspension without further proceedings under this part.

* * * * *

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 2012–1984 Filed 1–30–12; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BB56

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 18A

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council (Council) has submitted Amendment 18A to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 18A) for review, approval, and implementation by NMFS. The amendment proposes actions to update the current rebuilding strategy for black sea bass, modify the current system of accountability measures for black sea bass, limit effort in the black sea bass component of the snapper-grouper fishery, and improve fisheries data reporting in the for-hire sector of the snapper-grouper fishery.

DATES: Written comments must be received on or before April 2, 2012.

ADDRESSES: You may submit comments on the amendment identified by ''NOAA–NMFS–2011–0282'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* click on ''submit a comment,'' then enter ''NOAA–NMFS–2011–0282'' in the keyword search and click on ''search''. To view posted comments during the comment period, enter ''NOAA–NMFS–2011–0282'' in the keyword search and click on ''search''. NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Electronic copies of Amendment 18A may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.* Amendment 18A includes an Environmental Impact Statement, an Initial Regulatory Flexibility Analysis, a Regulatory Impact Review, and a Fishery Impact Statement.

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: (727) 824–5305, or email: *Kate.Michie@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The South Atlantic snapper-grouper fishery is managed under the FMP. The FMP was prepared by the Council and implemented by NMFS under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

Background

The primary purpose of Amendment 18A is to address derby fishing conditions in the black sea bass component of the snapper-grouper fishery by reducing effort in the fishery and reducing the rate of harvest to optimize use of the resource among fishery participants. Amendment 18A would also implement measures to update the current rebuilding strategy for black sea bass in response to the outcome a new stock assessment for the species, and improve data reporting in the for-hire sector of the snapper-grouper fishery.

Targeting of black sea bass has increased as restrictions are placed on other species, and black sea bass has been in a constant catch rebuilding plan since 2006, where the allowable catch is held steady as the stock rebuilds. Furthermore, as black sea bass rebuilds and the population size becomes larger, fish are being harvested at a faster rate. Due to these circumstances, the commercial and recreational annual catch limits (ACLs) have been met before the end of the fishing year for the past 3 fishing years, and the ACL closures have occurred earlier in each consecutive fishing year. In an effort to extend fishing opportunities further into the fishing season, the Council has approved several actions intended to reduce effort and the rate of harvest in the black sea bass segment of the snapper-grouper fishery.

To reduce effort in the commercial sector for black sea bass, Amendment 18A contains an action to establish a black sea bass pot endorsement program. In order to qualify for a black sea bass pot endorsement the following eligibility criteria must be met:

(1) The permit holder must have a South Atlantic Unlimited Snapper-Grouper Permit that is valid (not expired) on the effective date of the final rule implementing Amendment 18A, if approved; (2) the South Atlantic Unlimited Snapper-Grouper Permit must have black sea bass landings with pot gear between January 1, 1999, and December 31, 2010, of at least 2,500 lb (1,134 kg), round weight; and (3) the South Atlantic Unlimited Snapper-Grouper Permit must have reported black sea bass landings with pot gear between January 1, 2008, and December 31, 2010. There are 31 South Atlantic Unlimited Snapper-Grouper Permit

holders who meet the criteria and who would receive an endorsement to fish for black sea bass using pot gear, which constitutes a sizable reduction from the 50 permit holders who fished using black sea bass pot gear during the 2011/2012 fishing year.

Related to the proposed endorsement program are provisions contained in Amendment 18A to allow for transferability of the endorsements once they are issued, and a 90-day opportunity to appeal the non-issuance of endorsements based on landings records. Additionally, Amendment 18A proposes to limit the number of black sea bass pot tags issued to any endorsement holder to 35 per vessel each permit year. Previously there was no limit on the number of pot tags a South Atlantic Unlimited Snapper-Grouper Permit holder could obtain and use.

Amendment 18A also includes a 1,000 lb (454 kg), round weight, commercial trip limit intended to further reduce the rate of harvest of black sea bass. This action, paired with the endorsement program, is expected to result in the commercial fishing season, which begins on June 1, remaining open until August or September of the 2012/2013 fishing year, which is approximately 1 to 2 months longer than the previous fishing year.

The Council determined a modification to the current size limit regulations for black sea bass may also help to reduce the rate of harvest in the commercial and recreational sectors. Therefore, Amendment 18A contains an action to change the recreational minimum size limit from 12 inches (30.5 cm), total length (TL) to 13 inches (33 cm), TL, and to increase the commercial minimum size limit from 10 inches (25.4 cm), TL, to 11 inches (28 cm), TL. In addition, Amendment 18A would require that all black sea bass pots be returned to shore (but may remain on the vessel) at the conclusion of each trip, in order to reduce bycatch of non-target species and reduce the risk of protected species interactions with vertical line gear.

In October 2011, a new stock assessment for black sea bass was completed through the Southeast Data Assessment and Review process. The stock assessment indicates that black sea bass are no longer overfished but have not yet been fully rebuilt. A 10-year rebuilding plan was implemented in 2006 and should end in 2016. Amendment 18A contains actions to modify the current rebuilding strategy for black sea bass based on the outcome of this new stock assessment. The Council voted to modify the current constant catch rebuilding strategy to one that would hold catch constant (847,000 lb (384,193 kg)) round weight, (718,000 lb (325,679 kg)) gutted weight, in fishing years 2012/2013 and 2013/2014 and then change to $F_{rebuild}$ in 2014/2015. $F_{rebuild}$ is defined as a constant fishing mortality strategy that maintains the 66 percent probability of recovery rate throughout the remaining fishing seasons of the rebuilding timeframe. After the 2015/2016 fishing season, the fishing mortality rate would be held constant until modified. Additionally, Amendment 18A would set a new stock ACL for black sea bass, which would be equal to the optimum yield and the acceptable biological catch (ABC), which is 847,000 lb (384,193 kg) round weight, 718,000 lb (325,679 kg) gutted weight. The ACL would remain the same during the next two fishing seasons, after which a new assessment update would need to be completed to determine whether or not it is appropriate to increase the ACL in the 2015/2016 fishing year. Based on the current allocation formula implemented through the final rule for Amendment 13C to the FMP (71 FR 55096, September 21, 2006), the commercial allocation is 43 percent of the ABC and the recreational allocation is 57 percent of the ABC. Therefore, the commercial ACL would be set at 309,000 lb (140,160 kg) gutted weight, 364,620 lb (165,389 kg) round weight, and the recreational ACL would be set at 409,000 lb (185,519 kg) gutted weight, 482,620 lb (218,913 kg) round weight. Amendment 18A also proposes an annual catch target (ACT) of 357,548 lb (162,180 kg kg) gutted weight, 421,907 lb (191,400 kg) round weight, for the recreational sector, which is set at a level lower than the ACL to help prevent ACL overages from occurring. In the case of black sea bass, the recreational ACT would not trigger any preventative or corrective action. The ACT would serve as a management reference point to track the effectiveness of management measures intended to control recreational harvest.

Amendment 17B to the FMP (Amendment 17B) implemented a system of accountability measures (AMs) for the commercial and recreational black sea bass sectors to limit harvest to the sector ACLs and correct for ACL overages if they occur. Subsequent to the implementation of Amendment 17B, the Council determined the methodology employed by the system of AMs under Amendment 17B may not be the most appropriate way to constrain harvest at or below the sector ACLs and it could unnecessarily penalize participants in the commercial and recreational sectors of the black sea bass component of the snapper-grouper fishery. Therefore, Amendment 18A proposes to modify the AMs specified in Amendment 17B to eliminate the use of the 3-year running average to determine ACL overages. Eliminating the 3-year running average would result in a reduced risk of implementing overly conservative AMs. The modified AMs in Amendment 18A would also implement a payback provision if the commercial ACL is exceeded, and includes a payback provision in the event the recreational ACL is exceeded regardless of the overfished status of the stock.

In addition to the actions listed previously, Amendment 18A would also require vessels that have South Atlantic Charter/Headboat Snapper-Grouper Permits to report landings information electronically, if selected to do so by NMFS. Reporting would be required on a weekly or daily basis.

The Council has submitted Amendment 18A for Secretarial review, approval, and implementation. The decision to approve, partially approve, or disapprove Amendment 18A will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability. After consideration of these factors, and in consistency with the Magnuson-Stevens Act and other applicable laws, NMFS will publish a notice of agency action in the **Federal Register** announcing the Agency's decision to approve, partially approve, or disapprove Amendment 18A, and the associated rationale.

Proposed Rule for Amendment 18A

A proposed rule that would implement measures outlined in Amendment 18A has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating Amendment 18A to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

Comments received by April 2, 2012, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the

amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: January 26, 2012.

James P. Burgess,

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

[FR Doc. 2012–2081 Filed 1–30–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 77, No. 20

Tuesday, January 31, 2012

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

Ochoco National Forest, Lookout Mountain Ranger District; Oregon; McKay Fuels and Vegetation Management Project EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Ochoco National Forest is preparing an environmental impact statement (EIS) to analyze the effects of managing fuels and vegetation within the 25,526-acre McKay project area, which is about 11 miles northeast of Prineville, Oregon. The project area includes National Forest System lands in the McKay Watershed. The alternatives that will be analyzed include the proposed action, no action, and additional alternatives that respond to issues generated through the scoping process. The Ochoco National Forest will give notice of the full environmental analysis and decision making process so interested and affected people may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by March 1, 2012. The draft environmental impact statement is expected to be completed and available for public comment in November, 2012. The final environmental impact statement is expected to be completed in February, 2013.

ADDRESSES: Send written comments to Slater Turner, District Ranger, Lookout Mountain District, Ochoco National Forest, 3160 NE. Third Street, Prineville, Oregon 97754. Alternately, electronic comments may be sent to comments-pacificnorthwest-ochoco@fs.fed.us. Electronic comments must be submitted as part of the actual email message, or as an attachment in plain text (.txt), Microsoft Word (.doc), rich text format (.rtf), or portable document format (.pdf).

FOR FURTHER INFORMATION CONTACT: Marcy Anderson, Project Leader, at 3160 NE. Third Street, Prineville, Oregon 97754, or at (541) 416–6463, or by email at marcelleanderson@fs.fed.us.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The existing condition of the McKay Watershed was evaluated in 2006 and documented in the McKay Watershed Analysis. The Watershed Analysis (WA) determined that vegetation conditions in the watershed have departed from the historic condition in several ways:

- Changes in tree species compositions.
- A reduction in late and old structured forest.
- A reduction in open-canopy stands.
- An increased risk of large-scale loss of forest to wildfire.
- An increased risk of insect infestation and/or disease that can impact forested stands.
- Areas where dwarf mistletoe in overstory trees is affecting the growth and sustainability of the next generation of trees.
- A reduction in upland shrub habitat.
- A decline in the condition of riparian vegetation.

The project area contains McKay and Little McKay creeks, both of which are on the Oregon Department of Environmental Quality's 303(d) list of water quality limited waters; both streams are listed due to high summer water temperatures. Stream temperature can be affected by stream shade, which may be provided by riparian vegetation. Riparian vegetation, especially deep-rooted hardwoods, contributes to bank stability and stream structure and also provides important habitat for many bird species. Large conifers near streams eventually fall and contribute to instream wood, which is an important component of fish habitat and contributor to stream form and function. Streams in the McKay Watershed are often deficient in streamside vegetation, due to recreation and past management. Large conifers along streams are at risk of loss due to understory competition and fuels accumulation.

Based upon direction from the Ochoco Forest Plan and opportunities identified in the McKay WA, the Lookout Mountain Ranger District has determined that within the McKay project area:

1. There is a need to strategically reduce forest vegetation density and fuel loadings to reduce the risk that disturbance events such as insect, disease and wildfire will lead to a loss of desired forest conditions.

2. There is a need to increase or maintain large tree structure and hardwood abundance and diversity in RHCAs while meeting the need identified in point #1.

3. There is a need to contribute to the local and regional economies by providing timber and other wood fiber products now and in the future.

Proposed Action

The proposed action includes a variety of management strategies and activities, including commercial thinning with follow-up precommercial thinning and/or slash treatment (3,573 acres), mistletoe reduction harvest/overstory removal (205 acres), precommercial thinning with slash treatment (1,724 acres), juniper removal with slash treatment (2,944 acres), prescribed burning (1,222 acres), small-diameter thinning, limbing, handpiling and burning (210 acres), thinning with fire (853 acres), and hardwood and riparian vegetation enhancement (12 locations of various sizes). Implementation of the proposed action would require some connected actions; these include use of temporary roads on existing disturbance (6 miles), use of a new temporary road (1 mile), road reconstruction (3 miles), and streambank stabilization at a proposed crossing (1 location).

Responsible Official

The responsible official will be Kate Klein, Forest Supervisor, Ochoco National Forest, 3160 NE. Third Street, Prineville, Oregon 97754.

Nature of Decision To Be Made

Given the purpose and need, the deciding official will review the proposed action, the other alternatives, and the environmental consequences in order to decide whether and under what circumstances fuels and vegetation management will be implemented in the McKay Fuels and Vegetation project area.

Preliminary Issues

The project's interdisciplinary team has developed a list of preliminary issues that will be used during the analysis of effects. Other issues may arise as a result of public comment and further analysis. Preliminary issues include:

• *Invasive Plant Species (Noxious Weeds).* Several populations of noxious weeds are known to exist within the project area. There is a risk that management activities may exacerbate the weed situation by spreading existing populations or introducing new ones.

• *Peck's Mariposa Lily.* Management activities can improve habitat for this sensitive species, but also risk impacting individual plants and/or habitat where it occurs in the project area.

• *Soil Productivity.* Maintenance of soil productivity is an important objective for management of National Forest Lands. When mechanized equipment is used in the Forest, soil can become displaced and compacted, which can impact productivity.

• *Water Quality.* The main streams in the project area, McKay and Little McKay Creeks, are listed on Oregon DEQ's 303(d) list due to high summer temperatures. Management activities can result in reduced shade on streams, as well as contribute sediment into the streams, which impacts water quality and decreases habitat quality for fish and other riparian fauna.

• *Wildlife Habitat.* Activities intended to improve forest health and resiliency may reduce habitat effectiveness for some wildlife species, including forest raptors and big game.

• *Economics.* In the current economy, markets for wood products are severely depressed. Some forest work is extremely labor-intensive and the Forest Service depends on these markets to pay for the work that is needed to improve forest health and reduce fuels.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. At this time, the Ochoco National Forest plans to hold a public field trip to the project area in the late spring or early summer of 2012; details will be made public closer to that time.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered.

Dated: January 25, 2012.

Slater R. Turner,

District Ranger.

[FR Doc. 2012–2009 Filed 1–30–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket T–2–2012]

Foreign-Trade Zone 59—Lincoln, Nebraska, Application for Temporary/Interim Manufacturing Authority, Novartis Consumer Health, Inc. (Pharmaceutical Product Manufacturing), Lincoln, NE

An application has been submitted to the Executive Secretary of the Foreign-Trade Zones Board (the Board) by Lincoln Foreign-Trade Zone, Inc., grantee of FTZ 59, requesting temporary/interim manufacturing (T/IM) authority at two sites within FTZ 59 at Novartis Consumer Health, Inc. (Novartis) facilities, located in Lincoln, Nebraska. The application was filed on January 24, 2012.

The Novartis facilities (568 employees, capacity of 450 million units/year) are located within FTZ 59, at Sites 3 and 4, in Lincoln, Nebraska. Under T/IM procedures, Novartis has requested authority to produce over-the-counter (OTC) pharmaceutical products, such as analgesics, cough/cold medicine, antihistamines/decongestants, and penicillin-based antibiotics (HTSUS 3004.10, 3004.40, 3004.90—duty free). Foreign ingredients that would be used in production (representing 25% of the value of the finished products) include: Menthol (HTSUS 2906.11), ibuprofen (HTSUS 2916.39), sodium salicylate (HTSUS 2918.21), aspirin (HTSUS 2918.22), terbinafine (HTSUS 2921.49), diphenhydramine citrate (HTSUS 2922.19), diclofenac sodium (HTSUS 2922.49), acetaminophen (HTSUS 2924.29), tolnaftate (HTSUS 2930.20), lansoprazole (HTSUS 2933.39), loratadine (HTSUS 2933.39), pyrilamine maleate (HTSUS 2933.39), dextromethorphan HBr (HTSUS 2933.49), clemastine fumarate (HTSUS 2933.99), acesulfame K (HTSUS 2934.99), bensalkonium chloride (HTSUS 3402.13), and microcrystalline cellulose (HTSUS 3912.90). Duty rates on these inputs range from duty free to 6.5%. T/IM authority could be granted for a period of up to two years.

FTZ procedures could exempt Novartis from customs duty payments on the foreign components used in export production. The company anticipates that some 5–10 percent of the plant's shipments will be exported. On its domestic sales, Novartis would be able to choose the duty rates during customs entry procedures that apply to the OTC pharmaceutical products (duty free) for the foreign inputs noted above. Novartis would also be exempt from duty payments on foreign materials that become scrap or waste during the production process.

In accordance with the Board's regulations, Diane Finver of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations pursuant to Board Orders 1347 and 1480.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW., Washington, DC 20230. The closing period for their receipt is March 1, 2012.

Novartis has also submitted a request to the FTZ Board for FTZ manufacturing authority beyond a two-year period, which may include additional products and components. It should be noted that the request for extended authority would be docketed separately and would be processed as a distinct proceeding. Any party wishing to submit comments for consideration regarding the request for extended authority would need to submit such comments pursuant to the separate notice that would be published for that request.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Diane Finver at *Diane.Finver@trade.gov* or 202–482–1367.

Dated: January 24, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–2073 Filed 1–30–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke two antidumping duty orders in part.

DATES: *Effective Date:* January 31, 2012.

FOR FURTHER INFORMATION CONTACT: Brenda Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. The Department also received a timely request to revoke in part the antidumping duty orders on certain cased pencils from the People's Republic of China for two exporters, and on honey from Argentina with respect to four exporters.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (i.e., treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (i.e., investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after August 2011, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from

government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than December 31, 2012.

	Period to be reviewed
Antidumping Duty Proceedings	
Argentina: Honey A–357–812	12/1/10—11/30/11
AGLH S.A.	
Algodonera Avellaneda, S.A.	
Alimentos Naturales-Natural Foods Lavalle.	
Alma Pura S.A.	
Apicola Danangie.	
Apidouro Comercial Exportadora E Importadora Ltda.	
Bomare S.A.	
Compania Apicola Argentina S.A.	
Compania Inversora Platense S.A.	
D'Ambros Maria de los Angeles y D'Ambros Maria Daniela SH.	
El Mana S.A.	
Geomiel S.A.	
HoneyMax S.A.	
Industrial Haedo S.A.	
Interrupcion S.A.	
Mielar S.A.	
Miel Ceta SRL.	
Nexco, S.A.	
Patagonik SA.	
Productos Afer S.A.	
Seabird Argentina S.A.	
TransHoney S.A.	
Villamora S.A.	
India: Certain Hot-Rolled Carbon Steel Flat Products A–533–820	12/1/10—11/30/11
Essar Steel Limited (Essar Steel Ltd.).	

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Ispat Industries, Ltd.	
JSW Steel Limited (JSW Steel Ltd.).	
Tata Steel Limited (Tata Steel Ltd.).	
Japan: Welded Large Diameter Line Pipe A–588–857	12/1/10—11/30/11
JFE Steel Corporation.	
Nippon Steel Corporation.	
Sumitomo Corporation.	
Sumitomo Metal Industries, Ltd.	
Sumitomo Metals Pipe & Tube Company.	
The People's Republic of China: Certain Cased Pencils [3] A–570–827	12/1/10—11/30/11
Beijing Fila Dixon Stationery Company, Ltd. a/k/a Beijing Dixon Ticonderoga Stationery Company, Ltd. a/k/a Beijing Dixon Stationery Company, Ltd. and Dixon Ticonderoga Company (collectively, ''Dixon'').	
China First Pencil Co., Ltd. (''China First'').	
Orient International Holding Shanghai Foreign Trade Co., Ltd. (''SFTC'').	
Shandong Rongxin Import & Export Co., Ltd.	
The People's Republic of China: Hand Trucks and Parts Thereof [4] A–570–891	12/1/10—11/30/11
New-Tec Integration (Xiamen) Co., Ltd.	
Yangjiang Shunhe Industrial Co., Ltd.	
Yangjiang Shunhe Industrial & Trade Co., Ltd.	
WelCom Products Inc.	
Yuhuan Tonsheng Industry Company.	
The People's Republic of China: Honey [5] A–570–863	12/1/10—11/30/11
Ahcof Industrial Development Corp., Ltd.	
Alfred L. Wolff (Beijing) Co., Ltd.	
Anhui Changhao Import & Export Trading.	
Anhui Honghui Foodstuff (Group) Co., Ltd.	
Anhui Honghui Import & Export Trade Co., Ltd.	
Anhui Cereals Oils and Foodstuffs I/E (Group) Corporation.	
Anhui Hundred Health Foods Co., Ltd.	
Anhui Native Produce Imp & Exp Corp.	
APM Global Logistics (Shanghai) Co.	
Baiste Trading Co., Ltd.	
Cheng Du Wai Yuan Bee Products Co., Ltd.	
Chengdu Stone Dynasty Art Stone.	
Damco China Limited Qingdao Branch.	
Dongtai Peak Honey Industry Co., Ltd.	
Eurasia Bee's Products Co., Ltd.	
Feidong Foreign Trade Co., Ltd.	
Fresh Honey Co., Ltd. (formerly Mgl. Yun Shen).	
Golden Tadco Int'l.	
Hangzhou Golden Harvest Health Industry Co., Ltd.	
Hangzhou Tienchu Miyuan Health Food Co., Ltd.	
Haoliluck Co., Ltd.	
Hengjide Healthy Products Co. Ltd.	
Hubei Yusun Co., Ltd.	
Inner Mongolia Altin Bee-Keeping.	
Inner Mongolia Youth Trade Development Co., Ltd.	
Jiangsu Cereals, Oils Foodstuffs Import Export (Group) Corp.	
Jiangsu Kanghong Natural Healthfoods Co., Ltd.	
Jiangsu Light Industry Products Imp & Exp (Group) Corp.	
Jilin Province Juhui Import.	
Maersk Logistics (China) Company Ltd.	
Nefelon Limited Company.	
Ningbo Shengye Electric Appliance.	
Ningbo Shunkang Health Food Co., Ltd.	
Ningxia Yuehai Trading Co., Ltd.	
Product Source Marketing Ltd.	
Qingdao Aolan Trade Co., Ltd.	
QHD Sanhai Honey Co., Ltd.	
Qinhuangdao Municipal Dafeng Industrial Co., Ltd.	
Renaissance India Mannite.	
Shaanxi Youthsun Co., Ltd.	
Shanghai Bloom International Trading Co., Ltd.	
Shanghai Foreign Trade Co., Ltd.	
Shanghai Hui Ai Mal Tose Co., Ltd.	
Shanghai Luyuan Import & Export.	
Shanghai Taiside Trading Co., Ltd.	
Shine Bal Co., Ltd.	
Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd.	
Sichuan Hasten Imp Exp. Trading Co. Ltd.	
Silverstream International Co., Ltd.	
Sunnice Honey.	
Suzhou Aiyi IE Trading Co., Ltd.	

	Period to be reviewed
Suzhou Shanding Honey Product Co., Ltd. Tianjin Eulia Honey Co., Ltd. Tianjin Weigeda Trading Co., Ltd. Wanxi Haohua Food Co., Ltd. Wuhan Bee Healthy Co., Ltd. Wuhan Shino-Food Trade Co., Ltd. Wuhu Anjie Food Co., Ltd. Wuhu Deli Foods Co. Ltd. Wuhu Fenglian Co., Ltd. Wuhu Qinshi Tangye. Wuhu Xinrui Bee-Product Co., Ltd. Xinjiang Jinhui Food Co., Ltd. Youngster International Trading Co., Ltd. Zhejiang Willing Foreign Trading Co.	
Countervailing Duty Proceedings	
Argentina: Honey [6] C–357–813	1/1/11—12/31/11
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the period of review.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that the meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule''*), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: January 24, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–2086 Filed 1–30–12; 8:45 am]

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[3] If one of the above named companies does not qualify for a separate rate, all other exporters of Certain Cased Pencils from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] If one of the above named companies does not qualify for a separate rate, all other exporters of Hand Trucks and Parts Thereof from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If one of the above named companies does not qualify for a separate rate, all other exporters of Honey from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] In accordance with 19 CFR 351.213(b), the petitioners requested an administrative review of this countervailing duty order. No individual exporters requested the review pursuant to 19 CFR 351.213(b). The Department conducted the investigation and subsequent administrative reviews of this order on an aggregate basis pursuant to section 777A(e)(2)(B) of the Act. Accordingly, the Department intends to conduct the review of this order on an aggregate basis.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Brass Sheet and Strip From Germany: Final Results of the Full Third Five-Year (''Sunset'') Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 31, 2012.

SUMMARY: On March 1, 2011, the Department of Commerce (''the Department'') initiated its third sunset review of the antidumping duty order on brass sheet and strip from Germany, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). Based on adequate substantive responses filed on behalf of both the domestic interested parties and the respondent interested parties, the

Department determined to conduct a full sunset review of this antidumping order pursuant to 751(c) of the Act and 19 CFR 351.218(e)(2)(i). As a result of our analysis, the Department finds that revocation of the antidumping duty order on brass sheet and strip from Germany would likely lead to continuation or recurrence of dumping.

FOR FURTHER INFORMATION CONTACT: Mahnaz Khan or Yasmin Nair, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0914 and (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2011, the Department initiated the third sunset review of the antidumping duty order on brass sheet and strip from Germany, pursuant to section 751(c) of the Act. *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 11202 (March 1, 2011). The Department received a notice of intent to participate from domestic interested parties, GBC Metals, LLC, of Global Brass and Copper, Inc., doing business as Olin Brass; Heyco Metals, Inc.; Luvata North America, Inc.; PMX Industries, Inc.; Revere Copper Products, Inc.; and International Association of Machinists and Aerospace Workers, United Auto Workers (Local 2367 and Local 1024), and United Steelworkers AFL–CIO CLC (collectively, ''Petitioners''), within the deadline specified in 19 CFR 351.218(d)(1)(i).

On March 31, 2011, the Department received a substantive response from Petitioners, and a substantive response from respondent interested parties in Germany, Wieland-Werke AG, Schwermetall Halbzeugwerk GmbH & Co. KG, and Messingwerk Plettenberg Herfeld & Co., KG (collectively, ''Respondents'') within the deadline specified in 19 CFR 351.218(d)(3)(i). Based on the finding that the substantive responses were adequate, we determined to conduct a full sunset review of this antidumping duty order. *See* Memorandum from Susan H. Kuhbach, Director, AD/CVD Operations, Office 1, to Edward C. Yang, Acting Deputy Assistant Secretary for AD/CVD Operations entitled ''Adequacy Determination: Third Five-Year (''Sunset'') Review of the Antidumping Duty Order on Brass Sheet and Strip from Germany,'' dated June 7, 2011.

On September 26, 2011, the Department published in the **Federal Register** the preliminary results of this full third sunset review of the AD order on brass sheet and strip from Germany. *See Brass Sheet and Strip from Germany: Preliminary Results of the Third Five-Year (''Sunset'') Review of the Antidumping Duty Order,* 76 FR 59386 (September 26, 2011) and accompanying Issues and Decision Memorandum.

The Department invited interested parties to comment on the *Preliminary Results.* On November 15, 2011, we received case briefs from Petitioners and Respondents. On November 21, 2011, we received rebuttal briefs from Petitioners and Respondents. No hearing was held because none was requested.

Scope of the Order

The product covered by the order is brass sheet and strip, other than leaded and tinned brass sheet and strip. The chemical composition of the covered product is currently defined in the Copper Development Association (''C.D.A.'') 200 Series or the Unified Numbering System (''U.N.S.'') C2000. The order does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the product covered by the order has a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 7409.21.00 and 7409.29.00.

Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order remains dispositive.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the ''Issues and Decision Memorandum for the Sunset Review of the Antidumping Duty Order on Brass Sheet and Strip from Germany; Final Results'' from Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration (''Decision Memorandum'''), which is hereby adopted by, and issued concurrently with, this notice. The issues discussed in the Decision Memorandum are the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order is revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 7046 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on brass sheet and strip from Germany would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/producers/exporters	Margin (percent)
Wieland–Werke AG	3.81
All Others	7.30

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the final results of this review in accordance with sections 751(c), 752, and 777(i) of the Act.

Dated: January 25, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–2082 Filed 1–30–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Honey From Argentina: Notice of Initiation of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has received a request for a new shipper review of the

antidumping duty order on honey from Argentina. *See Notice of Antidumping Duty Order: Honey From Argentina,* 66 FR 63672 (December 10, 2001) (*Order*). In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d), we are initiating an antidumping duty new shipper review of D'Ambros María de los Angeles and D'Ambros María Daniela SH, an Argentine partnership doing business as Apícola Danangie (Danangie). The period of review (POR) of this new shipper review is December 1, 2010, through November 30, 2011.

DATES: *Effective Date:* January 31, 2012.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–8029 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department published the antidumping duty order on honey from Argentina. *See Order,* 66 FR at 63672. Thus, the antidumping duty order on honey from Argentina has a December anniversary month. On January 3, 2012, the Department received a timely filed request dated December 31, 2011, for a new shipper review from Danangie. In its request for a review, Danangie identified itself as an exporter of the subject merchandise. For the purpose of initiating this new shipper review, the Department determines that Danangie's submission was timely filed.

Pursuant to the requirements set forth in section 751(a)(2)(B)(i) of the Act and 19 CFR 351.214(b)(2), Danangie certified that (1) it did not export subject merchandise to the United States during the period of investigation (POI) (*see* section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i)); and (2) since the initiation of the investigation, it has never been affiliated with any company that exported subject merchandise to the United States during the POI, including those companies not individually examined during the investigation (*see* section 751(a)(2)(B)(i)(II) of the Act and19 CFR 351.214(b)(2)(iii)(A)). Furthermore, as required by 19 CFR 351.214(b)(2), Danangie's suppliers, Luis Hauser and Nestor Pezelatto, provided certifications that (1) they did not export the subject merchandise to the United States during the POI or at any time following the POI and (2) since the initiation of the investigation, they have never been affiliated with any company that exported subject merchandise to the United States during the POI, including those companies not individually examined during the investigation. Additionally, in accordance with 19 CFR 351.214(b)(2)(iv), Danangie submitted documentation establishing the following: (1) The date on which it first shipped subject merchandise to the United States; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated purchaser for exportation to the United States. Danangie also stated it had no shipments to the United States during the period subsequent to its first shipment.

Initiation of Review

Based on information on the record and in accordance with section 751(a)(2)(B) of the Act, and 19 CFR 351.214(d), we find that the request submitted by Danangie meets the statutory and regulatory requirements for initiation of a new shipper review. *See* Memorandum to the File, through Angelica L. Mendoza, Program Manager, regarding ''Initiation of the Antidumping Duty New Shipper Review: Honey From Argentina,'' dated January 25, 2012 (Initiation Checklist). Accordingly, we are initiating a new shipper review of the antidumping duty order on honey from Argentina exported by Danangie, for the period December 1, 2010, through November 30, 2011. However, the Department has concerns with certain other information contained within the entry data received from U.S. Customs and Border Protection (CBP). Due to the business proprietary nature of this information, please refer to the Initiation Checklist for further discussion. The Department intends to address this issue after initiation of the new shipper review. If the Department subsequently determines, based on information collected, that a new shipper review for Danangie is not warranted, the Department may rescind the review or apply facts available pursuant to section 776 of the Act, as appropriate.

We intend to issue the preliminary results of this review no later than 180 days after the date on which this review is initiated, and the final results within 90 days after the date on which we issue the preliminary results. *See* section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(h)(i).

We will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for certain entries of the subject merchandise exported by Danangie and produced by Luis Hauser or Nestor Pezelatto in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Danangie certified that the sales of subject merchandise which form the basis for its new shipper review request were produced by Luis Hauser and Nestor Pezelatto, we will instruct CBP to permit the use of a bond only for entries of subject merchandise which Danangie exported and was produced by Luis Hauser or Nestor Pezelatto.

Interested parties may submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and this notice are issued and published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: January 25, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–2093 Filed 1–30–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Second Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Gene Calvert, Jun Jack Zhao, or Emily Halle, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3586, (202) 482–1396 or (202) 482–0176, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 21, 2011, based on a request from Petitioner, SolarWorld Industries America, Inc. (SolarWorld), the Department of Commerce (the Department) extended the due date for the preliminary determination of the countervailing duty investigation of crystalline silicon photovoltaic cells, whether or not assembled into modules,

from the People's Republic of China, to no later than February 13, 2012.[1]

Postponement of Due Date for the Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, section 703(c)(1)(A) of the Act permits the Department to postpone making the preliminary determination until no later than 130 days after the date on which it initiated the investigation if, among other reasons, the petitioner makes a timely request for an extension. In the instant investigation, SolarWorld made a second timely request on January 19, 2012, for further postponement of the preliminary countervailing duty determination by 18 days, to March 2, 2012.[2]

Therefore, pursuant to the discretion afforded to the Department under section 703(c)(1)(A) of the Act, and because the Department does not find any compelling reason to deny the request, we are extending the due date for the preliminary determination to no later than March 2, 2012.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: January 25, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–2064 Filed 1–30–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 76 FR 81914 (December 29, 2011).

[2] *See* 19 CFR 351.205(e) and the petitioner's January 19, 2012 letter requesting a second postponement of the preliminary determination.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA963

Marine Mammals; File No. 15142

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Colleen Reichmuth, Ph.D., University of California at Santa Cruz, Long Marine Laboratory, 100 Shaffer Road, Santa Cruz, CA, has applied in due form for a permit to take bearded seals (*Erignathus barbatus*) for research purposes.

DATES: Written, telefaxed, or email comments must be received on or before March 1, 2012.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 15142 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include ''File No. 15142'' in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Tammy Adams, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to collect from the wild up to two bearded seals in the Northwest Arctic Borough of Alaska for a long-term behavioral study at Long Marine Laboratory in Santa Cruz, CA. Up to four bearded seals may be captured temporarily in order to evaluate their suitability for participation in research. Captured seals deemed unsuitable for the long-term study will be released at the capture site. Up to two bearded seals deemed suitable for captive research will be transported from Kotzebu, AK to Santa Cruz, CA. Incidental harassment of up to one ringed seal (*Phoca hispida*) and one spotted seal (*Phoca larga*) may occur during capture activities. Authorization for mortality of two bearded seals is requested for the duration of the permit. The applicant requests the permit be valid from October 1, 2012 to December 31, 2013. After a quarantine period, the research to be conducted at Long Marine Laboratory will occur under existing NMFS Permit No. 14535–01 (75 FR 58352) and will provide quantitative measurements of the amphibious hearing capabilities of bearded seals, which are needed to improve understanding of the potential effects of expected increases in anthropogenic activities in polar habitats.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 25, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–2084 Filed 1–30–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA879

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Northwest Pacific Ocean, March Through April 2012

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from Lamont-Doherty Earth Observatory (L–DEO), a part of Columbia University, for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting a marine geophysical survey in the northwest Pacific Ocean, March through April, 2012.

DATES: Comments and information must be received no later than March 1, 2012.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *ITP.Cody@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

An electronic copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (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: the National Science Foundation's (NSF) draft Environmental Analysis (EA) pursuant to Executive Order 12114. The EA incorporates an ''Environmental Assessment of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* in the Northwest Pacific Ocean, March–April, 2012,'' prepared by LGL Limited, on behalf of NSF. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States 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 adverse 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 established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS' 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. NMFS must publish a notice in the **Federal Register** within 30 days of its determination to 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].

Summary of Request

NMFS received an application on October 31, 2011, from L–DEO for the taking by harassment, of marine mammals, incidental to conducting a marine geophysical survey in the northwest Pacific Ocean in international waters. Upon receipt of additional information, NMFS determined the application complete and adequate on December 23, 2011.

L–DEO, with research funding from the U.S. National Science Foundation (NSF), plans to conduct the survey from March 24, 2012, through April 16, 2012. L–DEO received an IHA in 2010 to conduct the same specified activity in the same location. However, due to medical emergencies, L–DEO suspended its operations and was unable to complete the seismic survey. Thus, this 2011 survey will allow L–DEO to acquire data necessary to complete the abbreviated 2010 study.

L–DEO plans to use one source vessel, the R/V *Marcus G. Langseth* (*Langseth*), a seismic airgun array and a single hydrophone streamer to conduct a geophysical survey at the Shatsky Rise, a large igneous plateau in the northwest Pacific Ocean. The proposed survey will provide data necessary to decipher the crustal structure of the Shatsky Rise; may address major questions of earth history, geodynamics, and tectonics; could impact the understanding of terrestrial magmatism and mantle convection; and may obtain data that could be used to improve estimates of regional earthquake occurrence and distribution. In addition to the operations of the seismic airgun array and hydrophone streamer, L–DEO intends to operate a multibeam echosounder (MBES) and a sub-bottom profiler (SBP) continuously throughout the survey.

Acoustic stimuli (*i.e.,* increased underwater sound) generated during the operation of the seismic airgun array, may have the potential to cause a short-term behavioral disturbance for marine mammals in the survey area. This is the principal means of marine mammal taking associated with these activities and L–DEO has requested an authorization to take 30 species of marine mammals by Level B harassment. Take is not expected to result from the use of the MBES or the SBP for reasons discussed in this notice. Also, NMFS does not expect take to result from collision with the *Langseth* because it is a single vessel moving at

relatively slow speeds (4.6 knots (kts); 8.5 km per hr (km/h); 5.3 miles (mi) per hour (mph)) during seismic acquisition within the survey, for a relatively short period of time. It is likely that any marine mammal would be able to avoid the vessel.

Description of the Specified Activity

L–DEO's proposed seismic survey on the Shatsky Rise is scheduled to commence on March 24, 2012 and end on April 16, 2012. The *Langseth* would depart from Yokohama, Japan on March 24, 2012 and transit to the survey area in the northwest Pacific Ocean, approximately 1,200 kilometers (km) (745.6 miles (mi)) in international waters offshore of the east coast of Japan. At the conclusion of the survey activities, the *Langseth* proposes to arrive in Honolulu, Hawaii, on April 16, 2012. Some minor deviation from these dates is possible, depending on logistics, weather conditions, and the need to repeat some lines if data quality is substandard. Therefore, NMFS proposes to issue an authorization that is effective from March 24, 2012 to May 7, 2012.

Geophysical survey activities will involve 3–D seismic methodologies to decipher the crustal structure of the Shatsky Rise. To obtain high-resolution, 2–D structures of the area's magmatic systems and thermal structures, the *Langseth* will deploy a 36-airgun array as an energy source and a 6-km-long (3.7 mi-long) hydrophone streamer. As the airgun array is towed along the survey lines, the hydrophone streamer will receive the returning acoustic signals and transfer the data to the vessel's on-board processing system.

The proposed study (e.g., equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) will require approximately 7 days (d) to complete approximately 1,216 km (755.6 mi) of transect lines. The *Langseth* will conduct additional seismic operations in the survey area associated with turns, airgun testing, and repeat coverage of any areas where the initial data quality is sub-standard. Data acquisition will include approximately 168 hours (hr) of airgun operations (7 d x 24 hr).

L–DEO, the *Langseth's* operator, will conduct all planned seismic data acquisition activities, with on-board assistance by the scientists who have proposed the study. The Principal Investigators for this survey are Drs. Jun Korenaga (Yale University, New Haven, CT) and William Sager (Texas A&M University, College Station, TX). The vessel will be self-contained, and the crew will live aboard the vessel for the entire cruise.

Description of the Specified Geographic Region

L–DEO will conduct the proposed survey in international waters in the northwest Pacific Ocean. The study area will encompass an area on the Shatsky Rise bounded by approximately 33.5–36 degrees (°) North by 156–161° East (see Figure 1 in L–DEO's application). Water depths in the survey area range from approximately 3,000 to 5,000 meters (m) (1.9 to 3.1 mi).

Vessel Specifications

The *Langseth,* owned by NSF, is a seismic research vessel with a propulsion system designed to be as quiet as possible to avoid interference with the seismic signals emanating from the airgun array. The vessel, which has a length of 71.5 m (235 feet (ft)); a beam of 17.0 m (56 ft); a maximum draft of 5.9 m (19 ft); and a gross tonnage of 3,834 pounds, is powered by two 3,550 horsepower (hp) Bergen BRG–6 diesel engines which drive two propellers. Each propeller has four blades and the shaft typically rotates at 750 revolutions per minute. The vessel also has an 800-hp bowthruster, which is not used during seismic acquisition. The *Langseth's* operation speed during seismic acquisition will be approximately 4.6 kts (8.5 km/h; 5.3 mph) and the cruising speed of the vessel outside of seismic operations is 18.5 km/h (11.5 mph or 10 kts).

The *Langseth* will tow the 36-airgun array, as well as the hydrophone streamer, along predetermined lines. When the *Langseth* is towing the airgun array and the hydrophone streamer, the turning rate of the vessel is limited to five degrees per minute. Thus, the maneuverability of the vessel is limited during operations with the streamer.

The vessel also has an observation tower from which protected species visual observers (PSVO) will watch for marine mammals before and during the proposed airgun operations. When stationed on the observation platform, the PSVO's eye level will be approximately 21.5 m (71 ft) above sea level providing the PSVO an unobstructed view around the entire vessel.

Acoustic Source Specifications

Seismic Airguns

The *Langseth* will deploy a 36-airgun array, with a total volume of approximately 6,600 cubic inches (in^3) at a tow depth of 9 m (29.5 ft). The airguns are a mixture of Bolt 1500LL and Bolt 1900LLX airguns ranging in size from 40 to 360 in^3, with a firing pressure of 1,900 pounds per square inch. The dominant frequency components range from zero to 188 Hertz (Hz). The array configuration consists of four identical linear strings, with 10 airguns on each string; the first and last airguns will be spaced 16 m (52 ft) apart. Of the 10 airguns, nine will fire simultaneously while the tenth airgun will serve as a spare and will be turned on in case of failure of one of the other airguns. The *Langseth* will distribute the array across an area of approximately 24 x 16 m (78.7 x 52.5 ft) and will tow the array approximately 140 m (459.3 ft) behind the vessel. The tow depth of the array will be 9 m (29.5 ft).

During the multichannel seismic (MCS) survey, each airgun array will emit a pulse at approximately 20-second (s) intervals which corresponds to a shot interval of approximately 50 m (164 ft). During firing, the airguns will emit a brief (approximately 0.1 s) pulse of sound; during the intervening periods of operations, the airguns will be silent.

Metrics Used in This Document

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this document. Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. Sound pressure level (SPL) is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 μPa, and the units for SPLs are dB re: 1 μPa.

SPL (in decibels (dB)) = 20 log (pressure/reference pressure)

SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak (p-p), or the root mean square (rms). Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square unless otherwise noted. SPL does not take the duration of a sound into account.

Characteristics of the Airgun Pulses

Airguns function by venting high-pressure air into the water which creates an air bubble. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed

by several positive and negative pressure excursions caused by the oscillation of the resulting air bubble. The oscillation of the air bubble transmits sounds downward through the seafloor and the amount of sound transmitted in the near horizontal directions is reduced. However, the airgun array also emits sounds that travel horizontally toward non-target areas.

The nominal source levels of the airgun array used by L–DEO on the *Langseth* is 236 to 265 dB re: 1 $\mu Pa_{(p\text{-}p)}$ and the rms value for a given airgun pulse is typically 16 dB re: 1 μPa lower than the peak-to-peak value (Greene, 1997; McCauley *et al.,* 1998, 2000a). However, the difference between rms and peak or peak-to-peak values for a given pulse depends on the frequency content and duration of the pulse, among other factors.

Accordingly, L–DEO has predicted the received sound levels in relation to distance and direction from the 36-airgun array and the single Bolt 1900LL 40-in^3 airgun, which will be used during power downs. A detailed description of L–DEO's modeling for marine seismic source arrays for species mitigation is provided in Appendix A of NSF's EA. These are the nominal source levels applicable to downward propagation. The effective source levels for horizontal propagation are lower than those for downward propagation because of the directional nature of the sound from the airgun array. Appendix B(3) of NSF's EA discusses the characteristics of the airgun pulses. NMFS refers the reviewers to the IHA application and EA documents for additional information.

Predicted Sound Levels for the Airguns

Tolstoy *et al.,* (2009) reported results for propagation measurements of pulses from the *Langseth's* 36-airgun, 6,600 in^3 array in shallow-water (approximately 50 m (164 ft)) and deep-water depths (approximately 1,600 m (5,249 ft)) in the Gulf of Mexico in 2007 and 2008. Results of the Gulf of Mexico calibration study (Tolstoy *et al.,* 2009) showed that radii around the airguns for various received levels varied with water depth and that sound propagation varied with array tow depth.

L–DEO used the results from the Gulf of Mexico study to determine the algorithm for its model that calculates the exclusion zones (EZ) for the 36-airgun array and the single airgun. L–DEO uses these values to designate mitigation zones and to estimate take (described in greater detail in Section VII of L–DEO's application and Section IV of NSF's EA) for marine mammals.

Comparison of the Tolstoy *et al.* calibration study with L–DEO's model for the *Langseth's* 36-airgun array indicated that the model represents the actual received levels, within the first few kilometers, where the predicted EZs are located. However, the model for deep water (greater than 1,000 m; 3,280 ft) overestimated the received sound levels at a given distance but is still valid for defining exclusion zones at various tow depths. Because the tow depth of the array in the calibration study is less shallow (6 m; 19.7 ft) than the tow depth array in the proposed survey (9 m; 29.5 ft), L–DEO used correction factors for estimating the received levels in deep water during the proposed survey. The correction factors used were the ratios of the 160-,180-, and 190-dB distances from the modeled results for the 6,600 in^3 airgun array towed at 6 m (19.7 ft) versus 9 m (29.5 ft) from LGL (2008); 1.285, 1.338, and 1.364 respectively. For a single airgun, the tow depth has minimal effect on the maximum near-field output and the shape of the frequency spectrum for the single airgun; thus, the predicted EZs are essentially the same at different tow depths. The L–DEO model does not allow for bottom interactions, and thus is most directly applicable to deep water.

Table 1 summarizes the predicted distances at which sound levels (160- and 180-dB) are expected to be received from the 36-airgun array and a single airgun operating in deep water. To avoid the potential for injury, NMFS (1995, 2000) concluded that cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re: 1 μPa. NMFS believes that to avoid the potential for permanent physiological damage (Level A harassment), cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re: 1 μPa. The 180-dB level is a shutdown criterion applicable to cetaceans, as specified by NMFS (2000); these levels were used to establish the EZs. NMFS also assumes that cetaceans exposed to levels exceeding 160 dB re: 1 μPa (rms) may experience Level B harassment.

TABLE 1—MEASURED (ARRAY) OR PREDICTED (SINGLE AIRGUN) DISTANCES TO WHICH SOUND LEVELS GREATER THAN OR EQUAL TO 160 AND 180 DB RE: 1 μPA_{Rms} THAT COULD BE RECEIVED IN DEEP WATER USING A 36-AIRGUN ARRAY, AS WELL AS A SINGLE AIRGUN TOWED AT A DEPTH OF 9 M (29.5 FT) DURING THE PROPOSED SURVEY IN THE NORTHWEST PACIFIC OCEAN, DURING MARCH–APRIL, 2012

[Distances Are Based On Model Results Provided By L–DEO]

Source and volume	Water depth	Predicted RMS Distances (m)		
		160 dB	180 dB	190 dB
Single Bolt airgun (40 in^3)	Deep (>1,000 m)	385	40	12
36–Airgun Array		3,850	940	400

Appendix A of NSF's EA discusses L–DEO's calculations for the model. NMFS refers the reviewers to L–DEO's application and the NSF's EA for additional information.

Multibeam Echosounder

The *Langseth* will operate a Kongsberg EM 122 MBES concurrently during airgun operations to map characteristics of the ocean floor. The hull-mounted MBES emits brief pulses of sound (also called a ping) (10.5 to 13 kilohertz (kHz)) in a fan-shaped beam that extends downward and to the sides of the ship. The transmitting beamwidth is one or two degrees (°) fore-aft and 150° athwartship and the maximum source level is 242 dB re: 1 μPa.

For deep-water operations, each ping consists of eight (in water greater than 1,000 m; 3,280 ft) or four (less than 1,000 m; 3,280 ft) successive, fan-shaped transmissions, from two to 15 milliseconds (ms) in duration and each ensonifying a sector that extends 1° fore-aft. Continuous wave pulses increase from two to 15 milliseconds (ms) long in water depths up to 2,600 m (8,530 ft). The MBES uses frequency-modulated chirp pulses up to 100-ms long in water greater than 2,600 m (8,530 ft). The eight successive transmissions span an overall cross-track angular extent of about 150°, with

2-ms gaps between the pulses for successive sectors.

Sub-bottom Profiler

The *Langseth* will also operate a Knudsen Chirp 3260 SBP concurrently during airgun and MBES operations to provide information about the sedimentary features and bottom topography. The SBP is capable of reaching depths of 10,000 m (6.2 mi). The dominant frequency component of the SBP is 3.5 kHz which is directed downward in a 27° cone by a hull-mounted transducer on the vessel. The nominal power output is 10 kilowatts (kW), but the actual maximum radiated power is three kW or 222 dB re: 1 μPa. The ping duration is up to 64 ms with a pulse interval of one second, but a common mode of operation is to broadcast five pulses at 1-s intervals followed by a 5-s pause.

NMFS expects that acoustic stimuli resulting from the proposed operation of the single airgun or the 36-airgun array has the potential to harass marine mammals, incidental to the conduct of the proposed seismic survey. NMFS expects these disturbances to be temporary and result in a temporary modification in behavior and/or low-level physiological effects (Level B harassment only) of small numbers of certain species of marine mammals. NMFS does not expect that the movement of the *Langseth,* during the conduct of the seismic survey, has the potential to harass marine mammals because of the relatively slow operation speed of the vessel (4.6 kts; 8.5 km/hr; 5.3 mph) during seismic acquisition.

Description of the Marine Mammals in the Area of the Specified Activity

Thirty-four marine mammal species may occur in the Shatsky Rise survey area, including 26 odontocetes (toothed cetaceans), seven mysticetes (baleen whales) and one species of pinniped during March through April. Six of these species are listed as endangered under the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), including the blue (*Balaenoptera musculus*), fin (*Balaenoptera physalus*), humpback (*Megaptera novaeangliae*), north Pacific right (*Eubalaena japonica*), sei (*Balaenoptera borealis*), and sperm (*Physeter macrocephalus*) whales.

Based on available data, the western north Pacific gray whale (*Eschrichtius robustus*) may have the potential to migrate off of the Pacific coast of Japan (Reilly *et al.,* 2008a), though any occurrence in the survey area would be rare as gray whales are known to prefer nearshore coastal waters. Based on available data, L–DEO does not expect to encounter the western north Pacific gray whale within the proposed study area and does not present analysis for these species. Accordingly, NMFS did not consider this cetacean species in greater detail and the proposed IHA will only address requested take authorizations for the seven mysticetes, 26 odontocetes, and one species of pinniped. The species of marine mammals expected to be most common in the survey area (all delphinids) include the short-beaked common (*Delphinus delphis*), striped (*Stenella coeruleoalba*), and Fraser's (*Lagenodelphis hosei*) dolphins, and Dall's porpoise (*Phocoenoides dalli*).

Table 2 presents information on the abundance, distribution, and conservation status of the marine mammals that may occur in the proposed survey area March through April, 2012.

TABLE 2—HABITAT, ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE PROPOSED SEISMIC SURVEY AREA ON THE SHATSKY RISE IN THE NORTHWEST PACIFIC OCEAN

[See text and Tables 2 and 3 in L–DEO's application and the NSF's EA for further details]

Species	Habitat	Abundance in the NW Pacific	ESA [1]	Density [2]
Mysticetes				
North Pacific right whale	Pelagic, coastal	few 100 [3]	EN	0.04
Humpback whale	Mainly nearshore, banks	938–1107 [4]	EN	0.47
Minke whale	Pelagic, coastal	25,000 [5]	NL	2.51
Bryde's whale	Pelagic, coastal	20,501 [6]	NL	0.52
Sei whale	Primarily offshore, pelagic	7260–12,620 [7]	EN	1.78
Fin whale	Continental slope, mostly pelagic	13,620–18,680 [8]	EN	0.74
Blue whale	Pelagic, coastal	3500 [9]	EN	0.39
Odontocetes				
Sperm whale	Usually pelagic, deep sea	29,674 [10]	EN	1.04
Pygmy sperm whale	Deep waters off the shelf	N.A.	NL	3.19
Dwarf sperm whale	Deep waters off the shelf	11,200 [11]	NL	7.82
Cuvier's beaked whale	Pelagic	20,000 [11]	NL	6.80
Baird's beaked whale	Deep water	N.A.	NL	0.88
Longman's beaked whale	Deep water	N.A.	NL	0.45
Hubb's beaked whale	Deep water	25,300 [12]	NL	1.28
Ginkgo-toothed beaked whale	Pelagic	25,300 [12]	NL	0.01
Blainville's beaked whale	Pelagic	25,300 [12]	NL	3.12
Stejneger's beaked whale	Deep water	25,300 [12]	NL	23.99
Rough-toothed dolphin	Deep water	145,900 [11]	NL	70.41
Common bottlenose dolphin	Coastal, oceanic, shelf break	168,000 [13]	NL	0.83
Pantropical spotted dolphin	Pelagic, coastal	438,000 [13]	NL	119.07
Spinner dolphin	Pelagic, coastal	801,000 [14]	NL	4.57
Striped dolphin	Off continental shelf	570,000 [13]	NL	309.35
Fraser's dolphin	Waters >1000 m	289,300 [11]	NL	36.40
Short-beaked common dolphin	Shelf, pelagic, seamounts	2,963,000 [15]	NL	0.41
Pacific white-sided dolphin	Continental slope, pelagic	988,000 [16]	NL	10.8
Northern right whale dolphin	Deep water	307,000 [16]	NL	1.32
Risso's dolphin	Deep water, seamounts	838,000 [13]	NL	0
Melon-headed whale	Oceanic	45,400 [11]	NL	2.05
Pygmy killer whale	Deep, pantropical waters	38,900 [11]	NL	0.16
False killer whale	Pelagic	16,000 [13]	NL	5.00
Killer whale	Widely distributed	8500 [11]	NL	21.94

TABLE 2—HABITAT, ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE PROPOSED SEISMIC SURVEY AREA ON THE SHATSKY RISE IN THE NORTHWEST PACIFIC OCEAN—Continued

[See text and Tables 2 and 3 in L–DEO's application and the NSF's EA for further details]

Species	Habitat	Abundance in the NW Pacific	ESA [1]	Density [2]
Short-finned pilot whale	Mostly pelagic, high-relief	53,000 [13]	NL	1.04
Dall's porpoise	Deep water	1,337,224 [17]	NL	3.19
Pinnipeds				
Northern fur seal	Pelagic, coastal	1.1 million [18]	NL	1.79

N.A.—Not available or not assessed.
[1] Endangered Species Act: EN = Endangered, NL = Not listed
[2] Density estimate as listed in Table 3 of L–DEO's application. Refer to page 41 for specific references.
[3] North Pacific (Jefferson et al. 2008).
[4] Western North Pacific (Calambokidis et al. 2008).
[5] Northwest Pacific and Okhotsk Sea (Buckland et al. 1992; IWC 2010a).
[6] Western North Pacific (Kitakado et al. 2008; IWC 2010a).
[7] North Pacific (Tillman 1977).
[8] North Pacific (Ohsumi and Wada 1974).
[9] North Pacific (NMFS 1998).
[10] Western North Pacific (Whitehead 2002b).
[11] Eastern Tropical Pacific (ETP) (Wade and Gerrodette 1993).
[12] ETP; all *Mesoplodon* spp. (Wade and Gerrodette 1993).
[13] Western North Pacific (Miyashita 1993a).
[14] Whitebelly spinner dolphin in the ETP in 2000 (Gerrodette et al. 2005 in Hammond et al 2008a).
[15] ETP (Gerrodette and Forcada 2002 in Hammond et al 2008b).
[16] North Pacific (Miyashita 1993b).
[17] North Pacific (Buckland et al 1993).
[18] North Pacific, 2004–2005 (Gelatt and Lowry 2008).

NMFS refers the reader to Sections III and IV of L–DEO's application for detailed information regarding the abundance and distribution, population status, and life history and behavior of these species and their occurrence in the proposed project area. The application also presents how L–DEO calculated the estimated densities for the marine mammals in the proposed survey area. NMFS has reviewed these data and determined them to be the best available scientific information for the purposes of the proposed IHA.

Potential Effects on Marine Mammals

Acoustic stimuli generated by the operation of the airguns, which introduce sound into the marine environment, may have the potential to cause Level B harassment of marine mammals in the proposed survey area. The effects of sounds from airgun operations might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007).

Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.,* 2007). Although the possibility cannot be entirely excluded, it is unlikely that the proposed project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Based on the available data and studies described here, some behavioral disturbance is expected, but NMFS expects the disturbance to be localized and short-term.

Tolerance

Studies on marine mammals' tolerance to sound in the natural environment are relatively rare. Richardson *et al.* (1995) defines tolerance as the occurrence of marine mammals in areas where they are exposed to human activities or manmade noise. In many cases, tolerance develops by the animal habituating to the stimulus (i.e., the gradual waning of responses to a repeated or ongoing stimulus) (Richardson, *et al.,* 1995; Thorpe, 1963), but because of ecological or physiological requirements, many marine animals may need to remain in areas where they are exposed to chronic stimuli (Richardson, *et al.,* 1995).

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Several studies have shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response (see Appendix B(5) in NSF's EA). That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of the marine mammal group. Although various baleen whales and toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times marine mammals of all three types have shown no overt reactions (Stone 2003; Stone and Tasker 2006; Moulton et al. 2005, 2006a; Weir 2008a for sperm whales), (MacLean and Koski 2005; Bain and Williams 2006 for Dall's porpoises). The relative responsiveness of baleen and toothed whales are quite variable.

Masking of Natural Sounds

The term masking refers to the inability of a subject to recognize the occurrence of an acoustic stimulus as a result of the interference of another acoustic stimulus (Clark *et al.,* 2009). Introduced underwater sound may, through masking, reduce the effective communication distance of a marine mammal species if the frequency of the source is close to that used as a signal by the marine mammal, and if the anthropogenic sound is present for a significant fraction of the time (Richardson *et al.,* 1995).

NMFS expects the masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds to be limited, although there are very few specific data on this. Because of the intermittent nature and low duty cycle of seismic

airgun pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in some situations, reverberation occurs for much or the entire interval between pulses (*e.g.,* Simard *et al.,* 2005; Clark and Gagnon, 2006) which could mask calls. Some baleen and toothed whales are known to continue calling in the presence of seismic pulses, and their calls can usually be heard between the seismic pulses (*e.g.,* Richardson *et al.,* 1986; McDonald *et al.,* 1995; Greene *et al.,* 1999; Nieukirk *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a,b, 2006; and Dunn and Hernandez, 2009). However, Clark and Gagnon (2006) reported that fin whales in the northeast Pacific Ocean went silent for an extended period starting soon after the onset of a seismic survey in the area. Similarly, there has been one report that sperm whales ceased calling when exposed to pulses from a very distant seismic ship (Bowles *et al.,* 1994). However, more recent studies found that they continued calling in the presence of seismic pulses (Madsen *et al.,* 2002; Tyack *et al.,* 2003; Smultea *et al.,* 2004; Holst *et al.,* 2006; and Jochens *et al.,* 2008). Dolphins and porpoises commonly are heard calling while airguns are operating (*e.g.,* Gordon *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a, b; and Potter *et al.,* 2007). The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking.

In general, NMFS expects the masking effects of seismic pulses to be minor, given the normally intermittent nature of seismic pulses. Refer to Appendix B(4) of NSF's EA for a more detailed discussion of masking effects on marine mammals.

Behavioral Disturbance

Disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals would be present within a particular distance of industrial activities and/or exposed to a particular level of industrial sound. In most cases, this approach likely overestimates the numbers of marine mammals that would be affected in some biologically-important manner.

The sound criteria used to estimate how many marine mammals might be disturbed to some biologically-important degree by a seismic program are based primarily on behavioral observations of a few species. Scientists have conducted detailed studies on humpback, gray, bowhead (*Balaena mysticetus*), and sperm whales. Less detailed data are available for some other species of baleen whales, small toothed whales, and sea otters (*Enhydra lutris*), but for many species there are no data on responses to marine seismic surveys.

Baleen Whales—Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable (reviewed in Richardson *et al.,* 1995). Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, as reviewed in Appendix B(5) of the NSF's EA, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding and moving away from the area. In the cases of migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals (Richardson *et al.,* 1995). They simply avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have shown that seismic pulses with received levels of 160 to 170 dB re: 1 μPa seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed (Malme *et al.,* 1986, 1988; Richardson *et al.,* 1995). In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from four to 15 km from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong behavioral reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and studies summarized in Appendix B(5) of NSF's EA have shown that some species of baleen whales, notably bowhead and humpback whales, at times show strong avoidance at received levels lower than 160–170 dB re: 1 μPa.

Researchers have studied the responses of humpback whales to seismic surveys during migration, feeding during the summer months, breeding while offshore from Angola, and wintering offshore from Brazil. McCauley *et al.* (1998, 2000a) studied the responses of humpback whales off western Australia to a full-scale seismic survey with a 16-airgun array (2,678-in^3) and to a single, 20-in^3 airgun with source level of 227 dB re: 1 μPa (p-p). In the 1998 study, the researchers documented that avoidance reactions began at five to eight km (3.1 to 4.9 mi) from the array, and that those reactions kept most pods approximately three to four km (1.9 to 2.5 mi) from the operating seismic boat. In the 2000 study, McCauley *et al.* noted localized displacement during migration of four to five km (2.5 to 3.1 mi) by traveling pods and seven to 12 km (4.3 to 7.5 mi) by more sensitive resting pods of cow-calf pairs. Avoidance distances with respect to the single airgun were smaller but consistent with the results from the full array in terms of the received sound levels. The mean received level for initial avoidance of an approaching airgun was 140 dB re: 1 μPa for humpback pods containing females, and at the mean closest point of approach distance, the received level was 143 dB re: 1 μPa. The initial avoidance response generally occurred at distances of five to eight km (3.1 to 4.9 mi) from the airgun array and two km (1.2 mi) from the single airgun. However, some individual humpback whales, especially males, approached within distances of 100 to 400 m (328 to 1,312 ft), where the maximum received level was 179 dB re: 1 μPa.

Data collected by observers during several seismic surveys in the northwest Atlantic Ocean showed that sighting rates of humpback whales were significantly greater during non-seismic periods compared with periods when a full array was operating (Moulton and Holst, 2010). In addition, humpback whales were more likely to swim away and less likely to swim towards a vessel during seismic versus non-seismic periods (Moulton and Holst, 2010).

Humpback whales on their summer feeding grounds in Frederick Sound and Stephens Passage, Alaska did not

exhibit persistent avoidance when exposed to seismic pulses from a 1.64–L (100-in^3) airgun (Malme *et al.,* 1985). Some humpbacks seemed ''startled'' at received levels of 150 to 169 dB re: 1 μPa. Malme *et al.* (1985) concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 re: 1 μPa.

Other studies have suggested that south Atlantic humpback whales wintering off Brazil may be displaced or even strand upon exposure to seismic surveys (Engel *et al.,* 2004). Although, the evidence for this was circumstantial and subject to alternative explanations (IAGC, 2004). Also, the evidence was not consistent with subsequent results from the same area of Brazil (Parente *et al.,* 2006), or with direct studies of humpbacks exposed to seismic surveys in other areas and seasons. After allowance for data from subsequent years, there was ''no observable direct correlation'' between strandings and seismic surveys (IWC, 2007: 236).

There are no data on reactions of right whales to seismic surveys, but results from the closely-related bowhead whale show that their responsiveness can be quite variable depending on their activity (migrating versus feeding). Bowhead whales migrating west across the Alaskan Beaufort Sea in autumn, in particular, are unusually responsive, with substantial avoidance occurring out to distances of 20 to 30 km (12.4 to 18.6 mi) from a medium-sized airgun source at received sound levels of approximately 120 to 130 dB re: 1 μPa (Miller *et al.,* 1999; Richardson *et al.,* 1999; see Appendix B(5) of NSF's EA). However, more recent research on bowhead whales (Miller *et al.,* 2005; Harris *et al.,* 2007) corroborates earlier evidence that, during the summer feeding season, bowheads are not as sensitive to seismic sources. Nonetheless, subtle but statistically significant changes in surfacing—respiration—dive cycles were evident upon statistical analysis (Richardson *et al.,* 1986). In the summer, bowheads typically begin to show avoidance reactions at received levels of about 152 to 178 dB re: 1 μPa (Richardson *et al.,* 1986, 1995; Ljungblad *et al.,* 1988; Miller *et al.,* 2005).

Reactions of migrating and feeding (but not wintering) gray whales to seismic surveys have been studied. Malme *et al.* (1986, 1988) studied the responses of feeding eastern Pacific gray whales to pulses from a single 100-in^3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50 percent of feeding gray whales stopped feeding at an average received pressure level of 173 dB re: 1 μPa on an (approximate) rms basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB re: 1 μPa. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast (Malme *et al.,* 1984; Malme and Miles, 1985), and western Pacific gray whales feeding off Sakhalin Island, Russia (Wursig *et al.,* 1999; Gailey *et al.,* 2007; Johnson *et al.,* 2007; Yazvenko *et al.,* 2007a,b), along with data on gray whales off British Columbia (Bain and Williams, 2006).

Various species of *Balaenoptera* (blue, sei, fin, and minke whales) have occasionally been seen in areas ensonified by airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006), and calls from blue and fin whales have been localized in areas with airgun operations (*e.g.,* McDonald *et al.,* 1995; Dunn and Hernandez, 2009; Castellote *et al.,* 2010). Sightings by observers on seismic vessels off the United Kingdom from 1997 to 2000 suggest that, during times of good sightability, sighting rates for mysticetes (mainly fin and sei whales) were similar when large arrays of airguns were shooting vs. silent (Stone, 2003; Stone and Tasker, 2006). However, these whales tended to exhibit localized avoidance, remaining significantly further (on average) from the airgun array during seismic operations compared with non-seismic periods (Stone and Tasker, 2006). Castellote *et al.* (2010) also observed localized avoidance by fin whales during seismic airgun events in the western Mediterranean Sea and adjacent Atlantic waters from 2006–2009. They reported that singing fin whales moved away from an operating airgun array for a time period that extended beyond the duration of the airgun activity.

Ship-based monitoring studies of baleen whales (including blue, fin, sei, minke, and whales) in the northwest Atlantic found that overall, this group had lower sighting rates during seismic versus non-seismic periods (Moulton and Holst, 2010). Baleen whales as a group were also seen significantly farther from the vessel during seismic compared with non-seismic periods, and they were more often seen to be swimming away from the operating seismic vessel (Moulton and Holst, 2010). Blue and minke whales were initially sighted significantly farther from the vessel during seismic operations compared to non-seismic periods; the same trend was observed for fin whales (Moulton and Holst, 2010). Minke whales were most often observed to be swimming away from the vessel when seismic operations were underway (Moulton and Holst, 2010).

Data on short-term reactions by cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. It is not known whether impulsive sounds affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales have continued to migrate annually along the west coast of North America with substantial increases in the population over recent years, despite intermittent seismic exploration (and much ship traffic) in that area for decades (Appendix A in Malme *et al.,* 1984; Richardson *et al.,* 1995; Allen and Angliss, 2011). The western Pacific gray whale population did not seem affected by a seismic survey in its feeding ground during a previous year (Johnson *et al.,* 2007). Similarly, bowhead whales have continued to travel to the eastern Beaufort Sea each summer, and their numbers have increased notably, despite seismic exploration in their summer and autumn range for many years (Richardson *et al.,* 1987; Allen and Agliss, 2011).

Toothed Whales—Little systematic information is available about reactions of toothed whales to noise pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized earlier and (in more detail) in Appendix B of NSF's EA have been reported for toothed whales. However, there are recent systematic studies on sperm whales (e.g., Gordon *et al.,* 2006; Madsen *et al.,* 2006; Winsor and Mate, 2006; Jochens *et al.,* 2008; Miller *et al.,* 2009). There is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (*e.g.,* Stone, 2003; Smultea *et al.,* 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.,* 2006; Stone and Tasker, 2006; Potter *et al.,* 2007; Hauser *et al.,* 2008; Holst and Smultea, 2008; Weir, 2008; Barkaszi *et al.,* 2009; Richardson *et al.,* 2009; Moulton and Holst, 2010).

Seismic operators and protected species observers (PSOs) on seismic vessels regularly see dolphins and other small toothed whales near operating airgun arrays, but in general there is a tendency for most delphinids to show some avoidance of operating seismic vessels (*e.g.,* Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.,* 2006; Stone and Tasker, 2006; Weir, 2008; Richardson *et al.,* 2009; Barkaszi *et al.,* 2009; Moulton and

Holst, 2010). Some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing (*e.g.,* Moulton and Miller, 2005). Nonetheless, small toothed whales more often tend to head away, or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (*e.g.,* Stone and Tasker, 2006; Weir, 2008; Barry *et al.,* 2010; Moulton and Holst, 2010). In most cases, the avoidance radii for delphinids appear to be small, on the order of one km or less, and some individuals show no apparent avoidance. The beluga whale (*Delphinapterus leucas*) is a species that (at least at times) shows long-distance avoidance of seismic vessels. Summer aerial surveys conducted in the southeastern Beaufort Sea reported that sighting rates of beluga whales were significantly lower at distances of 10 to 20 km (6.2 to 12.4 mi) from an operating airgun array compared to distances of 20 to 30 km (12.4 to 18.6 mi). Further, PSOs on seismic boats in that area have rarely reported sighting beluga whales (Miller *et al.,* 2005; Harris *et al.,* 2007).

Captive bottlenose dolphins (*Tursiops truncatus*) and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.,* 2000, 2002, 2005). However, the animals tolerated high received levels of sound before exhibiting aversive behaviors.

Results for porpoises depend on species. The limited available data suggest that harbor porpoises (*Phocoena phocoena*) show stronger avoidance of seismic operations than do Dall's porpoises (Stone, 2003; MacLean and Koski, 2005; Bain and Williams, 2006; Stone and Tasker, 2006). Dall's porpoises seem relatively tolerant of airgun operations (MacLean and Koski, 2005; Bain and Williams, 2006), although they too have been observed to avoid large arrays of operating airguns (Calambokidis and Osmek, 1998; Bain and Williams, 2006). This apparent difference in responsiveness of these two porpoise species is consistent with their relative responsiveness to boat traffic and some other acoustic sources (Richardson *et al.,* 1995; Southall *et al.,* 2007).

Most studies of sperm whales exposed to airgun sounds indicate that the sperm whale shows considerable tolerance of airgun pulses (*e.g.,* Stone, 2003; Moulton *et al.,* 2005, 2006a; Stone and Tasker, 2006; Weir, 2008). In most cases the whales do not show strong avoidance, and they continue to call (see Appendix B of NSF's EA for review). However, controlled exposure experiments in the Gulf of Mexico indicate that foraging behavior was altered upon exposure to airgun sound (Jochens *et al.,* 2008; Miller *et al.,* 2009; Tyack, 2009).

There are almost no specific data on the behavioral reactions of beaked whales to seismic surveys. However, some northern bottlenose whales (*Hyperoodon ampullatus*) remained in the general area and continued to produce high-frequency clicks when exposed to sound pulses from distant seismic surveys (Gosselin and Lawson, 2004; Laurinolli and Cochrane, 2005; Simard *et al.,* 2005). Most beaked whales tend to avoid approaching vessels of other types (*e.g.,* Wursig *et al.,* 1998). They may also dive for an extended period when approached by a vessel (*e.g.,* Kasuya, 1986), although it is uncertain how much longer such dives may be as compared to dives by undisturbed beaked whales, which also are often quite long (Baird *et al.,* 2006; Tyack *et al.,* 2006). Based on a single observation, Aguilar-Soto *et al.* (2006) suggested that foraging efficiency of Cuvier's beaked whales (*Ziphius cavirostris*) may be reduced by close approach of vessels. In any event, it is likely that most beaked whales would also show strong avoidance of an approaching seismic vessel, although this has not been documented explicitly. In fact, Moulton and Holst (2010) reported 15 sightings of beaked whales during seismic studies in the Northwest Atlantic; seven of those sightings were made at times when at least one airgun was operating. There was little evidence to indicate that beaked whale behavior was affected by airgun operations; sighting rates and distances were similar during seismic and non-seismic periods (Moulton and Holst, 2010).

There are increasing indications that some beaked whales tend to strand when naval exercises involving mid-frequency sonar operation are ongoing nearby (*e.g.,* Simmonds and Lopez-Jurado, 1991; Frantzis, 1998; NOAA and USN, 2001; Jepson *et al.,* 2003; Hildebrand, 2005; Barlow and Gisiner, 2006; see also the Stranding and Mortality section in this notice). These strandings are apparently a disturbance response, although auditory or other injuries or other physiological effects may also be involved. Whether beaked whales would ever react similarly to seismic surveys is unknown. Seismic survey sounds are quite different from those of the sonar in operation during the above-cited incidents.

Odontocete reactions to large arrays of airguns are variable and, at least for delphinids and Dall's porpoises, seem to be confined to a smaller radius than has been observed for the more responsive of the mysticetes, belugas, and harbor porpoises (See Appendix B of NSF's EA).

Pinnipeds—Pinnipeds are not likely to show a strong avoidance reaction to the airgun array. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds, and only slight (if any) changes in behavior, see Appendix B(5) of NSF's EA. In the Beaufort Sea, some ringed seals avoided an area of 100 m (328 ft) to (at most) a few hundred meters around seismic vessels, but many seals remained within 100 to 200 m (328 to 656 ft) of the trackline as the operating airgun array passed by (*e.g.,* Harris *et al.,* 2001; Moulton and Lawson, 2002; Miller *et al.,* 2005). Ringed seal sightings averaged somewhat farther away from the seismic vessel when the airguns were operating than when they were not, but the difference was small (Moulton and Lawson, 2002). Similarly, in Puget Sound, sighting distances for harbor seals and California sea lions tended to be larger when airguns were operating (Calambokidis and Osmek, 1998). Previous telemetry work suggests that avoidance and other behavioral reactions may be stronger than evident to date from visual studies (Thompson *et al.,* 1998).

Hearing Impairment and Other Physical Effects

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran *et al.,* 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is called the initial threshold shift. If the threshold shift eventually returns to zero (*i.e.,* the threshold returns to the pre-exposure value), it is called temporary threshold shift (TTS) (Southall *et al.,* 2007).

Researchers have studied TTS in certain captive odontocetes and pinnipeds exposed to strong sounds (reviewed in Southall *et al.,* 2007). However, there has been no specific documentation of TTS let alone permanent hearing damage, *i.e.,* permanent threshold shift (PTS), in free-

ranging marine mammals exposed to sequences of airgun pulses during realistic field conditions.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. At least in terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007). Table 1 (introduced earlier in this document) presents the distances from the *Langseth's* airguns at which the received energy level (per pulse, flat-weighted) would be expected to be greater than or equal to 180 dB re: 1 μPa.

To avoid the potential for injury, NMFS (1995, 2000) concluded that cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re: 1 μPa. NMFS believes that to avoid the potential for permanent physiological damage (Level A harassment), cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re: 1 μPa. The 180-dB level is a shutdown criterion applicable to cetaceans, as specified by NMFS (2000); these levels were used to establish the EZs. NMFS also assumes that cetaceans exposed to SPLs exceeding 160 dB re: 1 μPa may experience Level B harassment.

Researchers have derived TTS information for odontocetes from studies on the bottlenose dolphin and beluga. For the one harbor porpoise tested, the received level of airgun sound that elicited onset of TTS was lower (Lucke *et al.,* 2009). If these results from a single animal are representative, it is inappropriate to assume that onset of TTS occurs at similar received levels in all odontocetes (*cf.* Southall *et al.,* 2007). Some cetaceans apparently can incur TTS at considerably lower sound exposures than are necessary to elicit TTS in the beluga or bottlenose dolphin.

For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS. The frequencies to which baleen whales are most sensitive are assumed to be lower than those to which odontocetes are most sensitive, and natural background noise levels at those low frequencies tend to be higher. As a result, auditory thresholds of baleen whales within their frequency band of best hearing are believed to be higher (less sensitive) than are those of odontocetes at their best frequencies (Clark and Ellison, 2004). From this, it is suspected that received levels causing TTS onset may also be higher in baleen whales (Southall *et al.,* 2007). For this proposed study, L–DEO expects no cases of TTS given the low abundance of baleen whales in the planned study area at the time of the survey, and the strong likelihood that baleen whales would avoid the approaching airguns (or vessel) before being exposed to levels high enough for TTS to occur.

In pinnipeds, TTS thresholds associated with exposure to brief pulses (single or multiple) of underwater sound have not been measured. Initial evidence from more prolonged (nonpulse) exposures suggested that some pinnipeds (harbor seals in particular) incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.,* 1999, 2005; Ketten *et al.,* 2001). The indirectly estimated TTS threshold for pulsed sounds would be approximately 181 to 186 dB re: 1 μPa (Southall *et al.,* 2007), or a series of pulses for which the highest SEL values are a few dB lower. Corresponding values for California sea lions and northern elephant seals are likely to be higher (Kastak *et al.,* 2005).

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur at least mild TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS (e.g., Richardson *et al.,* 1995, p. 372*ff;* Gedamke *et al.,* 2008). Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several dBs above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise times–see Appendix B(6) of NSF's EA. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as airgun pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis, and probably greater than six dB (Southall *et al.,* 2007).

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur. Baleen whales generally avoid the immediate area around operating seismic vessels, as do some other marine mammals.

Stranding and Mortality

When a live or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is termed a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding under the MMPA is that ''(A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance'' (16 U.S.C. 1421h).

Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.,* 1976; Eaton, 1979; Odell *et al.,* 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might predispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that

combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.,* 2003; Fair and Becker, 2000; Foley *et al.,* 2001; Moberg, 2000; Relyea, 2005a; 2005b, Romero, 2004; Sih *et al.,* 2004).

Strandings Associated with Military Active Sonar—Several sources have published lists of mass stranding events of cetaceans in an attempt to identify relationships between those stranding events and military active sonar (Hildebrand, 2004; IWC, 2005; Taylor *et al.,* 2004). For example, based on a review of stranding records between 1960 and 1995, the International Whaling Commission (2005) identified ten mass stranding events and concluded that, out of eight stranding events reported from the mid-1980s to the summer of 2003, seven had been coincident with the use of mid-frequency active sonar and most involved beaked whales.

Over the past 12 years, there have been five stranding events coincident with military MF active sonar use in which exposure to sonar is believed by NMFS and the Navy to have been a contributing factor to strandings: Greece (1996); the Bahamas (2000); Madeira (2000); Canary Islands (2002); and Spain (2006). NMFS refers the reader to Cox *et al.* (2006) for a summary of common features shared by the strandings events in Greece (1996), Bahamas (2000), Madeira (2000), and Canary Islands (2002); and Fernandez *et al.,* (2005) for an additional summary of the Canary Islands 2002 stranding event.

Potential for Stranding from Seismic Surveys—The association of strandings of beaked whales with naval exercises involving mid-frequency active sonar and, in one case, an L–DEO seismic survey (Malakoff, 2002; Cox *et al.,* 2006), has raised the possibility that beaked whales exposed to strong ''pulsed'' sounds may be especially susceptible to injury and/or behavioral reactions that can lead to stranding (*e.g.,* Hildebrand, 2005; Southall *et al.,* 2007). Appendix B (6) of NSF's EA provides additional details.

Specific sound-related processes that lead to strandings and mortality are not well documented, but may include:

(1) Swimming in avoidance of a sound into shallow water;

(2) A change in behavior (such as a change in diving behavior) that might contribute to tissue damage, gas bubble formation, hypoxia, cardiac arrhythmia, hypertensive hemorrhage or other forms of trauma;

(3) A physiological change such as a vestibular response leading to a behavioral change or stress-induced hemorrhagic diathesis, leading in turn to tissue damage; and

(4) Tissue damage directly from sound exposure, such as through acoustically-mediated bubble formation and growth or acoustic resonance of tissues. Some of these mechanisms are unlikely to apply in the case of impulse sounds. However, there are increasing indications that gas-bubble disease (analogous to the bends), induced in supersaturated tissue by a behavioral response to acoustic exposure, could be a pathologic mechanism for the strandings and mortality of some deep-diving cetaceans exposed to sonar. However, the evidence for this remains circumstantial and associated with exposure to naval mid-frequency sonar, not seismic surveys (Cox *et al.,* 2006; Southall *et al.,* 2007).

Seismic pulses and mid-frequency sonar signals are quite different, and some mechanisms by which sonar sounds have been hypothesized to affect beaked whales are unlikely to apply to airgun pulses. Sounds produced by airgun arrays are broadband impulses with most of the energy below one kHz. Typical military mid-frequency sonar emits non-impulse sounds at frequencies of two to 10 kHz, generally with a relatively narrow bandwidth at any one time. A further difference between seismic surveys and naval exercises is that naval exercises can involve sound sources on more than one vessel. Thus, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar signals can, in special circumstances, lead (at least indirectly) to physical damage and mortality (*e.g.,* Balcomb and Claridge, 2001; NOAA and USN, 2001; Jepson *et al.,* 2003; Fernández *et al.,* 2004, 2005; Hildebrand 2005; Cox *et al.,* 2006) suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity ''pulsed'' sound.

There is no conclusive evidence of cetacean strandings or deaths at sea as a result of exposure to seismic surveys, but a few cases of strandings in the general area where a seismic survey was ongoing have led to speculation concerning a possible link between seismic surveys and strandings. Suggestions that there was a link between seismic surveys and strandings of humpback whales in Brazil (Engel *et al.,* 2004) were not well founded (IAGC, 2004; IWC, 2007). In September 2002, there was a stranding of two Cuvier's beaked whales in the Gulf of California, Mexico, when the L–DEO vessel R/V *Maurice Ewing* was operating a 20-airgun (8,490 in^3) array in the general area. The link between the stranding and the seismic surveys was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, the Gulf of California incident plus the beaked whale strandings near naval exercises involving use of mid-frequency sonar suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales until more is known about effects of seismic surveys on those species (Hildebrand, 2005). No injuries of beaked whales are anticipated during the proposed study because of:

(1) The likelihood that any beaked whales nearby would avoid the approaching vessel before being exposed to high sound levels; and

(2) Differences between the sound sources operated by L–DEO and those involved in the naval exercises associated with strandings.

Non-Auditory Physiological Effects

Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. However, resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.,* 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might perhaps result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses.

In general, very little is known about the potential for seismic survey sounds (or other types of strong underwater sounds) to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007), or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of seismic vessels, including

most baleen whales and some odontocetes, are especially unlikely to incur non-auditory physical effects.

Potential Effects of Other Acoustic Devices

MBES

L–DEO will operate the Kongsberg EM 122 MBES from the source vessel during the planned study. Sounds from the MBES are very short pulses, occurring for two to 15 ms once every five to 20 s, depending on water depth. Most of the energy in the sound pulses emitted by this MBES is at frequencies near 12 kHz, and the maximum source level is 242 dB re: 1 μPa. The beam is narrow (1 to 2°) in fore-aft extent and wide (150°) in the cross-track extent. Each ping consists of eight (in water greater than 1,000 m deep) or four (less than 1,000 m deep) successive fan-shaped transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the segments. Also, marine mammals that encounter the Kongsberg EM 122 are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam and will receive only limited amounts of pulse energy because of the short pulses. Animals close to the vessel (where the beam is narrowest) are especially unlikely to be ensonified for more than one 2- to 15-ms pulse (or two pulses if in the overlap area). Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when an MBES emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order to receive the multiple pulses that might result in sufficient exposure to cause TTS.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans: (1) Generally have longer pulse duration than the Kongsberg EM 122; and (2) are often directed close to horizontally versus more downward for the MBES. The area of possible influence of the MBES is much smaller—a narrow band below the source vessel. Also, the duration of exposure for a given marine mammal can be much longer for naval sonar. During L–DEO's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by. Possible effects of an MBES on marine mammals are outlined in this section.

Masking—Marine mammal communications will not be masked appreciably by the MBES signals given the low duty cycle of the echosounder and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the MBES signals (12 kHz) do not overlap with the predominant frequencies in the calls, which would avoid any significant masking.

Behavioral Responses—Behavioral reactions of free-ranging marine mammals to sonars, echosounders, and other sound sources appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.,* 1985), increased vocalizations and no dispersal by pilot whales (*Globicephala melas*) (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. During exposure to a 21 to 25 kHz ''whale-finding'' sonar with a source level of 215 dB re: 1 μPa, gray whales reacted by orienting slightly away from the source and being deflected from their course by approximately 200 m (Frankel, 2005). When a 38-kHz echosounder and a 150-kHz acoustic Doppler current profiler were transmitting during studies in the eastern Tropical Pacific Ocean, baleen whales showed no significant responses, while spotted and spinner dolphins were detected slightly more often and beaked whales less often during visual surveys (Gerrodette and Pettis, 2005).

Captive bottlenose dolphins and a beluga whale exhibited changes in behavior when exposed to 1-s tonal signals at frequencies similar to those that will be emitted by the MBES used by L–DEO, and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.,* 2000; Finneran *et al.,* 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in duration as compared with those from an MBES.

Hearing Impairment and Other Physical Effects—Given recent stranding events that have been associated with the operation of naval sonar, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (see above). However, the MBES proposed for use by L–DEO is quite different than sonar used for navy operations. Pulse duration of the MBES is very short relative to the naval sonar. Also, at any given location, an individual marine mammal would be in the beam of the MBES for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth; navy sonar often uses near-horizontally-directed sound. Those factors would all reduce the sound energy received from the MBES rather drastically relative to that from naval sonar.

Based upon the best available science, NMFS believes that the brief exposure of marine mammals to one pulse, or small numbers of signals, from the MBES is not likely to result in the harassment of marine mammals.

SBP

L–DEO will also operate an SBP from the source vessel during the proposed survey. Sounds from the SBP are very short pulses, occurring for one to four ms once every second. Most of the energy in the sound pulses emitted by the SBP is at 3.5 kHz, and the beam is directed downward. The sub-bottom profiler on the *Langseth* has a maximum source level of 222 dB re: 1 μPa.

Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small—even for an SBP more powerful than that on the *Langseth*—if the animal was in the area, it would have to pass the transducer at close range and in order to be subjected to sound levels that could cause TTS.

Masking—Marine mammal communications will not be masked appreciably by the SBP signals given the directionality of the signal and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of most baleen whales, the SBP signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses—Marine mammal behavioral reactions to other pulsed sound sources are discussed above, and responses to the SBP are likely to be similar to those for other pulsed sources if received at the same levels. However, the pulsed signals from the SBP are considerably weaker than those from the MBES. Therefore, behavioral responses are not expected unless marine mammals are very close to the source.

Hearing Impairment and Other Physical Effects—It is unlikely that the SBP produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source. The SBP is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the

mammals would be close enough for there to be any possibility of effects from the less intense sounds from the SBP. Based upon the best available science, NMFS believes that the brief exposure of marine mammals to signals from the SBP is not likely to result in the harassment of marine mammals.

Potential Effects of Vessel Movement and Collisions

Vessel movement in the vicinity of marine mammals has the potential to result in either a behavioral response or a direct physical interaction. Both scenarios are discussed below this section.

Behavioral Responses to Vessel Movement

There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. In those cases where there is a busy shipping lane or where there is a large amount of vessel traffic, marine mammals may experience acoustic masking (Hildebrand, 2005) if they are present in the area (e.g., killer whales in Puget Sound; Foote *et al.,* 2004; Holt *et al.,* 2008). In cases where vessels actively approach marine mammals (e.g., whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.,* 2002; Constantine *et al.,* 2003), reduced blow interval (Ritcher *et al.,* 2003), disruption of normal social behaviors (Lusseau, 2003; 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.,* 2003; 2004). A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.* (1995). For each of the marine mammal taxonomy groups, Richardson *et al.* (1995) provides the following assessment regarding reactions to vessel traffic:

Toothed whales: ''In summary, toothed whales sometimes show no avoidance reaction to vessels, or even approach them. However, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. This may cause temporary displacement, but we know of no clear evidence that toothed whales have abandoned significant parts of their range because of vessel traffic.''

Baleen whales: ''When baleen whales receive low-level sounds from distant or stationary vessels, the sounds often seem to be ignored. Some whales approach the sources of these sounds. When vessels approach whales slowly and non-aggressively, whales often exhibit slow and inconspicuous avoidance maneuvers. In response to strong or rapidly changing vessel noise, baleen whales often interrupt their normal behavior and swim rapidly away. Avoidance is especially strong when a boat heads directly toward the whale.''

Behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors, such as species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, etc.), prior experience of the animal and physical status of the animal. For example, studies have shown that beluga whales' reactions varied when exposed to vessel noise and traffic. In some cases, naive beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km (49.7 mi) away, and showed changes in surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.,* 1990). In other cases, beluga whales were more tolerant of vessels, but responded differentially to certain vessels and operating characteristics by reducing their calling rates (especially older animals) in the St. Lawrence River where vessel traffic is common (Blane and Jaakson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were ''modified by their previous experience and current activity: habituation often occurred rapidly, attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli.'' Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales changed from frequent positive interest (e.g., approaching vessels) to generally uninterested reactions; fin whales changed from mostly negative (e.g., avoidance) to uninterested reactions; right whales apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks dramatically changed from mixed responses that were often negative to reactions that were often strongly positive. Watkins (1986) summarized that ''whales near shore, even in regions with low vessel traffic, generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed than previously. In particular locations with intense shipping and repeated approaches by boats (such as the whale-watching areas of Stellwagen Bank), more and more whales had positive reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways.''

Although the radiated sound from the *Langseth* will be audible to marine mammals over a large distance, it is unlikely that animals will respond behaviorally (in a manner that NMFS would consider MMPA harassment) to low-level distant shipping noise as the animals in the area are likely to be habituated to such noises (Nowacek *et al.,* 2004). In light of these facts, NMFS does not expect the *Langseth's* movements to result in Level B harassment.

Vessel Strike

Ship strikes of cetaceans can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the surface could be cut by a vessel's propeller. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.,* the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slow moving whales. Smaller marine mammals (*e.g.,* bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Jensen and Silber, 2003; Vanderlaan and Taggart, 2007). In assessing records in which vessel speed was known, Laist *et*

al. (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 14.9 mph (24.1 km/hr; 13 kts).

L–DEO's proposed operation of one vessel for the proposed survey is relatively small in scale compared to the number of commercial ships transiting at higher speeds in the same areas on an annual basis. The probability of vessel and marine mammal interactions occurring during proposed survey is unlikely due to the *Langseth's* slow operational speed, which is typically 4.6 kts (8.5 km/h; 5.3 mph). Outside of operations, the *Langseth's* cruising speed would be approximately 11.5 mph (18.5 km/h; 10 kts) which is generally below the speed at which studies have noted reported increases of marine mammal injury or death (Laist *et al.,* 2001).

As a final point, the *Langseth* has a number of other advantages for avoiding ship strikes as compared to most commercial merchant vessels, including the following: the *Langseth's* bridge offers good visibility to visually monitor for marine mammal presence; PSVOs posted during operations scan the ocean for marine mammals and must report visual alerts of marine mammal presence to crew; and the PSVOs receive extensive training that covers the fundamentals of visual observing for marine mammals and information about marine mammals and their identification at sea.

The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'' sections) which, as noted are designed to effect the least practicable adverse impact on affected marine mammal species and stocks.

Anticipated Effects on Marine Mammal Habitat

The proposed seismic survey is not anticipated to have any permanent impact on habitats used by the marine mammals in the proposed survey area, including the food sources they use (*i.e.,* fish and invertebrates). Additionally, no physical damage to any habitat is anticipated as a result of conducting the proposed seismic survey. While it is anticipated that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and reversible and was considered in further detail earlier in this document, as behavioral modification.

The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this notice. The next section discusses the potential impacts of anthropogenic sound sources on common marine mammal prey in the proposed survey area (*i.e.,* fish and invertebrates).

Anticipated Effects on Fish

One reason for the adoption of airguns as the standard energy source for marine seismic surveys is that, unlike explosives, they have not been associated with large-scale fish kills. However, existing information on the impacts of seismic surveys on marine fish populations is limited (see Appendix D of NSF's EA). There are three types of potential effects of exposure to seismic surveys: (1) Pathological, (2) physiological, and (3) behavioral. Pathological effects involve lethal and temporary or permanent sub-lethal injury. Physiological effects involve temporary and permanent primary and secondary stress responses, such as changes in levels of enzymes and proteins. Behavioral effects refer to temporary and (if they occur) permanent changes in exhibited behavior (*e.g.,* startle and avoidance behavior). The three categories are interrelated in complex ways. For example, it is possible that certain physiological and behavioral changes could potentially lead to an ultimate pathological effect on individuals (*i.e.,* mortality).

The specific received sound levels at which permanent adverse effects to fish potentially could occur are little studied and largely unknown. Furthermore, the available information on the impacts of seismic surveys on marine fish is from studies of individuals or portions of a population; there have been no studies at the population scale. The studies of individual fish have often been on caged fish that were exposed to airgun pulses in situations not representative of an actual seismic survey. Thus, available information provides limited insight on possible real-world effects at the ocean or population scale.

Hastings and Popper (2005), Popper (2009), and Popper and Hastings (2009a,b) provided recent critical reviews of the known effects of sound on fish. The following sections provide a general synopsis of the available information on the effects of exposure to seismic and other anthropogenic sound as relevant to fish. The information comprises results from scientific studies of varying degrees of rigor plus some anecdotal information. Some of the data sources may have serious shortcomings in methods, analysis, interpretation, and reproducibility that must be considered when interpreting their results (see Hastings and Popper, 2005). Potential adverse effects of the program's sound sources on marine fish are then noted.

Pathological Effects—The potential for pathological damage to hearing structures in fish depends on the energy level of the received sound and the physiology and hearing capability of the species in question (see Appendix D of NSF's EA). For a given sound to result in hearing loss, the sound must exceed, by some substantial amount, the hearing threshold of the fish for that sound (Popper, 2005). The consequences of temporary or permanent hearing loss in individual fish on a fish population are unknown; however, they likely depend on the number of individuals affected and whether critical behaviors involving sound (*e.g.,* predator avoidance, prey capture, orientation and navigation, reproduction, *etc.*) are adversely affected.

Little is known about the mechanisms and characteristics of damage to fish that may be inflicted by exposure to seismic survey sounds. Few data have been presented in the peer-reviewed scientific literature. As far as we know, there are only two papers with proper experimental methods, controls, and careful pathological investigation implicating sounds produced by actual seismic survey airguns in causing adverse anatomical effects. One such study indicated anatomical damage, and the second indicated TTS in fish hearing. The anatomical case is McCauley *et al.* (2003), who found that exposure to airgun sound caused observable anatomical damage to the auditory maculae of pink snapper (*Pagrus auratus*). This damage in the ears had not been repaired in fish sacrificed and examined almost two months after exposure. On the other hand, Popper *et al.* (2005) documented only TTS (as determined by auditory brainstem response) in two of three fish species from the Mackenzie River Delta. This study found that broad whitefish (*Coregonus nasus*) exposed to five airgun shots were not significantly different from those of controls. During both studies, the repetitive exposure to sound was greater than would have occurred during a typical seismic survey. However, the substantial low-frequency energy produced by the airguns (less than 400 Hz in the study by McCauley *et al.* [2003] and less than approximately 200 Hz in Popper *et al.* [2005]) likely did not propagate to the

fish because the water in the study areas was very shallow (approximately 9 m in the former case and less than two m in the latter). Water depth sets a lower limit on the lowest sound frequency that will propagate (the ''cutoff frequency'') at about one-quarter wavelength (Urick, 1983; Rogers and Cox, 1988).

Wardle *et al.* (2001) suggested that in water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) The received peak pressure, and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. According to Buchanan *et al.* (2004), for the types of seismic airguns and arrays involved with the proposed program, the pathological (mortality) zone for fish would be expected to be within a few meters of the seismic source. Numerous other studies provide examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence, 1973; Holliday *et al.,* 1987; La Bella *et al.,* 1996; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b, 2003; Bjarti, 2002; Thomsen, 2002; Hassel *et al.,* 2003; Popper *et al.,* 2005; Boeger *et al.,* 2006).

Some studies have reported, some equivocally, that mortality of fish, fish eggs, or larvae can occur close to seismic sources (Kostyuchenko, 1973; Dalen and Knutsen, 1986; Booman *et al.,* 1996; Dalen *et al.,* 1996). Some of the reports claimed seismic effects from treatments quite different from actual seismic survey sounds or even reasonable surrogates. However, Payne *et al.* (2009) reported no statistical differences in mortality/morbidity between control and exposed groups of capelin eggs or monkfish larvae. Saetre and Ona (1996) applied a 'worst-case scenario' mathematical model to investigate the effects of seismic energy on fish eggs and larvae. They concluded that mortality rates caused by exposure to seismic surveys are so low, as compared to natural mortality rates, that the impact of seismic surveying on recruitment to a fish stock must be regarded as insignificant.

Physiological Effects—Physiological effects refer to cellular and/or biochemical responses of fish to acoustic stress. Such stress potentially could affect fish populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses of fish after exposure to seismic survey sound appear to be temporary in all studies done to date (Sverdrup *et al.,* 1994; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b). The periods necessary for the biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus (see Appendix D of NSF's EA).

Behavioral Effects—Behavioral effects include changes in the distribution, migration, mating, and catchability of fish populations. Studies investigating the possible effects of sound (including seismic survey sound) on fish behavior have been conducted on both uncaged and caged individuals (e.g., Chapman and Hawkins, 1969; Pearson *et al.,* 1992; Santulli *et al.,* 1999; Wardle *et al.,* 2001; Hassel *et al.,* 2003). Typically, in these studies fish exhibited a sharp startle response at the onset of a sound followed by habituation and a return to normal behavior after the sound ceased.

In general, any adverse effects on fish behavior or fisheries attributable to seismic testing may depend on the species in question and the nature of the fishery (season, duration, fishing method). They may also depend on the age of the fish, its motivational state, its size, and numerous other factors that are difficult, if not impossible, to quantify at this point, given such limited data on effects of airguns on fish, particularly under realistic at-sea conditions.

Anticipated Effects on Fisheries

It is possible that the Langseth's streamer may become entangled with various types of fishing gear. L–DEO will employ avoidance tactics as necessary to prevent conflict. It is not expected that L–DEO's operations will have a significant impact on fisheries in the western Pacific Ocean. Nonetheless, L–DEO will minimize the potential to have a negative impact on the fisheries by avoiding areas where fishing is actively underway.

There is general concern about potential adverse effects of seismic operations on fisheries, namely a potential reduction in the ''catchability'' of fish involved in fisheries. Although reduced catch rates have been observed in some marine fisheries during seismic testing, in a number of cases the findings are confounded by other sources of disturbance (Dalen and Raknes, 1985; Dalen and Knutsen, 1986; Lokkeborg, 1991; Skalski et al., 1992; Engas *et al.,* 1996). In other airgun experiments, there was no change in catch per unit effort of fish when airgun pulses were emitted, particularly in the immediate vicinity of the seismic survey (Pickett *et al.,* 1994; La Bella *et al.,* 1996). For some species, reductions in catch may have resulted from a change in behavior of the fish, e.g., a change in vertical or horizontal distribution, as reported in Slotte *et al.* (2004).

Anticipated Effects on Invertebrates

The existing body of information on the impacts of seismic survey sound on marine invertebrates is very limited. However, there is some unpublished and very limited evidence of the potential for adverse effects on invertebrates, thereby justifying further discussion and analysis of this issue. The three types of potential effects of exposure to seismic surveys on marine invertebrates are pathological, physiological, and behavioral. Based on the physical structure of their sensory organs, marine invertebrates appear to be specialized to respond to particle displacement components of an impinging sound field and not to the pressure component (Popper *et al.,* 2001; see also Appendix E of NSF's EA).

The only information available on the impacts of seismic surveys on marine invertebrates involves studies of individuals; there have been no studies at the population scale. Thus, available information provides limited insight on possible real-world effects at the regional or ocean scale. The most important aspect of potential impacts concerns how exposure to seismic survey sound ultimately affects invertebrate populations and their viability, including availability to fisheries.

Literature reviews of the effects of seismic and other underwater sound on invertebrates were provided by Moriyasu *et al.* (2004) and Payne *et al.* (2008). The following sections provide a synopsis of available information on the effects of exposure to seismic survey sound on species of decapod crustaceans and cephalopods, the two taxonomic groups of invertebrates on which most such studies have been conducted. The available information is from studies with variable degrees of scientific soundness and from anecdotal information. A more detailed review of the literature on the effects of seismic survey sound on invertebrates is provided in Appendix E of L–DEO's EA.

Pathological Effects—In water, lethal and sub-lethal injury to organisms exposed to seismic survey sound appears to depend on at least two features of the sound source: (1) The received peak pressure; and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. For the type of airgun array planned for the proposed program, the pathological (mortality) zone for

crustaceans and cephalopods is expected to be within a few meters of the seismic source, at most; however, very few specific data are available on levels of seismic signals that might damage these animals. This premise is based on the peak pressure and rise/decay time characteristics of seismic airgun arrays currently in use around the world.

Some studies have suggested that seismic survey sound has a limited pathological impact on early developmental stages of crustaceans (Pearson *et al.,* 1994; Christian *et al.,* 2003; DFO, 2004). However, the impacts appear to be either temporary or insignificant compared to what occurs under natural conditions. Controlled field experiments on adult crustaceans (Christian *et al.,* 2003, 2004; DFO, 2004) and adult cephalopods (McCauley *et al.,* 2000a,b) exposed to seismic survey sound have not resulted in any significant pathological impacts on the animals. It has been suggested that exposure to commercial seismic survey activities has injured giant squid (Guerra *et al.,* 2004), but the article provides little evidence to support this claim.

Andre *et al.* (2011) exposed four cephalopod species (*Loligo vulgaris, Sepia officinalis, Octopus vulgaris,* and *Ilex coindetii*) to two hours of continuous sound from 50 to 400 Hz at 157 ± 5 dB re: 1 μPa. They reported lesions to the sensory hair cells of the statocysts of the exposed animals that increased in severity with time, suggesting that cephalopods are particularly sensitive to low-frequency sound.

The received SPL was reported as 157 ± 5 dB re: 1 μPa, with peak levels at 175 dB re 1 μPa. As in the McCauley *et al.* (2003) paper on sensory hair cell damage in pink snapper as a result of exposure to seismic sound, the cephalopods were subjected to higher sound levels than they would be under natural conditions, and they were unable to swim away from the sound source.

Physiological Effects—Physiological effects refer mainly to biochemical responses by marine invertebrates to acoustic stress. Such stress potentially could affect invertebrate populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses (*i.e.,* changes in haemolymph levels of enzymes, proteins, *etc.*) of crustaceans have been noted several days or months after exposure to seismic survey sounds (Payne *et al.,* 2007). The periods necessary for these biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—There is increasing interest in assessing the possible direct and indirect effects of seismic and other sounds on invertebrate behavior, particularly in relation to the consequences for fisheries. Changes in behavior could potentially affect such aspects as reproductive success, distribution, susceptibility to predation, and catchability by fisheries. Studies investigating the possible behavioral effects of exposure to seismic survey sound on crustaceans and cephalopods have been conducted on both uncaged and caged animals. In some cases, invertebrates exhibited startle responses (*e.g.,* squid in McCauley *et al.,* 2000a,b). In other cases, no behavioral impacts were noted (e.g., crustaceans in Christian *et al.,* 2003, 2004; DFO, 2004). There have been anecdotal reports of reduced catch rates of shrimp shortly after exposure to seismic surveys; however, other studies have not observed any significant changes in shrimp catch rate (Andriguetto-Filho *et al.,* 2005). Similarly, Parry and Gason (2006) did not find any evidence that lobster catch rates were affected by seismic surveys. Any adverse effects on crustacean and cephalopod behavior or fisheries attributable to seismic survey sound depend on the species in question and the nature of the fishery (season, duration, fishing method).

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

L–DEO has based the mitigation measures described herein, to be implemented for the proposed seismic survey, on the following:

(1) Protocols used during previous L–DEO seismic research cruises as approved by NMFS;

(2) Previous IHA applications and IHAs approved and authorized by NMFS; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman, (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, L–DEO and/or its designees would implement the following mitigation measures for marine mammals:

(1) Proposed EZs;
(2) Power-down procedures;
(3) Shutdown procedures; and
(4) Ramp-up procedures.

Proposed Exclusion Zones—L–DEO uses safety radii to designate EZs and to estimate take for marine mammals. Table 1 (presented earlier in this document) shows the distances at which three sound levels (160–, 180–, and 190–dB) are expected to be received from the 36-airgun array and a single airgun. The 180-dB and 190-dB level shut-down criteria are applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000); and L–DEO used these levels to establish the EZs.

If the protected species visual observer (PSVO) detects marine mammal(s) within or about to enter the appropriate EZ, the *Langseth* crew will immediately power down the airgun array, or perform a shut down if necessary (see Shut-down Procedures).

Power-down Procedures—A power-down involves decreasing the number of airguns in use such that the radius of the 180-dB (or 190-dB) zone is decreased to the extent that marine mammals are no longer in or about to enter the EZ. A power down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power-down for mitigation, L–DEO will operate one airgun (40 in ^{3}). The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shutdown occurs when the *Langseth* suspends all airgun activity.

If the PSVO detects a marine mammal outside the EZ, which is likely to enter the EZ, L–DEO will power-down the airguns before the animal enters the EZ. Likewise, if a mammal is already within the EZ, when first detected L–DEO will power-down the airguns immediately. During a power down of the airgun array, L–DEO will operate the 40-in ^{3} airgun. If a marine mammal is detected within or near the smaller EZ around that single airgun (Table 1), L–DEO will shut down the airgun (see next section).

Following a power-down, L–DEO will not resume airgun activity until the marine mammal has cleared the safety zone. L–DEO will consider the animal to have cleared the EZ if:

- A PSVO has visually observed the animal leave the EZ, or
- A PSVO has not sighted the animal within the EZ for 15 min for species with shorter dive durations (*i.e.*, small

odontocetes or pinnipeds), or 30 min for species with longer dive durations (*i.e.,* mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales); or

• The vessel has moved outside the EZ (e.g., if a marine mammal is sighted close to the vessel and the ship speed is 8.5 km km/h (5.3 mph), it would take the vessel approximately eight minutes to leave the vicinity of the marine mammal).

During airgun operations following a power-down or shutdown whose duration has exceeded the time limits specified previously, L–DEO will ramp up the airgun array gradually (see Shutdown and Ramp-up Procedures).

Shut-down Procedures—L–DEO will shut down the operating airgun(s) if a marine mammal is seen within or approaching the EZ for the single airgun. L–DEO will implement a shut-down:

(1) If an animal enters the EZ of the single airgun after L–DEO has initiated a power down; or

(2) If an animal is initially seen within the EZ of the single airgun when more than one airgun (typically the full airgun array) is operating.

L–DEO will not resume airgun activity until the marine mammal has cleared the EZ, or until the PSVO is confident that the animal has left the vicinity of the vessel. Criteria for judging that the animal has cleared the EZ will be as described in the preceding section.

Considering the conservation status for north Pacific right whales, L–DEO will shut down the airgun(s) immediately in the unlikely event that this species is observed, regardless of the distance from the *Langseth.* L–DEO will only begin a ramp-up if the right whale has not been seen for 30 min.

Ramp-up Procedures—L–DEO will follow a ramp-up procedure when the airgun subarrays begin operating after a specified period without airgun operations or when a power down has exceeded that period. L–DEO proposes that, for the present cruise, this period will be approximately eight minutes. This period is based on the 180-dB radius (940 m; 3,083 ft) for the 36-airgun array towed at a depth of 9 m (29.5 ft) in relation to the minimum planned speed of the Langseth while shooting (8.5 km/h; 5.3 mph; 4.6 kts). L–DEO has used similar periods (8–10 min) during previous L–DEO surveys. L–DEO will not resume operations if a marine mammal has not cleared the EZ as described earlier.

Ramp-up will begin with the smallest airgun in the array (40-in ^{3}). Airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding six dB per five-minute period over a total duration of approximately 30 min. During ramp-up, the PSVOs will monitor the EZ, and if he/she sights a marine mammal, L–DEO will implement a power down or shut down as though the full airgun array were operational.

If the complete EZ is not visible to the PSVO for at least 30 min prior to the start of operations in either daylight or nighttime, L–DEO will not commence the ramp-up unless at least one airgun (40-in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that L–DEO will not ramp up the airgun array from a complete shut-down at night or in thick fog, because the outer part of the EZ for that array will not be visible during those conditions. If one airgun has operated during a power-down period, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. L–DEO will not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable EZs during the day or close to the vessel at night.

NMFS has carefully evaluated the applicant's proposed mitigation measures and has considered a range of other measures in the context of ensuring that NMFS prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. NMFS' evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Based on NMFS' evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has preliminarily determined that the mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA 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.

Proposed Monitoring

L–DEO proposes to sponsor marine mammal monitoring during the present project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the IHA. L–DEO's proposed Monitoring Plan is described below this section. L–DEO understands that this monitoring plan will be subject to review by NMFS, and that refinements may be required. The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. L–DEO is prepared to discuss coordination of its monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

Vessel-based Visual Monitoring

L–DEO will position PSVOs aboard the seismic source vessel to watch for marine mammals near the vessel during daytime airgun operations and during any start-ups at night. PSVOs will also watch for marine mammals near the seismic vessel for at least 30 min prior to the start of airgun operations after an extended shut down (*i.e.,* greater than approximately eight minutes for this proposed cruise). When feasible, the PSVOs will conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on PSVO observations, the *Langseth* will power down or shut down the airguns when marine mammals are observed within or about to enter a designated EZ. The EZ is a region in which a possibility exists of adverse effects on animal hearing or other physical effects.

During seismic operations on the Shatsky Rise, at least four protected species observers (PSO) (*i.e.,* either a PSVO and/or a protected species acoustic observer (PSAO)) will be based aboard the *Langseth.* L–DEO will appoint the PSOs with NMFS' concurrence. The PSOs will conduct observations during ongoing daytime operations and nighttime ramp-ups of the airgun array. During the majority of seismic operations, two PSVOs will be on duty from the observation tower to monitor marine mammals near the seismic vessel. Use of two simultaneous PSVOs will increase the effectiveness of detecting animals near the source vessel. However, during mealtimes and bathroom breaks, it is sometimes difficult to have two PSVOs on effort, but at least one PSVO will be on watch during bathroom breaks and mealtimes. PSVOs will be on duty in shifts of no longer than four hours in duration.

Two PSVOs will also be on visual watch during all nighttime ramp-ups of the seismic airguns. A third PSAO will monitor the PAM equipment 24 hours a day to detect vocalizing marine mammals present in the action area. In summary, a typical daytime cruise would have scheduled two PSVOs on duty from the observation tower, and a third PSAO on PAM. Other crew will also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey, the crew will be given additional instruction on how to do so.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level will be approximately 21.5 m (70.5 ft) above sea level, and the observer will have a good view around the entire vessel. During daytime, the PSVOs will scan the area around the vessel systematically with reticle binoculars (*e.g.,* 7x50 Fujinon), Big-eye binoculars (25x150), and with the naked eye. During darkness, night vision devices (NVDs) will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Those are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly; that is done primarily with the reticles in the binoculars.

When the PSVOs observe marine mammals within or about to enter the designated EZ, the Langseth will immediately power-down or shut-down the airguns if necessary. The PSVO(s) will continue to maintain watch to determine when the animal(s) are outside the EZ by visual confirmation. Airgun operations will not resume until the animal is confirmed to have left the EZ, or if not observed after 15 min for species with shorter dive durations (small odontocetes and pinnipeds) or 30 min for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

Passive Acoustic Monitoring

Passive Acoustic Monitoring (PAM) will complement the visual monitoring program, when practicable. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustical monitoring can be used in conjunction with visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring will serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. The PSAO will monitor the system in real time so that he/she can advise the PSVO when cetaceans are detected. When bearings (primary and mirror-image) to calling cetacean(s) are determined, the bearings will be relayed to the visual observer to help him/her sight the calling animal(s).

The PAM system consists of hardware (*i.e.,* hydrophones) and software. The ''wet end'' of the system consists of a towed hydrophone array that is connected to the vessel by a tow cable. The tow cable is 250 m (820.2 ft) long, and the hydrophones are fitted in the last 10 m (32.8 ft) of cable. A depth gauge is attached to the free end of the cable, and the cable is typically towed at depths less than 20 m (65.6 ft). L–DEO will deploy the array from a winch located on the back deck. A deck cable will connect the tow cable to the electronics unit in the main computer lab where the acoustic station, signal conditioning, and processing system will be located. The acoustic signals received by the hydrophones are amplified, digitized, and then processed by the Pamguard software. The system can detect marine mammal vocalizations at frequencies up to 250 kHz.

One PSAO, an expert bioacoustician with primary responsibility for PAM will be aboard the *Langseth* in addition to the four PSVOs. The PSAO will monitor the towed hydrophones 24 h per day during airgun operations and during most periods when the *Langseth* is underway while the airguns are not operating. However, PAM may not be possible if damage occurs to both the primary and back-up hydrophone arrays during operations. The primary PAM streamer on the *Langseth* is a digital hydrophone streamer. Should the digital streamer fail, back-up systems should include an analog spare streamer and a hull-mounted hydrophone.

One PSAO will monitor the acoustic detection system by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by cetaceans. The PSAO monitoring the acoustical data will be on shift for one to six hours at a time. The other PSVOs are expected to rotate through the PAM position, although the expert PSAO will be on PAM duty more frequently.

When a vocalization is detected while visual observations are in progress, the PSAO on duty will contact the visual PSVO immediately, to alert him/her to the presence of cetaceans (if they have not already been seen), and to allow a power down or shut down to be initiated, if required. The information regarding the call will be entered into a database. Data entry will include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (*e.g.,* unidentified dolphin, sperm whale), types and nature of sounds heard (*e.g.,* clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. The acoustic detection can also be recorded for further analysis.

PSVO Data and Documentation

PSVOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power down or shut down of the airguns when a marine mammal is within or near the EZ.

When a sighting is made, the following information about the sighting will be recorded:

1. Species, group size, age/size/sex categories (if determinable), behavior

when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (*e.g.,* none, avoidance, approach, paralleling, *etc.*), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

All observations and power downs or shut downs will be recorded in a standardized format. Data will be entered into an electronic database. The accuracy of the data entry will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (airgun power down or shut down).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS.

3. Data on the occurrence, distribution, and activities of marine mammals and turtles in the area where the seismic study is conducted.

4. Information to compare the distance and distribution of marine mammals and turtles relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Proposed Reporting

L–DEO will submit a report to NMFS and NSF within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals and turtles near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the number and nature of exposures that could result in ''takes'' of marine mammals by harassment or in other ways.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), L–DEO shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Michael.Payne@noaa.gov* and *ITP.Cody@noaa.gov* and the NMFS Pacific Islands Regional Stranding Coordinator at 808–944–2269 (*David.Schofield@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of 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 all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with L–DEO to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. L–DEO may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that L–DEO discovers an injured or dead marine mammal, and the lead PSVO 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), L–DEO will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Michael.Payne@noaa.gov* and *ITP.Cody@noaa.gov* and the NMFS Pacific Islands Regional Stranding Coordinator at 808–944–2269 (*David.Schofield@noaa.gov*). The report must include the same information identified in the paragraph above this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with L–DEO to determine whether modifications in the activities are appropriate.

In the event that L–DEO discovers an injured or dead marine mammal, and the lead PSVO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), L–DEO will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Michael.Payne@noaa.gov* and *ITP.Cody@noaa.gov* and the NMFS Pacific Islands Regional Stranding Coordinator at 808–944–2269 (*David.Schofield@noaa.gov*), within 24 hours of the discovery. L–DEO will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

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].

Only take by Level B harassment is proposed to be authorized as a result of the marine geophysical survey in the northwestern Pacific Ocean. Acoustic stimuli (*i.e.,* increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause marine mammals in the survey area to be exposed to sounds at or greater than 160 dB or cause temporary, short-term changes in behavior. There is no evidence that the planned activities could result in injury, serious injury or mortality within the specified geographic area for which L–DEO seeks the IHA. The required mitigation and monitoring measures will minimize any potential risk for injury, serious injury, or mortality.

The following sections describe L–DEO's methods to estimate take by incidental harassment and present the applicant's estimates of the numbers of marine mammals that could be affected during the proposed seismic program.

The estimates are based on a consideration of the number of marine mammals that could be disturbed appreciably by operations with the 36-airgun array to be used during approximately 1,216 km (755.6 mi) of survey lines on the Shatsky Rise in the northwestern Pacific Ocean.

L–DEO assumes that, during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the MBES and SBP would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sources, marine mammals are expected to exhibit no more than short-term and inconsequential responses to the MBES and SBP given their characteristics (*e.g.,* narrow downward-directed beam) and other considerations described previously. Such reactions are not considered to constitute ''taking'' (NMFS, 2001). Therefore, L–DEO provides no additional allowance for animals that could be affected by sound sources other than airguns.

Density data on 18 marine mammal species in the Shatsky Rise area are available from two sources using conventional line transect methods: Japanese sighting surveys conducted since the early 1980s, and fisheries observers in the high-seas driftnet fisheries during 1987–1990 (see Table 3 in L–DEO's application).

For the 16 other marine mammal species that could be encountered in the proposed survey area, data from the western North Pacific right whale are not available (see Table 3 in L–DEO's application). L–DEO is not aware of any density estimates for three of those species—Hubb's (*Mesoplodon carlhubbsi*), Stejneger's (*Mesoplodon stejnegeri*), and gingko-toothed beaked whales (*Mesoplodon ginkgodens*). For the remaining 13 species out of the 16, (see Table 3 in L–DEO's application), density estimates are available from other areas of the Pacific: 11 species from the offshore stratum of the 2002 Hawaiian Islands survey (Barlow, 2006) and two species from surveys of the California Current ecosystem off the U.S. west coast between 1991 and 2005 (Barlow and Forney, 2007). Those estimates are based on standard line-transect protocols developed by NMFS' Southwest Fisheries Science Center (SWFSC).

Densities for 14 species are available from Japanese sighting surveys in the Shatsky Rise survey area. Miyashita (1993a) provided estimates for six dolphin species in this area that have been taken in the Japanese drive fisheries. The densities used here are Miyashita's (1993a) estimates for the 'Eastern offshore' survey area (30–42° N, 145°–180° E). Kato and Miyashita (1998) provided estimates for sperm whale densities from Japanese sightings data during 1982 to 1996 in the western North Pacific (20–50° N, 130°–180° E), and Hakamada *et al.* (2004) provided density estimates for sei whales during August through September in the JARPN II sub-areas 8 and 9 (35–50° N, 150–170° E excluding waters in the Exclusive Economic Zone of Russia) during 2002 and 2003. L–DEO used density estimates during 1994 through 2007 for minke whales at 35–40° N, 157–170° E from Hakamada *et al.* (2009), density estimates during 1998 through 2002 for Bryde's whales at 31–43° N, 145–165° E from Kitakado *et al.* (2008), and density estimates during 1994–2007 for blue, fin, humpback, and North Pacific right whales at 31–51° N, 140–170° E from Matsuoka *et al.* (2009).

For four species (northern fur seal, Dall's porpoise, Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), northern right-whale dolphin (*Lissodelphis borealis*)), estimates of densities in the Shatsky Rise area are available from sightings data collected by observers in the high-seas driftnet fisheries during 1987 through 1990 (Buckland *et al.,* 1993). Those data were analyzed for 5° × 5° blocks, and the densities used here are from blocks for which available data overlap the proposed survey area. In general, those data represent the average annual density in the northern half of the Shatsky Rise survey area (35–40° N).

The densities mentioned above had been corrected by the original authors for detectability bias and, with the exception of Kitakado *et al.* (2008) and Hakamada *et al.* (2009), for availability bias. Detectability bias is associated with diminishing sightability with increasing lateral distance from the track line [f(0)]. Availability bias refers to the fact that there is less than a 100 percent probability of sighting an animal that is present along the survey track line, and it is measured by g(0).

There is some uncertainty about the accuracy of the density data from the Japanese Whale Research Program under Special Permit (JARPN/JARPN II). For example, The available densities in Miyashita (1993a) and Buckland *et al.* (1993) are from the 1980s; although these densities represent the best available information for the Shatsky Rise area at present, they will be biased if abundance or distributions of those species have changed since the data were collected. Therefore, there is uncertainty with respect to the expected marine mammal densities during this time. However, the approach used here is based on the best available data.

The estimated numbers of individuals potentially exposed are based on the 160-dB re: 1 μPa criterion for all cetaceans (see Table 3 in this notice). It is assumed that marine mammals exposed to airgun sounds that strong might change their behavior sufficiently to be considered ''taken by harassment.''

L–DEO's estimates of exposures to various sound levels assume that the proposed surveys will be completed; in fact, the ensonified areas calculated using the planned number of line-kilometers have been increased by 25 percent to accommodate turns, lines that may need to be repeated, equipment testing, etc. As is typical during ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-kilometers of seismic operations that can be undertaken. Furthermore, any marine mammal sightings within or near the designated exclusion zone will result in the shutdown of seismic operations as a mitigation measure. Thus, the following estimates of the numbers of marine mammals potentially exposed to 160-dB re 1 μPa sounds are precautionary, and probably overestimate the actual numbers of marine mammals that might be involved. These estimates assume that there will be no weather, equipment, or mitigation delays, which is highly unlikely.

L–DEO estimated the number of different individuals that may be exposed to airgun sounds with received levels greater than or equal to 160 dB re: 1 μPa on one or more occasions by considering the total marine area that would be within the 160-dB radius around the operating airgun array on at least one occasion and the expected density of marine mammals. The number of possible exposures (including repeated exposures of the same individuals) can be estimated by considering the total marine area that would be within the 160-dB radius around the operating airguns, including areas of overlap. In the proposed survey, the majority of seismic lines are widely spaced in the survey area, so few individual mammals would be exposed numerous times during the survey. The area including overlap is only 1.01 times the area excluding overlap, so a marine mammal that stayed in the survey area during the entire survey could be exposed only once. However, it is unlikely that a particular animal would stay in the area during the entire survey.

The number of different individuals potentially exposed to received levels

greater than or equal to 160 re: 1 μPa was calculated by multiplying:

(1) The expected species density, times;

(2) The anticipated area to be ensonified to that level during airgun operations excluding overlap, which is approximately 10,971 square kilometers (km^2) (4,235.9 square miles (mi^2)).

The area expected to be ensonified was determined by entering the planned survey lines into a MapInfo GIS, using the GIS to identify the relevant areas by ''drawing'' the applicable 160-dB buffer (see Table 1 in this document) around each seismic line, and then calculating the total area within the buffers. Areas of overlap were included only once when estimating the number of individuals exposed. Applying this approach, approximately 9,229 km^2 (3,563 mi^2) (11,536 km^2; 4,454 mi^2 including the 25 percent contingency) would be within the 160-dB isopleth on one or more occasions during the survey. Because this approach does not allow for turnover in the mammal populations in the study area during the course of the survey, the actual number of individuals exposed could be underestimated. However, the approach assumes that no cetaceans will move away from or toward the trackline as the *Langseth* approaches in response to increasing sound levels prior to the time the levels reach 160 dB, which will result in overestimates for those species known to avoid seismic vessels.

The total estimate of the number of individual cetaceans that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re: 1 μPa during the survey is 7,354 (see Table 3). That total includes 74 baleen whales, 39 of which are endangered: 5 humpback whales or 0.53% of the regional population, 21 sei whales (0.21%), 9 fin whales (0.05%), and 4 blue whales (0.13%). In addition, 12 sperm whales (also listed as endangered under the ESA) or 0.04% of the regional population could be exposed during the survey, and 108 beaked whales including Cuvier's, Longman's, Baird's, and Blainville's beaked whales. Most (96 percent) of the cetaceans potentially exposed are delphinids; short-beaked common, striped, pantropical spotted, and Pacific white-sided dolphins are estimated to be the most common species in the area, with estimates of 3,569 (0.12% of the regional population), 1,374 (0.24%), 812 (0.19%), and 420 (0.04%) exposed to greater than or equal to 160 dB re: 1 μPa, respectively.

TABLE 3—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO DIFFERENT SOUND LEVELS DURING L–DEO'S SEISMIC SURVEY IN THE NORTHWESTERN PACIFIC OCEAN DURING MARCH THROUGH APRIL, 2012

Species	Estimated number of individuals exposed to sound levels ≥ 160 dB re: 1 μPa[1]	Requested or adjusted take authorization	Approximate percent of regional population[3]
North Pacific right whale	0	[2] 2	0.23
Humpback whale	5	5	0.53
Minke whale	29	29	0.12
Bryde's whale	6	6	0.03
Sei whale	21	21	0.21
Fin whale	9	9	0.05
Blue whale	4	4	0.13
Sperm whale	12	12	0.04
Pygmy sperm whale	37	37	N.A.
Dwarf sperm whale	90	90	<0.01
Cuvier's beaked whale	78	78	0.39
Baird's beaked whale	10	10	N.A.
Longman's beaked whale	5	[3] 18	N.A.
Blainville's beaked whale	15	15	0.06
Rough-toothed dolphin	36	36	0.02
Bottlenose dolphin	277	277	0.16
Pantropical spotted dolphin	812	812	0.19
Spinner dolphin	10	[2] 32	<0.01
Striped dolphin	1374	1374	0.24
Fraser's dolphin	53	[2] 286	0.02
Short-beaked common dolphin	3569	3569	0.12
Pacific white-sided dolphin	420	420	0.04
Northern right whale dolphin	5	5	<0.01
Risso's dolphin	125	125	0.01
Melon-headed whale	15	[2] 89	0.03
False killer whale	24	24	0.15
Killer whale	2	73	0.02
Short-finned pilot whale	58	[2] 65	0.11
Dall's porpoise	253	253	0.02
Northern fur seal	21	21	<0.01

[1] Estimates are based on densities in Table 3 and an ensonified area (including 25% contingency 11,536 km^2).
[2] Requested Take Authorization increased to mean group size from density sources in Table 3 of L–DEO's application.
[3] Regional population size estimates are from Table 3 of L–DEO's application; NA means not available.

Encouraging and Coordinating Research

L–DEO and NSF will coordinate the planned marine mammal monitoring program associated with the seismic survey in the northwestern Pacific Ocean with other parties that may have interest in the area and/or be conducting marine mammal studies in the same region during the seismic survey.

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:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited); and

(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, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

For reasons stated previously in this document, the specified activities associated with the marine seismic survey are not likely to cause PTS, or other non-auditory injury, serious injury, or death because:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The potential for temporary or permanent hearing impairment is relatively low and would likely be avoided through the incorporation of the required monitoring and mitigation measures (described previously in this document);

(3) The fact that cetaceans would have to be closer than 940 m (3,084 ft) in deep water when the 36-airgun array is in use at 9 m (29.5 ft) tow depth, and 40 m (131.2 ft) in deep water when the single airgun is in use at 9 m from the vessel to be exposed to levels of sound believed to have even a minimal chance of causing PTS; and

(4) The likelihood that marine mammal detection ability by trained PSVOs is high at close proximity to the vessel.

No injuries, serious injuries, or mortalities are anticipated to occur as a result of the L–DEO's planned marine seismic survey, and none are proposed to be authorized by NMFS. Only short-term behavioral disturbance is anticipated to occur due to the brief and sporadic duration of the survey activities. Table 3 of this document outlines the number of requested Level B harassment takes that are anticipated as a result of these activities. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see ''Potential Effects on Marine Mammals'' section in this notice), the activity is not expected to impact rates of recruitment or survival for any affected species or stock. Additionally, the seismic survey will not adversely impact marine mammal habitat.

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 seismic operations are anticipated to occur on consecutive days, the entire duration of the survey is not expected to last more than approximately 23 days (*i.e.,* 7 days of seismic operations, 16 days of transit) and the *Langseth* will be continuously moving along planned tracklines that are geographically spread-out. Therefore, the seismic survey will be increasing sound levels in the marine environment in a relatively small area surrounding the vessel, which is constantly travelling over far distances, for a relatively short time period (*i.e.,* one week) in the study area.

Of the 34 marine mammal species under NMFS' jurisdiction that are known to occur or likely to occur in the study area, six of these species are listed as endangered under the ESA: the blue, fin, humpback, north Pacific right, sei, and sperm whales. These species are also categorized as depleted under the MMPA. L–DEO has requested authorized take for the six listed species. To protect these animals (and other marine mammals in the study area), L–DEO must cease or reduce airgun 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 activity is not expected to impact rates of recruitment or survival.

As mentioned previously, NMFS estimates that 30 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 small (each, less than one percent) relative to the regional population size. NMFS provided the population estimates for the marine mammal species that may be taken by Level B harassment in Table 2 of this document.

NMFS' practice has been to apply the 160 dB re: 1 μPa received level threshold for underwater impulse sound levels to determine whether take by Level B harassment occurs. Southall *et al.* (2007) provides 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]).

NMFS has preliminarily determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting a marine seismic survey on the Shatsky Rise in the northwestern Pacific Ocean, March to April, 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 3 for the requested authorized take numbers of cetaceans.

While behavioral modifications, including temporarily vacating the area during the operation of the airgun(s), may be made by these species to avoid the resultant acoustic disturbance, the availability of alternate areas within these areas and the short and sporadic duration of the research activities, have led NMFS to preliminary determine that this action will have a negligible impact on the species in 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 preliminarily finds that L–DEO's planned research activities will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the marine seismic survey will have a negligible impact on the affected species or stocks of marine mammals; and that impacts to affected species or stocks of marine mammals have been mitigated to the lowest level practicable.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the MMPA 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 (Shatsky Rise, northwestern Pacific Ocean) that implicate MMPA section 101(a)(5)(D).

Endangered Species Act

Of the species of marine mammals that may occur in the proposed survey area, several are listed as endangered under the ESA, including the blue, fin, humpback, north Pacific right, sei, and sperm whales. L–DEO did not request take of endangered western north Pacific gray whales because of the low likelihood of encountering these species during the cruise.

Under section 7 of the ESA, NSF has initiated formal consultation with the NMFS', Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on this proposed seismic survey. NMFS' Office of Protected Resources, Permits and Conservation Division, had initiated formal consultation under section 7 of the ESA with NMFS' Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, to obtain a Biological Opinion (BiOp) evaluating the effects of issuing an IHA for threatened and endangered marine mammals and, if appropriate, authorizing incidental take. NMFS will conclude formal section 7 consultation prior to making a determination on whether or not to issue the IHA. If the IHA is issued, NSF and L–DEO, in addition to the mitigation and monitoring requirements included in the IHA, will be required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS' BiOp issued to both NSF and NMFS' Office of Protected Resources.

National Environmental Policy Act (NEPA)

To meet NMFS' National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requirements for the issuance of an IHA to L–DEO, NMFS will prepare an Environmental Assessment (EA) titled ''Issuance of an Incidental Harassment Authorization to the Lamont-Doherty Earth Observatory to Take Marine Mammals by Harassment Incidental to a Marine Geophysical Survey in the Northwest Pacific Ocean, March through April, 2012.'' This EA will incorporate the NSF's Environmental Analysis Pursuant To Executive Order 12114 (NSF, 2010) and an associated report (Report) prepared by LGL Limited Environmental Research Associates (LGL) for NSF, titled, ''Environmental Assessment of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* in the Northwest Pacific Ocean, March—April, 2012,'' by reference pursuant to 40 CFR 1502.21 and NOAA Administrative Order (NAO) 216–6 § 5.09(d). Prior to making a final decision on the IHA application, NMFS will make a decision of whether or not to issue a Finding of No Significant Impact (FONSI).

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to L–DEO's proposed marine seismic survey in the northwest Pacific Ocean, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the IHA would not exceed one year from the date of its issuance.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed project and NMFS's preliminary determination of issuing an IHA (see **ADDRESSES**). Concurrent with the publication of this notice in the **Federal Register,** NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 25, 2012.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–2076 Filed 1–30–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces; Amended Meeting Notice

AGENCY: Department of Defense, Office of the Assistant Secretary of Defense.

ACTION: Amended meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces a change to the previously announced meeting of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces. The meeting notice published in the January 24, 2012 edition of the **Federal Register** (77 FR 3454) is amended to reflect changes in the meeting times and agenda. All other text in the previously announced meeting remains the same.

DATES: Tuesday, February 21, 2012–Thursday, February 23, 2012, from 8 a.m. to 5:30 p.m. EST, each day.

FOR FURTHER INFORMATION CONTACT: Mail Delivery service through Recovering Warrior Task Force, Hoffman Building II, 200 Stovall St., Alexandria, VA 22332–0021 ''Mark as Time Sensitive for February Meeting.'' Emails to *rwtf@wso.whs.mil.* Denise F. Dailey, Designated Federal Officer; Telephone (703) 325–6640. Fax (703) 325–6710.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is for the Task Force Members to convene and gather data from panels and briefers on the Task Force's topics of inquiry.

Agenda: (Please refer to *http://dtf.defense.gov/rwtf/meetings.html* for the most up-to-date meeting information).

Day 1: Tuesday, February 21

8–9:30 a.m. Site Visit Review & Administration
9:30–9:45 a.m. Break
9:45–10:45 a.m. Continue Site Visit Review and Administration
10:45–11:45 a.m. WWCTP
11:45 a.m.–12:45 p.m. Lunch
12:45–2:15 p.m. Army WTC Briefing
2:15–2:30 p.m. Break
2:30–4 p.m. Air Force Programs for Wounded, Ill, and Injured Briefing
4–5 p.m. FRCP Update
5–5:30 p.m. Close

Day 2: Wednesday, February 22

8–8:30 a.m. Public Forum
8:30–9:30 a.m. TRICARE Management Activity Telephone Survey of Ill or Injured Service Members Post-Operational Deployment, Dr. Richard R. Bannick
9:30–9:45 a.m. Break
9:45–10:45 a.m. OSD Office of Military Community and Family Policy (MCFP)
10:45–11:45 a.m. SOCOM Care Coalition Update
11:45 a.m.–12:45 p.m. Lunch
12:45–2:15 p.m. Navy Safe Harbor Update

2:15–2:30 p.m. Break
2:30–3:30 p.m. VCE and EACE Updates
3:30–3:45 p.m. Break
3:45–4:45 p.m. OSD (HA) on Case Management Policy
4:45–5 p.m. Break
5–5:30 p.m. Close

Day 3: Thursday, February 23

8–8:30 a.m. Administration
8:30–9:45 a.m. DCoE PH & TBI Update
9:45–10 a.m. Break
10 a.m.–12 p.m. Panel on Evidence-Based Treatment Modalities for PTSD Program
12–1 p.m. Lunch
1–2:15 p.m. Interagency Program Office
2:15–2:30 p.m. Break
2:30–4 p.m. Marine Corps WWR Update
4–4:15 p.m. Break
4:15–5:15 p.m. Marine Corps WWR Staff Training
5:15–5:30 p.m. Wrap Up

Dated: January 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–2035 Filed 1–30–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 279. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 279 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

DATES: *Effective Date:* February 1, 2012.

FOR FURTHER INFORMATION CONTACT: Mrs. Sonia Malik, (571) 372–1276.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 278. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows: The changes in Civilian Bulletin 279 are updated rates for Alaska.

Dated: January 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA						
[OTHER]						
01/01 - 12/31	110		105		215	2/1/2012
ADAK						
01/01 - 12/31	120		79		199	7/1/2003
ANCHORAGE [INCL NAV RES]						
05/16 - 09/30	181		104		285	2/1/2012
10/01 - 05/15	99		96		195	2/1/2012
BARROW						
01/01 - 12/31	159		95		254	10/1/2002
BETHEL						
01/01 - 12/31	157		99		256	7/1/2011
BETTLES						
01/01 - 12/31	135		62		197	10/1/2004
CLEAR AB						
01/01 - 12/31	90		82		172	10/1/2006
COLDFOOT						
01/01 - 12/31	165		70		235	10/1/2006
COPPER CENTER						
09/16 - 05/14	99		95		194	2/1/2012
05/15 - 09/15	149		99		248	2/1/2012
CORDOVA						
01/01 - 12/31	95		109		204	2/1/2012
CRAIG						
10/01 - 04/30	99		78		177	11/1/2011
05/01 - 09/30	129		81		210	11/1/2011
DELTA JUNCTION						
01/01 - 12/31	129		62		191	2/1/2012
DENALI NATIONAL PARK						
05/01 - 09/30	159		101		260	2/1/2012
10/01 - 04/30	89		94		183	2/1/2012

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
DILLINGHAM						
05/15 - 10/15	185		111		296	1/1/2011
10/16 - 05/14	169		109		278	1/1/2011
DUTCH HARBOR-UNALASKA						
01/01 - 12/31	121		102		223	2/1/2012
EARECKSON AIR STATION						
01/01 - 12/31	90		77		167	6/1/2007
EIELSON AFB						
09/16 - 05/14	75		92		167	2/1/2012
05/15 - 09/15	175		102		277	2/1/2012
ELFIN COVE						
01/01 - 12/31	175		46		221	2/1/2012
ELMENDORF AFB						
05/16 - 09/30	181		104		285	2/1/2012
10/01 - 05/15	99		96		195	2/1/2012
FAIRBANKS						
05/15 - 09/15	175		102		277	2/1/2012
09/16 - 05/14	75		92		167	2/1/2012
FOOTLOOSE						
01/01 - 12/31	175		18		193	10/1/2002
FT. GREELY						
01/01 - 12/31	129		62		191	2/1/2012
FT. RICHARDSON						
05/16 - 09/30	181		104		285	2/1/2012
10/01 - 05/15	99		96		195	2/1/2012
FT. WAINWRIGHT						
05/15 - 09/15	175		102		277	2/1/2012
09/16 - 05/14	75		92		167	2/1/2012
GAMBELL						
01/01 - 12/31	105		39		144	1/1/2011
GLENNALLEN						
05/15 - 09/15	149		99		248	2/1/2012
09/16 - 05/14	99		95		194	2/1/2012
HAINES						

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01	- 12/31	107		101		208	1/1/2011
HEALY							
10/01	- 04/30	89		94		183	2/1/2012
05/01	- 09/30	159		101		260	2/1/2012
HOMER							
05/05	- 09/15	79		108		187	2/1/2012
09/16	- 05/04	167		117		284	2/1/2012
JUNEAU							
05/16	- 09/15	149		104		253	2/1/2012
09/16	- 05/15	135		103		238	2/1/2012
KAKTOVIK							
01/01	- 12/31	165		86		251	10/1/2002
KAVIK CAMP							
01/01	- 12/31	150		69		219	10/1/2002
KENAI-SOLDOTNA							
09/01	- 04/30	79		92		171	2/1/2012
05/01	- 08/31	179		102		281	2/1/2012
KENNICOTT							
01/01	- 12/31	175		111		286	2/1/2012
KETCHIKAN							
10/01	- 04/30	140		97		237	2/1/2012
05/01	- 09/30	99		94		193	2/1/2012
KING SALMON							
05/01	- 10/01	225		91		316	10/1/2002
10/02	- 04/30	125		81		206	10/1/2002
KLAWOCK							
05/01	- 09/30	129		81		210	11/1/2011
10/01	- 04/30	99		78		177	11/1/2011
KODIAK							
05/01	- 09/30	152		93		245	2/1/2012
10/01	- 04/30	100		88		188	2/1/2012
KOTZEBUE							
01/01	- 12/31	219		115		334	2/1/2012
KULIS AGS							

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
05/16 - 09/30	181		104		285	2/1/2012
10/01 - 05/15	99		96		195	2/1/2012
MCCARTHY						
01/01 - 12/31	175		111		286	2/1/2012
MCGRATH						
01/01 - 12/31	165		69		234	10/1/2006
MURPHY DOME						
05/15 - 09/15	175		102		277	2/1/2012
09/16 - 05/14	75		92		167	2/1/2012
NOME						
01/01 - 12/31	140		132		272	2/1/2012
NUIQSUT						
01/01 - 12/31	180		53		233	10/1/2002
PETERSBURG						
01/01 - 12/31	110		105		215	2/1/2012
POINT HOPE						
01/01 - 12/31	200		49		249	1/1/2011
POINT LAY						
01/01 - 12/31	225		51		276	8/1/2011
PORT ALEXANDER						
01/01 - 12/31	150		43		193	8/1/2010
PORT ALSWORTH						
01/01 - 12/31	135		88		223	10/1/2002
PRUDHOE BAY						
01/01 - 12/31	170		68		238	1/1/2011
SELDOVIA						
09/16 - 05/04	167		117		284	2/1/2012
05/05 - 09/15	79		108		187	2/1/2012
SEWARD						
10/16 - 04/30	85		95		180	2/1/2012
05/01 - 10/15	172		103		275	2/1/2012
SITKA-MT. EDGECUMBE						
05/01 - 09/30	119		92		211	2/1/2012
10/01 - 04/30	99		90		189	2/1/2012

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
SKAGWAY						
05/01 - 09/30	99		94		193	2/1/2012
10/01 - 04/30	140		97		237	2/1/2012
SLANA						
05/01 - 09/30	139		55		194	2/1/2005
10/01 - 04/30	99		55		154	2/1/2005
SPRUCE CAPE						
05/01 - 09/30	152		93		245	2/1/2012
10/01 - 04/30	100		88		188	2/1/2012
ST. GEORGE						
01/01 - 12/31	129		55		184	6/1/2004
TALKEETNA						
01/01 - 12/31	100		89		189	10/1/2002
TANANA						
01/01 - 12/31	140		132		272	2/1/2012
TOK						
05/15 - 09/30	95		89		184	2/1/2012
10/01 - 05/14	85		88		173	2/1/2012
UMIAT						
01/01 - 12/31	350		64		414	2/1/2012
VALDEZ						
05/16 - 09/14	159		89		248	2/1/2012
09/15 - 05/15	119		85		204	2/1/2012
WAINWRIGHT						
01/01 - 12/31	175		83		258	1/1/2011
WASILLA						
05/01 - 09/30	153		90		243	2/1/2012
10/01 - 04/30	89		84		173	2/1/2012
WRANGELL						
05/01 - 09/30	99		94		193	2/1/2012
10/01 - 04/30	140		97		237	2/1/2012
YAKUTAT						
01/01 - 12/31	105		94		199	1/1/2011
AMERICAN SAMOA						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
AMERICAN SAMOA						
01/01 - 12/31	139		122		261	12/1/2010
GUAM						
GUAM (INCL ALL MIL INSTAL)						
01/01 - 12/31	159		86		245	7/1/2011
HAWAII						
[OTHER]						
01/01 - 12/31	104		109		213	7/1/2011
CAMP H M SMITH						
01/01 - 12/31	177		116		293	7/1/2011
EASTPAC NAVAL COMP TELE AREA						
01/01 - 12/31	177		116		293	7/1/2011
FT. DERUSSEY						
01/01 - 12/31	177		116		293	7/1/2011
FT. SHAFTER						
01/01 - 12/31	177		116		293	7/1/2011
HICKAM AFB						
01/01 - 12/31	177		116		293	7/1/2011
HONOLULU						
01/01 - 12/31	177		116		293	7/1/2011
ISLE OF HAWAII: HILO						
01/01 - 12/31	104		109		213	7/1/2011
ISLE OF HAWAII: OTHER						
01/01 - 12/31	180		116		296	7/1/2011
ISLE OF KAUAI						
01/01 - 12/31	243		127		370	7/1/2011
ISLE OF MAUI						
01/01 - 12/31	169		120		289	7/1/2011
ISLE OF OAHU						
01/01 - 12/31	177		116		293	7/1/2011
KEKAHA PACIFIC MISSILE RANGE FAC						
01/01 - 12/31	243		127		370	7/1/2011
KILAUEA MILITARY CAMP						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31	104		109		213	7/1/2011
LANAI						
01/01 - 12/31	249		145		394	7/1/2011
LUALUALEI NAVAL MAGAZINE						
01/01 - 12/31	177		116		293	7/1/2011
MCB HAWAII						
01/01 - 12/31	177		116		293	7/1/2011
MOLOKAI						
01/01 - 12/31	131		97		228	7/1/2011
NAS BARBERS POINT						
01/01 - 12/31	177		116		293	7/1/2011
PEARL HARBOR						
01/01 - 12/31	177		116		293	7/1/2011
SCHOFIELD BARRACKS						
01/01 - 12/31	177		116		293	7/1/2011
WHEELER ARMY AIRFIELD						
01/01 - 12/31	177		116		293	7/1/2011
MIDWAY ISLANDS						
MIDWAY ISLANDS						
01/01 - 12/31	125		62		187	7/1/2011
NORTHERN MARIANA ISLANDS						
[OTHER]						
01/01 - 12/31	55		72		127	10/1/2002
ROTA						
01/01 - 12/31	130		93		223	7/1/2011
SAIPAN						
01/01 - 12/31	121		94		215	7/1/2011
TINIAN						
01/01 - 12/31	85		74		159	7/1/2011
PUERTO RICO						
[OTHER]						
01/01 - 12/31	62		57		119	10/1/2002
AGUADILLA						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31	124		113		237	9/1/2010
BAYAMON						
01/01 - 12/31	195		128		323	9/1/2010
CAROLINA						
01/01 - 12/31	195		128		323	9/1/2010
CEIBA						
01/01 - 12/31	210		141		351	11/1/2010
FAJARDO [INCL ROOSEVELT RDS NAVSTAT]						
01/01 - 12/31	210		141		351	11/1/2010
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]						
01/01 - 12/31	195		128		323	9/1/2010
HUMACAO						
01/01 - 12/31	210		141		351	11/1/2010
LUIS MUNOZ MARIN IAP AGS						
01/01 - 12/31	195		128		323	9/1/2010
LUQUILLO						
01/01 - 12/31	210		141		351	11/1/2010
MAYAGUEZ						
01/01 - 12/31	109		112		221	9/1/2010
PONCE						
01/01 - 12/31	149		87		236	9/1/2010
SABANA SECA [INCL ALL MILITARY]						
01/01 - 12/31	195		128		323	9/1/2010
SAN JUAN & NAV RES STA						
01/01 - 12/31	195		128		323	9/1/2010
VIRGIN ISLANDS (U.S.)						
ST. CROIX						
04/15 - 12/14	135		92		227	5/1/2006
12/15 - 04/14	187		97		284	5/1/2006
ST. JOHN						
04/15 - 12/14	163		98		261	5/1/2006
12/15 - 04/14	220		104		324	5/1/2006
ST. THOMAS						
04/15 - 12/14	240		105		345	5/1/2006

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	12/15 - 04/14	299		111		410	5/1/2006
WAKE ISLAND							
WAKE ISLAND							
	01/01 - 12/31	145		42		187	7/1/2011

[FR Doc. 2012–2042 Filed 1–30–12; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2012–0001]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Delete a System of Records.

SUMMARY: The Department of the Army is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on March 1, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905 or by calling (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The Department of the Army proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:
A0055 USEUCOM DoD

SYSTEM NAME:

Europe Command Travel Clearance Records (February 13, 2006, 71 FR 7549).

REASON:

The program was never established and DoD came online with the F011 AF A3 B DoD, Department of Defense (DoD) Foreign Clearance Program Records (January 3, 2012, 77 FR 94). Therefore, the EUCOM system of records notice can be deleted. Records in this system will not be destroyed until the National Archives and Records Administration (NARA) retention has been fulfilled.

[FR Doc. 2012–2017 Filed 1–30–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2012–0002]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The Department of the Navy proposes to add a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on March 1, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Patterson, Department of the Navy, DNS–36, 2000 Navy Pentagon, Washington, DC 20350–2000 or call at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on January 25, 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01520–1

SYSTEM NAME:

Naval War College (NWC) Networking Collaborative.

SYSTEM LOCATION:

Alumni Relations, NWC Press and Events Department, Naval War College, 686 Cushing Ave., Newport, RI 02841–1207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who wish to receive, on a continuing basis, information regarding NWC future events and conferences, items of academic interest and NWC Press materials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; home and work addresses; home and work email addresses; phone numbers (home, office, cell, and fax).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, U.S. Navy Regulations, and 5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To maintain a record of individuals and corporate entities who wish to receive, on a continuing basis, information regarding NWC future events and conferences, items of academic interest and NWC Press materials, including educational and professional materials to keep them abreast of current military and political developments which may impact U.S. strategy and doctrine.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Department of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper file folders and electronic storage media.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Records are maintained electronically in various folders on the NWC shared drive. Access to those folders is restricted to those who have an official need to know. Hard copies are also maintained in secured storage locations within the NWC Press, NWC Alumni Affairs Office, and NWC Events Department. Access to the NWC server is password protected.

RETENTION AND DISPOSAL:

The records will be maintained until the individual requests removal of his or her information from the system, or when the information is superseded, obsolete, or is no longer needed for reference.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Alumni Affairs, Naval War College, 686 Cushing Ave., Newport, RI 02841–1207.

Editor, Naval War College Press, 686 Cushing Ave., Newport, RI 02841–1207.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director of Alumni Affairs, Naval War College, 686 Cushing Ave., Newport, RI 02841–1207.

Written requests should be signed, and contain the full name of the individual(s), and the name and number of this system of records notice so that the request can be sent to the appropriate office.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

RECORDS ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director of Alumni Affairs, Naval War College, 686 Cushing Ave., Newport, RI 02841–1207.

Written requests should be signed, and contain the full name of the individual(s), and the name and number of this system of records notice so that the request can be sent to the appropriate office.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

CONTESTING RECORDS PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual or entity.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–1995 Filed 1–30–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

State Energy Advisory Board (STEAB)

AGENCY: Department of Energy, Energy Efficiency and Renewable Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference call of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, February 16, 2012, 3:30 p.m.–4 p.m. EST. To receive the call-in number and passcode, please contact the Board's Designated Federal Officer (DFO) at the address or phone number listed below.

FOR FURTHER INFORMATION CONTACT: Gil Sperling, STEAB's Designated Federal Officer, Senior Management Technical Advisor, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Ave. SW., Washington, DC 20585. Phone number is (202) 287–1644.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Plan for the Board's upcoming March meeting, discuss additional agenda items for the live meeting, hear an update from the Board's Task Forces, and provide an update to the Board on routine business matters and other topics of interest.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gil Sperling at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site at: *www.steab.org.*

Issued at Washington, DC, on January 24, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–2066 Filed 1–30–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental

Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, February 16, 2012; 5:30 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001; telephone: (270) 441–6825.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda
- Administrative Issues
  - Recommendation 12–01: Progress Report on Groundwater Contamination
  - Recommendation 12–02: Pro Nuclear Future Use for Paducah Gaseous Diffusion Plant Site
- Public Comments
- Adjourn

Breaks Taken As Appropriate

Public Participation: The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Reinhard Knerr as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will each be provided a maximum of five minutes to present their comments. The EM SSAB, Paducah, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.energy.gov/2011Meetings.html.*

Issued at Washington, DC, on January 25, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–2069 Filed 1–30–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CR–002]

Notice of Petition for Waiver of Hussmann From the Department of Energy Commercial Refrigerator, Freezer and Refrigerator-Freezer Test Procedure, and Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes the Hussmann Inc. (Hussmann) petition for waiver and application for interim waiver (hereafter, ''petition'') from the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of commercial refrigerators, freezers and refrigerator-freezers. Today's notice also grants an interim waiver of the commercial refrigerator, freezer and refrigerator-freezer test procedure. Through this notice, DOE also solicits comments with respect to the Hussmann petition.

DATES: DOE will accept comments, data, and information with respect to the Hussmann petition until March 1, 2012.

ADDRESSES: You may submit comments, identified by case number CR–002, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AS_Waiver_Requests@ee.doe.gov.* Include ''Case No. CR–002'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC, 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except on Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) DOE rulemakings and waivers regarding commercial refrigeration equipment. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW. Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *AS_Waiver_Requests@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. E-mail: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances. Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results

which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)). Part C of Title III provides for a similar energy efficiency program titled ''Certain Industrial Equipment,'' which includes commercial refrigerators, freezers and refrigerator-freezers and other types of commercial equipment.[1] (42 U.S.C. 6311–6317)

Section 343(a)(6)(C) of EPCA (42 U.S.C. 6314(a)(6)(C)) directs DOE to develop test procedures to establish the appropriate rating temperatures for products for which standards will be established under section 342(c)(4), *i.e.,* (1) ice-cream freezers; (2) commercial refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit without doors; and (3) commercial refrigerators, freezers, and refrigerator-freezers with a remote condensing unit. Other provisions of section 343(a)(6) provide DOE with additional authority to establish and amend test procedures for commercial refrigeration equipment. On December 8, 2006, DOE published a final rule adopting test procedures for commercial refrigeration equipment, effective January 8, 2007. 71 FR 71340. Title 10 of the Code of Federal Regulations (10 CFR) 431.64 directs manufacturers of commercial refrigerators, freezers and refrigerator-freezers to use Air-Conditioning and Refrigeration Institute (ARI) Standard 1200–2006, ''Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets'' when measuring the energy consumption of those products. DOE established energy conservation standards for certain classes of commercial refrigerators effective January 1, 2012 (74 FR 1092, Jan. 9, 2009). The basic models included in Hussmann's petition are subject to the applicable standards established in that rulemaking and are therefore required to be tested and rated according to the prescribed DOE test procedure, AHRI 1200–2006, as of January 1, 2012.

The regulations set forth in 10 CFR part 431.401 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered products. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(f)(4). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.401(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 430.401(g).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.401(e)(3). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.401(e)(4).

II. Application for Interim Waiver and Petition for Waiver

On December 7, 2011, Hussmann submitted a petition for waiver from the DOE test procedure applicable to commercial refrigerators, freezers and refrigerator-freezers set forth in 10 CFR 431.64. Hussmann requested the waiver for its commercial refrigerators intended to hold and display bulk produce (whole, uncut fresh fruits and/or vegetables). These refrigerators are manufactured in both ''remote'' and ''self-contained'' versions. These products are classified as commercial refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit and without doors (category viii of the applicable test procedure requirement set forth in the table at 10 CFR 431.64(b)(2)) and commercial refrigerators, freezers, and refrigerator-freezers with a remote condensing unit (category ix of the above table). The applicable test procedure for these products is ARI 1200–2006. Manufacturers are directed to use this test procedure pursuant to 10 CFR 431.64.

Hussmann seeks a waiver from the applicable test procedure under 10 CFR 431.64 on the grounds that its commercial refrigerators contain design characteristics that prevent testing according to the current DOE test procedure. Specifically, Hussmann asserts that the refrigerators are not able to operate at the specified integrated average temperature of 38 °F. Consequently, Hussmann requested that DOE grant a waiver from the applicable test procedure, allowing the specified products to be tested at 49 °F, which Hussmann asserts is the lowest temperature at which the specified basic models can operate.

On December 7, 2011, Hussmann also submitted an application for an interim waiver from the test procedures at 10 CFR 431.64 for its commercial refrigerators. An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. (10 CFR 430.401(e)(3)).

DOE has determined that Hussmann's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship Hussmann might experience absent a favorable determination on its application for an interim waiver. DOE has determined, however, that it is likely Hussmann's petition will be granted, and that it is desirable for public policy reasons to grant Hussmann relief pending a determination on the petition. DOE believes that it is likely Hussmann's petition will be granted because the refrigerators specified in Hussmann's petition are not able to operate at the specified integrated average temperature of 38 °F. In addition, DOE has determined that it is desirable that the energy efficiency of this equipment be able to be tested and rated in a manner similar to other commercial refrigeration equipment while DOE considers the petition for waiver. As a result, DOE grants an interim waiver to Hussmann for the specified models of its commercial refrigerator products. Therefore, *it is ordered that:*

The application for interim waiver filed by Hussmann is hereby granted for Hussmann's specified models of commercial refrigerators, subject to the specifications and conditions below.

Hussmann shall be required to test and rate the specified basic models according to the alternate test procedure as set forth in section III, ''Alternate test procedure.''

The interim waiver applies to the following basic model groups:

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

DBRP–03–4–R, DBRP–03–6–R, DBRP–03–8–R, DBRP–03–10–R, DBRP–03–12–R, DBRP–03–14–R, DBRP–03–16–R, DBRP–03–18–R, DBRP–03–20–R, DBRP–03–22–R, DBRP–03–24–R, DBRP–03–26–R, DBRP–03–28–R, DBRP–03–30–R, DBRP–03–32–R, DBRP–03–34–R, DBRP–03–36–R

DSRP–03–5–R, DSRP–03–6–R, DSRP–03–8–R, DSRP–03–10–R, DSRP–03–12–R, DSRP–03–14–R, DSRP–03–16–R, DSRP–03–18–R, DSRP–03–20–R, DSRP–03–22–R, DSRP–03–24–R, DSRP–03–26–R, DSRP–03–28–R, DSRP–03–30–R, DSRP–03–32–R, DSRP–03–34–R, DSRP–03–36–R

DSRPI–03–5–R, DSRPI–03–6–R, DSRPI–03–8–R, DSRPI–03–10–R, DSRPI–03–12–R, DSRPI–03–14–R, DSRPI–03–16–R, DSRPI–03–18–R, DSRPI–03–20–R, DSRPI–03–22–R, DSRPI–03–24–R, DSRPI–03–26–R, DSRPI–03–28–R, DSRPI–03–30–R, DSRPI–03–32–R, DSRPI–03–34–R, DSRPI–03–36–R

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Hussmann may submit a petition for waiver and request for grant of interim waiver, as appropriate, for additional models of commercial refrigerators, freezers and refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

III. Alternate Test Procedure

As a condition for granting this interim waiver to Hussmann, DOE requires Hussmann to test the commercial refrigerators specified in its December 7, 2011 petition and listed above according to the specified test procedure, Air-Conditioning and Refrigeration Institute (ARI) Standard 1200–2006, ''Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets,'' except that instead of testing at the required integrated average temperature of 38 ± 2 °F, Hussmann shall test the specified basic models at an integrated average temperature of 49 ± 2 °F.

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of Hussmann's petition for waiver from the test procedures that apply to commercial refrigerators, freezers and refrigerator-freezers. For the reasons articulated above, DOE also grants Hussmann an interim waiver from those procedures. DOE is publishing Hussmann's petition for waiver in its entirety pursuant to 10 CFR 430.401(b)(1)(iv). The petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that Hussmann is required to follow as a condition of its interim waiver.

DOE solicits comments from interested parties on all aspects of the petition. Pursuant to 10 CFR 431.401(d), any person submitting written comments must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Ron Shebik, Compliance Manager, Hussmann Corporation, 12999 St. Charles Rock Road, Bridgeton, MO 63044. All submissions received must include the case number for this proceeding, CR–002. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes). According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on January 25, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Petition for a Waiver

Request for a test procedure waiver from DOE pursuant to provisions described in 10 CFR 431.401 for the following product on the grounds of ''The prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data''

The design characteristics constituting the grounds for the Petition for the Waiver:

1.1 Commercial Refrigerators are intended to hold and display bulk produce (whole, uncut fresh fruits and/or vegetables). These refrigerators are manufactured in both ''Remote'' and ''Self-Contained'' version.

1.2 These commercial refrigerators are typically designed to hold the produce at an Average Integrated Temperature (AIT) of 41 °F ~ 50 °F range (The amount and method of merchandising the food product varies which results in a wide range of AIT). Whole, uncut fresh fruits/vegetables are not considered to be potentially hazardous foods by the FDA and therefore do not require time/temperature control for safety of the food.

1.3 DOE requires testing Medium Temperature commercial refrigerators at an AIT of 38 °F ± 2 °F.

1.4 In order to reduce the AIT from 41 °F ~ 50 °F range to an AIT of 38 °F ± 2 °F, manufacturers will have to take the following steps:

a) Increase energy consumption to reduce the AIT;

b) Significantly change the design;

c) Use higher energy consuming components such as condensing units or increase the number of energy consuming components such as condensing units; and

d) Use evaporator coils that would consume higher amounts of refrigerant and use higher capacity coil which will consume more BTU's which translates into higher energy consumption.

Need for the requested waiver:

1.5 It is clear that the law requires commercial refrigerators to be tested and certified using the test procedure set forth at 10 C.F.R. Pt 431, Subpt. C, Sec. 431.64—or be subject to a waiver—before they are sold in commerce. But DOE's test procedure which establishes the 38 °F ± 2 °F AIT criteria based on the medium temperature application simply does not contemplate commercial refrigerators (remote and/or self-contained) that are designed to hold and display bulk produce (whole, uncut fresh fruits and/or vegetables).

1.6 There is no existing DOE Test Procedure without a waiver establishing an alternative test procedure for such products, there is no way to know how a model of such product should be tested, whether a model complies with the standard, and how the model's energy use compares to others with similar features.

1.7 Testing of commercial refrigerators intended to hold and/or display bulk produce would increase the energy consumption and defeat the intent and spirit of energy conservation set forth by DOE. (NOTE: These cases do meet the maximum energy allowance limits set forth by DOE for the applicable DOE Equipment Class with the current AIT of 41 °F ~ 50 °F range. Reducing the AIT to 38 °F + 2 °F only for test purposes will increase the energy consumption.)

Basic Models on which the waiver is being requested:

DBRP–03–4–R, DBRP–03–6–R, DBRP–03–8–R, DBRP–03–10–R, DBRP–03–12–R, DBRP–03–14–R, DBRP–03–16–R,

DBRP–03–18–R, DBRP–03–20–R, DBRP–03–22–R, DBRP–03–24–R, DBRP–03–26–R, DBRP–03–28–R,

DBRP–03–30–R, DBRP–03–32–R, DBRP–03–34–R, DBRP–03–36–R

DSRP–03–5–R, DSRP–03–6–R, DSRP–03–8–R, DSRP–03–10–R, DSRP–03–12–R, DSRP–03–14–R, DSRP–03–16–R,

DSRP–03–18–R, DSRP–03–20–R, DSRP–03–22–R, DSRP–03–24–R, DSRP–03–26–R, DSRP–03–28–R, DSRP–03–30–R,

DSRP–03–32–R, DSRP–03–34–R, DSRP–03–36–R

DSRPI–03–5–R, DSRPI–03–6–R, DSRPI–03–8–R, DSRPI–03–10–R, DSRPI–03–12–R, DSRPI–03–14–R,
DSRPI–03–16–R, DSRPI–03–18–R, DSRPI–03–20–R, DSRPI–03–22–R, DSRPI–03–24–R, DSRPI–03–26–R,
DSRPI–03–28–R, DSRPI–03–30–R, DSRPI–03–32–R, DSRPI–03–34–R, DSRPI–03–36–R

Specific Requirements sought to be waived—Commercial Refrigerators intended to hold and/or display bulk produce (whole, uncut fresh fruits and/or vegetables) shall be exempt from DOE's requirement to test and certify in accordance with 10 C.F.R. Pt 431 and be exempt from certification, compliance and enforcement in accordance with 10 C.F.R. Pt 429.

List of manufacturers of all other basic models marketed in the United States and known to the petitioner to incorporate similar design characteristic(s)—
Manufacturer: Hill Phoenix Models: OEP, O3IP, and OIP
Manufacturer: Kysor Warren Models: P1W

Application for Interim Waiver

Request for a test procedure Interim Waiver from DOE pursuant to provisions described in 10 CFR 431.401 for the following product on the grounds of ''The prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data''

The design characteristics constituting the grounds for the Interim Waiver Application:

1.1 Commercial Refrigerators are intended to hold and display bulk produce (whole, uncut fresh fruits and/or vegetables). These refrigerators are manufactured in both ''Remote'' and ''Self-Contained'' version.

1.2 These commercial refrigerators are typically designed to hold the produce at an Average Integrated Temperature (AIT) of 41 °F ~ 50 °F range (The amount and method of merchandising the food product varies which results in a wide range of AIT). Whole, uncut fresh fruits/vegetables are not considered to be potentially hazardous foods by the FDA and therefore do not require time/temperature control for safety of the food. Moreover, the optimum temperature range to preserve freshness is 40 °F ~ 50 °F.

1.3 DOE requires testing Medium Temperature commercial refrigerators at an AIT of 38 °F ± 2 °F.

1.4 In order to reduce the AIT from the existing 41 °F ~ 50 °F range to an AIT of 38 °F ± 2 °F, manufacturers will have to take the following steps:

a) Increase energy consumption to reduce the AIT.

b) Significantly change the design.

c) Use higher energy consuming components such as condensing units or increase the number of energy consuming components such as condensing units, and

d) Use evaporator coils that would consume higher amounts of refrigerant and use higher capacity coil which will consume more BTU's which translates into higher energy consumption.

Need for the requested Interim Waiver:

1.5 It is clear that the law requires commercial refrigerators to be tested and certified using the test procedure set forth at 10 C.F.R. Pt 431, Subpt. C, Sec. 431.64—or be subject to a waiver—before they are sold in commerce. But DOE's test procedure which establishes the 38 °F ± 2 °F AIT criteria based on the medium temperature application simply does not contemplate commercial refrigerators (remote and/or self-contained) that are designed to hold and display bulk produce (whole, uncut fresh fruits and/or vegetables).

1.6 There is no existing DOE Test Procedure without a waiver establishing an alternative test procedure for such products, there is no way to know how a model of such product should be tested, whether a model complies with the standard, and how the model's energy use compares to others with similar features.

1.7 Testing of commercial refrigerators intended to hold and/or display bulk produce would increase the energy consumption and defeat the intent and spirit of energy conservation set forth by DOE. (NOTE: These cases do meet the maximum energy allowance limits set forth by DOE for the applicable DOE Equipment Class with the current AIT of 41 °F ~ 50 °F range. Reducing the AIT to 38 °F + 2 °F only for test purposes will increase the energy consumption.)

Basic Models on which the Interim Waiver is being requested:

DBRP–03–4–R, DBRP–03–6–R, DBRP–03–8–R, DBRP–03–10–R, DBRP–03–12–R, DBRP–03–14–R, DBRP–03–16–R,
DBRP–03–18–R, DBRP–03–20–R, DBRP–03–22–R, DBRP–03–24–R, DBRP–03–26–R, DBRP–03–28–R,
DBRP–03–30–R, DBRP–03–32–R, DBRP–03–34–R, DBRP–03–36–R

DSRP–03–5–R, DSRP–03–6–R, DSRP–03–8–R, DSRP–03–10–R, DSRP–03–12–R, DSRP–03–14–R, DSRP–03–16–R,
DSRP–03–18–R, DSRP–03–20–R, DSRP–03–22–R, DSRP–03–24–R, DSRP–03–26–R, DSRP–03–28–R, DSRP–03–30–R,
DSRP–03–32–R, DSRP–03–34–R, DSRP–03–36–R

DSRPI–03–5–R, DSRPI–03–6–R, DSRPI–03–8–R, DSRPI–03–10–R, DSRPI–03–12–R, DSRPI–03–14–R,
DSRPI–03–16–R, DSRPI–03–18–R, DSRPI–03–20–R, DSRPI–03–22–R, DSRPI–03–24–R, DSRPI–03–26–R,
DSRPI–03–28–R, DSRPI–03–30–R, DSRPI–03–32–R, DSRPI–03–34–R, DSRPI–03–36–R

Specific Requirements sought to be waived—Commercial Refrigerators intended to hold and/or display bulk produce (whole, uncut fresh fruits and/or vegetables) shall be exempt from DOE's requirement to test and certify in accordance with 10 C.F.R. Pt 431 and be exempt from certification, compliance and enforcement in accordance with 10 C.F.R. Pt 429.

Alternate test procedures known to the petitioner to evaluate the characteristics of the basic model in a manner representative of its energy consumption—An alternate test temperature of 49 ± 2 degrees Fahrenheit would be an acceptable test temperature.

Success of the application for Interim Waiver will: Ensure that the spirit and intent of conserving energy by DOE is followed and maintained.

What economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver—Economic hardship will be loss of sales due to not meeting the DOE requirements set forth. If the existing products were altered to meet the current DOE requirements, it would add significant cost and increase energy consumption.

Conclusion:

Hussmann Corporation seeks an Interim Waiver from DOE's current requirement to test and certify in accordance with 10 C.F.R. Pt 431 and be exempt from certification, compliance and enforcement in accordance with 10 C.F.R. Pt. 429. Such a waiver is necessary because the current prescribed test procedures produce materially inaccurate and unrepresentative data for regulatory and consumer information purposes.

Hussmann Corporation respectfully asks the Department of Energy to grant an Interim Waiver from existing test standards until such time as a representative test procedure is developed and adopted for this class of products.

If we can provide further information, or if it would be helpful to discuss any of these matters further, please contact Ron Shebik, Compliance Manager, at (314) 298–6483.

Sincerely,

Ron Shebik
Compliance Manager, Hussmann Corporation
12999 St. Charles Rock Road
Bridgeton, MO 63044

[FR Doc. 2012–2045 Filed 1–30–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP12–19–000; CP12–20–000]

Dominion Transmission, Inc.; Notice of Intent to Prepare an Environmental Assessment for the Proposed TIOGA Area Expansion and Sabinsville to Morrisville Projects, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental affects associated with the construction and operation of the Tioga Area Expansion and Sabinsville to Morrisville Projects (Projects) with facilities in Pennsylvania and New York proposed by Dominion Transportation Inc. (DTI) in the above-referenced dockets. Although the Projects are proposed to serve different customers, we [1] are combining them

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

into a single EA because the facilities adjoin in the same geographic region and will affect a similar set of environmental resources. The Commission will use this EA in its decision-making process to determine whether the Projects are in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the Projects. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on February 24, 2012.

You may submit comments in written form or verbally. Further details on how to submit written comments are in the Public Participation section of this notice. In lieu of or in addition to sending written comments, the Commission invites you to make verbal comments at the FERC public scoping meeting scheduled as follows: Wednesday, February 15, 2012, beginning at 6:30 p.m., Wellsboro High School Auditorium, 227 Nichols St., Wellsboro, PA 16901.

This notice is being sent to the Commission's current environmental mailing list for the Projects. State and local government representatives should notify their constituents about the proposed Projects and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a DTI representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, DTI could initiate condemnation proceedings where compensation would be determined in accordance with state law.

DTI provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC's internet Web site (*www.ferc.gov*).

Summary of the Proposed Project

The Tioga Area Expansion Project would provide up to 270,000 dekatherms-per-day (Dth/d) in firm transportation services to Shell Energy North America and Penn-Virginia Oil & Gas Company. The main facilities proposed by DTI in Docket No. CP12–19–000 would include:

- Installation of about 15 miles of new 24-inch-diameter pipeline (TL–610 Extension 1) beginning at Tennessee Gas Pipeline's (TGP) existing Sabinsville Meter Station and running south across portions of Clymer, Gaines, and Elk Townships in Tioga County, Pennsylvania;
- Installation of a new launcher and receiver at the southern terminus of the TL–610 Extension 1 Pipeline, at milepost (MP) 15.0, in Elk Township, Tioga County, Pennsylvania;
- Replacement of regulators and upgrade of monitor controls at the existing Boom Compressor Station in Lawrence Township, Tioga County, Pennsylvania;
- Installation of about 800 feet of new 24-inch-diameter pipeline (TL–614) between DTI's existing LN–50 pipeline and its existing Greenlick Compressor Station in Stewardson Township, Potter County, Pennsylvania;
- Installation of about 900 feet of new 24-inch-diameter pipeline (TL–615) between Texas Eastern Transmission Corporation's existing mainline and DTI's existing Crayne Compressor Station, in Franklin Township, Greene County, Pennsylvania;
- valve additions at DTI's existing Finnefrock Compressor Station in Leidy Township, Clinton County, Pennsylvania; and
- valve replacement and upgrade of monitor controls at DTI's existing Lindley Gate, in Steuben County, New York.

The Sabinsville to Morrisville Project would provide up to 920,000 Dth/d to TGP at a new receipt point. The main facilities proposed by DTI in Docket No. CP12–20–000 would include:

- Installation of about 3.6 miles of new 24-inch-diameter pipeline (TL–610), between the existing TGP Sabinsville Station and DTI's existing Sabinsville Gas Storage Station, in Clymer Township, Tioga County, Pennsylvania.

The general location of the Projects facilities is shown in Appendix 1.[2]

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

Land Requirements

Construction of the Projects would disturb a total of about 241 acres of land for the pipelines and at the aboveground facilities. Following construction, DTI would retain about 125 acres as part of its permanent easement for the operation and maintenance of facilities. The remaining acres used temporarily during construction would be restored and revert back to their former uses. Almost all of the proposed pipeline routes would be adjacent or parallel to existing pipelines, utility, or road rights-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental affects that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed Projects under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- cultural resources;
- land use;
- air quality and noise;
- public safety; and
- cumulative impacts.

The EA will present our independent analysis of the issues. The document will include our recommendations regarding measures to avoid or lessen adverse impacts on specific resources. In addition, in the EA we will evaluate feasible and reasonable alternatives to the proposed Projects, or portions of the Projects.

The EA will be available to the public through the ''eLibrary'' link on the FERC's Internet Web site. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the environmental mailing list (see below) for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the

opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section of this notice.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultations with the Pennsylvania and New York State Historic Preservation Offices (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPOs. For typical natural gas projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for these Projects will identify historic properties that may be affected, and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Projects. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before February 24, 2012.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the Projects docket numbers (CP12–19–000 and CP12–20–000) with your submission. The Commission encourages electronic filing of comments through the FERC's Internet Web site, and has expert technology staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental groups and non-government organizations; Indian tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Projects.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

In addition to involvement in the environmental scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP12–19). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: January 24, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–2006 Filed 1–30–12; 8:45 am]

BILLING CODE 6717–01–P

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations (CFR), Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at 36 CFR Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–48–000]

Dominion Transmission, Inc.; Notice of Request Under Blanket Authorization

Take notice that on January 13, 2012, Dominion Transmission, Inc. (Dominion), 701 East Cary Street, Richmond, Virginia 23219, filed in Docket No. CP12–48–000, an application pursuant to sections 157.205, 157.208, and 157.213 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to construct and operate two injection/withdrawal wells on behalf of UGI and as operator of the Tioga storage complex in Tioga County, Pennsylvania, under Dominion's blanket certificate issued in Docket No. CP82–537–000,[1] all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Dominion and UGI propose to construct and operate two injection/withdrawal wells (TW–210 and TW–211) and install associated piping and equipment, in the Tioga storage complex. Dominion states that the physical parameters, including total natural gas inventory, reservoir pressure, reservoir and buffer boundaries, and the certificated capacity of the Tioga storage complex would remain unchanged with the construction and operation of wells TW–210 and TW–211. Dominion estimates that the proposed wells would cost $5,374,329 to install.

Any questions concerning this application may be directed to Scott Francis, Regulatory and Certificates Analyst II, Dominion Transmission, Inc., 701 East Cary Street, Richmond, Virginia 23219, telephone (804) 771–4456, facsimile (804) 771–4804, or Email: *Scott.B.Francis@dom.com.*

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Dated: January 24, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–2007 Filed 1–30–12; 8:45 am]

BILLING CODE 6717–01–P

[1] 21 FERC ¶ 62,172 (1982).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3109–049]

Eugene Water and Electric Board; Notice of Application for Surrender of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of License.

b. *Project No.:* P–3109–049.

c. *Date Filed:* December 14, 2011.

d. *Applicant:* Eugene Water and Electric Board.

e. *Name of Project:* Blue River Project.

f. *Location:* The proposed project would be located at the U.S. Army Corps of Engineers' Blue River Dam on the Blue River, a tributary of the McKenzie River, in Lane County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Suzanne P. Adkins, EWEB FERC License Manager, 500 East 45th Avenue, P.O. Box 10148, Eugene, Oregon 97440–2148; telephone (541) 344–6311, ext. 3435.

i. *FERC Contact:* Diane M. Murray, telephone (202) 502–8835 and email: *diane.murray@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests: February 27, 2012.* Comments, motions to intervene, and protests may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

k. *Description of Request:* The licensee filed an application to surrender its license for the unconstructed Blue River Hydroelectric Project. The Licensee started construction on October 28, 1993, by signing a contract for the manufacture of generating units and making its first and only payment of $7,048.65 to Voith Hydro, Inc. However, no ground disturbing activities have occurred at the project site.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-(866) 208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the

Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—All filings must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: January 24, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–2005 Filed 1–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Revised Fee Policy for Acceptance of Foreign Research Reactor Spent Nuclear Fuel From High-Income Economy Countries

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of a change in the fee policy.

SUMMARY: This notice announces a change in the fee policy by the Department of Energy (DOE) for receipt and management of spent nuclear fuel (SNF) from foreign research reactors (FRR) containing uranium enriched in the U.S. in countries with high-income economies, as identified in the World Bank Development Report. The fee will increase in three phases (See Table 1) for all future SNF shipments (including Training, Research, Isotopes, General Atomics (TRIGA) from high-income economy countries. The first phase will take effect immediately and the fee will increase from no higher than $3,750 per kg total mass (not heavy metal mass) to $5,625 per kg total mass for SNF containing low enriched uranium (LEU). The second phase will be implemented automatically on January 1, 2014, and the fees will increase from $5,625 per kg total mass to $7,500 per kg total mass for shipments of SNF containing LEU and from no higher than $4,500 per kg total mass to $6,750 per kg total mass for SNF containing highly enriched uranium (HEU). The third phase will be implemented automatically on January 1, 2016, and the fee will increase from $6,750 per kg total mass to $9,000 per kg total mass for shipments of SNF containing HEU. DOE is also implementing a new minimum fee of $200,000 per shipment of any type and amount of eligible SNF to reflect a minimum cost of providing acceptance services. This minimum fee will take effect immediately. In the case where a reactor operator already has a signed and executed contract with DOE, DOE intends to negotiate an equitable adjustment to the fee in accordance with this revised fee policy. Under this revised fee policy, the fee for return of TRIGA fuel will be the same as that of aluminum based fuel. All other aspects of the fee policy are unaffected by this Notice.

This is the first fee increase since the fee policy was established in 1996, and will help DOE offset a portion of the increase in operation costs of managing SNF. DOE will continue to pay the costs for shipping, receipt and management of SNF from other than high-income economy countries. All other conditions and policies as previously established for acceptance of FRR SNF will continue to apply. DOE reserves the right to revise the fee policy at any time to respond to changed circumstances. DOE also reserves the right to adjust the fee set in an acceptance contract if there are unique and compelling circumstances that make it in DOE's best interest to do so.

DATES: *Effective dates:* Minimum fee January 31, 2012; First phase—January 31, 2012; Second phase—January 1, 2014; Third phase—January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Bieniawski, Assistant Deputy Administrator for Global Threat Reduction (NA–21), U.S. Department of Energy, National Nuclear Security Administration, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 586–0775.

SUPPLEMENTARY INFORMATION: DOE's policy concerning recovery of FRR SNF containing uranium enriched in the U.S. is described in the ''Record of Decision (ROD) for the Final Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel'' (61 FR 25092, May 17, 1996). In the ROD, DOE stated that it would announce a fee policy for acceptance of FRR SNF and that the policy could be changed as necessary to reflect changes in cost or new information relevant to the policy. In 1996, DOE established the fee policy and published it in a **Federal Register** Notice, (61 FR 26507, May 28, 1996). The policy was subsequently revised only to address the question of how, during the course of the acceptance program, a change in the economic status of the country from which SNF is shipped would affect the fee charged for participation (64 FR 18006, April 13, 1999). The maximum fees have remained constant since the establishment of the fee policy in 1996, even though the costs of SNF management have risen dramatically. DOE is revising its fee policy to take into account this rise in costs.

DOE has decided to increase the maximum fees by 100% (from its current rates) in three phases (See Table 1) for all future SNF shipments (including TRIGA fuels), which should minimize the impact to the high-income economy countries and allow those countries adequate time to plan for additional funding.

- The first phase will take effect January 31, 2012; and the fee will increase from no higher than $3,750 per kg total mass to $5,625 per kg of total mass for SNF shipments containing LEU.
- The second phase will be implemented automatically on January 1, 2014 and the fee will increase from $5,625 per kg of total mass to $7,500 per kg total mass for SNF shipments containing LEU and from no higher than $4,500 per kg total mass to $6,750 per kg total mass for SNF shipments containing HEU.
- The third phase will be implemented automatically on January 1, 2016, and the fee will increase from $6,750 per kg total mass to $9,000 per kg total mass for SNF shipments containing HEU.
- DOE is also implementing a new minimum fee of $200,000 per shipment of any type and amount of eligible SNF to reflect a minimum cost of providing acceptance services, which is consistent with past approaches of implementing the FRR SNF fee policy and reflects a more appropriate portion of the cost of providing acceptance services. This minimum fee will take effect January 31, 2012.
- In the case where a reactor operator already has a signed and executed contract with DOE, DOE intends to negotiate an equitable adjustment to the fee in accordance with this revised fee policy.

• Under this revised fee policy the fee for return of TRIGA fuel will be the same as that of aluminum based fuel, as noted above.

TABLE 1—SUMMARY OF FEE POLICY

Effective dates	Aluminum based fuel		Training, Research, Isotopes, General Atomics (TRIGA)	
	LEU	HEU	LEU	HEU
Current Rates	$3,750	$4,500	$4,500	$4,500
Date of Publication in **Federal Register**	5,625	4,500	5,625	4,500
January 1, 2014	7,500	6,750	7,500	6,750
January 1, 2016	7,500	9,000	7,500	9,000

The Department of Energy is also implementing a new minimum fee of $200,000 per shipment of any type and amount of eligible fuel to reflect a minimum cost of providing acceptance services.

All rates are ''per kg total mass'' (not heavy metal mass).

The first phase of the change in the current fee policy takes effect immediately upon publication of this Notice in the **Federal Register**.

DOE is not establishing the fee structure for target material as it would be established on a case-by-case basis and would be agreed to and specified on the shipping-receipt contract for a particular campaign. DOE reserves the right to revise the fee policy at any time to respond to changed circumstances. DOE also reserves the right to adjust the fee set in an acceptance contract if there are unique and compelling circumstances that make it in DOE's best interest to do so. Please note that all other conditions and policies for accepting FRR SNF as previously established will continue to apply.

Issued in Washington, DC, this 25th day of January, 2012.

Andrew Bieniawski,

Assistant Deputy Administrator, National Nuclear Security Administration, Department of Energy.

[FR Doc. 2012–2052 Filed 1–30–12; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2012–0056; FRL–9625–1]

Conference on Air Quality Modeling

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of conference.

SUMMARY: The EPA will be hosting the Tenth Conference on Air Quality Modeling on March 13–15, 2012. Section 320 of the Clean Air Act (CAA) requires a conference to be held every 3 years. The purpose of the conference is to provide an overview of the latest features of the agency's preferred air quality models and to provide a forum for public review and comment on how the agency determines and applies air quality models in the future.

DATES: *Comments:* Comments on how the agency determines and applies air quality models must be received on or before April 16, 2012.

Conference: The conference will be held on March 13 through 15, 2012, from 8:30 a.m. to 5:00 p.m. Requests to speak at the conference should be submitted to the individual listed below by March 5, 2012.

ADDRESSES: *Comments:* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–0056 by one of the following methods:

• *http://www.regulations.gov:* Follow the on-line instructions for submitting comments. This is the EPA's preferred method for receiving comments.

• *Email:* Comments may be sent by electronic mail (email) to *a-and-r-docket@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2012–0056.

• *Fax:* Fax your comments to (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2012–0056.

• *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2012–0056.

• *Hand Delivery or Courier:* Deliver your comments to EPA Docket Center, 1301 Constitution Ave. NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2012–0056. The 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 email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the 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 form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket in the EPA Docket Center, EPA West, 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 Docket telephone number is (202) 566–1742; fax (202) 566–9744.

Background Information: Additional information and a more detailed agenda are electronically available at *http://www.epa.gov/ttn/scram/10thmodconf.htm.*

Conference: The conference will be held in the EPA Auditorium, Room C111, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT:

George Bridgers, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Mail Code C439–01, Research Triangle Park, NC 27711; telephone: (919) 541–5563; fax: (919) 541–0044; email address: *bridgers.george@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

The *Guideline on Air Quality Models* (hereafter, called the *Guideline,* which is found in Appendix W to 40 CFR part 51), is used by the EPA, states and industry to prepare and review new source permits, source permit modifications, and State Implementation Plan submittals and revisions. The *Guideline* serves as a means by which national consistency is maintained in air quality analyses. We originally published the *Guideline* in April 1978, and it was incorporated by reference in the regulations for the Prevention of Significant Deterioration of Air Quality in June 1978. We revised the *Guideline* in 1986, and updated it with supplement A in 1987, supplement B in July 1993, and supplement C in August 1995. We published the *Guideline* as Appendix W to 40 CFR part 51 when we issued supplement B. We republished the *Guideline* in August 1996 (61 FR 41838) to adopt the CFR system for labeling paragraphs.

To support the process of developing and revising the *Guideline* during the period 1977–1988, we held the First, Second, and Third Conferences on Air Quality Modeling as required by CAA Section 320 to help standardize modeling procedures. These modeling conferences provided us with comments on the *Guideline* and associated revisions, thereby helping us introduce improved modeling techniques into the regulatory process.

In October 1988, we held the Fourth Conference on Air Quality Modeling to advise the public on new modeling techniques and to solicit comments to guide our consideration of any rulemaking needed to further revise the *Guideline.* We held the Fifth Conference in March 1991, which served as a public hearing for the proposed revisions to the *Guideline.* In August 1995, we held the Sixth Conference as a forum to update our available modeling tools with state-of-the-science techniques and for the public to offer new ideas. The Seventh Conference was held in June 2000 and served as a public hearing for the proposed changes to the recommended air quality models in Appendix W including the CALPUFF modeling system, AERMOD modeling system, and ISC–PRIME model. We held the Eighth Conference on Air Quality Modeling in September 2005, which provided details on changes to these recommended air quality models, including the Notice of Data Availability published in September 2003 related to the incorporation of the PRIME downwash algorithm in the AERMOD dispersion model in response to comments received from the Seventh Conference, and details on available methods for model performance evaluation. Additionally, at the Eighth Conference, there was a panel of experts discussion on the use of state-of-the-science prognostic meteorological data for informing the dispersion models.

The most recent conference was the Ninth Conference on Air Quality Modeling held in October 2008. The conference began with an overview presentation and review of Appendix W and plans to reinstitute the Model Clearinghouse. Several presentations were made on non-guideline applications of dispersion models as well as a continuation of discussions from the Eighth Conference on the use of prognostic meteorological data with respect to informing the Appendix W models. Updates were provided on the regulatory status, recent coding changes, and future development of the AERMOD modeling system, the EPA's preferred model for near-field regulatory applications, and the CALPUFF modeling system, the EPA's preferred model for long-range transport of criteria pollutants and their impacts on Federal Class I areas. The Ninth Conference concluded with a collection of presentations reviewing the available model evaluation methods and reviewing new and emerging models and techniques for future consideration under Appendix W. The proceedings, including supporting material and public comments received, are found in Docket No. EPA–HQ–OAR–2008–0604.

III. Public Participation

The Tenth Conference on Air Quality Modeling will be open to the public; no admission fee is charged and there is no formal registration. The conference will begin the first morning with introductory remarks by the presiding EPA official. The following topics will be presented:

A. Appendix W overview;

B. Model Clearinghouse update;

C. Currently preferred air quality models (AERMOD and CALPUFF) status and updates;

D. Review of prognostic meteorological data processing tool for dispersion models, MMIF;

E. Modeling for compliance demonstration of the $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS) including discussion of the draft $PM_{2.5}$ (primary and secondary) modeling guidance;

F. Modeling for compliance demonstration of the 1-hour NO_2 and SO_2 NAAQS including presentations from the AERMOD Implementation Workgroup NO_2 and SO_2 modeling study;

G. Review of new and emerging models/techniques for future consideration under Appendix W to address long-range transport and chemistry; and

H. Other presentations by the public.

Those wishing to speak at the conference, whether to volunteer a presentation on a special topic or to offer general comment on any of the modeling techniques scheduled for presentation, should contact the EPA at the address given in the **FOR FURTHER INFORMATION CONTACT** section (note the cutoff date). Such persons should identify the organization (if any) on whose behalf they are speaking and the length of the presentation. If a presentation of general comments is projected to be longer than 10 minutes, the presenter should also state why a longer period is needed. Persons failing to submit a written notice but desiring to speak at the conference should notify the presiding officer immediately before the conference, and they will be scheduled on a time-available basis.

The conference will be conducted informally and chaired by an EPA official. There will be no sworn testimony or cross examination. A verbatim transcript of the conference proceedings will be produced and placed in the docket. Speakers should bring extra copies of their presentation for inclusion in the docket and for the convenience of the recorder. Speakers will also be permitted to enter written comments into the record. Additional written statements or comments should be sent to the OAR Regulatory Docket (see **ADDRESSES** section). A transcript of the proceedings and a copy of all written comments will be maintained in Docket ID No. EPA–HQ–OAR–2012–0056, which will remain open until April 16, 2012, for the purpose of receiving additional comments.

Dated: January 25, 2012.

Mary E. Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2012–2026 Filed 1–30–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0005; FRL–9330–5]

Pesticide Products; Receipt of Applications To Register New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register new uses for pesticide products containing currently registered active ingredients, pursuant to the provisions of section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. EPA is publishing this Notice of such applications, pursuant to section 3(c)(4) of FIFRA.

DATES: Comments must be received on or before March 1, 2012.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number for the pesticide of interest, specified within Unit II, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number specified for the pesticide of interest as shown in the registration application summaries. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each registration application summary and may be contacted by telephone or email. The mailing address for each contact person listed is: Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0001 or Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially

affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number). If you are commenting on a docket that addresses multiple products, please indicate to which registration numbers your comment applies.

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications for New Uses

EPA received applications as follows to register pesticide products containing currently registered active ingredients pursuant to the provisions of section 3(c) of FIFRA, and is publishing this Notice of such applications pursuant to section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

1. *Registration Number:* 100–617. *Docket Number:* EPA–HQ–OPP–2011–0397. *Company name and address:* Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Propiconazole. *Proposed Uses:* Beans, dry and succulent. *Contact:* Erin Malone, Registration Division (703) 347–0253, *malone.erin@epa.gov.*

2. *Registration Number:* 100–618. *Docket Number:* EPA–HQ–OPP–2011–0397. *Company name and address:* Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Propiconazole. *Proposed Uses:* Beans, dry and succulent; and post harvest treatments on tomato, and citrus crop group 10–10. *Contact:* Erin Malone, Registration Division, (703) 347–0253, *malone.erin@epa.gov.*

3. *Registration Number:* 100–759. *Docket Number:* EPA–HQ–OPP–2011–0395. *Company name and address:* Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27409. *Active ingredients:* Fludioxonil. *Proposed Uses:* Avocado, beans (dried and succulent except cowpeas), berries (bush and cane), *brassica* (cole) leafy vegetables, bulb vegetables, citrus fruit, cereal grains, cereal grain (forage, fodder, and straw), cotton, cucurbit vegetables, foliage of legume vegetables, fruiting vegetables, ginseng, grapes, grass (forage, fodder, and hay), herbs and spices, kiwifruit, leafy vegetables except *brassica* vegetables, leaves of root and tuber vegetables, legume vegetables, nongrass animal feeds (forage, fodder, straw and hay), mango and papaya, peanut, pineapple, pistachio, pome fruit, pomegranate, rapeseed and canola (and crambe, flax seed, jojoba, and lesquerella), root and tuber vegetables, safflower, sunflower, strawberry, stone fruits, tropical fruits, and watercress. *Contact:* Lisa Jones, Registration Division, (703) 308–9424, *jones.lisa@epa.gov.*

4. *Registration Number:* 100–780. *Docket Number:* EPA–HQ–OPP–2011–0397. *Company name and address:* Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Propiconazole. *Proposed Uses:* Post harvest application on citrus crop group 10–10, stone fruit crop group 12, and tomato. *Contact:* Erin Malone, Registration Division, (703) 347–0253, *malone.erin@epa.gov.*

5. *Registration Number:* 100–811. *Docket Number:* EPA–HQ–OPP–2011–0394. *Company name and address:* Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27409. *Active ingredients:* Cyprodinil. *Proposed Uses:* Beans (succulent and dried except cowpeas), berries (caneberry subgroup 13–07A, bushberry subgroup 13–07B, small fruit vine climbing subgroup, except fuzzy kiwifruit 13–07F, low growing berry subgroup 13–07G), *brassica* (cole) leafy vegetables subgroup, bulb vegetables, citrus, cucurbit vegetables, fruiting vegetables crop group 8–10, grapes, herbs (dried and fresh), kiwi, leafy vegetables (except *brassica*), leaves of root and tuber vegetables, pistachios, pome fruit crop group 11–10, root vegetables (except sugarbeet), spinach, stone fruit, strawberry, tree nuts, tropical fruits, and watercress. *Contact:* Lisa Jones, Registration Division, (703) 308–9424, *jones.lisa@epa.gov.*

6. *Registration Number:* 100–828. *Docket Number:* EPA–HQ–OPP–2011–0394. *Company name and address:* Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27409. *Active ingredients:* Cyprodinil. *Proposed Uses:* Aronia berry, black currant, buffalo currant, Chilean guava, edible honeysuckle, European barberry, highbush cranberry, jostaberry, native currant, red currant, sea buckthorn, wild raspberry, amur river grape, hardy kiwifruit, maypop, schisandra berry, New Zealand spinach, spinach, spinach vine, chinese onion, daylily bulb, fritillaria bulb, great-headed, garlic, lily bulb, pearl onion, potato onion, serpent garlic, shallot, green onion, beltsville bunching, onion, Chinese chive, fresh leaves, fresh chive leaves, fritillaria leaves, fresh onion, hosta elegans, kurrat, lady's leek, leek, macrostem onion, shallot fresh, leaves, tree tops onion, welsh onion tops, wild leek, wild onion, bearberry, bilberry, cloudberry,

muntries, partridgeberry, dragon fruit, eggplant and other fruiting vegetables including African eggplant, bush tomato, bell pepper, cocona, currant tomato, eggplant, garden huckleberry, goji berry, groundcherry, martynia, naranjilla, okra, pea eggplant, pepino, pepper, bell pepper, nonbell, roselle, scarlet eggplant, sunberry, tree tomato, dragon fruit. *Contact:* Lisa Jones, Registration Division, (703) 308–9424, *jones.lisa@epa.gov.*

7. *Registration Numbers:* 100–921 and 100–922. *Docket Number:* EPA–HQ–OPP–2011–0086. *Company name and address:* Syngenta Crop Protection, LLC P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Acibenzolar. *Proposed Use:* Low growing berry subgroup 13–07G. *Contact:* Rose Kearns, Registration Division, (703) 305–5611, *kearns.rosemary@epa.gov.*

8. *Registration Number:* 100–953. *Docket Number:* EPA–HQ–OPP–2011–0394 and EPA–HQ–OPP–2011–0395. *Company name and address:* Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27409. *Active ingredients:* Cyprodinil and Fludioxonil. *Proposed Uses:* Aronia berry, black currant, buffalo currant, Chilean guava, edible honeysuckle, European barberry, highbush cranberry, jostaberry, native currant, red currant, sea buckthorn, wild raspberry, amur river grape, hardy kiwifruit, maypop, schisandra berry, New Zealand spinach, spinach, spinach vine, Chinese onion, daylily bulb, fritillaria bulb, great-headed, garlic, lily bulb, pearl onion, potato onion, serpent garlic, shallot, green onion, beltsville bunching, onion, Chinese chive, fresh leaves, fresh chive leaves, fritillaria leaves, fresh onion, hosta elegans, kurrat, lady's leek, leek, macrostem onion, shallot fresh, leaves, tree tops onion, welsh onion tops, wild leek, wild onion, bearberry, bilberry, cloudberry, muntries, partridgeberry, dragon fruit, eggplant and other fruiting vegetables including African eggplant, bush tomato, bell pepper, cocona, currant tomato, eggplant, garden huckleberry, goji berry, groundcherry, martynia, naranjilla, okra, pea eggplant, pepino, pepper, bell pepper, nonbell, roselle, scarlet eggplant, sunberry, tree tomato. *Contact:* Lisa Jones, Registration Division, (703) 308–9424, *jones.lisa@epa.gov.*

9. *Registration Number:* 100–969. *Docket Number:* EPA–HQ–OPP–2011–0395. *Company name and address:* Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27409. *Active ingredients:* Fludioxonil. *Proposed Uses:* Pineapple, potato, tomato, acerola, atemoya, biriba, cherimoya, custard apple, dragon fruit, feijoa, guava, ilama, jaboticaba, passionfruit, soursop, starfruit, sugar apple, wax jambu, Australian desert lime, Australian finger lime, Australian round lime, Brown River finger lime, Mount White lime, New Guinea wild lime, Russell River lime, sweet lime, Tachibana orange, Tahiti lime, tangelo, tangerine, (Mandarin) tangor, trifoliate orange, uniq fruit, azarole, medlar, pear, Asian quince, quince, Chinese quince, Japanese tejocote. *Contact:* Lisa Jones, Registration Division, (703) 308–9424, *jones.lisa@epa.gov.*

10. *Registration Number:* 100–1242. *Docket Number:* EPA–HQ–OPP–2011–0395. *Company name and address:* Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27409. *Active ingredient:* Fludioxonil. *Proposed Uses:* Pineapple, potato, tomato, acerola, atemoya, biriba, cherimoya, custard apple, dragon fruit, feijoa, guava, ilama, jaboticaba, passionfruit, soursop, starfruit, sugar apple, wax jambu, Australian desert lime; Australian finger lime; Australian round lime; Brown River finger lime; Mount White lime; New Guinea wild lime; Russell River lime; sweet lime; Tachibana orange; Tahiti lime; tangelo; tangerine; (Mandarin) Tangor; Trifoliate orange; Uniq fruit; Azarole, Medlar, pear, Asian quince, quince, Chinese quince, Japanese tejocote. *Contact:* Lisa Jones, Registration Division, (703) 308–9424, *jones.lisa@epa.gov.*

11. *Registration Number:* 100–1308. *Docket Number:* EPA–HQ–OPP–2011–0395 and EPA–HQ–OPP–2011–0398. *Company name and address:* Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27409. *Active ingredient:* Fludioxonil and azoxystrobin. *Proposed Uses:* Australian desert lime, Australian finger lime, Australian round lime, Brown River finger lime, Mount White lime, New Guinea wild lime, Russell River lime, sweet lime, Tachibana orange, Tahiti lime, tangelo, tangerine, (Mandarin) tangor, trifoliate orange, uniq fruit. *Contact:* Lisa Jones, Registration Division, (703) 308–9424, *jones.lisa@epa.gov.*

12. *Registration Number:* 100–1317. *Docket Number:* EPA–HQ–OPP–2011–0394 and EPA–HQ–OPP–2011–0395. *Company name and address:* Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27409. *Active ingredients:* Cyprodinil and difenoconazole. *Proposed Uses:* Eggplant, pepper (includes bell pepper), chili pepper, cooking pepper, pimento, African eggplant, bush tomato, bell pepper, cocona, currant tomato, eggplant, garden huckleberry, goji berry, groundcherry, martynia, naranjilla, okra, pea eggplant, pepino, pepper, bell, pepper, nonbell, roselle, scarlet eggplant, sunberry, Amur river grape, gooseberry, kiwifruit, hardy, maypop, muscadines, schisandra berry, azarole, medlar, pear, Asian quince, quince, Chinese quince, Japanese tejocote, low-growing berry subgroup. *Contact:* Lisa Jones, Registration Division, (703) 308–9424, *jones.lisa@epa.gov.*

13. *Registration Numbers:* 264–704 and 264–788. *Docket Number:* EPA–HQ–OPP–2011–0477. *Company name and address:* Bayer CropScience, LP, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709. *Active ingredient:* Pyrimethanil. *Proposed Uses:* Onion subgroups 3–07 A & B and small fruit, and berry subgroups 13–07 F & G. *Contact:* Tamue L. Gibson, Registration Division, (703) 305–9096, *gibson.tamue@epa.gov.*

14. *Registration Number:* 279–3338. *Docket Number:* EPA–HQ–OPP–2011–0873. *Company name and address:* FMC Corporation, 1735 Market Street, Philadelphia, PA 19103. *Active ingredient:* Fluthiacet-methyl. *Proposed Uses:* Crop subgroup 6C (dry shelled pea and bean) and crop group 15 (barley, proso and pearl millets, oats, rye, teosinte, triticale, and wheat). *Contact:* Bethany Benbow, Registration Division, (703) 347–8072, *benbow.bethany@epa.gov.*

15. *Registration Number:* 279–9550. *Docket Number:* EPA–HQ–OPP–2011–0873. *Company name and address:* FMC Corporation, 1735 Market Street, Philadelphia, PA 19103. *Active ingredient:* Fluthiacet-methyl. *Proposed Uses:* For formulation into end-use herbicide products used on crop subgroup 6C (dry shelled pea and bean except soybean) and crop group 15 (cereal grains except rice). *Contact:* Bethany Benbow, Registration Division, (703) 347–8072, *benbow.bethany@epa.gov.*

16. *Registration Number:* 400–480 (technical); 400–514; 400–503. *Docket Number:* EPA–HQ–OPP–2010–0904. *Company name and address:* Chemtura Corporation, 199 Benson Rd, Middlebury, CT 06749. *Active ingredient:* Bifenazate. *Proposed Uses:* Herb Subgroup 19A (except chives and chervil); fruiting vegetable group 8–10; pome fruit group 11–10 and; Timothy hay. *Contact:* Jennifer Gaines, Registration Division, (703) 305–5957, *gaines.jennifer@epa.gov.*

17. *Registration Number/File Symbol:* 42750–223 and 42750–EGI. *Docket Number:* EPA–HQ–OPP–2011–0957. *Company name and address:* Albaugh, Inc., P.O. Box 2127, Valdosta, GA 31604. *Active ingredient:* Fomesafen. *Proposed Uses:* Non-cropland areas.

Contact: Michael Walsh, Registration Division, (703) 308–2972, *walsh.michael@epa.gov.*

18. *File Symbol:* 62719–AUI. *Docket Number:* EPA–HQ–OPP–2011–0962. *Company name and address:* Dow AgroSciences, LLC 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredient:* Fluroxypyr. *Proposed Use:* Rice. *Contact:* Bethany Benbow, Registration Division, (703) 347–8072, *benbow.bethany@epa.gov.*

19. *Registration Number:* 62719–285. *Docket Number:* EPA–HQ–OPP–2011–0962. *Company name and address:* Dow AgroSciences, LLC 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredient:* Fluroxypyr. *Proposed Uses:* For formulation into end-use herbicide products used on crop group 15 (cereal grains including barley, buckwheat, corn (field, pop, sweet), millet, oats, rice, rye, sorghum, teosinte, triticale, wheat and wild rice, crop group 16 (forage, fodder and straw of cereal grains). *Contact:* Bethany Benbow, Registration Division, (703) 347–8072, *benbow.bethany@epa.gov.*

20. *Registration Number:* 62719–577. *Docket Number:* EPA–HQ–OPP–2011–0962. *Company name and address:* Dow AgroSciences, LLC 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredient:* Fluroxypyr. *Proposed Uses:* Buckwheat, popcorn, rice, rye, teosinte, and wild rice. *Contact:* Bethany Benbow, Registration Division, (703) 347–8072, *benbow.bethany@epa.gov.*

21. *File Symbol:* 83399–RR. *Docket Number:* EPA–HQ–OPP–2011–0903. *Company name and address:* CEVA Animal Health, LLC, 301 Route 17 North, Rutherford, NJ 07070 USA. *Active ingredient:* Dinotefuran and pyriproxifen. *Proposed Use:* Pour-on use on horses. *Contact:* Rita Kumar, Registration Division, (703) 308–8291, *kumar.rita@epa.gov.*

22. *Registration Numbers:* 86203–8, 86203–12, 86203–23, and 59639–135. *Docket Number:* EPA–HQ–OPP–2011–0433. *Company name and address:* Mitsui Chemicals Agro, Inc., c/o Landis International, Inc., P.O. Box 5126, Valdosta, GA 31603–5126; and Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596–8025. *Active ingredient:* Dinotefuran. *Proposed Uses:* Berry and small fruit, bulb and green onion, tuberous and corm vegetables, watercress, peach and nectarine. *Contact:* Rita Kumar, Registration Division, (703) 308–8291, *kumar.rita@epa.gov.*

List of Subjects

Environmental protection, Pesticides and pest.

Dated: January 12, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2012–2039 Filed 1–30–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9624–7]

Proposed Reissuance of the NPDES General Permits for Oil and Gas Exploration Facilities on the Outer Continental Shelf and Contiguous State Waters in the Beaufort Sea and on the Outer Continental Shelf in the Chukchi Sea

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed reissuance of general permits.

SUMMARY: EPA Region 10 proposes to reissue the National Pollutant Discharge Elimination System (NPDES) General Permits for Oil and Gas Exploration Facilities on the Outer Continental Shelf and Contiguous State Waters in the Beaufort Sea (Permit No. AKG–28–2100) and on the Outer Continental Shelf in the Chukchi Sea (Permit No. AKG–28–8100). As proposed, the Beaufort and Chukchi general permits would authorize thirteen types of discharges from facilities engaged in field exploration and drilling activities under the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 425, Subpart A), as authorized by Section 402 of the Clean Water Act (CWA or ''the Act''), 33 U.S.C. 1342. *State Certification of Beaufort General Permit:* Section 401 of the Act, 33 U.S.C. 1341, requires EPA to seek a certification from the State of Alaska that the conditions of the Beaufort general permit are stringent enough to comply with State water quality standards. EPA obtained a draft certification from the Alaska Department of Environmental Conservation (DEC) on January 10, 2012. EPA intends to seek a final certification from DEC prior to issuing the final Beaufort general permit. When the State issues a final certification, it may impose more stringent conditions than what is proposed in the Beaufort general permit to ensure compliance with State water quality standards. EPA would then be required to include the more stringent conditions from the State certification in the permit pursuant to Section 401(d) of the Act, 33 U.S.C. 1341(d). This is also notice of the draft CWA Section 401 certification provided by the State of Alaska.

DATES: *Comments.* The public comment period for the draft Beaufort and Chukchi general permits will be from the date of publication of this Notice until March 30, 2012. Comments must be received or post-marked by no later than midnight Pacific Standard Time on March 30, 2012.

Public Hearings. EPA will hold public hearings on March 13, 2012, in Barrow, Alaska, at the Inupiat Heritage Center, and March 15, 2012, in Anchorage, Alaska, at the Z. J. Loussac Library. Both hearings will begin at 6 p.m. and will continue until all testimony is heard or 10 p.m., whichever is earlier. Additionally, EPA will hold two hearings via teleconferences on March 16, 2012, at the following times: 10 a.m.–1 p.m., and 2 p.m.–5 p.m. Alaska Standard Time. See **SUPPLEMENTARY INFORMATION** for additional information.

ADDRESSES: You may submit comments by any of the following methods. EPA will consider all comments received during the public comment period prior to making its final decision.

Mail: Send paper copies to Hanh Shaw, Office of Water and Watersheds, Mail Stop OWW–130, 1200 6th Avenue, Suite 900, Seattle, WA 98101–3140.

Email: Send electronic copies to *r10arcticpermits@epa.gov.*

Fax: Fax copies to the attention of Hanh Shaw at (206) 553–0165.

Hand Delivery/Courier: Deliver copies to Hanh Shaw, Office of Water and Watersheds, Mail Stop OWW–130, 1200 6th Avenue, Suite 900, Seattle, WA 98101–3140. Call (206) 553–1200 before delivery to verify business hours.

Viewing and/or Obtaining Copies of Documents. A copy of the draft Beaufort and Chukchi general permits, the fact sheet that fully explains the proposal, and a copy of the State's draft certification for the Beaufort general permit, may be obtained by contacting EPA at 1 (800) 424–4372. Copies of the documents are also available for viewing and downloading at: *http://yosemite.epa.gov/r10/water.nsf/npdes+permits/arctic-gp* See **SUPPLEMENTARY INFORMATION** for other document viewing locations.

FOR FURTHER INFORMATION CONTACT: Hanh Shaw, Office of Water and Watersheds, U.S. Environmental Protection Agency, Region 10, Mail Stop OWW–130, 1200 6th Avenue, Suite 900, Seattle, WA 98101–3140, (206) 553–0171, *shaw.hanh@epa.gov.*

SUPPLEMENTARY INFORMATION: The currently expired Arctic NPDES General Permit, No. AKG–28–0000 (Arctic GP),

was issued by EPA on June 26, 2006. The Arctic GP expired on June 26, 2011 (71 FR 30405). EPA proposes to replace the Arctic GP with two general permits, the Beaufort and Chukchi general permits, renumbered as AKG–28–2100 and AKG–28–8100, respectively. The Arctic GP will remain in effect for those operators that obtained authorization to discharge before the permit expired. Those operators must apply for and obtain coverage under the applicable Beaufort or Chukchi general permit when it is reissued. EPA proposes to make the following major changes to the reissued permits:

(1) Remove the Hope and Norton Basins from the areas of coverage since they are not on the Bureau of Energy Management's (BOEM) current 2012–2017 leasing plan.

(2) Eliminate the authorization to discharge non-aqueous drilling fluids and associated drill cuttings (*i.e.,* only discharges of water-based drilling fluids and cuttings are authorized);

(3) Eliminate the authorization to discharge test fluids;

(4) Expand the Notice of Intent (NOI) requirements;

(5) Expand the scope of the environmental monitoring program (EMP) and require it to be implemented at every drilling site for four phases of exploration activity;

(6) Impose additional EMP requirements if water-based drilling fluids and drill cuttings are authorized to be discharged by EPA;

(7) Increase the chemical additive inventory and reporting requirement for all discharges, including limitations on chemical additive concentrations;

(8) Prohibit all discharges to waters that are 5-meters deep or less;

(9) Limit drilling to 5 wells per lease block, except upon the EPA's review and authorization for discharges from the additional wells;

(10) Prohibit the discharge of water-based drilling fluids and drill cuttings during active bowhead whale hunts in the Beaufort Sea, unless EPA authorizes the discharge after review of the operator's evaluation of the feasibility of drilling facility storage capacity and land-based disposal alternatives;

(11) Require an alternatives analysis before authorization is granted for discharge of water-based drilling fluids and drill cuttings, sanitary, and domestic wastes to stable ice in the Beaufort Sea area of coverage;

(12) Require screening of certain waste streams for toxicity and conduct whole effluent toxicity (WET) testing if those waste streams exceed a volume discharge threshold and if chemicals are added to the system, or if an initial toxicity screen shows potential toxicity;

(13) Include cooling water intake structure requirements; and

(14) Include electronic Discharge Monitoring Report (DMR) requirements.

The Beaufort and Chukchi general permits contain conditions and limitations that conform to the Offshore Subcategory of the Oil and Gas Extraction Point Source Effluent Limitations Guidelines, as well as additional requirements that ensure the discharges will not cause unreasonable degradation of the marine environment, as required by section 403(c) of the Clean Water Act (i.e., the Ocean Discharge Evaluation Criteria), 33 U.S.C. 1343(c).

Public Hearing Locations and Information. The locations, teleconference information, and general agenda for the hearings are:

(1) March 13, 2012, Inupiat Heritage Center, 5421 North Star Street, Barrow, AK 99723; Teleconference number 1–(866) 299–3188, code 2065536524; 4 p.m.–5 p.m. Open House; 6 p.m.–7 p.m. Presentation; 7 p.m.–10 p.m. Testimony.

(2) March 15, 2012, Z.J. Loussac Library, 3600 Denali Street, Anchorage, AK 99503; 4 p.m.–5 p.m. Open House; 6 p.m.–7 p.m. Presentation; 7 p.m.–10 p.m. Testimony.

(3) March 16, 2012; Teleconference number 1–(866) 299–3188, code 2065536524; 10 a.m.–1 p.m. and 2 p.m.–5 p.m.

Public Hearing Procedures. Public hearings will be conducted in accordance with 40 CFR 124.12 and will provide interested persons with the opportunity to give written and/or oral comments for the official record. The following procedures will be used at the public hearings:

(1) The presiding officer shall conduct the hearing in a manner which will allow all interested persons wishing to make oral statements an opportunity to do so (however, the presiding officer may inform attendees of any time limits during the opening statement of the hearing);

(2) Any person may submit written statements or documents for the hearing record;

(3) The presiding officer may, in his or her discretion, exclude oral testimony if such testimony is overly repetitious of previous testimony or is not relevant to the Beaufort and Chukchi general permits;

(4) The transcripts of the hearings, together with copies of all submitted statements and documents, shall become a part of the record submitted to the Director of the Office of Water and Watersheds;

(5) The hearing record shall be left open until the deadline for receipt of comments, specified at the beginning of this Notice, to allow any person enough time to submit additional written statements or to present views or evidence tending to rebut or support testimony presented at the public hearing;

(6) Hearing statements may be provided orally or in written format. Commenters providing oral testimony are encouraged to provide written statements to ensure accuracy of the record and for use of EPA and other interested persons. Persons wishing to make oral testimony supporting their written comments are encouraged to give a summary of their points rather than reading lengthy written comments verbatim into the record.

All comments related to the Beaufort and Chukchi general permits received by EPA Region 10 by the deadline for receipt of comments, or presented at the public hearing, will be considered by EPA before taking final action on the general permits.

Document Viewing Locations. The documents may also be viewed at the following locations:

(1) EPA Region 10 Library, Park Place Building, 1200 6th Avenue, Suite 900, Seattle, WA 98101; (206) 553–1289.

(2) EPA Region 10, Alaska Operations Office, 222 W 7th Avenue, #19, Room 537, Anchorage, AK 99513; (907) 271–5083.

(3) DEC Anchorage office, 555 Cordova Street, Anchorage, AK 99501; (907) 269–7235.

(4) Z.J. Loussac Public Library, 3600 Denali Street, Anchorage, AK 99503; (907) 343–2975.

(5) North Slope Borough School District Library/Media Center, Pouch 169, 829 Aivak Street, Barrow, AK 99723; (907) 852–5311.

EPA's current administrative records for the proposal are available for review at the EPA Region 10 Office, Park Place Building, 1200 6th Avenue, Suite 900, Seattle, WA 98101, between 9 a.m. and 4 p.m., Monday through Friday. Contact Hanh Shaw at *shaw.hanh@epa.gov* or (206) 553–0171.

Oil Spill Requirements. Section 311 of the Act, 33 U.S.C. 1321, prohibits the discharge of oil and hazardous materials in harmful quantities. Discharges authorized under the Beaufort and Chukchi general permits are excluded from the provisions of CWA Section 311, 33 U.S.C. 1321. However, the Beaufort and Chukchi general permits will not preclude the institution of legal action, or relieve the permittees from

any responsibilities, liabilities, or penalties for other unauthorized discharges of oil and hazardous materials, which are covered by Section 311.

Endangered Species Act. Section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1531–1544, requires federal agencies to consult with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) if their actions have the potential to either beneficially or adversely affect any threatened or endangered species. EPA has determined that the Beaufort and Chukchi general permits are not likely to adversely affect any threatened or endangered species. EPA has initiated consultation with NMFS and USFWS to meet its obligations under the ESA. Biological Evaluations (BE) and the fact sheet for the Beaufort and Chukchi general permits were submitted to NMFS and USFWS for review and concurrence during the public comment period. EPA will obtain a determination from NMFS and USFWS before reissuing the final permits.

Essential Fish Habitat. The Magnuson-Stevens Fishery Conservation and Management Act requires EPA to consult with NMFS when a proposed discharge has the potential to adversely affect an Essential Fish Habitat (EFH). EPA is consulting with NMFS to ensure that the discharges authorized by the Beaufort and Chukchi general permits are not likely to adversely affect an EFH or associated species.

Coastal Zone Management Act. As of July 1, 2011, there is no longer a Coastal Zone Management Act (CZMA) program in Alaska. Consequently, federal agencies are no longer required to provide the State of Alaska with CZMA consistency determinations.

Annex V of MARPOL (73/78 and 33 CFR 155.73). Under Annex V of MARPOL, the U.S. Coast Guard (USCG) has issued final regulations under 33 CFR 151.73 to control the disposal of garbage and domestic wastes from fixed or floating drilling facilities involved in the exploration of oil and gas resources. These regulations also apply to drilling facilities located in navigable waters of the U.S. or within the 200 mile Exclusive Economic Zone. The Beaufort and Chukchi general permits prohibit the discharge of garbage.

Executive Order 12866. The Office of Management and Budget (OMB) exempts this action from the review requirements of Executive Order 12866 pursuant to Section 6 of that order.

Paperwork Reduction Act. EPA has reviewed the requirements imposed on regulated facilities in the Beaufort and Chukchi general permits and find them consistent with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act. Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., a federal agency must prepare an initial regulatory flexibility analysis ''for any proposed rule'' for which the agency ''is required by section 553 of the Administrative Procedure Act (APA), or any other law, to publish general notice of proposed rulemaking.'' The RFA exempts from this requirement any rule that the issuing agency certifies ''will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' EPA has concluded that NPDES general permits are permits, not rulemakings, under the APA and thus not subject to APA rulemaking requirements or the FRA. Notwithstanding that general permits are not subject to the RFA, EPA has determined that the Beaufort and Chukchi general permits will not have significant impact on a substantial number of small entities. This determination is based on the fact that the regulated companies are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5023 et seq. (February 9, 1984). These facilities are classified as Major Group 13—Oil as Gas Extraction SIC 1311 Crude Petroleum and Natural Gas.

Authority: This action is taken under the authority of Section 402 of the Clean Water Act as amended, 42 U.S.C. 1342. I hereby provide public notice of the draft Beaufort and Chukchi general permit in accordance with 40 CFR 124.10.

Dated: January 23, 2012.

Michael A. Bussell,

Director, Office of Water and Watersheds, Region 10.

[FR Doc. 2012–2031 Filed 1–30–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0038; FRL–9335–2]

Ace Info Solutions, Inc., and Information International Associates; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Ace Info Solutions, Inc., and its subcontractor, Information International Associates, in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Ace Info Solutions, Inc., and its subcontractor, Information International Associates, have been awarded a contract to perform work for OPP, and access to this information will enable Ace Info Solutions, Inc., and its subcontractor, Information International Associates, to fulfill the obligations of the contract.

DATES: Ace Info Solutions, Inc., and its subcontractor, Information International Associates, will be given access to this information on or before February 6, 2012.

FOR FURTHER INFORMATION CONTACT: Mario Steadman, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–8338; email address: *steadman.mario@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0038. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Contractor Requirements

Under Contract No. EP–W–11–023, Ace Info Solutions, Inc., and its subcontractor, Information International Associates, will perform duties related to public access reference and referral:

1. EPA Desktop Library support;
2. Electronic resources management support, statistics reporting, library desk reference, library services outreach, communications and user support;
3. Metadata cataloging of web pages, cataloging of library and repository materials in support of the Headquarters and Chemical Libraries and Repository;
4. Information architecture support, consultation on site structure and development, creation of content inventories, support workgroups for the development of micro sites and resource directories; and
5. Web development, graphics creation, web page coding, Web 2.0 project support for wikis and blogs and web site design.

OPP has determined that access by Ace Info Solutions, Inc., and its subcontractor, Information International Associates, to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Ace Info Solutions, Inc., and its subcontractor, Information International Associates, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, Ace Info Solutions, Inc., and its subcontractor, Information International Associates, are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Ace Info Solutions, Inc., and its subcontractor, Information International Associates, until the requirements in this document have been fully satisfied. Records of information provided to Ace Info Solutions, Inc., and its subcontractor, Information International Associates, will be maintained by EPA project officers for this contract. All information supplied to Ace Info Solutions, Inc., and its subcontractor, Information International Associates, by EPA for use in connection with this contract will be returned to EPA when Ace Info Solutions, Inc., and its subcontractor, Information International Associates, have completed their work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: January 19, 2012.

Michael Hardy,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2012–2033 Filed 1–30–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 2, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Judith B.Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov*. To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1122.

Title: Preparation of Annual Reports to Congress for the Collection and Expenditures of Fees or Charges for Enhanced 911 (E911) Services Under the NET 911 Improvement Act of 2008.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: State, local or tribal governments.

Number of Respondents: 56 respondents; 56 responses.

Estimated Time per Response: 50 hours.

Frequency of Response: Annual reporting requirement and recordkeeping requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. Sections 201(b), 219(b) and 220 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,800 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: There were no assurances of confidentiality provided to respondents. The Commission's rules address the issue of confidentiality at 47 CFR sections 0.457, 0.459, and 0.461. These rules address access to records that are not routinely available to the public, requests and requirements that materials submitted to the Commission be withheld from public inspection, and requests for inspection of materials not routinely available for public inspection.

Needs and Uses: The Commission is seeking OMB approval for a revision of this information collection in order to obtain the full three year approval from them. There is no change in the

Commission's previous burden estimates.

The Commission proposes to ask the following questions:

1. A statement as to whether or not your State, or any political subdivision, Indian tribe, village or regional corporation therein as defined by Section 6(f)(1) of the NET 911 Act, has established a funding mechanism designated for or imposed for the purposes of 911 or E911 support or implementation (including a citation to the legal authority for such mechanism).

2. The amount of the fees or charges imposed for the implementation and support of 911 or E911 services, and the total amount collected pursuant to the assessed fees or charges, for the annual period ending December 31, 20XX.

3. A statement describing how the funds collected are made available to localities, and whether your state has established written criteria regarding the allowable uses of the collected funds, including the legal citation to such criteria.

4. A statement identifying any entity in your State that has the authority to approve the expenditure of funds collected for 911 or E911 purposes; a description of any oversight procedures established to determine that collected funds have been made available or used for the purposes designated by the funding mechanism or otherwise used to implement or support 911; and a statement describing enforcement or other corrective actions undertaken in connection with such oversight, for the annual period ending December 31, 20XX.

5. A statement whether all the funds collected for 911 or E911 purposes have been made available or used for the purposes designated by the funding mechanism, or otherwise used for the implementation or support of 911 or E911.

6. A statement identifying what amount of funds collected for 911 or E911 purposes were made available or used for any purposes other than the ones designated by the funding mechanism or used for purposes otherwise unrelated to 911 or E911 implementation or support, including a statement identifying the unrelated purposes for which the funds collected for 911 or E911 purposes were made available or used.

7. A statement identifying which specificity all activities, programs, and organizations for whose benefit your State, or political subdivision thereof, has obligated or expended funds collected for 911 or E911 purposes and how these activities, programs, and organizations support 911 or E911 services or enhancements of such services.

8. A statement regarding whether your State classifies expenditures on Next Generation 911 as within the scope of permissible expenditures of funds for 911 or E911 purposes, whether your State has expended such funds on Next Generation 911 programs, and if so, how much your State has expended in the annual period ending December 31, 20XX on Next Generation 911 programs.

9. Any other comments you may wish to provide regarding the applicable funding mechanism for 911 or E911.

The purpose of this information collection is to meet the Commission's ongoing statutory obligations under the New and Emerging Technologies 911 Improvement Act of 2008, Public Law 110–283, 122 Stat. 2620 (2008) (NET 911 Act), which requires the Commission to submit an annual report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives, ''detailing the status in each State of the collection and distribution of such fees or charges, and including findings on the amount of revenues obligated or expended by each State or political subdivision thereof for any purposes other than the purpose for which any such fees or charges are specified.''

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–2013 Filed 1–30–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change The Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: AMERICAN FAMILY ASSOCIATION, Station KATG, Facility ID 86330, BPED–20120113ACF, From ATHENS, TX, To ELKHART, TX; CALVARY CHAPEL OF KANSAS CITY, Station KYLF, Facility ID 174965, BMPED–20120117AEC, From FREEMAN, MO, To ADRIAN, MO; COCHISE BROADCASTING LLC, Station KZXQ, Facility ID 78273, BMPH–20111202AFT, From CONCHO, AZ, To LAKE OF THE WOODS, AZ; LINCOLN FINANCIAL MEDIA COMPANY OF COLORADO, Station KRWZ, Facility ID 30839, BP–20111230ABW, From DENVER, CO, To PARKER, CO; NORTH AMERICAN BROADCASTING COMPANY, INC., Station WTDA, Facility ID 60099, BPH–20101004ACN, From WESTERVILLE, OH, To WORTHINGTON, OH; NORTH AMERICAN BROADCASTING COMPANY, INC., Station WMNI, Facility ID 49110, BP–20111222ANT, From COLUMBUS, OH, To WESTERVILLE, OH; PYEATT, KATHERINE, Station NEW, Facility ID 189519, BNPH–20110622AAD, From ELKHART, TX, To WHEELOCK, TX; WALKING BY FAITH MINISTRIES, INC., Station WAML, Facility ID 52617, BP–20111114AEK, From LAUREL, MS, To COLLINS, MS; WAY MEDIA, INC., Station KFWA, Facility ID 79249, BPH–20111230ACI, From PARKER, CO, To WELDONA, CO.

DATES: The agency must receive comments on or before April 2, 2012.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, (202) 418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC, 20554, telephone 1–(800) 378–3160 or *www.BCPIWEB.com.*

Federal Communications Commission

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. 2012–2067 Filed 1–30–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the PRA. On November 14, 2011 (76 FR 70447), the FDIC solicited public comment for a 60-day period on renewal of the following information collection: Notification of Changes in Insured Status (OMB No. 3064–0124). No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

DATES: Comments must be submitted on or before March 1, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie ((202) 898–3719), Counsel, Room F–1084, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information

Title: Notification of Changes in Insured Status.

OMB Number: 3064–0124.

Frequency of Response: On occasion.

Affected Public: Insured depository institutions.

Estimated Number of Respondents: 285 for certifications and 6 for depositor notices.

Estimated Time per Response: 15 minutes (certifications) 1 hour (depositor notices).

Total Annual Burden: 77.25 hours.

General Description of Collection: The collection involves the certification that insured depository institutions provide the FDIC when they completely assume deposit liabilities from another insured depository institution, and a notification that insured depository institutions provide to the FDIC when they seek to voluntarily terminate their insured status.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 25th day of January, 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–1948 Filed 1–30–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the PRA. On November 14, 2011 (76 FR 70447), the FDIC solicited public comment for a 60-day period on renewal of the following information collection: Qualified Financial Contracts (OMB No. 3064–0163). No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

DATES: Comments must be submitted on or before March 1, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie ((202) 898–3719), Counsel, Room F–1084, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information

Title: Qualified Financial Contracts.

OMB Number: 3064–0163.

Frequency of Response: On occasion.

Affected Public: Insured depository institutions.

Estimated Number of Respondents: 190 (recordkeeping/reporting); 20 (application).

Estimated Time per Response: 64 hours (24 hours— reporting; 40 hours—recordkeeping); 30 minutes (application).

Estimated Total Annual Burden: 12,160 hours (recordkeeping/reporting); 10 hours (application).

Total Annual Burden: 12,170 hours.

General Description of Collection: This collection consists of reporting and

recordkeeping requirements for qualified financial contracts (QFCs) held by insured depository institutions in troubled condition.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 25th day of January, 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–1949 Filed 1–30–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Performance Review Board

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Harriette H. Charbonneau, Director of Human Resources, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Richard A. Lidinsky, Jr.,

Chairman.

The Members of the Performance Review Board:

1. Joseph E. Brennan, Commissioner
2. Mario Cordero, Commissioner
3. Rebecca F. Dye, Commissioner
4. Michael A. Khouri, Commissioner
5. Clay G. Guthridge, Administrative Law Judge
6. Erin M. Wirth, Administrative Law Judge
7. Florence A. Carr, Deputy Managing Director
8. Lowry A. Crook, Chief of Staff
9. Rebecca A. Fenneman, General Counsel
10. Karen V. Gregory, Secretary
11. Vern W. Hill, Director, Office of Consumer Affairs and Dispute Resolution Services
12. Peter J. King, Director, Bureau of Enforcement
13. Sandra L. Kusumoto, Director, Bureau of Certification and Licensing
14. Ronald D. Murphy, Managing Director
15. Austin L. Schmitt, Director, Bureau of Trade Analysis

[FR Doc. 2012–1982 Filed 1–30–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–0260]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services (HHS), is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60 days.

Proposed Project: Protection of Human Subjects: Assurance of Compliance with Federal Policy/IRB Review/IRB Recordkeeping/Informed Consent/Consent Documentation—OMB No. 0990–0260—Office for Human Research Protections.

Abstract: Section 491(a) of Public Law 99–158 states that the Secretary of HHS shall by regulation require that each entity applying for HHS support (e.g., a grant, contract, or cooperative agreement) to conduct research involving human subjects submit to HHS assurances satisfactory to the Secretary that it has established an institutional review board (IRB) to review the research in order to ensure protection of the rights and welfare of the human research subjects. IRBs are boards, committees, or groups formally designated by an entity to review, approve, and have continuing oversight of research involving human subjects.

Pursuant to the requirement of the Public Law 99–158, HHS promulgated regulations at 45 CFR part 46, subpart A, the basic HHS Policy for the Protection of Human Subjects. The June 18, 1991 adoption of the common Federal Policy (56 FR 28003) by 15 departments and agencies implements a recommendation of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research which was established on November 9, 1974, by Public Law 95–622. The Common Rule is based on HHS regulations at 45 CFR part 46, subpart A, the basic HHS Policy for the Protection of Human Subjects.

TOTAL ESTIMATED ANNUALIZED BURDEN—DOLLARS

	Total burden hours	Hourly wage rate	Total burden dollars
Total	1,138,000	$23.20	$26,400,000

Keith A. Tucker,

Paperwork Reduction Act Clearance Officer, Office of the Secretary.

[FR Doc. 2012–2038 Filed 1–30–12; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following meeting for the aforementioned committee:

Times and Dates: 9 a.m.–5 p.m., February 16, 2012, 9 a.m.–12 p.m., February 17, 2012.

Place: CDC, Global Communications Center, Building 19, Auditorium B3, 1600 Clifton Road NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. Please register for the meeting at *www.cdc.gov/hicpac.*

Purpose: The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health and Human Services, the Director, CDC, the Director, National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), and the Director, Division of Healthcare Quality Promotion regarding (1) the practice of healthcare infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.,* nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters To Be Discussed: The agenda will include updates on CDC's activities for Healthcare Associated Infections (HAI), CDC's dialysis HAI activities, and CDC's long-term care HAI activities, draft guideline for prevention of infections among patients in neonatal intensive care units (NICU), draft guideline for infection control in healthcare personnel, draft guideline for the prevention of surgical site infections, update from the HICPAC surveillance working group, and updates on HAI surveillance definitions.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Erin Stone, M.S., HICPAC, Division of Healthcare Quality Promotion, NCEZID, CDC, l600 Clifton Road NE., Mailstop A–07, Atlanta, Georgia 30333, Telephone: (404) 639–8692, Email: *hicpac@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 25, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–2001 Filed 1–30–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

World Trade Center Health Program Scientific/Technical Advisory Committee (WTCHP STAC or Advisory Committee), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meetings of the aforementioned committee:

Committee Public Meeting Times and Dates: (All times are Eastern Standard Time.)

12 p.m.–5 p.m., February 15, 2012. 8:30 a.m.–2 p.m., February 16, 2012.

Public Comment Times and Dates: (All times are Eastern Standard Time.)

3:45 p.m.–4:45 p.m., on February 15, 2012. 8:45 a.m.–9:45 a.m., on February 16, 2012.

Place: Jacob J. Javits Federal Building, 26 Federal Plaza, New York, New York 10278. This meeting is also available by teleconference. Please dial 1–800–593–0693 and enter code 37121.

Status: Open to the public, limited by the capacity of the room, which is about 70 persons, and the number of telephone lines. The conference line will accommodate up to 300 callers; therefore it is suggested that those interested in calling in to listen to the committee meeting share a line when possible.

Please note that the public comment periods end at the times indicated above or following the last call for comments, whichever is earlier. Members of the public who want to comment must sign up. A limited number of time slots are available and will be assigned on a first come-first served basis. Each commenter will be provided up to five minutes for comment. You can sign up before the meeting by mail, facsimile, email, or telephone until all slots are filled. When you sign up you must indicate if you will be making your comments by telephone or in person. Advance sign up will conclude at 5 p.m. on February 13, 2012. If time slots are still available, you will be able to sign up at the meeting beginning at 11 a.m. on February 15 for the public comment period that day, or beginning at 8 a.m. on February 16, for the public comment period that day. To sign up in advance of the meeting, use the contact information that follows.

Mail: NIOSH Docket Office, Robert A. Taft Laboratories, MS–C–34, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Facsimile: (513) 533–8285.

Email: nioshdocket@cdc.gov.

Telephone: (513) 533–8611.

Written comments will also be accepted (see below).

Security Considerations: Due to mandatory security clearance procedures at the Jacob K. Javits Federal Building, in-person attendees must present valid government-issued picture identification to security personnel upon entering the building and go through an airport-type security check. Non-U.S. citizens are encouraged to participate in the audio conferencing due to the extra clearance involved with in-person attendance. To attend in person, a non-U.S. citizen will have to call or send an email to the contact person in this Notice before February 1, 2012, and provide passport information. You will be notified if clearance to attend the meeting in person is received; otherwise, you will not be able to attend the meeting in person.

Background: The Advisory Committee was established by Public Law 111–347 (The James Zadroga 9/11 Health and Compensation Act of 2010, Title XXXIII of the Public Health Service Act), enacted on January 2, 2011 and codified at 42 U.S.C. 300mm–300mm–61.

Purpose: The purpose of the Advisory Committee is to review scientific and medical evidence and to make recommendations to the World Trade Center (WTC) Program Administrator regarding additional WTC Health Program eligibility criteria and potential additions to the list of covered WTC-related health conditions. Title XXXIII of the Public Health Service Act established within the Department of Health and Human Services (HHS), the World Trade Center (WTC) Health Program, to be administered by the WTC Program Administrator. The WTC Health Program provides: (1) Medical monitoring and treatment benefits to eligible emergency responders and recovery and cleanup workers (including those who are Federal employees) who responded to the September 11, 2001, terrorist attacks, and (2) initial health evaluation, monitoring, and treatment benefits to residents and other building occupants and area workers in New York City, who were directly impacted and adversely affected by such attacks (''survivors''). Certain specific activities of the WTC Program Administrator are reserved to the Secretary, HHS, to delegate at her discretion; other WTC Program Administrator duties not explicitly reserved to the Secretary, HHS, are assigned to the Director, NIOSH. The administration of the Advisory Committee established under Section 300mm–1(a) is left to the Director of NIOSH in his role as WTC Program Administrator. CDC and NIOSH provide funding, staffing, and administrative support services for the Advisory Committee. The charter was issued on May 12, 2011, and will expire on May 12, 2013.

Matters To Be Discussed: The agenda for the Advisory Committee meeting includes: discussion of the petition to add cancer to the list of covered WTC-related health

conditions, research needs of the WTC Health Program, and WTC Health Program enrollment eligibility criteria for individuals who were members of a fire or police department (whether fire or emergency personnel, active or retired), worked for a recovery or cleanup contractor, or were a volunteer; and performed rescue, recovery, demolition, debris cleanup, or other related services at the Pentagon site or the Shanksville, Pennsylvania, site of the terrorist-related aircraft crashes of September 11, 2001. The agenda is subject to change as priorities dictate.

Submissions to the Docket: Written comments may be submitted. The comments should be limited to two pages and submitted to the contact person below by February 9, 2012. Efforts will be made to provide the two-page written comments received by the deadline below to the committee members before the meeting. Comments in excess of two pages will be made publicly available at the NIOSH docket (*http://www.cdc.gov/niosh/docket/archive/docket248.html*).

To provide written comments or to submit comments to the docket, send information to the NIOSH Docket Office by one of the following means:

Mail: NIOSH Docket Office, Robert A. Taft Laboratories, MS–C–34, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Facsimile: (513) 533–8285.

Email: nioshdocket@cdc.gov.

Telephone: (513) 533–8611.

Submissions to the docket should reference docket #248.

Policy on Redaction of Committee Meeting Transcripts (Public Comment): Transcripts will be prepared and posted to NIOSH Docket 248 within 60 days after the meeting. If a person making a comment gives his or her name, no attempt will be made to redact that name. NIOSH will take reasonable steps to ensure that individuals making public comments are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include: (a) A statement read at the start of the meeting stating that transcripts will be posted and names of speakers will not be redacted; and (b) A printed copy of the statement mentioned in (a) above will be displayed on the table where individuals sign up to make public comments. If individuals in making a statement reveal personal information (e.g., medical information) about themselves, that information will not usually be redacted. The CDC Freedom of Information Act coordinator will, however, review such revelations in accordance with the Freedom of Information Act and if deemed appropriate, will redact such information. Disclosures of information concerning third party medical information will be redacted.

Contact Person for More Information: Paul J. Middendorf, Ph.D., Designated Federal Official, NIOSH, CDC, 4676 Columbia Parkway, MailStop R–45, Cincinnati, Ohio 45226, Telephone: 1-(888) 982–4748; email: *wtc-stac@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 25, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–2002 Filed 1–30–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Public Health Service Act, Non-competitive Replacement Award

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of Non-competitive Replacement Award to the California Telehealth Network.

SUMMARY: The Health Resources and Services Administration (HRSA) is issuing a non-competitive replacement award under the Telehealth Resource Center Grant Program (TRCGP) to the California Telehealth Network in order to continue advancement of the effective use of telehealth technology that will facilitate the provision of health care services to rural, medically-underserved California residents.

SUPPLEMENTARY INFORMATION:

Former Grantee of Record: California Health Foundation and Trust.

Original Period of Grant Support: September 30, 2006, to August 31, 2012.

Replacement Awardee: California Telehealth Network.

Amount of Replacement Award: $355,000.

Period of Replacement Award: The period of support for this award is September 1, 2011, to August 31, 2012.

Authority: Section 330I(d)(2) of the Public Health Service Act, as amended, 42 U.S.C. 254c–14(d)(2).

Catalog of Federal Domestic Assistance Number: 93.211.

Justification For the Exception To Competition

The former grantee, California Health Foundation and Trust (CHFT), housed the California Telemedicine & eHealth Center (CTEC). For the past twelve years, CTEC has been a centralized resource center for California's telemedicine/telehealth efforts. CTEC provides technical assistance services to organizations within California interested in expanding new or existing telehealth services. HRSA was informed that CTEC is transferring organizationally from CHFT to the California Telehealth Network (CTN). The comprehensive services that CTEC provides and their ability to expand their services will allow CTN to maintain the current scope of service and activities as originally awarded under the grant. CTN has a demonstrated history of telecommunications success that will allow it to manage a regional telehealth resource center. This replacement award will help ensure the continued improvement of health care systems in California.

FOR FURTHER INFORMATION CONTACT: Monica Cowan, Public Health Analyst, Office for the Advancement of Telehealth, Office of Rural Health Policy, Health Resources and Services Administration, Room 5A–55, 5600 Fishers Lane, Rockville, Maryland 20857; (301) 443–0076; email: *Monica.cowan@hrsa.hhs.gov.*

Dated: January 24, 2012.

Mary K. Wakefield,

Administrator.

[FR Doc. 2012–2071 Filed 1–30–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Public Availability of DHS Fiscal Year 2011 Service Contract Inventory

AGENCY: Office of the Chief Procurement Officer, DHS.

ACTION: Notice of availability.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the Department of Homeland Security (DHS) is publishing this notice to advise the public of the availability of the FY 2011 Service Contract inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2011. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). On December 19, 2011, OFPP submitted additional guidance available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventory-guidance.pdf.* Except for minor changes to reporting deadlines, the guidance for preparing

and analyzing FY 2011 inventories is essentially unchanged from OFFP's November 5, 2010 guidance for preparing the FY 2010 inventory. DHS has posted its FY 2011 inventory for public review at: *http://www.dhs.gov/xopnbiz/regulations/editorial_0504.shtm* under ''Acquisition Reports and Notices.''

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Gail Carter at *Gail.A.Carter1@dhs.gov,* or telephone (202) 447–5302.

Daniel Clever,

Deputy Chief Procurement Officer.

[FR Doc. 2012–1985 Filed 1–30–12; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2004–19147]

Extension of Agency Information Collection Activity Under OMB Review: Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0021, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on September 21, 2011 (76 FR 58531). The ICR describes the nature of the information collection and its expected burden. The collection involves collecting information for background checks for all aliens and other designated individuals seeking flight instruction (''candidates'') from Federal Aviation Administration (FAA)-certificated flight training providers. Through the information collected, TSA will determine whether a candidate is a threat to aviation or national security, and thus prohibited from receiving flight training. Additionally, flight training providers are required to conduct a security awareness program for their employees and contract employees and to maintain records associated with this training.

DATES: Send your comments by March 1, 2012. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3651; email *TSAPRA@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0021.

Forms(s): N/A.

Affected Public: Aliens and other designated individuals seeking flight instruction from FAA-certified flight training providers; flight training providers required to conduct security awareness training and their employees.

Abstract: TSA has adopted regulations relating to the security threat assessments that TSA will conduct to determine whether candidates are a threat to aviation or national security, and thus prohibited from receiving flight training. This collection of information requires Federal Aviation Administration (FAA)-certificated flight training providers to provide TSA with the information necessary to conduct the security threat assessments. Finally, TSA has adopted regulations relating to security awareness training for flight school employees and contract employees, which include maintaining records of all such training.

Public Comment: TSA received one comment on the 60-day notice for this collection. The commenter stated that aliens who seek to do harm to the country will have false identification documents. The commenter also stated that aliens seeking flight training on any aircraft size should be required to undergo a threat assessment. As to the first point, the threat assessment process has safeguards in place to guard against issues of false identification documents. As to the second point, when Congress enacted the Vision 100—Century of Aviation Reauthorization Act it specifically included aliens seeking flight training in aircraft with a MTOW of less than 12,500 pounds in the threat assessment requirement.

Number of Respondents: 53,000.

Estimated Annual Burden Hours: An estimated 507,750 hours annually.

Issued in Arlington, Virginia, on January 26, 2012.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2012–2024 Filed 1–30–12; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP Dec. 12–01]

Western Hemisphere Travel Initiative: Designation of an Approved Native American Tribal Card Issued by the Kootenai Tribe of Idaho as an Acceptable Document To Denote Identity and Citizenship

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Notice.

SUMMARY: This notice announces that the Commissioner of U.S. Customs and Border Protection (CBP) is designating an approved Native American Tribal Card issued by the Kootenai Tribe of Idaho (Kootenai Tribe) to U.S. and Canadian citizens as an acceptable travel document for purposes of the Western Hemisphere Travel Initiative. The approved card may be used to denote identity and citizenship of Kootenai Tribe members entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

DATES: This designation will become effective on January 31, 2012.

FOR FURTHER INFORMATION CONTACT: Colleen Manaher, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229, (202) 344–3003.

SUPPLEMENTARY INFORMATION:

Background

The Western Hemisphere Travel Initiative

Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, as amended, required the Secretary of Homeland Security (Secretary), in consultation with the Secretary of State, to develop and implement a plan to require U.S. citizens and individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(4)(B)) to present a passport or other document or combination of documents as the Secretary deems sufficient to denote identity and citizenship for all travel into the United States. *See* 8 U.S.C. 1185 note. On April 3, 2008, the Department of Homeland Security (DHS) and the Department of State promulgated a joint final rule, effective on June 1, 2009, that implemented the plan known as the Western Hemisphere Travel Initiative (WHTI) at U.S. land and sea ports of entry. *See* 73 FR 18384 (the WHTI land and sea final rule). It amended, among other sections of the Code of Federal Regulations (CFR), 8 CFR 212.0, 212.1, and 235.1. The WHTI land and sea final rule specifies the documents that U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico are required to present when entering the United States at land and sea ports of entry.

Under the WHTI land and sea final rule, one type of citizenship and identity document that may be presented upon entry to the United States at land and sea ports of entry from contiguous territory or adjacent islands [1] is a Native American Tribal Card that has been designated as an acceptable document to denote identity and citizenship by the Secretary, pursuant to section 7209 of IRTPA for the purposes of entering the United States at a land and sea port of entry. Specifically, 8 CFR 235.1(e), as amended by the WHTI land and sea final rule, states:

> Upon the designation by the Secretary of Homeland Security of a United States qualifying tribal entity document as an acceptable document to denote identity and citizenship for the purposes of entering the United States, Native Americans may be permitted to present tribal cards upon entering or seeking admission to the United States according to the terms of the voluntary agreement entered between the Secretary of Homeland Security and the tribe. The Secretary of Homeland Security will announce, by publication of a notice in the **Federal Register**, documents designated under this paragraph. A list of the documents designated under this paragraph will also be made available to the public.

A ''United States qualifying tribal entity'' is defined as a ''tribe, band, or other group of Native Americans formally recognized by the United States Government which agrees to meet WHTI document standards.'' [2] Native American tribal cards are also referenced in 8 CFR 235.1(b), which lists the documents U.S. citizens may use to establish identity and citizenship when entering the United States. *See* 8 CFR 235.1(b)(7).

The Secretary has delegated to the Commissioner of CBP the authority to designate certain documents as acceptable border crossing documents for persons arriving in the United States by land or sea from within the Western Hemisphere, including certain United States Native American tribal cards. *See* DHS Delegation Number 7105 (Revision 00), dated January 16, 2009.

Tribal Card Program

The WHTI land and sea final rule allows U.S. federally recognized Native American tribes to work with CBP to enter into agreements to develop tribal identification cards that can be designated as acceptable to establish identity and citizenship when entering the United States at land and sea ports of entry from contiguous territory or adjacent islands. CBP has been working with various U.S. federally recognized Native American tribes to facilitate the development of such cards.[3] As part of the process, CBP will enter into one or more agreements with a U.S. federally recognized tribe that specify the requirements for developing and issuing WHTI-compliant tribal cards, including a testing and auditing process to ensure that the cards are produced and issued in accordance with the terms of the agreements.

After production of the cards in accordance with the specified requirements, and successful testing and auditing by CBP of the cards and program, the Secretary of DHS or the Commissioner of CBP may designate the tribal card as an acceptable WHTI-compliant document for the purpose of establishing identity and citizenship when entering the United States by land or sea from contiguous territory or adjacent islands. Such designation will be announced by publication of a notice in the **Federal Register**. A list of entities issuing WHTI-compliant documents and the kind of documents issued is available at *http://www.getyouhome.gov.*

Kootenai WHTI-Compliant Tribal Card Program

The Kootenai Tribe has voluntarily established a program to develop a WHTI-compliant tribal card that denotes identity and U.S. or Canadian citizenship. On March 3, 2009, CBP and the Kootenai Tribe signed a Memorandum of Agreement (MOA) to develop, issue, test, and evaluate tribal cards to be used for border crossing purposes. Pursuant to this MOA, the cards are issued to members of the Kootenai Tribe who can establish identity, tribal membership, and U.S. or Canadian citizenship. The cards incorporate physical security features acceptable to CBP as well as facilitative technology allowing for electronic validation of identity, citizenship, and tribal membership. CBP and the Kootenai Tribe finalized a service level agreement on December 1, 2009. This service level agreement memorializes the technical specifications for the production, issuance and use of the card.

CBP has tested the cards developed by the Kootenai Tribe pursuant to the above agreements and has performed an audit of the tribe's card program. On the basis of these tests and audit, CBP has determined that the cards meet the requirements of section 7209 of the IRTPA and are acceptable documents to

[1] ''Adjacent islands'' is defined in 8 CFR 212.0 as ''Bermuda and the islands located in the Caribbean Sea, except Cuba.'' This definition applies to 8 CFR 212.1 and 235.1.

[2] *See* 8 CFR 212.0. This definition applies to 8 CFR 212.1 and 235.1.

[3] The Native American tribal cards qualifying to be a WHTI-compliant document for border crossing purposes are commonly referred to as ''Enhanced Tribal Cards'' or ''ETCs.''

denote identity and citizenship for purposes of entering the United States at land and sea ports of entry from contiguous territory or adjacent islands. CBP's continued acceptance of the tribal card as a WHTI-compliant document is conditional on compliance with the MOA and all related agreements.

Acceptance and use of the WHTI-compliant tribal card is voluntary for tribe members. If an individual is denied a WHTI-compliant tribal card, he or she may still apply for a passport or other WHTI-compliant document.

Designation

This notice announces that the Commissioner of CBP designates the tribal card issued by the Kootenai Tribe in accordance with the MOA and all related agreements between the tribe and CBP as an acceptable WHTI-compliant document pursuant to section 7209 of the IRTPA and 8 CFR 235.1(e). In accordance with these provisions, the approved card, if valid and lawfully obtained, may be used to denote identity and U.S. or Canadian citizenship of Kootenai Tribe members who are entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

Dated: January 25, 2012.

David V. Aguilar,

Acting Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2012–1962 Filed 1–30–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELPOMENT

[Docket No. 5604–N–01]

Notice of Revised Information Collection for Public Comment; Consolidated Plan & Annual Performance Report

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of revised information collection for public comment.

SUMMARY: The revised information collection requirements for Consolidated Planning for Community Planning and Development (CPD) programs described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 2, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to William Kelleher, Paperwork Reduction Act Officer, Office of Chief Information Officer, Department of Housing and Urban Development, 451 7th Street SW., Room 7233, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Meg Barclay, Office of Community Planning and Development, telephone (202) 402–3669 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the revised information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C Chapter 35 as amended). As required under 5 CFR 1320.8(d)(1), HUD and OMB are seeking comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the revised 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 revised collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated collection techniques (e.g. electronic submission of the Consolidated Plan and annual performance reports) or other forms of information submission of responses.

Title of Proposal: Consolidated Plan & Annual Performance Report.

OMB Control Number: 2506–011.

Agency Form Numbers: None.

Description of the Need for the Information and Proposed Uses: The Department's collection of this information is in compliance with statutory provisions of the Cranston Gonzalez National Affordable Housing Act of 1990 that requires participating jurisdictions to submit a Comprehensive Housing Affordability Strategy (Section 105(b)); the 1974 Housing and Community Development Act, as amended, that requires states and localities to submit a Community Development Plan (Section 104(b)(4) and Section 104(m)); and statutory provisions of these Acts that requires states and localities to submit applications and reports for these formula grant programs. The information is needed to provide HUD with preliminary assessment as to the statutory and regulatory eligibility of proposed grantee projects and for informing citizens of intended uses of program funds.

Members of the Affected Public: State and local governments participating in the Community Development Block Grant Program (CDBG), the HOME Investments Partnership (HOME) Program, the Emergency Shelter Grants (ESG) program, or the Housing Opportunities for Persons with AIDS/HIV (HOPWA) program.

Estimation of the total number of hours to prepare the information collection including number of respondents, frequency of response and hours of response: The burden of meeting the regulatory requirements of Title I of the National Affordable Housing Act (NAHA) and the Housing and Community Development Act (HCDA) were assessed based on revisions to the previously approved information collection [OMB Control Number 2506–0117]. The paperwork estimates are as follows:

Task	Number of respondents	Frequency of response	Total U.S. burden hrs
Consolidated Plan.			
Localities.			
• Strategic Plan Development	1,000	1	154,000
• Action Plan Development	1,000	1	56,000
States.			
• Strategic Plan Development	50	1	21,150
• Action Plan Development	50	1	9,350
Performance Report.			
Localities	1,000	1	81,000
States	50	1	6,300
* Abbreviated Strategy	100		8,200

Task	Number of respondents	Frequency of response	Total U.S. burden hrs
Total	1,150		336,000

Status of the proposed information collection: Revision of previously approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 25, 2012.

Mercedes Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2012–2048 Filed 1–30–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–MB–2012–N0010; FXMB12320100000P2–123–FF01M01000]

Golden Eagles; Programmatic Take Permit Application; Draft Environmental Assessment; West Butte Wind Project, Crook and Deschutes Counties, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; extension of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are extending the public comment period on a draft environmental assessment (DEA) for an application for the programmatic take of golden eagles. The DEA evaluates alternatives for the application we have received from West Butte Wind Power, LLC, for programmatic permit for the take of golden eagles. If issued, the permit would be the first programmatic permit issued under our new permitting regulations under the Bald and Golden Eagle Protection Act (BGEPA). We announced receipt of the application and the availability of the DEA in our January 3, 2012, **Federal Register** notice, which also opened the 30-day public comment period. If you have previously submitted comments, please do not resubmit them, because we have already incorporated them in the public records and will fully consider them in our final decision.

DATES: To ensure consideration, please send your written comments by February 17, 2012.

ADDRESSES: You may download a copy of the DEA on the Internet at http://www.fws.gov/pacific/migratorybirds/nepa.html. Alternatively, you may use one of the methods below to request hard copies or a CD–ROM of the documents. Please specify the ''DEA for the West Butte Wind Project'' on all correspondence.

Submitting Comments: You may submit comments or requests for copies or more information by one of the following methods.

- *Email:* pacific_birds@fws.gov. Include ''DEA for the West Butte Wind Project'' in the subject line of the message.
- *U.S. Mail:* Please address written comments to Michael Green, Acting Chief, Division of Migratory Birds and Habitat Programs, Pacific Region, U.S. Fish and Wildlife Service, 911 NE 11th Ave, Portland, OR 97232.
- *Fax:* Michael Green, Acting Chief, Division of Migratory Birds and Habitat Programs, (503) 231–2019, Attn.: DEA for the West Butte Wind Project.

FOR FURTHER INFORMATION CONTACT: Michael Green, Acting Chief, Division of Migratory Birds and Habitat Programs, U.S. Fish and Wildlife Service, (503) 231–2019 (phone); pacific_birds@fws.gov (email, include ''DEA for the West Butte Wind Project'' in the subject line of the message). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

The U.S. Fish and Wildlife Service is considering an application under the Bald and Golden Eagle Protection Act (16 U.S.C. 668a-d; BGEPA) for a programmatic golden eagle (*Aquila chrysaetos*) take permit from West Butte Wind Power, LLC. The company plans to develop the West Butte wind-power project in central Oregon, and there is a risk of eagle fatalities as a result of the operation of this facility. The application includes an avian and bat protection plan combined with an eagle conservation plan that describes actions taken and proposed future actions to avoid, minimize, and mitigate adverse effects on eagles. The eagle conservation plan was developed in collaboration with the Service.

The Draft Environmental Assessment (DEA) analyzes the alternatives associated with this permit application in light of our BGEPA permitting regulations in the Code of Federal Regulations (CFR) at 50 CFR 22.26. If the results of this analysis lead us to issue this permit, it will be the first programmatic permit issued under these new regulations, as well as the first eagle take permit issued to a wind-energy company.

Background

BGEPA allows us to authorize bald eagle and golden eagle programmatic take (take that is recurring, is not caused solely by indirect effects, and that occurs over the long term or in a location or locations that cannot be specifically identified). Such take must be incidental to actions that are otherwise lawful. BGEPA's implementing regulations define ''take'' as ''to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb individuals, their nests and eggs'' (50 CFR 22.3); and ''disturb'' is further defined as ''to agitate or bother a bald or golden eagle to a degree that causes … injury to an eagle, … a decrease in its productivity, … or nest abandonment'' (50 CFR 22.3). The West Butte Wind Project potentially will result in one or more recurring eagle mortalities over the life of the project, so the appropriate type of take permit is the programmatic permit under 50 CFR 22.26.

To obtain a programmatic permit under BGEPA and 50 CFR 22.26, the applicant must (1) avoid and minimize take to the maximum extent achievable; (2) conduct adequate monitoring to determine effects; (3) offset through compensatory mitigation any remaining take, such that the net effect on the eagle population is, at a minimum, no change for eagle management populations that cannot sustain additional mortality; and (4) ensure that the direct and indirect effects of the take and required mitigation, together with the cumulative effects of other permitted take and additional factors affecting eagle populations, are compatible with the preservation of bald eagles and golden eagles.

Applicant's Proposal

The 104-megawatt (MW) project is to be built in Crook and Deschutes Counties, Oregon. As a result of monitoring studies conducted on the proposed project site, the applicant considers the use of the site by eagles to be low, and has requested in their application a permit for the legal take of

''1 to 2 Golden Eagles over the 20 to 30 year life of the project.''

The applicant developed an eagle conservation plan, following recommendations provided by the Service (Draft Eagle Conservation Plan Guidance, January 2011, *http://www.fws.gov/windenergy/docs/ECP_draft_guidance_2_10_final_clean_omb.pdf*). As recommended in the Service's guidance, the applicant's plan outlines avoidance and minimization measures and potential advanced conservation practices, assesses risk from pre-construction monitoring data, makes commitments for mitigating eagle mortalities, and commits to post-construction monitoring. This plan was submitted as part of the permit application, and if we issue the permit following the National Environmental Policy Act (NEPA) process, then the conservation commitments would become conditions of the permit.

The Service independently evaluated the risk of eagle fatalities from the construction of this project and compared that risk to the conservation measures, largely mitigation actions, to which the applicant has committed. This is an essential step in the Service's evaluation of an application for a permit for programmatic take of eagles, since issuing criteria require permitted take to be in compliance with the BGEPA's preservation standard. The Service has interpreted this standard to require maintenance of stable or increasing breeding populations of eagles (74 FR 46836; September 11, 2009). The evaluation of risk and offsetting conservation measures, and the implications for direct, indirect, and cumulative effects under three alternatives, are discussed in detail in the DEA.

Next Steps

The public process for the proposed Federal permit action will be completed after the public comment period, at which time we will evaluate the permit application and comments submitted thereon to determine whether the application meets the permitting requirements under BGEPA, applicable regulations, and NEPA requirements. Upon completion of that evaluation, we will select our course of action.

Public Comments

We invite public comment on the proposed DEA. If you wish, you may submit comments by any one of the methods discussed above under **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. You can ask us in your comment to withhold your personal identifying information from public review, but we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 668a of the Act (16 U.S.C. 668–668c) and NEPA regulations (40 CFR 1506.6).

Dated: January 12, 2012.

Hugh Morrison,

Acting Deputy Regional Director, Pacific Region, Portland, Oregon.

[FR Doc. 2012–1999 Filed 1–30–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO910000–L10100000.PH0000]

Notice of the Joint Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest Colorado Resource Advisory Council (RAC), Southwest RAC, and Front Range RAC will meet as indicated below.

DATES: The Northwest, Southwest and Front Range Colorado RACs have scheduled a joint meeting for March 6, 7 and 8, 2012. March 6 the meeting will begin at 1 p.m. and adjourn at 4:45 p.m.; on March 7 the meeting will begin at 8 a.m. and adjourn at 5 p.m.; on March 8 the meeting will begin at 8 a.m. and adjourn at noon. A 55-minute public comment period, from 3:50 p.m. to 4:45 p.m., is scheduled for March 6, 2012. The Northwest, Southwest and Front Range RACs will hold individual RAC meetings from 3:30 p.m. to 5 p.m. on March 7 and 8 a.m. to noon on March 8.

ADDRESSES: The Joint Colorado RAC (JCRAC) meeting will be held at the Holiday Inn Express Hotel and Suites, 1391 South Townsend Avenue, Montrose, CO 81401.

FOR FURTHER INFORMATION CONTACT: Deanna Masterson, Public Affairs Specialist, BLM Colorado State Office, 2850 Youngfield St., Lakewood, CO 80215, telephone (303) 239–3671.

SUPPLEMENTARY INFORMATION: The Colorado RACs advise the Secretary of the Interior, through the BLM, on a variety of public land issues in Colorado. Topics of discussion during the RAC meeting may include working group reports, the National Landscape Conservation System strategy implementation, vegetation management, BLM internet, air quality and the General Land Office anniversary. These meetings are open to the public. The public may present written comments to the RAC. There will also be time, as identified above, allocated for hearing public comments. Depending on the number of people who wish to comment during the public comment period, individual comments may be limited.

The Northwest RAC will consider one fee adjustment proposal for the Kremmling Field Office from 9 a.m. to 10 a.m. on March 8, with a specific public comment period on that proposal scheduled for 9:30 a.m. The fee adjustment proposal would adjust the fee structure at the Pumphouse and Radium recreation sites along the Upper Colorado River. Fees have been charged here since 1998. Adjustments are needed to keep pace with increased costs of maintaining and improving these areas. More information about this proposal and the complete agenda for the individual Northwest RAC meeting are available on the Northwest RAC's Web site at *http://www.blm.gov/co/st/en/BLM_Resources/racs/nwrac.html.* A second, general public comment period that does not include the fee adjustment proposal is scheduled for the Northwest RAC at 10 a.m. on March 8.

Topics of discussion for all Southwest Colorado RAC meetings may include field manager and working group reports, recreation, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, land exchange proposals, cultural resource management and other issues as appropriate.

Topics of discussion at the Front Range RAC meeting may include manager updates and resource management planning. A general public comment period is scheduled for the

Front Range RAC at 3:45 p.m. on March 7.

Helen M. Hankins,

State Director.

[FR Doc. 2012–2003 Filed 1–30–12; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–New]

Agency Information Collection Activities; Proposed Collection; Comments Requested: September 11th Victim Compensation Fund Objection Form

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Civil Division, September 11th Victim Compensation Fund, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until April 2, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to (202) 395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Clifford Krieger at 514–0013. (202) 395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Victim Compensation Objection Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* N/A. Civil Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Anyone expressing a potential objection to the filing of a claim by a purported personal representative of a deceased victim. Abstract: This form is to be submitted in connection with potential objections made to claims filed with the September 11th Victim Compensation Fund of 2001. The form asks that the objection be characterized and explained or be withdrawn.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 objectors with an average of 2.0 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 100 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–2029 Filed 1–30–12; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0036]

Agency Information Collection Activities; Proposed Collection; Comments Requested: FFL Out-of-Business Records Request

ACTION: 60-Day Notice of Information Collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until April 2, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Tracey Robertson, *Tracey.Robertson@atf.gov* or (304) 616–4647, Acting Chief, Federal Firearms Licensing Center, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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.

Summary of Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* FFL Out-of-Business Records Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5300.3A. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

Firearms licensees are required to keep records of acquisition and disposition. These records remain with the licensee as long as they are in business. The ATF F 5300.3A, FFL Out-of-Business Records Request is used by ATF to notify licensees who go out of business. When discontinuance of the business is absolute, such records shall be delivered within thirty days following the business discontinuance to the ATF Out-of-Business Records Center.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 2,285 respondents will take approximately 5 minutes to complete the form.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 190.4 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–508, 145th Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–2030 Filed 1–30–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0060]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Firearms Disabilities for Nonimmigrant Aliens

Correction

In notice document 2012–1057 appearing on page 3006 in the issue of Friday, January 20, 2012 make the following correction:

In the first column, in the next to last paragraph, starting in the third line ''[insert the date 30 days from the date this notice is published in the **Federal Register**]'' should read ''February 21, 2012''.

[FR Doc. C1–2012–1057 Filed 1–30–12; 8:45 am]

BILLING CODE 1505–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—OPENSAF Foundation

Notice is hereby given that, on January 4, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), OpenSAF Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, GoAhead Software, Bellevue, WA; and Huawei Industrial Base, Shenzhen, Guangdong, PEOPLE'S REPUBLIC OF CHINA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OpenSAF Foundation intends to file additional written notifications disclosing all changes in membership.

On April 8, 2008, OpenSAF Foundation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 16, 2008 (73 FR 28508).

The last notification was filed with the Department on April 4, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 28, 2011 (76 FR 23839).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–2041 Filed 1–30–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 7, 2011, Mallinckrodt, LLC, 3600 North Second Street, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Norlevorphanol (9634)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
4-Anilino-N-phenethyl-4-piperidine (8333).	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Metopon (9260)	II
Dextropropoxyphene, bulk. (non-dosage forms) (9273)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Opium tincture (9630)	II
Opium, powdered (9639)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances for internal use and for sale to other companies.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 2, 2012.

Dated: January 23, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–1975 Filed 1–30–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Emilio Luna, M.D.; Decision and Order

On July 12, 2011, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Emilio Luna, M.D. (Registrant), of Phoenix, Arizona. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration as a practitioner, on the grounds that he does not possess authority to handle controlled substances in Arizona, the State in which he is registered with DEA, and that his continued registration is inconsistent with the public interest. Show Cause Order at 1 (citing 21 U.S.C. 824(a)(3) & (4)).

More specifically, the Show Cause Order alleged that on September 1, 2010, the Federal Bureau of Investigation arrested and charged Registrant with distributing child pornography in interstate commerce. *Id.* The Order further alleged that on September 3, 2010, the Arizona Medical Board issued an Interim Order for Practice Restriction and Consent Order, under which Registrant is prohibited ''from prescribing any form of treatment including prescription medications.'' *Id.* The Show Cause Order also notified Registrant of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedures for doing either, and the consequence for failing to do either. *Id.* at 2 (citing 21 CFR 1301.43).

The Government initially attempted to serve the Show Cause Order on Registrant by certified mail, return receipt requested, addressed to him at his registered location. However, the mailing was returned to the Agency and stamped ''Returned to Sender Attempted Not Known''; in addition, the word ''Refused'' was handwritten on the envelope. GX 4. Simultaneously, the Show Cause Order was emailed to Registrant at the email address he had previously provided to the Agency. GX 5. Thereafter, the Government did not receive back either an error or undeliverable message. *See* Gov. Statement Re: Service of the Order to Show Cause. In addition, several weeks later, Diversion Investigators attempted to personally serve Registrant at his registered location. GX 6, at 1. However, the DIs were told that Registrant ''was not present and no longer practices at the clinic.'' *Id.*

Before proceeding to the merits, it is necessary to determine whether the means employed by the Government to serve the Show Cause Order on Registrant were constitutionally sufficient. The Supreme Court has long held ''that due process requires the government to provide 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' '' *Jones* v. *Flowers,* 547 U.S. 220, 226 (2006) (quoting *Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314 (1950)). Moreover, '' 'when notice is a person's due * * * [t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.' '' *Jones,* 547 U.S. at 229 (quoting *Mullane,* 339 U.S. at 315).

In *Jones,* the Court further noted that its cases ''require[] the government to consider unique information about an intended recipient regardless of whether a statutory scheme is reasonably calculated to provide notice in the ordinary case.'' *Id.* at 230. The Court cited with approval its decision in *Robinson* v. *Hanrahan,* 409 U.S. 38 (1972), where it ''held that notice of forfeiture proceedings sent to a vehicle owner's home address was inadequate when the State knew that the property owner was in prison.'' *Jones,* 547 U.S. at 230.[1] *See also Robinson,* 409 U.S. at 40 (''[T]he State knew that appellant was not at the address to which the notice was mailed * * * since he was at that very time confined in * * * jail. Under these circumstances, it cannot be said that the State made any effort to provide notice which was 'reasonably calculated' to apprise appellant of the pendency of the * * * proceedings.''); *Covey* v. *Town of Somers,* 351 U.S. 141 (1956) (holding that notice by mailing, publication, and posting was inadequate when officials knew that recipient was incompetent).

The *Jones* Court further explained that ''under *Robinson and Covey,* the government's knowledge that notice pursuant to the normal procedure was ineffective triggered an obligation on the government's part to take additional steps to effect notice.'' 547 U.S. at 230. The Court also noted that ''a party's ability to take steps to safeguard its own interests [such as by updating his address] does not relieve the State of its constitutional obligation.'' *Id.* at 232 (quoting Brief for United States as *Amicus Curiae* 16 n.5 (quoting *Mennonite Bd. of Missions* v. *Adams,* 462 U.S. 791, 799 (1983))). However, the Government is not required to undertake ''heroic efforts'' to find a registrant. *Dusenbery* v. *United States,* 534 U.S. 161, 170 (2002). Nor is actual notice required. *Id.*

Thus, in *Jones,* the Court held that where the State had received back a certified mailing of process as unclaimed and took ''no further action'' to notify the property owner, the State did not satisfy due process. 547 U.S. at 230. Rather, the State was required to ''take further reasonable steps if any were available.'' *Id.*

I conclude that the Government has satisfied its obligation under the Due Process Clause ''to provide 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' '' *Id.* at 226 (quoting *Mullane,* 339 U.S. at 314). Even assuming that the Government's attempts to serve Registrant by certified mail and personal service[2] did not

[1] The CSA states that ''[b]efore taking action pursuant to [21 U.S.C. 824(a)] * * * the Attorney General shall serve upon the * * * registrant an order to show cause why registration should not be * * * revoked[] or suspended.'' 21 U.S.C. 824(c). In contrast to the schemes challenged in *Jones* and *Robinson,* which provided for service to the property owner's address as listed in state records, neither the CSA nor Agency regulations state that service shall be made at any particular address such as the registered location. In any event, while in most cases, service to a registrant's registered location provides adequate notice, the Supreme Court's clear instruction is that the Government cannot ignore ''unique information about an intended recipient'' when its seeks to serve that person with notice of a proceeding that it is initiating. *Jones,* 547 U.S. at 230.

[2] As for the use of mail, after *Jones,* it seems relatively clear that when certified mail is returned

Continued

comply with the Supreme Court's instruction, several courts have held that the emailing of process can, depending on the facts and circumstances, satisfy due process, especially where service by conventional means is impracticable because a person secretes himself. *See Rio Properties, Inc.* v. *Rio Int'l Interlink,* 284 F.3d 1007, 1017–18 (9th Cir. 2002); *see also Snyder, et al.* v. *Alternate Energy* Inc., 857 N.Y.S. 2d 442, 447–449 (N.Y. Civ. Ct. 2008); *In re International Telemedia Associates, Inc.,* 245 B.R. 713, 721–22 (Bankr. N.D. Ga. 2000). While courts have recognized that the use of email to serve process has ''its limitations,'' including that ''[i]n most instances, there is no way to confirm receipt of an email message,'' *Rio Properties,* 284 F.3d at 1018, I conclude that the use of email to serve Registrant satisfied due process because service was made to an email address which Registrant provided to the Agency and the Government did not receive back either an error or undeliverable message.[3] *See Robert Leigh Kale,* 76 FR 48898, 48899–900 (2011).

Having found that the service of the Show Cause Order was constitutionally adequate, I further find that thirty days have now passed since service of the Order and neither Registrant, nor any one purporting to represent him, has either requested a hearing or submitted a written statement in lieu of a hearing. I therefore find that Registrant has waived his right to a hearing or to submit a written statement in lieu of a hearing, *see* 21 CFR 1301.43(d), and issue this Decision and Final Order based on relevant evidence contained in the Investigative Record submitted by the Government. *Id.* 1301.43(d) & (e). I make the following additional findings of fact.

Findings

Registrant is the holder of DEA Certificate of Registration BL5670686, which authorizes him to dispense controlled substances in schedule II through V at the registered location of 4137 N. 108th Ave., Phoenix, Arizona 85037. GX 1. Registrant's registration does not expire until March 31, 2013. *Id.* At the time this proceeding was commenced, Registrant was also the holder of an allopathic medicine license issued by the Arizona Medical Board. GX 2, at 1.

On September 1, 2010, Registrant was arrested by the Federal Bureau of Investigation and charged with distributing child pornography in interstate commerce. *Id.; see also* GX 6, at 2. The next day, the State Board received word of the arrest and concluded that ''if Respondent were to practice medicine in Arizona there would be a danger to the public health and safety.'' *Id.* at 2. The following day, the Board's Executive Director and Registrant entered into an Interim Order, pursuant to which Registrant was ''not [to] practice clinical medicine or any medicine involving direct patient care, and [wa]s prohibited from prescribing any form of treatment including prescription medications, until [he] applie[d] to the Board and receive[d] permission to do so.'' *Id.*

Subsequently, on October 6, 2011, the Board revoked Registrant's medical license. GX 7. I therefore find that Registrant is currently without authority under the laws of Arizona to dispense controlled substances, the State in which he holds his DEA registration.

Discussion

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to dispense controlled substances in the ''jurisdiction in which he practices'' in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) (''[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice''). *See also id.* § 823(f) (''The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). As these provisions make plain, possessing authority under state law to handle controlled substances is an essential condition for obtaining and maintaining a DEA practitioner's registration.

Accordingly, DEA has held that revocation of a registration is warranted whenever a practitioner's state authority to dispense controlled substances has been suspended or revoked. *David W. Wang,* 72 FR 54297, 54298 (2007); *Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988). *See also* 21 U.S.C. 824(a)(3) (authorizing revocation of a registration ''upon a finding that the registrant * * * has had his State license or registration suspended [or] revoked * * * and is no longer authorized by State law to engage in the * * * distribution [or] dispensing of controlled substances'').

As found above, on September 3, 2010, the Arizona Board issued an Interim Order prohibiting Registrant ''from prescribing any form of treatment including prescription medications,'' GX 2, at 2, and on October 6, 2011, the Board issued an Order revoking his medical license. GX 7, at 4. Accordingly, Registrant is without authority to dispense controlled substances in the State where he practices medicine and holds his DEA registration, and is therefore no longer entitled to hold his registration. *See* 21 U.S.C. 802 (21), 823(f), 824(a)(3). Therefore, pursuant to the authority granted under 21 U.S.C. 824(a)(3), his registration will be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BL5670686, issued to Emilio Luna, M.D., be, and it hereby is, revoked. I further order that any pending application of Emilio Luna, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[4]

Dated: January 17, 2012.

Michele M. Leonhart,

Administrator.

[FR Doc. 2012–1974 Filed 1–30–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Southwest K–9; Decision and Order

On August 16, 2011, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to

unclaimed, in most cases, the Government can satisfy its constitutional obligation by simply re-mailing the Show Cause Order by regular first class mail. *Jones,* 547 U.S. at 234–35. It also seems doubtful that any court would hold that going to the clinic where Registrant formerly practiced would provide '' 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' '' *Jones,* 547 U.S. at 226 (quoting *Mullane,* 339 U.S. at 314). At that point, nearly a year had passed since the State Board had prohibited Registrant from practicing medicine and it was a widely publicized fact that Registrant was a fugitive from justice and wanted by the FBI.

[3] While in *Kale,* I explained that the use of email to serve an Order to Show Cause is acceptable only after traditional methods of service have been tried and been ineffective, given Registrant's status as a fugitive and the likelihood that the traditional methods would (and ultimately did) prove futile, I conclude that the timing of the Government's use of email service does not constitute prejudicial error.

[4] Based on the findings of the Arizona Board, I conclude that the public interest requires that this Order be made effective immediately. 21 CFR 1316.67.

Show Cause to Southwest K–9 (hereinafter, Applicant), of New Braunfels, Texas. The Show Cause Order proposed the denial of Applicant's application for a DEA Certificate of Registration as a Canine Handler/Researcher, on the ground that its ''registration would be inconsistent with the public interest.'' Show Cause Order at 1.

More specifically, the Show Cause Order alleged that Applicant had applied for a registration as a Canine Handler/Researcher of controlled substances in schedule I but that it currently lacks authority to handle controlled substances in the State of Texas, the State in which it seeks a DEA registration. *Id.* The Show Cause Order further alleged that Applicant has failed to: (1) Obtain other required state licenses, (2) provide information required by DEA on the application for registration, (3) ''provide proposed procedures for sufficiently reporting findings of illicit drugs to law enforcement officials,'' (4) ''provide evidence that [it has] taken steps to obtain dogs from a kennel or trainer,'' as well as to either lease or build its own kennel space, and (5) ''institute * * * procedures for ensuring that its services will not be offered to illegal drug traffickers.'' *Id.* at 2. In addition, the Order alleged that Applicant ''requested a registration to handle controlled substances in types and quantities far in excess of what is required to conduct research involving canines'' and that it ''failed to provide sufficient evidence of need'' for canine drug detection services in the area where it proposes to do business. *Id.* The Order also notified applicant of its right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedures for doing so, and the consequences for failing to do either. *Id.*

As evidenced by the signed return receipt card, on September 6, 2011, the Government served the Show Cause Order on Applicant. GX 4. Since then, more than thirty days have now passed and neither Applicant, nor anyone purporting to represent it, have requested a hearing or submitted a written statement in lieu of a hearing. 21 CFR 1301.43(d). I therefore find that Applicant has waived its right to a hearing or to submit a written statement and issue this Decision and Final Order based on the record submitted by the Government. *Id.* 1301.43(d) & (e). I make the following findings.

Findings

On March 3, 2010, Applicant applied for a registration authorizing it to handle schedule I controlled substances as a canine handler, an activity which requires a researcher's registration. GX 6. Applicant provided as its proposed registered location an address in New Braunfels, Texas and checked each of the twenty-two schedule I controlled substances listed on the application form as drugs it sought authority to handle. *Id.* at 1–2. While on the application, Applicant was required to list any state licenses or controlled substances registration which authorizes it to engage in research or otherwise handle controlled substances, Applicant left this part of the form blank. *Id.* at 3. According to the affidavit of a Diversion Investigator (DI) who was assigned to review its application, Applicant possesses neither a Texas Controlled Substances Registration, which is required by Texas law, nor the license required by Texas law to operate a Guard Dog Company. GX 5, at 2. (citing Texas Health & Safety Code § 481.061(a) and Texas Occupations Code § 1702.116).

According to the DI, he interviewed Mr. Ryan Taylor, Applicant's co-owner, who stated he had two and one half years of law enforcement experience and that its manager, Ms. Mellissa Jones, was a retired police officer with twenty years of law enforcement experience. *Id.* However, Mr. Taylor ''provided no evidence that any of its employees and/or owners possessed any ability or experience [in] training * * * canines for drug detection.'' *Id.* (citing 21 CFR 1301.18(a)(1)(iii)). The DI also found Applicant's protocols to be deficient in that they did not explain how Applicant would screen its potential customers to ensure that it was not providing services to drug dealers. *Id.*

Discussion

Under the Controlled Substances Act (CSA), a canine handler is deemed to be a researcher and is subject to the registration and licensing requirements of section 303(f), 21 U.S.C. 823(f). *See Angelos Michalatos d/b/a Contraband Searches and Investigations,* 54 FR 48161 (1989) (applying registration standards of 21 U.S.C. 823(f) to canine handlers); *see also* 21 U.S.C. 802(21) (''The term 'practitioner' means * * * [an] other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, * * * conduct research with respect to, * * * or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.''). Likewise, section 823(f) imposes, as a condition of obtaining a registration under this provision, that the applicant must be currently authorized to handle controlled substances under the laws of the State in which it performs such activities. *See* 21 U.S.C. 823(f) (''The Attorney General shall register practitioners * * * to * * * conduct research with[] controlled substances * * * if the applicant is authorized to * * * conduct research with respect to controlled substances under the laws of the State in which he practices.''); *see also id.*§ 824(a)(3) (authorizing revocation of a registration ''upon a finding that the registrant * * * has had his State license or registration suspended [or] revoked * * * and is no longer authorized by State law to engage in the * * * distribution [or] dispensing of controlled substances''). *See Michalatos,* 54 FR at 48161; *see also Robert G. Crummie,* 76 FR 71369 (2011); *David W. Wang,* 72 FR 54297 (2007).

Under Texas law, ''a person who is not a registrant may not manufacture, distribute, prescribe, possess, analyze, or dispense a controlled substance in th[at] State.'' Tex. Health & Safety Code § 481.061(a).[1] Because Applicant does not possess authority under Texas law to handle controlled substances, it therefore does not meet a threshold requirement for obtaining a registration as a researcher under the CSA.[2] *See* 21 U.S.C. 802(21) & 823(f). Accordingly, Respondent's application will be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b), I order that the application of Southwest K–9 for a DEA Certificate of Registration as a Canine Handler/Researcher, be, and it hereby is, denied. This Order is effective March 1, 2012.

Dated: January 19, 2012.

Michele M. Leonhart,

Administrator.

[FR Doc. 2012–1976 Filed 1–30–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice

[1] While Texas law provides several exemptions from registration, none of these apply here. *See* Tex. Health & Safety Code § 481.062(a).

[2] Because Respondent does not have current authority to handle controlled substances under Texas law, it is not necessary to make further findings as to whether its registration is consistent with the public interest.

that on September 12, 2011, Mallinckrodt LLC., 3600 North Second Street, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

Drug	Schedule
Methylphenidate (1724)	II
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances to manufacture bulk controlled substances for distribution to its customers, and for research and analytical standards.

No comments, objections, or requests for any hearings will be accepted on any application for registration or re-registration to import crude opium, poppy straw, poppy straw concentrate, and coca leaves. As explained in the Correction to Notice of Application pertaining to 72 FR 3417 (2007), comments and requests for hearings on applications to import narcotic raw material are not appropriate.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule I or II, which fall under the authority of section 1002(a)(2)(B) of the Act 21 U.S.C. 952 (a)(2)(B) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than March 1, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f).

As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: January 23, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–1980 Filed 1–30–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 1, 2011, and published in the **Federal Register** on June 9, 2011, 76 FR 33784, Alltech Associates, Inc., 2051 Waukegan Road, Deerfield, Illinois 60015, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Heroin (9200)	I
Lysergic acid diethylamide (7315)	I
Cocaine (9041)	II
Codeine (9050)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II

The company plans to import these controlled substances for the manufacture of reference standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Alltech Associates, Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Alltech Associates, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: January 23, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–1979 Filed 1–30–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 23, 2011, and published in the **Federal Register** on July 5, 2011, 76 FR 39127, Cayman Chemical Company, 1180 East Ellsworth Road, Ann Arbor, Michigan 48108, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590).	I
1-Pentyl-3-(1-naphthoyl)indole (7118).	I
1-Butyl-3-(1-naphthoyl)indole (7173).	I
1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl) Indole (7200).	I
Alpha-ethyltryptamine (7249)	I
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (7297).	I
5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (7298).	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348).	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I

Drug	Schedule
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411) ...	I
5-Methoxy-N-N-dimethyltryptamine (7431).	I
Alpha-methyltryptamine (7432)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
5-Methoxy-N,N-diisopropyltryptamine (7439).	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II

The company plans to manufacture small quantities of marihuana derivatives for research purposes. In reference to drug code 7360 (Marihuana), the company plans to bulk manufacture cannabidiol. In reference to drug code 7370 (Tetrahydrocannabinols), the company will manufacture a synthetic THC. No other activity for this drug code is authorized for this registration.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cayman Chemical Company to manufacture the listed basic classed of controlled substances is consistent with the public interest at this time. DEA has investigated Cayman Chemical Company to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: January 23, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–1977 Filed 1–30–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 7, 2011, and published in the **Federal Register** on June 16, 2011, 76 FR 35243, Archimica, Inc., 2460 W. Bennett Street, Springfield, Missouri 65807–1229, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Phenylacetone (8501)	II
Methadone Intermediate (9254) ...	II
Tapentadol (9780)	II

The company plans to manufacture the listed controlled substances in bulk for distribution and sale to its customers for Amphetamine (1100).

The company plans to acquire the listed controlled substances in bulk from a domestic source in order to manufacture other controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Archimica, Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Archimica, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: January 23, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–1981 Filed 1–30–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0004]

Agency Information Collection Activities; Proposed Collection, Comments Requested: Extension of a Currently Approved Collection; Number of Full-Time Law Enforcement Employees as of October 31

ACTION: 30-day Notice of Information Collection Under Review.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 228, page 72977, on November 28, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 1, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Mr. Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, CJIS Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Number of Full-time Law Enforcement Employees as of October 31.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number 1–711, 1–711a, 1–711b; Sponsor: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, federal and tribal law enforcement agencies. Brief Abstract: This collection is needed to collect information on the number of full-time law enforcement employees, both civilians and officers, throughout the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 18,108 law enforcement agency respondents that submit once a year for a total of 18,108 responses with an estimated response time of 8 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 2,414 hours, annual burden, associated with this information collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE. Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–2027 Filed 1–30–12; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0146]

Proposed Extension of Existing Information Collection; Refuge Alternatives for Underground Coal Mines

AGENCY: Mine Safety and Health Administration.

ACTION: Notice of request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal and state agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, that reporting (time and financial resources) is minimal, that collection instruments are clearly understood, and that the impact of collection requirements can be properly assessed.

The Mine Safety and Health Administration is soliciting comments concerning the proposed extension of an existing information collection, OMB Control Number 1219–0146, Refuge Alternatives for Underground Coal Mines

DATES: Submit comments on or before April 2, 2012.

ADDRESSES: Comments must be identified with ''OMB Control Number 1219–0146'' and may be sent to MSHA by any of the following methods:

- *Federal E–Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Facsimile:* 202–693–9441. Include ''OMB 1219–0146'' in the subject line of the message.
- *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939.
- *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Greg Moxness, Chief, Economic Analysis Division, Office of Standards, Regulations, and Variances, MSHA, at *moxness.greg@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The Mine Safety and Health Administration is responsible for the approval of refuge alternatives. The information collection requirements are intended to help protect miners by assuring that mine operators properly supply and maintain refuge alternatives, and in the event of an emergency, that miners will know when and where to seek refuge, that the immediate area of the refuge is secure from roof failure, and that maps are current and can be used by mine rescue teams to locate the sheltered miners.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (e.g., permitting electronic submissions of responses).

A copy of the information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov/*) and selecting ''Rules and Regs,'' and then selecting ''Fed Reg Docs.''

III. Current Actions

This notice contains the request for an extension of the existing collection of information in 30 CFR 75.1506—Refuge alternatives. MSHA does not intend to publish the results from this information collection and is not seeking approval to either display or not display the expiration date for the OMB approval of this information collection.

There are no certification exceptions identified with this information collection and the collection of this

information does not employ statistical methods.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Refuge Alternatives for Underground Coal Mines.

OMB Number: 1219–0146.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR Part 75.

Total Respondents: 510.

Frequency: Various.

Total Responses: 958,819.

Estimated Total Burden Hours: 93,917 hours.

Estimated Total Burden Cost: $7,979,712.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2012–1988 Filed 1–30–12; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations, and Variances on or before March 1, 2012.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* (202) 693–9441.

3. *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations, and Variances.

4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939. Individuals who submit comments by hand-delivery are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at (202) 693–9447 (Voice), *barron.barbara@dol.gov* (Email), or (202) 693–9441 (Facsimile). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

(1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

(2) That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2011–012–M.

Petitioner: Celite Corporation, 2500 Miguelito Road, Lompoc, California 93436.

Mine: Lompoc Plant, MSHA I.D. No. 04–02848, 2500 Miguelito Road, Lompoc, California 93436, located in Santa Barbara County, California.

Regulation Affected: 30 CFR 56.20001 (Intoxicating beverages and narcotics).

Modification Request: The petitioner requests a modification of the existing standard to permit alcohol slow-fermented from starch, bearing an alcohol content of less than 10 percent alcohol by volume (ABV), commonly called ''beer,'' to be used at the Lompoc Plant for chemical testing that is part of product quality control and research. The petitioner proposes to store containers of beer at the Lompoc Plant in secure locations with restricted access, and use logs, records, and markings to ensure the beer will be used solely for purposes of quality control testing, statistical method control testing, and research testing. The petitioner states that:

(1) It does not seek a modification of any other part of the standard.

(2) The consumption of any intoxicating beverages and narcotics, including beer, will be prohibited and persons under the influence of alcohol or narcotics will not be permitted on site.

(3) The Lompoc Mine is a surface diatomaceous earth (DE) mine and processing facility. Mined DE is processed to create finished DE products (the marketable products).

(4) One of the commercial applications of the marketable products is a filtration agent utilized during the brewing process for beer. The marketable products are integrated onto a fine mesh screen, with other ingredients, thereby creating a ''filter-cake.'' At the end of the brewing process, following fermentation that results in the creation of the alcohol-containing liquid that is called ''beer,'' the beer is passed through the filter-cake to remove undesirable contaminants that results in higher clarity of the beer, which is commercially desirable.

(5) Mining operations at Celite Corporation require that containers of beer less than 10 percent ABV be located at the Lompoc Plant to conduct quality control testing of the marketable products, and to perform research testing to ensure that the marketable products are suitable for use in beer brewing. Celite Corporation's commercial operations also require that beer be located at the Lompoc Plant's Research Laboratory (Research Lab) so that the company's research staff may continue to create new marketable products and modify existing marketable products.

(6) Although DE can be an excellent filtration aid in the production of beer, it also contains naturally occurring iron, which is undesirable in beer production. If the beer absorbs too much iron, the beer will develop a bitter taste, which is not commercially desirable. Soluble iron in beer also has a deleterious effect on beer stability, which is also not commercially desirable. Accordingly, one of the most

critical properties of the marketable products is its beer-soluble iron (BSI) content.

(7) To ensure that the marketable products meet the BSI and other applicable specifications, Celite must engage in testing on-site at the Lompoc Plant to identify the BSI content of the DE products as they are processed.

(8) Specifications for BSI in the marketable products are measured at the parts per million level. Celite warrants maximum BSI content in marketable products sold to the beer industry. To adequately control the production of marketable products, and release marketable products within customers' specifications, it is essential to conduct in-process, finished product, and research testing of the marketable products.

(9) The number of actual BSI tests conducted at the Lompoc Plant can range from 5 to 40 per day. This testing methodology conforms to recommendations of the American Society of Brewing Chemists.

(10) Celite Corporation's research scientists continue to analyze and develop new and modified marketable products for use in beer production. Since beer industry customers are among Celite's largest, Celite's research scientists need to keep customer products on-site in the Research Lab for use in developmental research. Work routinely requiring the use of beer in the Research Lab includes DE permeability analysis, beer stability analysis, and solubility of other trace elements in DE that may have deleterious effect on beer quality.

(11) Because this on-site testing and research activity require that beer be stored and used at the Lompoc Plant, which is prohibited by 30 CFR 56.20001, there is a need for this petition.

(12) The use of intoxicating beverages and narcotics is not tolerated at the Lompoc Plant or at any other mine operated by Celite. However, for commercial purposes, Celite requires that containers of beer be stored at the Lompoc Plant so that appropriate quality control and research testing can be conducted. Celite seeks to modify the existing standard for the following reasons:

(a) To store containers of beer at the Lompoc Plant in secure locations.

(b) To use beer at the Lompoc Plant for purposes of quality control testing, statistical method control testing, and research testing.

(13) Celite believes that these modifications may be accomplished in a manner that ensures that miners do not have access to the beer used for testing purposes, thereby, ensuring that miners cannot consume the beer. The petitioner proposes the following alternative method of compliance:

(a) Beer used in laboratory procedures will be ordered by the Quality Specialist, Research Technician, or other responsible designee, from the purchasing coordinator.

(b) The purchasing coordinator or other responsible designee will arrange for the supply of beer to be purchased and delivered to the appropriate person/department for receipt. Beer may be received directly from a customer that requires testing in their specific beer.

(c) When the beer is received, the amount will be recorded on a log or other equivalent form.

(d) Prior to storage, the containers of beer will be initialed or marked across the label with a permanent maker to easily identify containers purchased or received for testing purposes.

(e) Except during testing procedures, the beer will be stored in a locked steel cabinet. The key will be kept by the Quality Assurance Supervisor, Research Technician, or other designee(s). A copy of the key to the locking steel cabinet will be kept by the Quality Manager, Research Manager, or other responsible person designated by the operator.

(f) A record of beer use will be kept on the log or equivalent form. The record will include the amount of beer and date used and the initials of the person acquiring the beer for testing.

(g) When the testing has concluded, the remaining degassed beer will be disposed of by dumping it down a sink drain or by other appropriate means.

(h) Empty containers of beer will be kept in a locked steel cabinet or designated receptacle until they are disposed of properly.

The petitioner asserts that the proposed alternative method is consistent with the goals of the Mine Act by providing an equivalent level of protection for the miners as provided by the existing standard, and will allow the Celite Corporation to maintain the commercial viability of the products that are mined at the Lompoc Plant.

Docket Number: M–2011–013–M.

Petitioner: Dicalite Minerals Corporation, 36994 Summit Lake Road, Burney, CA 96013.

Mine: Dicalite Plant, MSHA I.D. No. 04–04053, 36994 Summit Lake Road, Burney, CA 96013, located in Shasta County, California.

Regulation Affected: 30 CFR 56.20001 (Intoxicating beverages and narcotics).

Modification Request: The petitioner requests a modification of the existing standard to permit alcohol slow-fermented from starch, bearing an alcohol content of less than 10 percent alcohol by volume (ABV), commonly called ''beer'', to be used at the Dicalite Plant for chemical testing that is part of product quality control and research. The petitioner proposes to store containers of beer at the Dicalite Plant in secure locations with restricted access, and use logs, records, and markings to ensure the beer will be used solely for purposes of quality control testing, statistical method control testing, and research testing. The petitioner states that:

(1) It does not seek a modification of any other part of the standard.

(2) The consumption of any intoxicating beverages and narcotics, including beer, will be prohibited and persons under the influence of alcohol or narcotics will not be permitted on site.

(3) The Dicalite Plant is a surface diatomaceous earth (DE) mine and processing facility. Mined DE is processed to create finished DE products (the marketable products).

(4) One of the commercial applications of the marketable products is a filtration agent utilized during the brewing process for beer. The marketable products are integrated onto a fine mesh screen with other ingredients, thereby creating a ''filter-cake.'' At end of the brewing process, following fermentation that results in the creation of the alcohol-containing liquid that is called ''beer,'' the beer is passed through the filter-cake to remove undesirable contaminants. This results in higher clarity of the beer, which is commercially desirable.

(5) Mining operations at Dicalite Minerals Corporation require that containers of beer less than 10 percent ABV be located at the Dicalite Plant to conduct quality control testing of the marketable products and perform research testing to ensure that the marketable products are suitable for use in beer brewing. Beer industry customers are at the core of Dicalite's business.

(6) Although DE can be an excellent filtration aid in the production of beer, it also contains naturally occurring iron, which is undesirable in beer production. If the beer absorbs too much iron, the beer will develop a bitter taste, which is not commercially desirable. Soluble iron in beer also has a deleterious effect on beer stability, which is also not commercially desirable. Accordingly, one of the most critical properties of the marketable products is its beer-soluble iron (BSI) content.

(7) To ensure that the marketable products meet the BSI and other

applicable specifications, Dicalite will engage in testing on-site at the Dicalite Plant to identify the BSI content of the DE products as they are processed.

(8) Specifications for BSI in the marketable products are measured at the parts per million level. Dicalite warrants maximum BSI content in marketable products sold to the beer industry. To adequately control the production of marketable products and release marketable products within customers' specifications, it is essential to conduct in-process, finished product, and research testing of the marketable products.

(9) The number of actual BSI tests conducted at the Dicalite Plant can range from 5 to 30 per day. This testing methodology conforms to recommendations of the American Society of Brewing Chemists.

(10) The purpose of the existing standard is to protect miners by ensuring that the miners do not have access to intoxicating beverages and narcotics at mines, and that miners are not under the influence of intoxicating beverages and narcotics while on the job. The use of intoxicating beverages and narcotics is not tolerated at the Dicalite Plant. However, for commercial purposes, Dicalite requires that containers of beer be stored at the Dicalite Plant so that appropriate quality control and research testing can be conducted. The petitioner proposes to:

(a) Store closed containers of beer at the Dicalite Plant in secure locations with restricted access.

(b) Use beer at the Dicalite Plant only for purposes of quality control testing, statistical method control testing, and research testing.

(c) Store open containers of beer in a manner that ensures that miners do not have access to the beer used for testing purposes.

(11) The petitioner believes that the modifications sought through the petition may be accomplished in a manner that ensures that miners do not have access to the beer used for testing purposes. The petitioner proposes the following alternative method of compliance:

(a) Beer used in laboratory procedures will be ordered by the lab technician or other responsible designee, who will arrange for the supply of beer to be purchased and delivered to the appropriate person/department for receipt.

(b) When the beer is received, the amount will be recorded on a log or other equivalent form.

(c) The beer bottles will be initialed or marked in some way across the label with permanent marker prior to storage, to easily identify containers purchased for testing purposes.

(d) Beer will be stored in a steel locking cabinet. The key will be kept by the lab technician or other designee(s). A copy of the key to the locking cabinet will be kept by the Quality Manager or other responsible person.

(e) A record of use will be kept on the log or equivalent form that includes the amount, date used, and initials of the person acquiring the beer for testing purposes.

(f) When testing has concluded, the remaining degassed beer will be disposed of by dumping it down the drain or other appropriate disposal means.

(g) Empty containers of beer will be kept in a locking cabinet/or designated receptacle until disposed of properly.

The petitioner asserts that the proposed alternative method is consistent with the goals of the Mine Act by providing an equivalent level of protection for the miners as is provided by the existing standard, and will allow the Dicalite Minerals Corporation to maintain the commercial viability of the products that are mined at the Dicalite Plant.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2012–1989 Filed 1–30–12; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (12–007)]

NASA Advisory Council; Science Committee; Planetary Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held via Teleconference and WebEx for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATE: Thursday, February 23, 2012, 2 p.m. to 4 p.m., local time.

ADDRESSES: This meeting will take place telephonically and by WebEx. Any interested person may call the USA toll free conference call number (888) 603–9221, pass code PSS, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* meeting number 995 854 546, and password PSS@Feb23.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topics:

—Status of Budget and Programmatic Impacts on the Planetary Science Division.

—Status of the Joint NASA–European Space Agency Mars Program.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2012–2012 Filed 1–30–12; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on February 9–11, 2012, 11545 Rockville Pike, Rockville, Maryland.

Thursday, February 9, 2012, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–12 p.m.: Status Update on Implementation of the Near-Term Task Force (NTTF) Recommendations (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Energy Institute (NEI) regarding the current status on the implementation of the NTTF recommendations in response to the Fukushima event.

1 p.m.–3 p.m.: Draft Final Regulatory Guide 1.93, ''Availability of Electric

Power Sources'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Draft final Regulatory Guide 1.93, ''Availability of Electric Power Sources.''

3:15 p.m.–4:15 p.m.: Draft Final Report on the Biennial ACRS Review of the NRC Safety Research Program (Open)—The Committee will discuss the proposed draft final report on the biennial ACRS review of the NRC Safety Research Program.

4:15 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

Friday, February 10, 2012, Conference Room T–2B1, 11545 Rockville Pike, Rockville, MD

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Licensing Approach for Reviewing Instrumentation and Control (I&C) for the mPower and Other Advanced Reactors (Open)—The Committee will be hearing presentations by and hold discussions with representatives of the NRC staff regarding the proposed licensing approach for reviewing I&C for the mPower and other advanced reactors.

10:45 a.m.–12:15 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

12:15 p.m.–12:30 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

1:30 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

Saturday, February 11, 2012 Conference Room T2–B1, Two White Flint North, Rockville, Maryland

8:30 a.m.–1 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

1 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011 (76 FR 64126–64127). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Mr. Antonio Dias, Cognizant ACRS Staff (Telephone: (301) 415–6805, Email: *Antonio.Dias@nrc.gov*), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–(800) 397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301) 415–8066, between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service.

Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: January 25, 2012.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2012–2015 Filed 1–30–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on U.S. Evolutionary Power Reactor (U.S. EPR); Notice of Meeting

The ACRS Subcommittee on U.S. Evolutionary Power Reactor (U.S. EPR) will hold a meeting on February 21–23, 2012, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance, with the exception of portions that may be closed to protect proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, February 21, 2012—8:30 A.M. Until 4:30 P.M.; Wednesday, February 22, 2012—8:30 A.M. Until 4:30 P.M.; and Thursday, February 23, 2012—8:30 A.M. Until 4:30 P.M.

The Subcommittee will review Chapter 3, ''Design of Structures, Components, Equipment, and Systems,'' portions of Chapter 9, ''Auxiliary Systems,'' and Chapter 14, ''Initial Test Program and ITAAC'' of the U.S. EPR Document Control Design (DCD) Safety Evaluation Report (SER) with Open Items. The Subcommittee will hear

presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kathy Weaver (Telephone (301) 415–6236 or Email: *Kathy.Weaver@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64127–64128).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone (240) 888–9835) to be escorted to the meeting room.

Dated: January 25, 2012.

Antonio F. Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–2016 Filed 1–30–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission [NRC–2012–0002].

DATES: Weeks of January 30, February 6, 13, 20, 27, March 5, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of January 30, 2012

Monday, January 30, 2012

1:25 p.m. Affirmation Session (Public Meeting) (Tentative).

a. Final Rule: Requirements for Distribution of Byproduct Material, 10 CFR parts 30, 31, 32, 40, AND 70 (RIN 3150–AH91) (Tentative).

b. Final Rule: Advance Notification to Native American Tribes of Transport of Certain Types of Nuclear Waste (RIN 3150–AG41) (Tentative).

Week of February 6, 2012—Tentative

Thursday, February 9, 2012

9 a.m. Briefing on Status of Outreach and Educational Efforts with External Stakeholders Related to the Safety Culture Policy Statement (Public Meeting) (Contact: Diane Sieracki, (301) 415–3297).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of February 13, 2012—Tentative

There are no meetings scheduled for the week of February 13, 2012.

Week of February 20, 2012—Tentative

Wednesday, February 22, 2012

9 a.m. Briefing on Fort Calhoun (Public Meeting); (Contact: Jeff Clark, (817) 860–8147).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of February 27, 2012—Tentative

Tuesday, February 28, 2012

9:30 a.m. Briefing on the Threat Environment Assessment (Closed—Ex. 1).

Week of March 5, 2012—Tentative

There are no meetings scheduled for the week of March 5, 2012.

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at (301) 415–6200, TDD: (301) 415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 ((301) 415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: January 26, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–2182 Filed 1–27–12; 4:15 pm]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request OMB approval of revised collection of information.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is modifying the collection of information under its regulation on Payment of Premiums (OMB control number 1212–0007; expires December 31, 2013) and intends to request that the Office of Management and Budget (OMB) approve the revised collection of information under the Paperwork Reduction Act for three years. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments must be submitted by April 2, 2012.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Email: paperwork.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

Comments received, including personal information provided, will be posted to *www.pbgc.gov.*

Copies of the collection of information and comments may be obtained without charge by writing to the Disclosure Division, Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; visiting the Disclosure Division; faxing a request to 202–326–4042; or calling 202–326–4040 during normal business hours. (TTY/TDD users may call the Federal relay service toll-free at 1 (800) 877–8339 and ask to be connected to (202) 326–4040.) The premium payment regulation and the premium instructions (including illustrative forms) for 2012 are available at *www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: James Bloch, Program Analyst, Legislative and Policy Division, or Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; (202) 326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1 (800) 877–8339 and ask to be connected to (202) 326–4024.)

SUPPLEMENTARY INFORMATION: Section 4007 of Title IV of the Employee Retirement Income Security Act of 1974 (ERISA) requires pension plans covered under Title IV pension insurance programs to pay premiums to PBGC. Pursuant to section 4007, PBGC has issued its regulation on Payment of Premiums (29 CFR part 4007). Under § 4007.3 of the premium payment regulation, plan administrators are required to file premium payments and information prescribed by PBGC. Premium information must be filed electronically using ''My Plan Administration Account'' (''My PAA'') through PBGC's Web site except to the extent PBGC grants an exemption for good cause in appropriate circumstances, in which case the information must be filed using an approved PBGC form. The plan administrator of each pension plan covered by Title IV of ERISA is required to submit one or more premium filings for each premium payment year. Under § 4007.10 of the premium payment regulation, plan administrators are required to retain records about premiums and information submitted in premium filings.

PBGC needs information from premium filings to identify the plans for which premiums are paid, to verify whether the amounts paid are correct, to help PBGC determine the magnitude of its exposure in the event of plan termination, to help track the creation of new plans and transfer of participants and plan assets and liabilities among plans, and to keep PBGC's insured-plan inventory up to date. That information and the retained records are also needed for audit purposes.

All plans covered by Title IV of ERISA pay a flat-rate per-participant premium. An underfunded single-employer plan also pays a variable-rate premium based on the value of the plan's unfunded vested benefits.

Large-plan filers (*i.e.,* plans that were required to pay premiums for 500 or more participants for the prior plan year) are required to pay PBGC's flat-rate premium early in the premium payment year. Because the participant count often is not available until later in the premium payment year, PBGC permits filers to make an ''Estimated flat-rate premium filing.''

All plans are required to make a ''Comprehensive premium filing.'' Comprehensive filings are used to report (i) the flat-rate premium and related data (all plans), (ii) the variable-rate premium and related data (single-employer plans), and (iii) additional data such as identifying information and miscellaneous plan-related or filing-related data (all plans). For large plans, the Comprehensive filing also serves to reconcile an estimated flat-rate premium paid earlier in the year.

PBGC intends to revise the 2013 filing procedures and instructions to:

- Provide for revoking a prior election to use the Alternative Premium Funding Target (APFT) to determine unfunded vested benefits (UVBs). (Under PBGC regulations, an election to use the APFT is irrevocable for 5 years; 2008 was the first year that plans were permitted to elect the APFT, so 2013 is the first year for which it is necessary to collect this information.)
- Require plan administrators using the APFT to report the ''effective interest rate'' (defined in section 430(h) of the Internal Revenue Code). PBGC will use this information to update its annual contingency list and financial statements more accurately.
- Require that the plan effective date be reported for all plans rather than just new and newly covered plans. This date helps PBGC trace plans that change Employer Identification Number or Plan Number.
- Require plan administrators to provide a breakdown of the total premium funding into the same categories of participants used for Schedule SB reporting, i.e., active participants, terminated vested participants, and retirees and beneficiaries receiving payment. PBGC uses the premium funding target to estimate termination liability, e.g., for the annual contingency list, and a breakdown will enable PBGC to make a much better estimate than simply using only the total premium funding target.
- Allow a plan administrator to list a second person whom PBGC could contact with questions about a filing.
- Reorder and renumber some items on the illustrative form that accompanies and is part of the instructions, and make other minor changes.

The collection of information under the regulation has been approved through December 31, 2013, by OMB under control number 1212–0007. PBGC intends to request that OMB approve the revised collection of information for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that it will receive 29,800 premium filings per year from 24,500 plan administrators under this collection of information. PBGC further estimates that the average annual burden of this collection of information is 8,200 hours and $54,140,000.

PBGC is soliciting public comments to —

- 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 methodologies 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.

Issued in Washington, DC, this 26th day of January, 2012.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. 2012–2096 Filed 1–30–12; 8:45 am]

BILLING CODE 7709–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66242; File No.10–206]

BOX Options Exchange LLC; Notice of Filing of Application, as Amended, for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934

January 26, 2012.

On December 19, 2011, BOX Options Exchange LLC (the ''Applicant'' or ''BOX Exchange'') submitted to the Securities and Exchange Commission (''Commission'') a Form 1 application under the Securities Exchange Act of 1934 (''Exchange Act''), seeking registration as a national securities exchange under Section 6 of the Exchange Act.[1] On December 28, 2011, the Applicant submitted Amendment No. 1 to its Form 1 application.[2] The Commission is publishing this notice to solicit comments on the Applicant's Form 1 application, as amended. The Commission will take these comments into consideration in making its determination about whether to grant the Applicant's request to be registered as a national securities exchange. The Commission will grant the registration if it finds that the requirements of the Exchange Act and the rules and regulations thereunder with respect to the Applicant are satisfied.[3]

The Applicant's Form 1 application, as amended, provides detailed information on how it proposes to satisfy the requirements of the Exchange Act. BOX Market LLC (''BOX Market''), a wholly-owned subsidiary of BOX Holdings Group LLC (''BOX Holdings'') would own and operate the options trading platform as a facility of the Applicant.. Specifically, BOX Market would operate the Boston Options Exchange (''BOX'') options trading platform, which would be operated as a facility of the Applicant, as the successor-in-interest to BOX Options Exchange Group, LLC, which currently operates BOX. BOX would be an all-electronic marketplace for the trading of listed options and would not maintain a physical trading floor. Liquidity on BOX would be derived from orders to buy and orders to sell submitted electronically by order flow providers, as well as from market makers, which would have certain market making obligations. The Applicant's Form 1 application is available at the Commission's Public Reference Room and *www.sec.gov*.

Interested persons are invited to submit written data, views, and arguments concerning the Applicant's Form 1 application, as amended, including whether the application is consistent with the Exchange Act. In addition to any other areas for which interested persons may wish to submit comments, the Commission seeks comment on the proposed corporate structure of the Applicant. In order to approve the registration, the Commission must find that the Applicant is ''so organized and has the capacity to be able to carry out the purposes of [the Exchange Act].''[4] As noted above, the Applicant, BOX Exchange, would be a separate corporate entity from BOX Market, the owner and operator of its trading facility, BOX. BOX Market would in turn be owned by BOX Holdings. As discussed in further detail in the Form 1 documents, the same persons would own BOX Exchange and BOX Holdings, albeit in different percentages. The Commission requests comment on all aspects of this proposed structure, including:

○ Commenters views on the registration of an entity as a national securities exchange that does not own or operate its trading facility.

○ How, if at all, the proposed corporate structure (including that the Applicant will not own the facility) potentially would impact the ability of the Applicant to carry out its statutory obligations to regulate and oversee BOX. If commenters believe there would be an impact, and that the impact could be detrimental, what, if any, steps do commenters think the Commission could take to address the potential impact?

○ How, if at all, the proposed corporate structure potentially would impact the ability of the Commission to carry out its oversight responsibilities with respect to BOX Exchange and its trading facility BOX.

○ What are commenters' views as to whether the separation of the regulatory and oversight function of the Applicant from the market operations function in the manner proposed would have an impact on the independence of the regulatory function of the Applicant and its ability to fulfill its responsibilities? If commenters believe that there would be an impact, please describe the nature of the impact and the reasoning as to why they believe it would occur.

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 email to *rule-comments@sec.gov*. Please include File Number 10–206) on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number 10–206. This file number should be included on the subject line if email 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 Applicant's Form 1 applications filed with the Commission, and all written communications relating to the application 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. 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

[1] On January 26, 2012, the Commission issued an order granting the Applicant exemptive relief, subject to certain conditions, in connection with the filing of its Form 1 application. *See* Securities Exchange Act Release No. 66241. Because the Applicant's Form 1 application was incomplete without the exemptive relief, the date of filing of such application is January 26, 2012.

[2] Amendment No. 1, among other things, provides the unconsolidated financial statements for certain affiliates of the Applicant that are required in Exhibit D to Form 1 but were not included in the Applicant's initial Form 1 application. In its initial Form 1 application, the Applicant only submitted consolidated financials for certain of these affiliates.

[3] 15 U.S.C. 78s(a).

[4] *See* Section 6(b)(1) of the Exchange Act, 15 U.S.C. 78f(b)(1).

available publicly. All submissions should refer to File Number 10–206 and should be submitted on or before March 16, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–2022 Filed 1–30–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, February 2, 2012 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, February 2, 2012 will be:

Institution and settlement of injunctive actions; institution and settlement of administrative proceedings; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: January 26, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–2126 Filed 1–27–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66229; File No. SR–NSX–2012–01]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend its Rules To Extend Pilot Program Regarding Trading Pauses in Individual Securities Due to Extraordinary Market Volatility

January 24, 2012.

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 January 11, 2012, National Stock Exchange, Inc. (the ''Exchange'' or ''NSX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. (''NSX®'' or ''Exchange'') is proposing to amend its rules to extend a certain pilot program regarding trading pauses in individual securities due to extraordinary market volatility.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

With this rule change, the Exchange is proposing to extend a pilot program currently in effect regarding trading pauses in individual securities due to extraordinary market volatility under NSX Rule 11.20B. Currently, unless otherwise extended or approved permanently, this pilot program will expire on January 31, 2012. The instant rule filing proposes an extension to the pilot program until July 31, 2012.

NSX Rule 11.20B (Trading Pauses in Individual Securities Due to Extraordinary Market Volatility) was approved by the Securities and Exchange Commission (the ''Commission'') on June 10, 2010 on a pilot basis to end on December 10, 2010.[3] The pilot program end date was subsequently extended until April 11, 2011.[4] Similar rule changes were adopted by other markets in the national market system in a coordinated manner. As the Exchange noted in its filing to adopt NSX Rule 11.20B, during the pilot period, the Exchange, in conjunction with other markets in the national market system, would continue to assess whether additional securities need to be added and whether the parameters of the rule would need to be modified to accommodate trading characteristics of different securities. NSX Rule 11.20B was expanded to include additional exchange traded products on September 10, 2010.[5] The pilot program end date was further extended to August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted applies.[6] The pilot program was then again lengthened until January 31, 2012.[7] The Exchange, in consultation with the Commission and other markets, is now proposing that this pilot program be extended until July 31, 2012. Accordingly, pursuant to the instant rule filing, the expiration date of the pilot program referenced in

[3] *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–NSX–2010 05).

[4] *See* Securities Exchange Act Release No. 63512 (December 9, 2010), 75 FR 78786 (December 16, 2010) (SR–NSX–2010–17).

[5] *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–NSX–2010–08).

[6] *See* Securities and Exchange Act Release No. 34–64213 (April 6, 2011), 76 FR 20409 (April 12, 2011) (SR–NSX–2011–04).

[7] *See* Securities Exchange Act Release No. 34–65095 (August 10, 2011), 76 FR 50777 (August 16, 2011) (SR–NSX–2011–08).

Commentary .05 to Rule 11.20B is proposed to be changed from ''January 31, 2012'' to ''July 31, 2012.''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) and Section 11A of the Securities Exchange Act of 1934 [8] (the ''Act''), in general, and Section 6(b)(5) of the Act,[9] in particular, in that it is designed, among other things, to promote clarity, transparency and full disclosure, in so doing, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to maintain fair and orderly markets and protect investors and the public interest. Moreover, the proposed rule change is not discriminatory in that it uniformly applies to all ETP Holders. The Exchange believes that the extension of the pilot program will promote uniformity among markets with respect to trading pauses.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and Rule 19b-4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b-4(f)(6)(iii) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NSX–2012–01 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 No. SR–NSX–2012–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NSX–2012–01 and should be submitted on or before February 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1978 Filed 1–30–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b) and 15 U.S.C. 78k–1, respectively.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66235; File No. SR–CBOE–2011–114]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Relating to Complex Order Processing in Hybrid 3.0 Classes

January 25, 2012.

I. Introduction

On November 29, 2011, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposal to revise the rules governing the execution of complex orders in options classes trading on CBOE's Hybrid 3.0 trading platform. The proposed rule change was published for comment in the **Federal Register** on December 14, 2011.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

CBOE proposes to add new Interpretation and Policy .10 to CBOE Rule 6.53C, ''Complex Orders on the Hybrid System,'' to revise the operation of the complex order book (''COB'') and the complex order request for responses auction process (''COA'') for complex orders in options classes traded on CBOE's Hybrid 3.0 trading platform. The Hybrid 3.0 platform is an electronic trading platform that allows one or more quoters to submit electronic quotes that represent the aggregate market maker quoting interest in a series for the trading crowd. Certain designated Lead Market Makers currently generate the aggregate trading crowd quote. S&P 500 Index options (''SPX'') are the only options that currently trade on the Hybrid 3.0 trading platform.

Currently, complex orders submitted to COB or COA may execute automatically against (i) individual orders and quotes residing in the CBOE's electronic book (''EBook''), provided that the complex order can be executed in full or in a permissible ratio; and (ii) against other complex orders represented in COB or COA, as applicable.[4]

New CBOE Rule 6.53C, Interpretation and Policy .10 provides that, for Hybrid 3.0 classes, CBOE may determine not to allow marketable complex orders entered into COB and/or COA to execute automatically against individual quotes residing in the EBook. A marketable complex order would be able to execute automatically against other complex orders or against individual orders in the EBook, provided that conditions in CBOE Rule 6.53C, Interpretation and Policy .10 are satisfied. In particular, a marketable complex order will execute automatically against individual orders in the EBook, provided that the complex order can be executed in full, or in a permissible ratio, against the individual orders in the EBook and the individual orders in the EBook are priced equal to, or better than, the quotes residing in the EBook.[5] Complex orders that are marketable against each other will execute automatically, provided that the execution is at a net price that has priority over the individual orders and quotes in the EBook.[6]

The allocation of marketable complex orders against individual orders in the EBook and against other complex orders will be based on the best net price(s).[7] At the same net price, multiple orders will be allocated as provided in CBOE Rule 6.53C(c) and/or (d), as applicable.[8]

To the extent that a marketable complex order cannot execute automatically in full or in a permissible ratio when it is routed to COB or after being subject to a COA, any part of the order that may be executed will be executed automatically and the part of the order that cannot execute automatically will route to PAR or, at the order entry firm's discretion, to the order entry firm's booth.[9] If an order is not eligible to route to PAR, the remaining balance will be cancelled.[10]

In addition, to the extent that a complex order resting in COB becomes marketable and cannot execute automatically in full or in a permissible ratio, the full order will be subject to a COA and the processing described in CBOE Rule 6.53C, Interpretation and Policy .10(c).[11] CBOE believes that automatically initiating a COA when a resting complex order becomes marketable will provide an opportunity for market participants to match or improve the net price and provide an opportunity for automatic execution before a marketable complex order is routed for manual handling to PAR or a booth.

CBOE believes that revising its rules to prevent complex orders in Hybrid 3.0 classes from executing automatically against individual quotes in the EBook will help to prevent complex orders from executing automatically at potentially erroneous prices. CBOE notes that a market maker must send updates for all of its quotes in the individual series legs in response to a change in the price of the underlying security or index. For SPX options, the only options class currently traded on the Hybrid 3.0 platform, this may include thousands of series. CBOE states that it would be possible for a market maker to trade unintentionally with another market maker or market participant via COB or COA before the market maker's quote update(s) in the individual series leg is processed, which could result in an execution at price(s) that were not intended and that could be extreme or potentially erroneous.[12] CBOE believes that the limitation on complex order executions against a market maker's quotations in Hybrid 3.0 classes will address an operational issue that could discourage market makers, particularly Lead Market Makers, from offering additional liquidity in individual series legs.[13]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65914 (December 8, 2011), 76 FR 77878.

[4] *See* CBOE Rules 6.53C(c), ''Complex Order Book,'' and 6.53C(d), ''Process for Complex Order RFR Auction.''

[5] *See* CBOE Rule 6.53C, Interpretation and Policy .10(a).

[6] *See* CBOE Rule 6.53C, Interpretation and Policy .10(b).

[7] CBOE Rule 6.53C, Interpretation and Policy .10.

[8] CBOE Rule 6.53C, Interpretation and Policy .10.

[9] CBOE Rule 6.53C, Interpretation and Policy .10(c).

[10] CBOE Rule 6.53C, Interpretation and Policy .10(c).

[11] CBOE Rule 6.53C, Interpretation and Policy .10(d).

[12] According to CBOE, the Exchange has recognized the need to ameliorate small timing differences in processing market maker quotation updates by delaying market maker quotations from executing against each other for up to one second. *See, e.g.,* CBOE Rule 6.45B(d).

[13] CBOE notes that on the Hybrid 3.0 platform, the quotes represent aggregate market maker quoting interest in a series for the trading crowd, but the Lead Market Maker is responsible for generating the quotes and satisfying trades against those quotes in relation to executions occurring through COB or COA.

[14] 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).

rule change is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the limitation on automatic executions of marketable complex orders against individual leg market quotations for options classes traded on CBOE's Hybrid 3.0 trading platform is consistent with the Act. According to CBOE, the limitation is designed to address an operational issue that CBOE believes could discourage market makers, particularly Lead Market Makers, from offering additional liquidity in the individual series legs. This operational issue may arise when a market maker unintentionally trades with another market maker or market participant via COB or COA before the market maker's quote update(s) in the individual series leg(s) is processed. By addressing an operational issue that might discourage market makers from offering additional liquidity in the individual series legs, the Commission believes that the limitation on automatic executions of marketable complex orders against market makers' quotations in the individual series legs could benefit investors by helping to increase liquidity in the individual series legs. In addition, the Commission notes that it approved a proposal by the International Securities Exchange, LLC (''ISE'') that limits the automatic execution of market makers' complex order quotations against bids and offers in the individual series legs.[16]

Under CBOE Rule 6.53C, Interpretation and Policy .10, a marketable complex order may execute automatically against individual orders in the EBook, provided that the complex order can be executed in full or in a permissible ratio and the orders in the EBook are priced equal to or better than the individual quotes in the EBook.[17] The Commission believes that this requirement will prevent any leg of a complex order from trading at a price that is inferior to the best quote for the series in the EBook. CBOE Rule 6.53, Interpretation and Policy .01 provides, further, that complex orders that are marketable against each other will execute automatically only if the execution is at a net price that has priority over the individual orders and quotes in the EBook.[18] The Commission believes that this provision will maintain the current requirements for a complex order to obtain priority over individual orders and quotes in the EBook.

Under CBOE Rule 6.53C, Interpretation and Policy .10, the allocation of marketable complex orders against orders in the EBook and against other complex orders will be based on the best net price(s), and multiple orders at the same net price will be allocated as provided in CBOE Rules 6.53C(c) and/or (d), as applicable.[19] Accordingly, the proposal applies the requirements of the existing COB and COA allocation frameworks to determine how a marketable complex order would be allocated against individual orders in the EBook and other complex orders at the same net price.

Any part of a marketable complex order that can be executed in full or in a permissible ratio when it is routed to COB or after being subject to a COA will be executed automatically, and the part of the order that cannot execute automatically will route to PAR or to the order entry firm's booth.[20] If the order is not eligible to route to PAR, the remaining balance will be cancelled.[21] The Commission believes that these provisions will advise market participants of the treatment of marketable complex orders that cannot be executed in full or in a permissible ratio by clearly describing the processing of these orders.

A complex order resting in COB that becomes marketable but cannot be executed automatically in full or in a permissible ratio will be subject to a COA.[22] The Commission believes that subjecting such orders to a COA could provide an opportunity for price improvement and facilitate the execution of marketable complex orders.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–CBOE–2011–114) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1987 Filed 1–30–12; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78f(b)(5).

[16] *See* Securities Exchange Act Release No. 65548 (October 13, 2011), 76 FR 64980 (October 19, 2011) (order approving File No. SR–ISE–2011–39).

[17] *See* CBOE Rule 6.53C, Interpretation and Policy .10(b).

[18] *See* CBOE Rule 6.53C, Interpretation and Policy .10(b).

[19] *See* CBOE Rule 6.53C, Interpretation and Policy .10. CBOE Rule 6.53C(c) describes the operation of the COB, and CBOE Rule 6.53C(d) describes the operation of the COA.

[20] *See* CBOE Rule 6.53C, Interpretation and Policy .10(c).

[21] *See* CBOE Rule 6.53C, Interpretation and Policy .10(c).

[22] *See* CBOE Rule 6.53C, Interpretation and Policy .10(d).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66241]

Order Granting Application by BOX Options Exchange LLC for a Conditional Exemption Pursuant to Section 36(a) of the Exchange Act From Certain Requirements of Rules 6a–1 and 6a–2 Under the Exchange Act

January 26, 2012.

I. Introduction

On December 19, 2011, BOX Options Exchange LLC (the ''Applicant'') submitted to the Securities and Exchange Commission (''Commission'') an application on Form 1 under the Securities Exchange Act of 1934 (''Exchange Act'') to register as a national securities exchange.[1] In addition, the Applicant, pursuant to Rule 0–12 [2] under the Exchange Act, has requested an exemption under Section 36(a)(1) of the Exchange Act [3] from certain requirements of Rules 6a-1(a) and 6a–2 under the Exchange Act.[4] This order grants the Applicant's request for exemptive relief, subject to the satisfaction of certain conditions, which are outlined below.

[1] On December 28, 2011, the Applicant submitted Amendment No. 1 to its Form 1 application. Amendment No. 1, among other things, provides the unconsolidated financial statements for certain affiliates of the Applicant that are required in Exhibit D to Form 1 but were not included in the Applicant's initial Form 1 application. In its initial Form 1 application, the Applicant only submitted consolidated financials for certain of these affiliates. *See* Securities Exchange Act Release No. 66242 (January 26, 2012) (publishing for notice and comment the Applicant's Form 1 application, as amended, to register as a national securities exchange).

[2] 17 CFR 240.0–12.

[3] 15 U.S.C. 78mm(a)(1).

[4] 17 CFR 240.6a–1(a) and 6a–2. *See* letter from Lisa J. Fall, General Counsel and Secretary, Boston Options Exchange Group LLC, to Elizabeth Murphy, Secretary, Commission, dated December 16, 2011 (''Exemption Request'').

II. Application for Conditional Exemption From Certain Requirements of Exchange Act Rules 6a–1 and 6a–2

A. Filing Requirements Under Exchange Act Rule 6a–1(a)

Exchange Act Rule 6a–1(a) requires an applicant for registration as a national securities exchange to file an application with the Commission on Form 1. Exhibit C to Form 1 requires the applicant to provide certain information with respect to each of its subsidiaries and affiliates.[5] For purposes of Form 1, an ''affiliate'' is ''[a]ny person that, directly or indirectly, controls, is under common control with, or is controlled by, the national securities exchange * * * including any employees.''[6] Form 1 defines ''control'' as ''[t]he power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise * * * .''[7] Form 1 provides, further, that any person that directly or indirectly has the right to vote 25% or more of a class of voting securities, or has the power to sell or direct the sale of 25% or more of a class of voting securities, is presumed to control the entity.[8]

Exhibit D to Form 1 requires an applicant for exchange registration to provide unconsolidated financial statements for the latest fiscal year for each subsidiary or affiliate. Exhibit D requires the financial statements to include, at a minimum, a balance sheet and an income statement with such footnotes and other disclosures as are necessary to avoid rendering the financial statements misleading. Exhibit D provides, in addition, that if any affiliate or subsidiary of the applicant is required by another Commission Rule to submit annual financial statements, a statement to that effect, with a citation to the other Commission rule, may be provided in lieu of the financial statements required in Exhibit D.

A Form 1 application is not considered filed until all necessary information, including financial statements and other required documents, have been furnished in the proper form.[9]

B. Filing Requirements Under Exchange Act Rule 6a–2

Exchange Act Rule 6a–2(a)(2) requires a national securities exchange to update the information provided in Exhibit C within 10 days of any action that causes the information provided in Exhibit C to become inaccurate or incomplete. In addition, Exchange Act Rule 6a–2(b)(1) requires a national securities exchange to file Exhibit D on or before June 30 of each year, and Exchange Act Rule 6a–2(c) requires a national securities exchange to file Exhibit C every three years.

C. Exemption Request

On December 19, 2011, the Applicant requested that the Commission grant an exemption under Section 36 of the Exchange Act, subject to the conditions set forth below, from the requirement under Exchange Act Rule 6a–1 to file the information requested in Exhibits C and D to Form 1 for the ''Foreign Indirect Affiliates,'' as defined below, of the Applicant.[10] In addition, the Applicant requested an exemption, subject to certain conditions, with respect to the Foreign Indirect Affiliates from the requirements under: (1) Exchange Act Rule 6a–2(a)(2) to amend Exhibit C within 10 days if the information in Exhibit C becomes inaccurate or incomplete; and (2) Exchange Act Rule 6a–2(b)(1) and (c) to file periodic updates to Exhibits C and D.

MX US 2, Inc., a Delaware corporation, would hold a 20% voting interest and a 40% equity interest in the Applicant. MX US 2, Inc. also would hold a 53.83% interest in BOX Holdings LLC, which would be the 100% owner of BOX Market, which would own and operate the Boston Options Exchange options trading platform as a facility of the Applicant.[11] MX US 2, Inc. is a wholly owned subsidiary of MX US 1, Inc., a Delaware corporation. MX US 1, Inc. is a wholly owned subsidiary of Bourse de Montreal, Inc., a Canadian corporation. Bourse de Montreal, Inc. is a wholly owned subsidiary of TMX Group, Inc., a Canadian corporation. According to the Applicant, the parent ownership structure of MX US 1, Inc. is comprised entirely of foreign entities, Bourse de Montreal, Inc. and TMX Group, Inc. (the ''Foreign Direct Affiliates''), which in turn own interests, either directly or indirectly, of 25 percent or more in a number of other foreign entities (the ''Foreign Indirect Affiliates'').[12]

Because of the limited and indirect nature of its connection to the Foreign Indirect Affiliates, the Applicant believes that the corporate and financial information of the Foreign Indirect Affiliates required by Exhibits C and D of Form 1 would have little relevance to the Commission's review of the Applicant's Form 1 application or to the Commission's ongoing oversight of the Applicant as a national securities exchange if the Commission were to approve the Applicant's Form 1 application.[13] In this regard, the Exemption Request states that the Foreign Indirect Affiliates have no ability to influence the management, policies, or finances of the Applicant and no obligation to provide funding to, or ability to materially affect the funding of, the Applicant.[14] The Exemption Request also states that (1) the Foreign Indirect Affiliates have no ownership interest in the Applicant or in any of the controlling shareholders of the Applicant; and (2) there are no commercial dealings between the Applicant and the Foreign Indirect Affiliates.[15] Further, the Exemption Request states that obtaining detailed corporate and financial information with respect to the Foreign Indirect Affiliates (1) is unnecessary for the protection of investors and the public interest and (2) would be unduly burdensome and inefficient because these affiliates are located in foreign jurisdictions and the disclosure of such information could implicate foreign information sharing restrictions in such jurisdictions.[16]

[5] Specifically, Exhibit C requires the applicant to provide, for each subsidiary or affiliate, and for any entity that operates an electronic trading system used to effect transactions on the exchange: (1) The name and address of the organization; (2) the form of organization; (3) the name of the state and statute citation under which it is organized, and the date of its incorporation in its present form; (4) a brief description of the nature and extent of the affiliation; (5) a brief description of the organization's business or function; (6) a copy of the organization's constitution; (7) a copy of the organization's articles of incorporation or association, including all amendments; (8) a copy of the organization's by-laws or corresponding rules or instruments; (9) the name and title of the organization's present officers, governors, members of all standing committees, or persons performing similar functions; and (10) an indication of whether the business or organization ceased to be associated with the applicant during the previous year, and a brief statement of the reasons for termination of the association.

[6] Form 1 Instructions, Explanation of Terms, 17 CFR 249.1.

[7] *Id.*

[8] *Id.*

[9] 17 CFR 202.3(b)(2). *See also* 17 CFR 240.0–3(a). Defective Form 1 applications ''may be returned with a request for correction or held until corrected before being accepted as a filing.'' *See* 17 CFR 202.3(b)(2). *See also* Securities Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844, 70881 (Dec. 22, 1998) (''Regulation ATS Adopting Release'').

[10] *See* Exemption Request, *supra* note 4.

[11] MX US 2, Inc. currently holds a 53.83% interest in the Boston Options Exchange Group, LLC, a facility of NASDAQ OMX BX, Inc.

[12] *See* Exemption Request, *supra* note 4, at 3–4.

[13] *Id.* at 4.

[14] *Id.*

[15] *Id.*

[16] *Id.* The Applicant also believes that providing the information required by Exhibits C and D with respect to the Foreign Indirect Affiliates could raise

As a condition to the granting of exemptive relief, the Applicant has agreed to provide: (i) A listing of the names of the Foreign Indirect Affiliates; (ii) an organizational chart setting forth the affiliation of the Foreign Indirect Affiliates and the Foreign Direct Affiliates and the Applicant; and (iii) in Exhibit C of the Applicant's Form 1 application, a description of the nature of the Foreign Indirect Affiliates' affiliation with the Foreign Direct Affiliates and the Applicant. In addition, as a condition to the granting of exemptive relief from the requirements of Exchange Act Rule 6a–2(a)(2), 6a–2(b)(1), and 6a–2(c), as described above, the Applicant has agreed to provide amendments to the information required under conditions (i) through (iii) above on or before June 30th of each year. Further, the Applicant notes that it will provide the information required by Exhibits C and D for all of its affiliates other than the Foreign Indirect Affiliates, including the Foreign Direct Affiliates.[17]

III. Order Granting Conditional Section 36 Exemption

Section 6 of the Exchange Act [18] sets forth a procedure for an exchange to register as a national securities exchange.[19] Exchange Act Rule 6a–1(a)[20] requires an application for registration as a national securities exchange to be filed on Form 1 in accordance with the instructions in Form 1. A Form 1 application is not considered filed until all necessary information, including financial statements and other required documents, have been furnished in the proper form.[21] Exchange Act Rule 6a–2 establishes ongoing requirements to file certain amendments to Form 1.

Section 36(a)(1) of the Exchange Act provides that ''the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of [the Exchange Act] or of any Rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.''[22]

For the reasons discussed below, the Commission believes that it is appropriate in the public interest and consistent with the protection of investors to exempt the Applicant from the requirement under Exchange Act Rule 6a–1 to provide the information required in Exhibits C and D to Form 1 with respect to the Foreign Indirect Affiliates, subject to the following conditions:

(1) The Applicant must provide a list of the names of the Foreign Indirect Affiliates;

(2) The Applicant must provide an organizational chart setting forth the affiliation of the Foreign Indirect Affiliates and the Foreign Direct Affiliates and the Applicant; and

(3) As part of Exhibit C to the Applicant's Form 1 Application, the Applicant must provide a description of the nature of the affiliation between the Foreign Indirect Affiliates and the Foreign Direct Affiliates and the Applicant.

The Commission believes, further, that it is appropriate in the public interest and consistent with the protection of investors to exempt the Applicant, with respect to the Foreign Indirect Affiliates, from the requirements under: (a) Exchange Act Rule 6a–2(a)(2) to amend Exhibit C within 10 days of any action that renders the information in Exhibit C inaccurate or incomplete; (b) Exchange Act Rules 6a–2(c) to provide periodic updates of Exhibit C; and (c) Exchange Act Rules 6a–2(b)(1) to provide periodic updates of Exhibit D, subject to the condition that the Applicant provides amendments to the information required under conditions (1) through (3) above on or before June 30th of each year.

As part of an application for exchange registration, the information included in Exhibits C and D is designed to help the Commission make the determinations required under Sections 6(b) and 19(a) of the Exchange Act with respect to the application. The updated Exhibit C and D information required under Exchange Act Rule 6a–2 is designed to help the Commission exercise its oversight responsibilities with respect to registered national securities exchanges.

Specifically, Exhibit D is designed to provide the Commission with information concerning the financial status of an exchange and its affiliates and subsidiaries,[23] and Exhibit C provides the Commission with the names and organizational documents of these affiliates and subsidiaries.[24] Such information is designed to help the Commission determine whether an applicant for exchange registration would have the ability to carry out its obligations under the Exchange Act, and whether a registered national securities exchange continues to have the ability to carry out its obligations under the Exchange Act.

Since the most recent amendments to Form 1 in 1998,[25] many registered national securities exchanges that previously were member-owned organizations with few affiliated entities have demutualized. Some of these demutualized exchanges have been consolidated under holding companies with numerous affiliates that, in some cases, have only a limited and indirect connection to the registered national securities exchange, with no ability to influence the management or policies of the registered exchange and no obligation to fund, or to materially affect the funding of, the registered exchange. The Commission believes that, for these affiliated entities, the information required under Exhibits C and D would have limited relevance to the Commission's review of an application for exchange registration or to its oversight of a registered exchange.

Based on the Applicant's representations, the indirect nature of the relationship between the Applicant and the Foreign Indirect Affiliates, and the information that the Applicant will provide with respect to the Foreign Direct Affiliates and the Foreign Indirect Affiliates, the Commission believes that it will have sufficient information to review the Applicant's Form 1 application and to make the determinations required under Sections 6(b) and 19(a) of the Exchange Act with respect to its application for registration as a national securities exchange.[26] The Commission believes, further, that it would have the information necessary

confidentiality concerns because many of the Foreign Indirect Affiliates are not public companies. *Id.*

[17] *See* Exemption Request, *supra* note 4, at 4.

[18] 15 U.S.C. 78f.

[19] Specifically, Section 6(a) of the Exchange Act states that ''[a]n exchange may be registered as a national securities exchange * * * by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.'' Section 6 of the Exchange Act also sets forth various requirements to which a national securities exchange is subject.

[20] 17 CFR 240.6a–1(a).

[21] 17 CFR 202.3(b)(2). *See also supra* note 9.

[22] 15 U.S.C. 78mm(a)(1).

[23] *See* Securities Exchange Act Release No. 18843 (June 25, 1982), 47 FR 29259 (July 6, 1982) (proposing amendments to Form 1); *see also* Form 1, 17 CFR 249.1, and *supra* Section II.A.

[24] Form 1, 17 CFR 249.1. *See also supra* note 5.

[25] *See* Regulation ATS Adopting Release, *supra* note 9.

[26] 15 U.S.C. 78f(b) and 78s(a). Section 6(b) of the Exchange Act enumerates certain determinations that the Commission must make with respect to an exchange before registering the exchange as a national securities exchange. The Commission will not register an exchange as a national securities exchange unless it is satisfied that the exchange meets these requirements. *See* Regulation ATS Adopting Release, *supra* note 9, at IV.B.

to oversee the Applicant's activities as a national securities exchange if the Commission were to approve the Applicant's Form 1 application. In particular, the Commission notes that the Applicant has represented that it would have no direct connection to the Foreign Indirect Affiliates, that the Foreign Indirect Affiliates would have no ability to influence the management or policies of the Applicant, and that the Foreign Indirect Affiliates would have no obligation to fund, or ability to materially affect the funding of, the Applicant. In addition, the Commission notes that the Applicant represented that: (1) The Foreign Indirect Affiliates have no ownership interest in the Applicant or in any of the controlling equity holders of the Applicant; and (2) there are no commercial dealings between the Applicant and the Foreign Indirect Affiliates.[27] The Commission also believes that, based on the Applicant's representations, it could be burdensome for the Applicant to obtain detailed corporate and financial information with respect to the Foreign Indirect Affiliates because these affiliates are located in foreign jurisdictions and the disclosure of such information could implicate foreign information sharing restrictions in such jurisdictions.[28]

Given the limited and indirect relationship between the Applicant and the Foreign Indirect Affiliates and the location of the Foreign Indirect Affiliates in foreign jurisdictions, as described above, the Commission believes that the detailed corporate and financial information required in Exhibits C and D with respect to the Foreign Indirect Affiliates is unnecessary for the Commission's review of the Applicant's Form 1 application and would be unnecessary for the Commission's oversight of the Applicant as a registered national securities exchange following any Commission approval of its Form 1 application.

For the reasons discussed above, the Commission finds that the conditional exemptive relief requested by the Applicant is appropriate in the public interest and is consistent with the protection of investors.

It is ordered, pursuant to Section 36 of the Exchange Act,[29] and subject to the conditions described above, that the Applicant is exempt from the requirements to: (1) include in its Form 1 application the information required in Exhibits C and D to Form 1 with respect to the Foreign Indirect Affiliates; and (2) with respect to the Foreign Indirect Affiliates, update the information in Exhibits C and D to Form 1 as required by Exchange Act Rules 6a–2(a)(2), 6a–2(b)(1), and 6a–2(c).

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–2021 Filed 1–30–12; 8:45 am]

BILLING CODE 8011–01–P

[27] *See* Exemption Request, *supra* note 4, at 4.

[28] *See id.*

[29] 15 U.S.C. 78mm.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66237; File No. SR–NYSEAmex–2012–02]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Options Rule 902NY To Create a Reserve Floor Market Maker Amex Trading Permit

January 25, 2012.

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 January 24, 2012, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') 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 NYSE Amex Options Rule 902NY to create a Reserve Floor Market Maker Amex Trading Permit (''Reserve ATP''). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Amex Options Rule 902NY to create a Reserve ATP.

Under the current Fee Schedule, an ATP Holder[3] acting as a Market Maker must pay $5,000 per month per Amex Trading Permit (''ATP'').[4] In order to act as a Floor Market Maker, an individual must be specifically named on the relevant Market Maker's ATP. On some occasions, a Floor Market Maker may be absent from the floor due to illness or other unexpected absence, in which case the ATP Holder may wish to have a Market Maker Authorized Trader[5] (''MMAT'') employee engage in open outcry trading to cover for the absent Floor Market Maker. However, at present the ATP Holder cannot do so unless the MMAT employee is specifically named on the relevant ATP, and it may not be economical for the ATP Holder to maintain an additional ATP to address such unexpected or limited situations or to complete the approval process for an additional ATP in a timely way when a short-term need arises. In such cases, the ATP Holder must carry out its responsibilities with fewer than the optimal number of Floor Market Makers on the trading floor. For example, currently under NYSE Amex Rule 923NY, a total of four ATPs are required to stream quotes electronically into all option issues traded on the Exchange. Additionally, each ATP can have an individual named to act as a Floor Market Maker in open outcry trading on the Floor of the Exchange. Thus, an ATP Holder with four ATPs may stream quotes in every option issue on the Exchange and have four

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An ''ATP Holder'' is a natural person, sole proprietorship, partnership, corporation, limited liability company or other organization, in good standing, that has been issued an Amex Trading Permit. *See* NYSE Amex Rule 900.2NY(5).

[4] The fee is calculated based on the maximum number of ATPs held by the ATP Holder during the calendar month.

[5] A ''Market Maker Authorized Trader'' is an authorized trader who performs market making activities pursuant to Rule 920NY on behalf of an ATP Holder registered as a Market Maker. *See* NYSE Amex Rule 900.2NY(37). A Market Maker Authorized Trader must meet the same registration requirements as a Floor Market Maker before they can be designated as a Market Maker Authorized Trader. *See* NYSE Amex Rule 921.1NY.

individuals conduct trading in open outcry on the trading Floor as Floor Market Makers. If one of those four individuals is unavailable due to sickness, vacation or other reason, the ATP Holder is required to pay for an additional ATP (presently $5,000) in order to have another individual trade in open outcry as a Floor Market Maker. If the ATP Holder activates an individual on an ATP for any portion of a month, even as little as one day, the ATP Holder is charged the full $5,000 monthly ATP fee.

The Exchange believes that an option should be available to Market Maker firms to address the short-term absence of an employee in a more economical way, which also would assist the Exchange in maintaining fair and orderly markets. In addition, certain Market Maker firms have requested that the Exchange amend the present system to address the issue of an absent Floor Market Maker. Accordingly, the Exchange proposes to create a Reserve ATP under which an ATP Holder would be permitted to have a qualified MMAT employee cover for the absent Floor Market Maker under the firm's ATP, effectively empowering the individual acting as a qualified MMAT to act as a Floor Market Maker in lieu of the absent individual until such time as the absent Floor Market Maker returns. When a Floor Market Maker is or will be absent, an ATP Holder that maintains a Reserve ATP would be required to provide written notice to the Exchange that it will utilize such Reserve ATP, at least a day in advance of the utilization. The notice will identify both the Floor Market Maker who will not be utilizing the ATP Holder's ATP and the MMAT who will be acting as the substitute Floor Market Maker. While the notice is in effect, only the specifically named MMAT acting as a substitute Floor Market Maker will be authorized to utilize the ATP. When the original Floor Market Maker returns, the ATP Holder will provide written notice to the Exchange, and, as of the date specified in the notice, the original Floor Market Maker may resume reliance on the ATP and the MMAT will no longer be able to utilize the ATP. In this manner, an ATP Holder that has purchased the four ATPs required to quote every issue on the Exchange would have the ability to ensure it has sufficient Floor Market Maker coverage in the event of an absence, without having to incur the full $5,000 ATP fee, by instead paying a Reserve ATP fee of $175 per month, which would be established by a separate fee filing with the Commission. The proposed fee would be assessed to an ATP Holder for each MMAT in its employ whom the ATP Holder wishes to be eligible to be named to the ATP to act as a Floor Market Maker to cover for another Floor Market Maker who is otherwise unable to be at work that day.

Any natural person to whom a Reserve ATP is issued would be required, as of the date of notice, to (a) be fully qualified and approved by the Exchange to be an ATP Holder authorized as an MMAT; and (b) meet all of the requirements of an ATP Holder under the Exchange's rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change would provide a method for ATP Holders to have fully qualified personnel step in to handle other employees' absences without requiring the ATP Holders to pay the full fee every month for the ATPs used by such substitute persons, thereby contributing to the efficient use of ATP Holder personnel and resources, and fair and orderly markets. Additionally, the Exchange notes that it is filing this rule change to respond to the Market Maker firms that have requested a solution to the issues they face when they have an absent Floor Market Maker.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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 email to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2012–02 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.

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

All submissions should refer to File Number SR–NYSEAmex–2012–02. This file number should be included on the subject line if email 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 NW., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2012–02 and should be submitted on or before February 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2036 Filed 1–30–12; 8:45 am]

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[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66238; File No. SR–BX–2012–005]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Expand the Short Term Option Series Program

January 25, 2012.

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 January 17, 2012, NASDAQ OMX BX, Inc. (the ''Exchange'') 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 Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Trading Rules of the Boston Options Exchange Group, LLC (''BOX'') to expand the Short Term Option Series Program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Supplementary Material .07 to Chapter IV, Section 6 (Series of Options Open for Trading) and Supplementary Material .02 to Chapter XIV, Section 10 (Terms of Index Options Contracts) to expand the Short Term Option Series Program (''Weeklys Program'').[4] Currently, BOX may select up to 25 currently listed option classes on which Weekly options may be opened in the Weeklys Program. The Exchange proposes to increase this to thirty option classes to participate in the Weeklys Program. This is a competitive filing and is based on recently approved filings submitted by The NASDAQ Stock Market LLC for the NASDAQ Options Market (''NOM'') and NASDAQ OMX PHLX, Inc. (''PHLX'').[5]

On November 17, 2011, the Exchange amended the BOX Weeklys Program by increasing the number of strikes that may be listed per class (from 20 to 30) that participates in the Weeklys Program, and by increasing the number of classes (from 15 to 25) that are eligible to participate in the BOX Weeklys Program.[6] On that same day, NOM and PHLX each increased the number of classes that are eligible to participate in their Weeklys Programs from 15 classes to 30 classes. As a result, BOX is competitively disadvantaged since it operates a substantially similar Weeklys Program as NOM and PHLX but is limited to selecting only 25 classes that may participate in its Weeklys Program (whereas PHLX and NOM may each select 30 classes).[7]

The Exchange is not proposing any changes to these additional Weeklys Program limitations other than to increase from 25 to 30 the number of option classes that may participate in the Weeklys Program.

BOX notes that the Weeklys Program has been well-received by market participants, in particular by retail investors. BOX believes a modest increase to the number of classes that may participate in the Weeklys Program, such as the one proposed in this rule filing, will permit BOX to meet increased customer demand and provide market participants with the ability to hedge in a greater number of option classes.

With regard to the impact of this proposal on system capacity, BOX has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of classes that participate in the Weeklys Program.

The proposed increase to the number of classes eligible to participate in the

[3] 17 CFR 240.19b–4(f)(6).

[4] The Exchange adopted the Weeklys Program on July 15, 2010. *See* Securities Exchange Act Release No. 62505 (July 15, 2010), 75 FR 42792 (July 22, 2010) (SR–BX–2010–047).

[5] *See* Securities Exchange Act Release Nos. 65775 (November 17, 2011), 76 FR 72473 (November 23, 2011) (SR–NASDAQ–2011–138) and 65776 (November 17, 2011), 76 FR 72482 (November 23, 2011) (SR–PHLX–2011–131).

[6] See Securities Exchange Act Release No. 65773 (November 17, 2011), 76 FR 72490 (November 23, 2011) (SR–BX–2011–075).

[7] BOX is permitted to list Weekly options ''on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules.'' See Supplementary Material .07 to Chapter IV, Section 6, and Supplementary Material .02 to Chapter XIV, Section 10 of the BOX Trading Rules.

Weeklys Program is required for competitive purposes as well as to ensure consistency and uniformity among the competing options exchanges that have adopted similar Weeklys Programs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 [8] (the ''Act'') in general, and furthers the objectives of Section 6(b)(5) of the Act [9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 Exchange believes that expanding the current short term options program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions and hedging decisions in greater number of securities. The Exchange believes that expanding the current program would provide the investing public and other market participants increased opportunities because an expanded program would provide market participants additional opportunities to hedge their investment thus allowing these investors to better manage their risk exposure. While the expansion of the Weeklys Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal remains limited to a fixed number of classes. Further, the Exchange does not believe that the proposed rule change will result in a material proliferation of additional series because it [sic] the number of series per class remains limited, and the Exchange does not believe that the additional price points will result in fractured liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to those of other exchanges that have been approved by the Commission that permit such exchanges to select up to 30 classes to participate in their respective short term option series programs.[12] Therefore, the Commission designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day prefiling requirement.

[12] *See supra* note 5.

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2012–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–005. This file number should be included on the subject line if email 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–BX–2012–005 and should be submitted on or before February 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2037 Filed 1–30–12; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66234; File No. SR–ISE–2011–82]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving a Proposed Rule Change Relating to Legging Orders

January 25, 2012.

I. Introduction

On November 29, 2011, the International Securities Exchange, LLC (the ''Exchange'' or ''ISE'') 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 amend ISE Rule 715, ''Types of Orders,'' to add a new order type, the legging order. The proposed rule change was published for comment in the **Federal Register** on December 12, 2011.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description

A complex order resting on ISE's complex order book may be executed either by: (i) Trading against an incoming complex order that is marketable against the resting complex order, or (ii) legging into the market when the net price of the complex order can be satisfied by executing all of the legs of the complex order against the best bids or offers on ISE for the individual options series. ISE's new order type, the legging order, is designed to increase the opportunities for a complex order resting on ISE's complex order book to leg into the market.[4]

Under the proposal, a legging order may be generated automatically on behalf of one leg of a complex order resting on ISE's complex order book at a price: (i) That matches or improves the best displayed bid or offer on ISE's regular limit order book; and (ii) at which the net price of the complex order can be achieved when the other leg of the complex order executes against the best displayed bid or offer on ISE's regular limit order book.[5] When a legging order representing one leg of the complex order is executed, the other leg of the complex order will execute automatically against ISE's displayed best bid or offer.[6]

A legging order will be removed automatically from ISE's regular limit order book if: (i) The price of the legging order is no longer at the displayed best bid or offer on the Exchange's regular limit order book; (ii) execution of the legging order would no longer achieve the net price of the complex order when the other leg is executed against the best displayed bid or offer on the regular limit order book; (iii) the complex order is executed in full or in part against another complex order on the complex order book; or (iv) the complex order is cancelled or modified.[7]

Legging orders are firm orders that will be included in ISE's displayed best bid or offer.[8] A legging order will be executed only after all other executable orders (including any non-displayed size) and quotes at the same price are executed in full.[9] Accordingly, ISE notes that the generation of a legging order will not affect the existing priority, or execution opportunities, currently provided to participants in the regular market.[10]

The proposal limits the circumstances under which a legging order may be generated. A legging order may be generated only on behalf of a two-legged complex that has an equal number of contracts on both legs, and a legging order will not be created at a price that would lock or cross the best bid or offer of another exchange.[11] There can be only one legging order to buy in a series.[12]

In addition to these limitations, ISE states that it will carefully manage and curtail the number of legging orders being generated so that they do not negatively impact system capacity and performance.[13] Accordingly, legging orders may not be generated for all eligible complex orders resting on the complex order book.[14] ISE represents that it will curtail the number of legging orders on an objective basis, such as by limiting the number of orders generated in a particular class.[15] ISE represents, further, that it will not limit the generation of legging orders on the basis of the entering participant or the participant category of the order (*i.e.,* professional, professional customer, or public customer).[16]

The following example illustrates the operation of legging orders:

A complex order to buy 10 series 1 (S1) and 10 series 2 (S2) at a net price of $2.25 (buy S1/S2 10 @ $2.25) is entered into the complex order book and there is no off-setting complex order to sell.

The complex order cannot leg into the regular market because the BBO net price available for the complex order on ISE's regular order book is $2.40, as follows:

ISE Bid	ISE Offer
S1 10 @ $1.00	20 @ $1.20
S2 10 @ $1.00	20 @ $1.20

(buy S1 @ $1.20 + buy S2 @ $1.20 = $2.40 net)

Legging orders to buy 10 S1 @ $1.05 and 10 S2 @ $1.05 may be generated automatically, improving ISE's best bid for both S1 and S2 to $1.05:

ISE Bid	ISE Offer
S1 10 @ $1.05 (legging order)	20 @ $1.20
S2 10 @ $1.05 (legging order)	20 @ $1.20

If ISE receives a marketable order to sell 10 S1, it would execute against the legging order to buy S1 at $1.05, the other leg of the complex order would execute automatically against the displayed offer of $1.20 for S2, and the legging order to buy S2 at $1.05 would be cancelled automatically. This would achieve the net price of $2.25 for the complex order (buy S1 @ $1.05 + buy S2 @ $1.20 = $2.25 net).[17]

ISE notes that, in this example, the legging order enabled the execution of the complex order at a net price of $2.25 and enhanced the execution of the interest in the leg market because (i) the incoming marketable order to sell S1 received a better price ($1.05 instead of $1.00), and (ii) the complex order provided liquidity to execute the resting leg market interest to sell S2 at $1.20.[18]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65900 (December 6, 2011), 76 FR 77275 (''Notice'').

[4] Legging orders will not be generated for market maker quotes on the complex order book because market maker quotes cannot leg into the market. *See* ISE Rule 722, Supplementary Material .03.

[5] *See* ISE Rule 715(k)(1).

[6] *See* ISE Rule 715(k)(2).

[7] *See* ISE Rule 715(k)(3).

[8] *See* ISE Rule 715(k).

[9] *See* ISE Rule 715(k)(2).

[10] *See* Notice, 76 FR at 77276.

[11] *See* ISE Rule 715(k) and (k)(1).

[12] *See* Notice, 76 FR at 77276.

[13] *See id.*

[14] *See id.*

[15] *See* Notice, 76 FR at 77276, footnote 6.

[16] *See id.*

[17] If ISE received a marketable order to sell 10 S2, it would execute against the legging order to buy S2 at $1.05, the other leg of the complex order would execute automatically against the displayed offer of $1.20 for S1, and the legging order to buy S1 at $1.05 would be cancelled automatically. This would achieve the net price of $2.25 for the complex order (buy S1 @ $1.20 + buy S2 @ $1.05 = $2.25 net). For additional examples regarding the operation of legging orders, *see* Notice, 76 FR at 77275–77276.

[18] *See* Notice, 76 FR at 77276.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[20] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change could facilitate the execution of complex orders resting on ISE's complex order book by increasing the opportunities for these orders to execute against interest in the leg market, thereby benefitting investors seeking to execute complex orders. In addition, the Commission believes that the proposal could benefit participants in the leg market by providing additional liquidity, and potentially more favorable executions, for orders and quotes in the leg market.

A legging order is a firm order that will be included in ISE's displayed best bid or offer.[21] In addition, a legging order will not be created at a price that would lock or cross the best bid or offer of another exchange.[22] The Commission notes that a legging order will be executed only after all other executable orders (including any non-displayed size) and quotes at the same price are executed in full.[23] Accordingly, ISE states that legging orders will not affect the existing priority, or execution opportunities, of participants in the leg market.[24]

As noted above, ISE represents that it will carefully manage and curtail the number of legging orders being generated so that they do not negatively impact system capacity and performance.[25] ISE represents, further, that it will curtail the number of legging orders on an objective basis, such as by limiting the number of orders generated in a particular class, and that it will not limit the generation of legging orders on the basis of the entering participant or the participant category of the order (*i.e.,* professional, professional customer, or public customer).[26]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–ISE–2011–82) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1986 Filed 1–30–12; 8:45 am]

BILLING CODE 8011–01–P

[19] 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).

[20] 15 U.S.C. 78f(b)(5).

[21] *See* ISE Rule 715(k).

[22] *See* ISE Rule 715(k)(1).

[23] *See* ISE Rule 715(k)(2).

[24] *See* Notice, 76 FR at 77276.

[25] *See id.*

[26] *See id.*

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Airbee Wireless, Inc., Axial Vector Engine Corp. (n/k/a Avec Corporation), and Exploration Drilling International, Inc.; Order of Suspension of Trading

January 27, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Airbee Wireless, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Axial Vector Engine Corp. (n/k/a Avec Corporation) because it has not filed any periodic reports since the period ended March 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Exploration Drilling International, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on January 27, 2012, through 11:59 p.m. EST on February 9, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–2161 Filed 1–27–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Onyx Service & Solutions, Inc.; Order of Suspension of Trading

January 27, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Onyx Service & Solutions, Inc. (''ONYX'') because of questions regarding the accuracy of assertions by ONYX in press releases concerning, among other things, the company's business projects and prospects.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST, on January 27, 2012 through 11:59 p.m. EST, on February 9, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–2160 Filed 1–27–12; 4:15 pm]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12990 and #12991]

North Carolina Disaster #NC–00041

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of NORTH CAROLINA dated 01/19/2012.

Incident: Tornadoes, High Wind and Severe Weather.

Incident Period: 01/11/2012.

Effective Date: 01/19/2012.

Physical Loan Application Deadline Date: 03/19/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 10/19/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Burke.

Contiguous Counties:

North Carolina: Avery, Caldwell, Catawba, Cleveland, Lincoln, Mcdowell, Rutherford.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.125
Homeowners without Credit Available Elsewhere	2.063
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.125
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12990 C and for economic injury is 12991 O.

The States which received an EIDL Declaration # are NORTH CAROLINA.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008.)

Dated: January 19, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–2018 Filed 1–30–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12976 and #12977]

Alaska Disaster Number AK–00022

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 ALASKA (FEMA–4050–DR), dated 12/22/2011.

Incident: Severe Winter Storms and Flooding.

Incident Period: 11/08/2011 through 11/13/2011.

Effective Date: 01/24/2012.

Physical Loan Application Deadline Date: 02/21/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 09/24/2012.

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 ALASKA, dated 12/22/2011, is hereby amended to establish the incident period for this disaster as beginning 11/08/2011 and continuing through 11/13/2011.

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. 2012–2019 Filed 1–30–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Military Reservist Economic Injury Disaster Loans; Interest Rate for Second Quarter FY 2012

In accordance with the Code of Federal Regulations 13—Business Credit and Assistance § 123.512, the following interest rate is effective for Military Reservist Economic Injury Disaster Loans approved on or after January 23, 2012.

Military Reservist Loan Program	4.000%

January 23, 2012.

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–2023 Filed 1–30–12; 8:45 am]

BILLING CODE P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act (PRA) of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved information collections, and a new information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA. Fax: (202) 395–6974. Email address: *OIRA_Submission@omb.eop.gov.*

(SSA)

Social Security Administration, DCRDP, Attn: Reports Clearance Officer, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235. Fax: (410) 966–2830. Email address: *OPLM.RCO@ssa.gov.*

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than April 2, 2012. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at (410) 965–8783 or by writing to the above email address.

1. *Electronic Health Records Partnering Program Evaluation Form—24 CFR 495.300–495.370—0960–New.* The Health Information Technology for Economic and Clinical Health (HITECH) Act promotes the adoption and meaningful use of health information technology (IT), particularly in the context of working with government agencies. Similarly, Section 3004 of the Public Health Service Act requires health care providers or health insurance issuers with government contracts to implement, acquire, or upgrade their health IT systems and

products to meet adopted standards and implementation specifications. To support expansion of SSA's health IT initiative as defined under HITECH, SSA developed Form SSA–680, the Partnering Program Evaluation Form. The SSA–680 allows healthcare providers to provide the information SSA needs to determine their ability to exchange health information with us electronically. We intend to evaluate potential partners (*i.e.,* healthcare providers and organizations) on (1) the accessibility of the health information they possess and (2) the content value of their electronic health records' systems for our disability adjudication processes. SSA reviews the completeness of organizations' SSA–680 responses as one part of our careful analysis of their readiness to enter into a health IT partnership with us. The respondents are healthcare providers and organizations exchanging information with the agency.

Type of Request: This is a new information collection request.

Collection instrument	Number of responses	Frequency of response	Average burden per response (hours)	Estimated total annual burden (hours)
SSA–680	30	1	5	150

2. *Third Party Liability Information Statement—42 CFR 433.136–433.139—0960–0323.* To reduce Medicaid costs, Medicaid state agencies must identify third party insurers liable for medical care or services for Medicaid beneficiaries. Regulations at 42 CFR 433.136–433.139 require Medicaid state agencies to obtain this information on Medicaid applications and redeterminations as a condition of Medicaid eligibility. States may enter into agreements with the Commissioner of Social Security to make Medicaid eligibility determinations for aged, blind, and disabled beneficiaries in those states. Applications for and redeterminations of Supplemental Security Income (SSI) eligibility in jurisdictions with such agreements are applications and redeterminations of Medicaid eligibility. Under these agreements, SSA obtains third party liability information using Form SSA–8019, and provides that information to the Medicaid state agencies. The Medicaid state agencies use the information to bill third parties liable for medical care, support, or services for a beneficiary to guarantee that Medicaid remains the payer of last resort. The respondents are SSI claimants and recipients.

Type of Request: Extension of an OMB-approved information collection.

Collection instrument	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–8012 Paper form	130	1	5	11
SSA Intranet Modernized SSI Claims System (MSSICS)	66,904	1	5	5,575
Totals	67,034			5,586

3. *Prohibition of Payment of SSI Benefits to Fugitive Felons and Parole/Probation Violators—20 CFR 416.708(o)—0960–0617.* Section 1611(e)(4) of the Social Security Act (Act) precludes eligibility for SSI payments for certain fugitives and probation/parole violators. Regulations at 20 CFR 416.708(o) require individuals applying for or receiving SSI benefits to report to SSA that (1) they are fleeing to avoid prosecution for a crime; (2) they are fleeing to avoid custody or confinement after conviction of a crime; or (3) they are violating a condition of probation or parole. SSA will use the information we receive to deny eligibility, or suspend recipients SSI payments. The respondents are SSI applicants and recipients, or representative payees of SSI applicants and recipients, who are reporting their status as a fugitive felon or probation/parole violator.

Type of Request: Extension of an OMB-approved information collection.

Collection instrument	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
MSSICS	1,000	1	1	17

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than March 1, 2012. Individuals can obtain copies of the OMB clearance packages by calling the SSA Reports Clearance Officer at (410) 965–8783 or by writing to the above email address.

1. *Statement of Marital Relationship (By one of the parties)—20 CFR 404.726—0960–0038.* SSA must obtain a signed statement from a spousal applicant if the applicant claims a common-law marriage to the insured in a state in which such marriages are recognized, and no formal marriage documentation exists. SSA uses information we collect on Form SSA–754–F4 to determine if an individual applying for spousal benefits meets the criteria of common-law marriage under state law. The respondents are applicants for spouse's Social Security benefits or SSI payments.

This is a correction notice. SSA published this information collection as an extension on November 16, 2011 at 76 FR 71105. Since we are revising the Privacy Act Statement, this is actually a revision of an OMB-approved information collection.

Type of Request: Revision of an OMB-approved information collection.

Collection instrument	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–754–F4	30,000	1	30	15,000

2. *Medicaid Use Report—20 CFR 416.268—0960–0267.* Section 20 CFR 416.268 of the Code of Federal Regulations requires SSA to determine eligibility for (1) special SSI cash payments and (2) special SSI eligibility status for a person who works despite a disabling condition. It also explains how, in order to qualify for special SSI eligibility status, an individual must establish that termination of eligibility for benefits under title XIX of the Act would seriously inhibit the ability to continue employment. SSA uses the information required by this regulation to determine if an individual is entitled to special title XVI SSI payments and, consequently, to Medicaid. The respondents are SSI recipients for whom SSA has stopped payments based on earnings.

Type of Request: Extension of an OMB-approved information collection.

Regulation section	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
20 CFR 416.268	60,000	1	3	3,000

3. *Supplemental Security Income (SSI) Claim Information Notice—20 CFR 416.210—0960–0324.* Section 1611(e)(2) of the Act requires individuals to file for and obtain all payments (annuities, pensions, disability benefits, veteran's compensation, etc.) for which they are eligible before qualifying for SSI payments. Individuals do not qualify for SSI if they do not first apply for all other benefits. SSA uses the information on Form SSA–L8050–U3 to verify and establish a claimant's or recipient's eligibility under the SSI program. Respondents are SSI applicants or recipients who may be eligible for other payments from public or private programs.

Type of Request: Revision of an OMB-approved information collection.

Collection instrument	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–L–8050–U3	7,500	1	10	1,250

4. *Filing Claims Under the Federal Tort Claims Act—20 CFR 429.101–429.110—0960–0667.* The Federal Tort Claims Act is the legal mechanism for compensating persons injured by negligent or wrongful acts that occur during the performance of official duties by Federal employees. In accordance with the law, SSA accepts monetary claims filed under the Federal Tort Claims Act for damages against the United States, loss of property, personal injury, or death resulting from an SSA employee's wrongful act or omission. The regulation sections this information collection comprises require claimants to provide information SSA can use to investigate and determine whether to make an award, compromise, or settlement under the Federal Tort Claims Act. The respondents are individuals or entities making a claim under the Federal Tort Claims Act.

Type of Request: Extension of an OMB-approved information collection.

Regulation section	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
20 CFR 429.102; 20 CFR 492.103 [1]	—	—	—	1
20 CFR 429.104(a)	31	1	5	3
20 CFR 429.104(b)	25	1	5	2
20 CFR 429.104(c)	2	1	5	.17
20 CFR 429.106(b)	10	1	10	2
Totals	68			8

[1] The 1 hour represents a placeholder burden. We are not reporting a burden for this collection because respondents complete OMB-approved Form SF–95 (OMB Control #1105–0008).

Dated: January 25, 2012.

Faye Lipsky,

Reports Clearance Officer, Office of Regulations and Reports Clearance, Social Security Administration.

[FR Doc. 2012–1947 Filed 1–30–12; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: (202) 395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCRDP, Attn: Reports Clearance Officer, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: (410) 966–2830, Email address: *OPLM.RCO@ssa.gov.*

SSA submitted the information collection below to OMB for clearance. Your comments regarding the information collection would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than March 1, 2012. Individuals can obtain copies of the OMB clearance package by calling the SSA Reports Clearance Officer at (410) 965–8783 or by writing to the above email address.

1. *Disability Report-Appeal—20 CFR 404.1512, 416.912, 404.916(c), 416.1416(c), 405 Subpart C, 422.140—0960–0144.* SSA requires disability claimants who are appealing an unfavorable disability determination to complete the SSA–3441–BK, the associated Electronic Disability Collect System (EDCS) interview, or the Internet application, i3441. This allows claimants to disclose any changes to their disability or resources that might influence SSA's unfavorable determination. We may use the information to: (1) Reconsider and review an initial disability determination; (2) review a continuing disability; and (3) evaluate a request for a hearing. This information assists the State Disability Determination Services and administrative law judges (ALJ) in preparing for the appeals and hearings, and issuing a determination or decision on an individual's entitlement (initial or continuing) to disability benefits. Respondents are individuals who appeal denial, reduction, or cessation of Social Security disability income Supplemental Security Income (SSI) payments, or who are requesting a hearing before an ALJ.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–3441–BK	5,604	1	45	4,203
EDCS Interview	662,090	1	45	496,568
i3441 (Internet)	605,268	1	28	282,458
Totals	1,272,962			783,229

2. *Request for Hearing by Administrative Law Judge—20 CFR 404.929, 404.933, 416.1429, 404.1433, 418.1350, and 42 CFR 405.722—0960–0269.* When SSA denies applicants' or beneficiaries' requests for new or continuing benefits, those applicants or beneficiaries are entitled to request a hearing to appeal the decision. To request a hearing, individuals use Form HA–501, the associated Modernized Claims System (MCS) or Modernized Supplemental Security Income Claims System (MSSICS) interview, or the Internet application (i501). SSA uses the information to determine if the individual filed the request within the prescribed time; is the proper party; and has taken the steps necessary to obtain the right to a hearing. SSA also uses the information to determine the individual's reason(s) for disagreeing with SSA's prior determinations in the case; if the individual has additional evidence to submit; if the individual wants an oral hearing or a decision on-the-record; and whether the individual has (or wants to appoint) a representative. The respondents are Social Security benefit applicants and recipients who want to appeal SSA's denial of their request for new or continued benefits and Medicare Part B recipients who must pay the Medicare Part B Income-Related Monthly Adjustment Amount.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–501; MCS or MSSICS Interview	25,953	1	10	4,326
i501 (Internet iAppeals)	643,516	1	5	53,626
Totals	669,469			57,952

3. *Request for Reconsideration—20 CFR 404.907–404.921, 416.1407–416.1421, 408.1009, and 418.1325—0960–0622.* Individuals use the SSA–561–U2, the associated MCS interview, or the Internet application (i561) to initiate a request for reconsideration of a denied claim. SSA uses the information to document the request and to determine an individual's eligibility or entitlement to Social Security benefits (title II), SSI payments (title XVI), Special Veterans Benefits (title VIII), Medicare (title XVIII), and for initial determinations regarding Medicare Part B income-related premium subsidy reductions. The respondents are individuals filing for reconsideration.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–561 and MCS Interview	550,370	1	8	73,383
i561 (Internet iAppeals)	911,330	1	5	75,944
Totals	1,461,700			149,327

Dated: January 23, 2012.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2012–1598 Filed 1–30–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7781]

60-Day Notice of Proposed Information Collection: DS 5507, Affidavit of Physical Presence or Residence, Parentage and Support

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* DS 5507, Affidavit of Physical Presence or Residence, Parentage and Support.
- *OMB Control Number:* OMB No. 1405–0187.
- *Type of Request:* Revision.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS–5507.
- *Respondents:* United States Citizens.
- *Estimated Number of Respondents:* 17,784.
- *Estimated Number of Responses:* 17,784.
- *Average Hours per Response:* 30 minutes.
- *Total Estimated Burden:* 8,892 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Application for Benefits. Although acquisition of citizenship is not a federal ''benefit,'' applicants will not be able to obtain citizenship for their child(ren) if they do not provide the information requested in the form.

DATES: The Department will accept comments from the public up to 60 days from January 31, 2012.

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

- *Email:* ASKPRI@state.gov.
- *Mail (paper, disk, or CD–ROM submissions):* U.S. Department of State, CA/OCS/PRI, SA–29, 4th Floor, Washington, DC 20520.
- *Fax:* 202–736–9111.
- *Hand Delivery or Courier:* U.S. Department of State, CA/OCS/PRI, 2100 Pennsylvania Avenue, 4th Floor, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Derek A. Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/PRI), U.S. Department of State, SA–29, 4th Floor, Washington, DC 20520 or at *ASKPRI@state.gov*.

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The purpose of the information collection is to determine if a U.S. citizen/national parent possesses the requisite physical presence or residence in the United States prior to their child's birth to transmit U.S. citizenship to the child, to establish parentage of the child, and to fulfill the requirements of 8 U.S.C. 1409(a) which requires a written statement of financial support to be provided by U.S. citizen fathers for children born out of wedlock.

Methodology

The information is collected in person. The Bureau of Consular Affairs is currently exploring options to make this information collection available electronically.

Dated: December 21, 2011.

Michelle Bernier-Toth,

Managing Director, Bureau of Consular Affairs, Department of State.

[FR Doc. 2012–2079 Filed 1–30–12; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 7780]

Culturally Significant Objects Imported for Exhibition Determinations: ''Byzantium and Islam: Age of Transition (7th–9th Century)''

AGENCY: Department of State.

ACTION: Notice, correction.

SUMMARY: On September 28, 2011, notice was published on page 60112 of the **Federal Register** (volume 76, number 188) of determinations made by

the Department of State pertaining to the exhibition ''Byzantium and Islam: Age of Transition (7th–9th Century). The referenced notice is corrected here to include additional objects as part of the exhibition. Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the additional objects to be included in the exhibition ''Byzantium and Islam: Age of Transition (7th–9th Century),'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The additional objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about March 12, 2012, until on or about July 8, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest.

The action of the United States in this matter, and the immunity based on the application of the provisions of law involved, does not imply any view of the United States concerning the ownership of the exhibit objects. Further, it is not based upon and does not represent any change in the position of the United States regarding the status of Jerusalem or the territories occupied by Israel since 1967. *See* Letter of September 22, 1978, of President Jimmy Carter, attached to the Camp David Accords, reprinted in 78 Dept. of State Bulletin 11 (October 1978); Statement of September 1, 1982, of President Ronald Reagan, reprinted in 82 Dept. of State Bulletin 23 (September 1982).

I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 25, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–2074 Filed 1–30–12; 8:45 am]

BILLING CODE 4710–05–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in ''**DATES**.''

DATE: October 1, 2011, through December 31, 2011.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; email: *rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; email: *srichardson@srbc.net*. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Approvals by Rule Issued Under 18 CFR 806.22(f)

1. Citrus Energy Corp, Pad ID: Reimiller 1, ABR–201110001, Meshoppen Township, Wyoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: October 6, 2011.
2. Citrus Energy Corp, Pad ID: Mattocks 1, ABR–201110002, Washington Township, Wyoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: October 6, 2011.
3. Citrus Energy Corp, Pad ID: McConnell 1, ABR–201110003, Tunkhannock Township, Wyoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: October 6, 2011.
4. Chesapeake Appalachia, LLC, Pad ID: Laurel, ABR–201110004, Overton Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 11, 2011.
5. Chesapeake Appalachia, LLC, Pad ID: Brule, ABR–201110005, Elkland Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 11, 2011.
6. Seneca Resources Corporation, Pad ID: DCNR 100 Pad A, ABR–201110006, McIntyre Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 11, 2011.
7. Chief Oil & Gas LLC, Pad ID: Squier B Drilling Pad #1, ABR–201110007, Springville Township, Susquehanna County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: October 11, 2011.
8. Chief Oil & Gas LLC, Pad ID: Bouse Drilling Pad #1, ABR–201110008, Monroe Township, Bradford County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: October 11, 2011.
9. SWEPI LP, Pad ID: Chappell 855, ABR–201110009, Middlebury Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 13, 2011.
10. EQT Production Company, Pad ID: COP 63 Hogback, ABR–201110010, Pine and Huston Townships, Clearfield County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: October 13, 2011.
11. Chesapeake Appalachia, LLC, Pad ID: Falconero, ABR–201110011, Forkston Township, Wyoming County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 20, 2011.
12. Seneca Resources Corporation, Pad ID: DCNR 007 Pad H, ABR–201110012, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 20, 2011.
13. Seneca Resources Corporation, Pad ID: Gamble Pad A, ABR–201110013, Gamble Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 20, 2011.
14. Cabot Oil & Gas Corporation, Pad ID: LippincottF P1, ABR–201110014, Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: October 20, 2011.
15. Cabot Oil & Gas Corporation, Pad ID: EllsworthA P1, ABR–201110015, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: October 20, 2011.
16. Chesapeake Appalachia, LLC, Pad ID: Donovan, ABR–201110016, Ulster Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 24, 2011.
17. Carrizo Marcellus, LLC, Pad ID: Henninger Pad, ABR–201110017, Jessup Township, Susquehanna County, Pa.; Consumptive Use of up to 2.100 mgd; Approval Date: October 24, 2011.
18. Cabot Oil & Gas Corporation, Pad ID: WilliamsD P1, ABR–201110018, Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: October 25, 2011.
19. Energy Corporation of America, Pad ID: Coldstream Affiliates B, ABR–201110019, Goshen Township, Clearfield County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: October 25,

2011.

20. Chesapeake Appalachia, LLC, Pad ID: Gardner, ABR–201110020, Albany Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 27, 2011.
21. Chesapeake Appalachia, LLC, Pad ID: Alkan, ABR–201110021, Wilmot Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 31, 2011.
22. Chesapeake Appalachia, LLC, Pad ID: Nicholson, ABR–201110022, Nicholson Township, Wyoming County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 31, 2011.
23. Talisman Energy USA Inc., Pad ID: 02 155 Mountain Run Hunting Club, ABR–20111023, Union Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 31, 2011.
24. Talisman Energy USA Inc., Pad ID: 03 125 Stiles D, ABR–20111024, Columbia Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 31, 2011.
25. Talisman Energy USA Inc., Pad ID: 03 126 Stiles D, ABR–20111025, Columbia Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 31, 2011.
26. Enerplus Resources (USA) Corporation, Pad ID: Winner 6 Well Pad, ABR–201110026, East Keating Township, Clinton County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 31, 2011.
27. EOG Resources, Inc., Pad ID: PHC Pad AA, ABR–201110027, Goshen Township, Clearfield County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: October 31, 2011.
28. EOG Resources, Inc., Pad ID: KINGSLEY 5HA/6HA Pad, ABR–201110028, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: October 31, 2011.
29. EOG Resources, Inc., Pad ID: GHFC Pad B, ABR–201110029, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: October 31, 2011.
30. EOG Resources, Inc., Pad ID: GHFC Pad A, ABR–201110030, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: October 31, 2011.
31. EOG Resources, Inc., Pad ID: ASHBY Pad, ABR–201110031, Athens Borough, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: October 31, 2011.
32. EOG Resources, Inc., Pad ID: WALLACE Pad, ABR–201110032, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: October 31, 2011.
33. EOG Resources, Inc., Pad ID: WOLFE Pad, ABR–201110033, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: October 31, 2011.
34. EOG Resources, Inc., Pad ID: PRUYNE 1H Pad, ABR–201110034, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: October 31, 2011.
35. Chesapeake Appalachia, LLC, Pad ID: Cook, ABR–201111001, Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: November 4, 2011.
36. Chesapeake Appalachia, LLC, Pad ID: Gestewitz, ABR–201111002, North Towanda Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: November 8, 2011.
37. Chesapeake Appalachia, LLC, Pad ID: Knapp, ABR–201111003, Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: November 8, 2011.
38. Range Resources—Appalachia, LLC, Pad ID: Bobst Unit #34H–#37H, ABR–201111004, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: November 10, 2011.
39. Range Resources—Appalachia, LLC, Pad ID: Sechrist, Mark—#1H–#3H, ABR–201111005, Anthony Township, Lycoming County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: November 10, 2011.
40. Range Resources—Appalachia, LLC, Pad ID: Red Bend B Unit #1H–#8H, ABR–201111006, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: November 10, 2011.
41. Range Resources—Appalachia, LLC, Pad ID: Red Bend C Unit #1H–#5H, ABR–201111007, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: November 10, 2011.
42. Tenaska Resources, LLC, Pad ID: Traub Pad A, ABR–201111008, Abbott Township, Potter County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: November 10, 2011.
43. Chesapeake Appalachia, LLC, Pad ID: Coyle, ABR–201111009, Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: November 14, 2011.
44. Chesapeake Appalachia, LLC, Pad ID: Richard, ABR–201111010, Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: November 14, 2011.
45. Chesapeake Appalachia, LLC, Pad ID: Rossi, ABR–201111011, Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: November 14, 2011.
46. Chesapeake Appalachia, LLC, Pad ID: Bartholomew, ABR–201111012, Franklin Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: November 14, 2011.
47. Pennsylvania General Energy Co. LLC, Pad ID: COP Tract 293 Pad H, ABR–201111013, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 3.500 mgd; Approval Date: November 14, 2011.
48. Pennsylvania General Energy Co. LLC, Pad ID: COP Tract 293 Pad I, ABR–201111014, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 3.500 mgd; Approval Date: November 14, 2011.
49. Pennsylvania General Energy Co. LLC, Pad ID: COP Tract 729 Pad B, ABR–201111015, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 3.500 mgd; Approval Date: November 14, 2011.
50. Chief Oil & Gas LLC, Pad ID: Madigan Farms A Drilling Pad #1, ABR–201111016, Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: November 14, 2011.
51. Chesapeake Appalachia, LLC, Pad ID: Lines, ABR–201111017, Monroe Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: November 14, 2011.
52. Chesapeake Appalachia, LLC, Pad ID: Robbins, ABR–201111018, Ulster Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: November 14, 2011.
53. Chesapeake Appalachia, LLC, Pad ID: Williamson, ABR–201111019, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: November 14, 2011.
54. Chesapeake Appalachia, LLC, Pad ID: Dulcey, ABR–201111020, Wilmot Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: November 14, 2011.
55. Chesapeake Appalachia, LLC, Pad ID: Eagle Rock, ABR–201111021, Cherry Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: November 15, 2011.
56. Chesapeake Appalachia, LLC, Pad ID: Krise, ABR–201111022, Leroy Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: November 15, 2011.
57. Cabot Oil & Gas Corporation, Pad ID: WellsP P1, ABR–201111023, Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: November 15, 2011.
58. Chief Oil & Gas LLC, Pad ID: Beirne Green Hills Farms A Drilling Pad #1, ABR–201111024, Asylum Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: November 18, 2011.
59. Chesapeake Appalachia, LLC, Pad ID: Gregerson, ABR–201111025, Auburn Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: November 21, 2011.
60. Chesapeake Appalachia, LLC, Pad ID: North40, ABR–201111026, Litchfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: November 21, 2011.
61. Chesapeake Appalachia, LLC, Pad ID: LW, ABR–201111027, Cherry Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: November 21, 2011.
62. Chesapeake Appalachia, LLC, Pad ID: Bodolus, ABR–201111028, Litchfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: November 23, 2011.
63. Williams Production Appalachia LLC,

Pad ID: Hartle Pad Site, ABR–201111029, Cooper Township, Clearfield County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: November 23, 2011.
64. Seneca Resources Corporation, Pad ID: DCNR 007 Pad K 49V, ABR–201111030, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: November 23, 2011.
65. Chief Oil & Gas LLC, Pad ID: Nelson Drilling Pad #1, ABR–201111031, Forks Township, Sullivan County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: November 28, 2011.
66. Southwestern Energy Production Company, Pad ID: INNES, ABR–201111032, New Milford Borough, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: November 28, 2011.
67. Southwestern Energy Production Company, Pad ID: WHENGREEN, ABR–201111033, Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: November 28, 2011.
68. Cabot Oil & Gas Corporation, Pad ID: HessR P1, ABR–201111034, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: November 30, 2011.
69. Inflection Energy, LLC, Pad ID: Nature Boy #1V, ABR–201111035, Upper Fairfield Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: November 30, 2011.
70. Inflection Energy, LLC, Pad ID: Ultimate Warrior #2H, ABR–201111036, Upper Fairfield Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: November 30, 2011.
71. Inflection Energy, LLC, Pad ID: Stunner #1V, ABR–201111037, Gamble and Eldred Townships, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: November 30, 2011.
72. EXCO Resources (PA), LLC, Pad ID: Farnsworth Unit 1H Pad, ABR–201111038, Franklin Township, Lycoming County, Pa.; Consumptive Use of Up to 8.000 mgd; Approval Date: November 30, 2011.
73. Williams Production Appalachia, LLC, Pad ID: HDK Pad, ABR–201112001, Franklin Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: December 6, 2011.
74. Cabot Oil & Gas Corporation, Pad ID: KielarD P1, ABR–201112002, Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: December 6, 2011.
75. Cabot Oil & Gas Corporation, Pad ID: Jeffers Farms P1, ABR–201112003, Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: December 6, 2011.
76. Cabot Oil & Gas Corporation, Pad ID: ZuppK P1, ABR–201112004, Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: December 6, 2011.
77. Southwestern Energy Production Company, Pad ID: SKELLY, ABR–201112005, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: December 6, 2011.
78. Southwestern Energy Production Company, Pad ID: TNT 1 LIMITED PARTNERSHIP, ABR–201112006, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: December 6, 2011.
79. Enerplus Resources (USA) Corporation, Pad ID: Dutch Run Camp 1 Well Pad, ABR–201112007, West Keating Township, Clinton County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: December 6, 2011.
80. Anadarko E&P Company LP, Pad ID: Stephen M Sleboda Pad A, ABR–201112008, Cascade Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: December 6, 2011.
81. Chief Oil & Gas, LLC, Pad ID: Kingsley B Drilling Pad #1, ABR–201112009, Monroe Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: December 7, 2011.
82. Chief Oil & Gas, LLC, Pad ID: Lucarino Drilling Pad #1, ABR–201112010, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: December 7, 2011.
83. Energy Corporation of America, Pad ID: COP 325 A, ABR–201112011, Girard Township, Clearfield County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: December 8, 2011.
84. Carrizo (Marcellus), LLC, Pad ID: Karthaus CK–19, ABR–201112012, Covington Township, Clearfield County, Pa.; Consumptive Use of Up to 2.100 mgd; Approval Date: December 9, 2011.
85. Carrizo (Marcellus), LLC, Pad ID: CK–21, ABR–201112013, Karthaus Township, Clearfield County, Pa.; Consumptive Use of Up to 2.100 mgd; Approval Date: December 9, 2011.
86. Talisman Energy USA Inc., Pad ID: 01 097 Terrel L, ABR–201112014, Troy Township, Bradford County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: December 12, 2011.
87. Talisman Energy USA Inc., Pad ID: 01 095 Terrel L, ABR–201112015, Troy Township, Bradford County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: December 12, 2011.
88. Talisman Energy USA Inc., Pad ID: 01 091 Hoherchak J, ABR–201112016, Armenia Township, Bradford County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: December 12, 2011.
89. Talisman Energy USA Inc., Pad ID: 01 088 McClellan, ABR–201112017, Canton Township, Bradford County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: December 13, 2011.
90. Seneca Resources Corporation, Pad ID: DCNR 007 Pad K, ABR–201112018, Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: December 13, 2011.
91. Chesapeake Appalachia, LLC, Pad ID: Bucks Hill, ABR–201112019, LeRaysville Borough, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: December 13, 2011.
92. Chesapeake Appalachia, LLC, Pad ID: Edger, ABR–201112020, Smithfield and Ulster Townships, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: December 13, 2011.
93. Chesapeake Appalachia, LLC, Pad ID: RGB, ABR–201112021, Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: December 13, 2011.
94. Chesapeake Appalachia, LLC, Pad ID: Yost, ABR–201112022, Franklin Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: December 14, 2011.
95. Cabot Oil & Gas Corporation, Pad ID: CareyR P1, ABR–201112023, Harford Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: December 14, 2011.
96. Southwestern Energy Production Company, Pad ID: RANSOM (HH PAD), ABR–201112024, Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: December 14, 2011.
97. Southwestern Energy Production Company, Pad ID: KILMER, ABR–201112025, Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: December 16, 2011.
98. Chesapeake Appalachia, LLC, Pad ID: Wildonger, ABR–201112026, Wyalusing Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: December 16, 2011.
99. Chesapeake Appalachia, LLC, Pad ID: Sharidan, ABR–201112027, Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: December 16, 2011.
100. Enerplus Resources (USA) Corporation, Pad ID: Winner 1 Well Pad, ABR–201112028, East Keating Township, Clinton County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: December 20, 2011.
101. Anadarko E&P Company LP, Pad ID: COP Tract 356 Pad E, ABR–201112029, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: December 20, 2011.
102. Anadarko E&P Company LP, Pad ID: Larrys Creek F&G Pad E, ABR–201112030, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: December 20, 2011.
103. Southwestern Energy Production Company, Pad ID: LOCH, ABR–201112031, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: December 21, 2011.
104. Southwestern Energy Production Company, Pad ID: HOWLAND–LENT, ABR–201112032, Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: December 21, 2011.
105. Southwestern Energy Production Company, Pad ID: FRIES PAD, ABR–201112033, Lenox Township, Susquehanna County, Pa.; Consumptive

Use of Up to 4.999 mgd; Approval Date: December 21, 2011.

106. Seneca Resources Corporation, Pad ID: DCNR 007 Pad D, ABR–201112034, Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: December 22, 2011.
107. Seneca Resources Corporation, Pad ID: DCNR 001 Pad C, ABR–201112035, Ulysses Township, Potter County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: December 22, 2011.
108. Seneca Resources Corporation, Pad ID: DCNR 007 Pad R, ABR–201112036, Delmar and Shippen Townships, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: December 22, 2011.
109. Seneca Resources Corporation, Pad ID: DCNR 001 Pad E, ABR–201112037, Ulysses Township, Potter County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: December 23, 2011.
110. SWEPI LP, Pad ID: Hoffman 1201, ABR–201112038, Brookfield Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: December 23, 2011.
111. SWEPI LP, Pad ID: Scheible 898, ABR–201112039, Deerfield Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: December 23, 2011.
112. Range Resources—Appalachia, LLC, Pad ID: Cornwall Mountain, ABR–201112040, Lewis Township, Lycoming County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: December 28, 2011.
113. Range Resources—Appalachia, LLC, Pad ID: Hess Unit #1H, ABR–201112041, Morris Township, Clearfield County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: December 28, 2011.

Authority: Pub. L. 91–575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: January 20, 2012.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2012–1997 Filed 1–30–12; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[Docket No. DOT–OST–2008–0182]

Agency Requests for Renewal of a Previously Approved Information Collection: SBTRC Regional Field Offices Intake Form (DOT F 4500) and SBTRC Regional Field Offices Quarterly Report Form (DOT F 4502)

AGENCY: Office of Small and Disadvantaged Business Utilization (OSDBU), Office of the Secretary of Transportation (OST), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The OSDBU invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew an information collection. The collection involves the following two (2) forms that have an expiration date of 01/31/2012, and are presently in use. The SBTRC forms have added the term of Regional Field Offices Intake Form and Regional Field Offices Quarterly Report Form, respectively.

The Regional Field Offices Intake Form (No. DOT F 4500) is used to document the type of assistance provided to each small business that is enrolled in the database of the Program.

The use of the Regional Field Office Quarterly Report Form (No. DOT F 4502) highlights activities such as counseling, marketing, meetings/conferences, and services to businesses as completed during the quarter. The Quarterly Report Form provides a more composite and comprehensive review of the Field Offices' activities over a longer time frame. The information will be used to ascertain whether the program is providing services to its constituency, the small business community, and is done so in a fair and equitable manner. The information collected is necessary to determine whether small businesses are participating in DOT funded and DOT assisted opportunities with the DOT.

We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104–13.

DATES: Please submit comments by March 23, 2012.

ADDRESSES: You may submit comments [identified by Docket No. DOT–OST–2008–0182] through one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail or Hand Delivery:* U.S. Department of Transportation, Dockets Management Facility, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590.
- *Agency Web Site: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Arthur D. Jackson, (202) 366–1930 ext 65344, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W56 462, Washington, DC 20590. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0554.

Title: SBTRC Regional Field Offices Intake Form (DOT F 4500) and SBTRC Regional Field Offices Quarterly Report Form (DOT F 4502).

Form Numbers: DOT F 4500 and DOT F 4502.

Type of Review: Renewal of an information collection.

Background: In accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1953, OSDBU is responsible for the implementation and execution of DOT activities on behalf of small businesses, in accordance with Section 8, 15 and 31 of the Small Business Act (SBA), as amended. The Office of Small and Disadvantaged Business Utilization also administers the provisions of Title 49, of the United States Code, Section 332, the Minority Resource Center (MRC) which includes the duties of advocacy, outreach, and financial services on behalf of small and disadvantaged businesses and those certified under CFR 49 parts 23 and or 26 as Disadvantaged Business Enterprises (DBE).

SBTRC's Regional Field Offices will collect information on small businesses, which includes Disadvantaged Business Enterprise (DBE), Women-Owned Small Business (WOB), Small Disadvantaged Business (SDB), 8(a), Service Disabled Veteran Owned Business (SDVOB), Veteran Owned Small Business (VOSB), HubZone, and types of services they seek from the Regional Field Offices. Services and responsibilities of the Field Offices include business analysis, general management & technical assistance and training, business counseling, outreach services/conference participation, short-term loan and bond assistance. The cumulative data collected will be analyzed by the OSDBU to determine the effectiveness of services provided, including counseling, outreach, and financial services. Such data will also be analyzed by the OSDBU to determine agency effectiveness in assisting small businesses to enhance their opportunities to participate in government contracts and subcontracts.

The Regional Field Offices Intake Form, (DOT F 4500) is used to enroll small business clients into the program in order to create a viable database of firms that can participate in government contracts and subcontracts, especially

those projects that are transportation related. Each area on the fillable pdf form must be filled in electronically by the Field Offices and submitted every quarter to OSDBU. The Offices will retain a copy of each Intake Form for their records. The completion of the form is used as a tool for making decisions about the needs of the business, such as; referral to technical assistance agencies for help, identifying the type of profession or trade of the business, the type of certification that the business holds, length of time in business, and location of the firm. This data can assist the Field Offices in developing a business plan or adjusting their business plan to increase its ability to market its goods and services to buyers and potential users of their services.

Respondents: SBTRC Regional Field Offices.

Estimated Number of Respondents: 100.

Frequency: The information will be collected quarterly.

Estimated Number of Responses: 100.

Estimated Total Annual Burden on Respondents: 600 hours per year.

Background: The Regional Field Offices Quarterly Report Form (DOT F 4502) by each Field Office must be submitted as a quarterly status report of business activities conducted during the three month time frame. The form is used to capture activities and accomplishments that were made by the Regional Field Offices during the course of the quarter. In addition, the form includes a data collection section where numbers and hours are reported and a section that is assigned for a written narrative that provides back up which supports the data.

Activities to be reported are (1) Counseling Activity which identifies the counseling hours provided to businesses, number of new appointments, and follow-up on counseled clients. (2) Activity for Businesses Served identifies the type of small business that is helped, such as a DBE, 8(a), WOB, HubZone, SDB, SDVOB, or VOSB. (3) Marketing Activity includes the name of an event attended by the SBTRC and the role played when participating in a conference, workshop or any other venue that relates to small businesses. (4) Meetings that are held with government representatives in the region, or at the state level, are an activity that is reported. (5) Events Hosted by the SBTRC Regional Field Offices, such as small business workshops, financial assistance workshops, matchmaking events, are activities that are reported on a quarterly basis.

Respondents: SBTRC Regional Field Offices.

Estimated Number of Respondents: 100.

Frequency: The information will be collected quarterly.

Estimated Number of Responses: 100.

Estimated Total Annual Burden on Respondents: 1200 hours per year.

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 the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents, by the use of electronic means, including the use of automated collection techniques or other forms of information technology. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC on January 24, 2012.

Brandon Neal,

Director, Office of Small and Disadvantaged, Business Utilization.

[FR Doc. 2012–2044 Filed 1–30–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[Docket No. DOT–OST–2012–0012]

Notice of Funding Availability for the Department of Transportation's National Infrastructure Investments Under the Full-Year Continuing Appropriations, 2012; and Request for Comments

AGENCY: Office of the Secretary of Transportation, DOT.

ACTION: Notice of Funding Availability, Request for Comments.

SUMMARY: This notice announces the availability of funding and requests proposals for the Department of Transportation's National Infrastructure Investments. In addition, this notice announces selection criteria and pre-application and application requirements for the National Infrastructure Investments.

The Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112–055, Nov. 18, 2011) (''FY 2012 Appropriations Act'') appropriated $500 million to be awarded by the Department of Transportation (''DOT'') for National Infrastructure Investments. This appropriation is similar, but not identical to the appropriation for the Transportation Investment Generating Economic Recovery, or ''TIGER Discretionary Grant'', program authorized and implemented pursuant to the American Recovery and Reinvestment Act of 2009 (the ''Recovery Act''). Because of the similarity in program structure, DOT will continue to refer to the program as ''TIGER Discretionary Grants.'' As with previous rounds of TIGER, funds for the FY 2012 TIGER program are to be awarded on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area or a region.

Through this notice, DOT is soliciting applications for TIGER Discretionary Grants. In the event that this solicitation does not result in the award and obligation of all available funds, DOT may decide to publish an additional solicitation(s).

DATES: Pre-applications must be submitted by February 20, 2012, at 5 p.m. EST (the ''Pre-Application Deadline''). Final applications must be submitted through *Grants.gov* by March 19, 2012, at 5 p.m. EDT (the ''Application Deadline''). The DOT pre-application system will open on or before February 13, 2012, to allow prospective applicants to submit pre-applications. Subsequently, the *Grants.gov* ''Apply'' function will open on February 22, 2012, allowing applicants to submit applications. Applicants are encouraged to submit pre-applications and applications in advance of the deadlines.

ADDRESSES: Pre-applications must be submitted electronically to DOT and applications must be submitted electronically through *Grants.gov.* Only pre-applications received by DOT and applications received electronically through *Grants.gov* will be deemed properly filed. Instructions for submitting pre-applications to DOT and applications through *Grants.gov* are included in Section VII (*Pre-Application and Application Cycle*).

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice please contact the TIGER Discretionary Grant program staff via

email at *TIGERGrants@dot.gov*, or call Howard Hill at (202) 366–0301. A TDD is available for individuals who are deaf or hard of hearing at (202) 366–3993. In addition, DOT will regularly post answers to questions and requests for clarifications on DOT's Web site at *www.dot.gov/TIGER.* Applicants are encouraged to contact DOT directly and rather than rely on third parties to receive information about TIGER Discretionary Grants.

SUPPLEMENTARY INFORMATION: This notice is substantially similar to the Final notice published for the TIGER Discretionary Grant program in the **Federal Register** on August 12, 2011. However, there are a few significant differences:

1. To ensure applicants receive the most accurate information possible, Eligible Applicants must contact DOT directly, rather than through intermediaries, to get questions answered, set up briefings on the TIGER Discretionary Grants selection and award process, or receive other assistance.

2. As in previous rounds of TIGER, high speed and intercity passenger rail projects remain eligible for funding under this program and a high priority of this Administration. DOT would like to encourage those seeking funding for passenger rail projects to consider TIGER and will, therefore, make up to $100 million in TIGER funds available to high speed and intercity passenger rail projects.

3. Applications must include a detailed statement of work, detailed project schedule, and detailed project budget in the project narrative. Due to the shorter timeframe allowed for the obligation of TIGER Discretionary Grant funds in this round of funding in comparison to previous rounds, applicants must include this detailed information in their application in order to demonstrate that their projects are ready to proceed within this shortened timeframe.

4. The discussion on Benefit-Cost Analysis (*Appendix A: Additional Information on Benefit-Cost Analysis*) has been streamlined and includes tools to aid applicants in preparing their analyses.

Other than these differences, and minor edits for clarification and those made to conform the notice to the statutory circumstances of this round of TIGER Discretionary Grants funding, there have been no material changes made to the notice. *Each section of this notice contains information and instructions relevant to the application process for these TIGER Discretionary Grants and prospective applicants should read this notice in its entirety so that they have the information they need to submit eligible and competitive applications.*

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I. Background

On November 18, 2011, the President signed the FY 2012 Appropriations Act. This Act appropriated $500 million to DOT for National Infrastructure Investments, using language that is similar, but not identical to the language in appropriations bills from FY 2010 and FY 2011 and the Recovery Act.

This program was first created in the 2009 Recovery Act, since which time DOT has referred to these grants as Transportation Investment Generating Economic Recovery or ''TIGER Discretionary Grants.'' Through the Recovery Act and continuing through the FY 2010 and 2011 appropriations processes, Congress has provided DOT with three rounds of competitive grants totaling just over $2.6 billion for capital investments in surface transportation infrastructure. See DOT's Web site at *http://www.dot.gov/tiger/index.html* for further background on the disbursement of past rounds of TIGER Discretionary Grants.

DOT's most recent solicitation for TIGER Discretionary Grants occurred through a notice of funding availability published in the **Federal Register** on August 12, 2011 (an interim notice was published on July 1, 2011). Applications for TIGER Discretionary Grants were due on October 31, 2011 and 848 applications were received with funding requests totaling approximately $14.29 billion. Awards for 46 capital projects totaling $511 million were announced on December 15, 2011. Grant awards ranged from $1 million to $13.5 million for projects in rural areas and $10 million to $20 million for projects in urban areas. Projects were selected for funding based on their alignment with the selection criteria specified in the August 12, 2011, **Federal Register** notice.

FY 2012 TIGER Discretionary Grants

Like the previous rounds, this year's TIGER Discretionary Grants are for capital investments in surface transportation infrastructure and are to be awarded on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area, or a region.

''Eligible Applicants'' for TIGER Discretionary Grants are State, local, and tribal governments, including U.S. territories, transit agencies, port authorities, metropolitan planning organizations (MPOs), other political subdivisions of State or local governments, and multi-State or multi-jurisdictional groups applying through a single lead applicant (for multi-jurisdictional groups, each member of the group, including the lead applicant, must be an otherwise Eligible Applicant as defined in this paragraph).

To ensure applicants receive the most accurate information possible, Eligible Applicants must contact DOT directly, rather than through intermediaries, to get questions answered, set up briefings on the TIGER Discretionary Grants selection and award process, or receive other assistance. Assistance can be obtained by simply calling or emailing the TIGER Discretionary Grant program staff via email at *TIGERGrants@dot.gov*, or by calling Howard Hill at (202) 366–0301.

Projects that are eligible for TIGER Discretionary Grants (''Eligible Projects'') include, but are not limited to: (1) Highway or bridge projects eligible under title 23, United States Code; (2) public transportation projects eligible under chapter 53 of title 49, United States Code; (3) passenger and freight rail transportation projects; and (4) marine port infrastructure investments. Federal wage rate requirements included in subchapter IV of chapter 31 of title 40, United States Code, apply to all projects receiving funds, and apply to all parts of the project, whether funded with TIGER Discretionary Grant funds, other federal funds, or non-federal funds. This description of Eligible Projects is identical to the description of eligible projects under earlier rounds of the TIGER Discretionary Grant program.[1]

[1] Consistent with the FY 2012 Appropriations Act, DOT will apply the following principles in determining whether a project is eligible as a capital investment in surface transportation: (1) surface transportation facilities generally include roads, highways and bridges, marine ports, freight and passenger railroads, transit systems, and projects that connect transportation facilities to other modes

As was the case in earlier rounds of the TIGER Discretionary Grant program, Eligible Projects do not include research, demonstration, or pilot projects that do not result in publically accessible surface transportation infrastructure. To be funded, projects or elements of a project must demonstrate independent utility, which means that the project provides transportation benefits and is ready for broad public use upon completion of project construction.

Each applicant may submit no more than three applications for consideration to the TIGER Discretionary Grant Program to focus submissions on those applications that are most likely to align well with DOT's selection criteria. While applications may include requests to fund more than one project, applicants may not bundle together unrelated projects in the same application for purposes of avoiding the three application limit that applies to each applicant. Please note that the three application limit applies only to applications where the applicant is the lead applicant, and there is no limit on applications for which an applicant can be listed as a partnering agency. Also, DOT will not count any application for a multistate project against the three application limit to the extent multiple states are partnering to submit the application. Furthermore, jurisdictions that collaborate with regional partners on a priority application are more likely to be successful than those that choose separate priorities and apply separately because DOT will give priority to applications that demonstrate a high degree of Jurisdictional & Stakeholder Collaboration (see *Section II. Selection Criteria and Guidance on Application of Selection Criteria*). If any lead applicant submits more than three applications, only the first three received will be considered.

The FY 2012 Appropriations Act requires a new solicitation of applications and, therefore, any unsuccessful applicant for earlier rounds of TIGER Discretionary Grants that wishes to be considered for a TIGER Discretionary Grant this year must reapply according to the procedures in this notice.

The FY 2012 Appropriations Act specifies that TIGER Discretionary Grants may be not less than $10 million (except in rural areas) and not greater than $200 million. The FY 2012 Appropriations Act does not provide authority to waive the minimum $10 million grant size for projects located in urbanized areas. For projects located in rural areas (as defined in Section V (*Projects in Rural Areas*)), the minimum TIGER Discretionary Grant size is $1 million. The term ''grant'' in the provision of the FY 2012 Appropriations Act specifying a minimum grant size does not include TIGER TIFIA Payments, as described below.

DOT reserves the right to award funds for a part of the project, not the full project, if a part of the project has independent utility and aligns well with the selection criteria specified in this notice.

Pursuant to the FY 2012 Appropriations Act, no more than 25 percent of the funds made available for TIGER Discretionary Grants (or $125 million) may be awarded to projects in a single State.

The FY 2012 Appropriations Act directs that not less than $120 million of the funds provided for TIGER Discretionary Grants be used for projects located in rural areas. Further, in awarding TIGER Discretionary Grants pursuant to the FY 2012 Appropriations Act, DOT must take measures to ensure an equitable geographic distribution of grant funds, an appropriate balance in addressing the needs of urban and rural areas and the investment in a variety of transportation modes. As in previous rounds of TIGER, high speed and intercity passenger rail projects remain eligible for funding under this program and a high priority of this Administration. DOT would like to encourage those seeking funding for passenger rail projects to consider TIGER and will, therefore, make up to $100 million in TIGER funds available to high speed and intercity passenger rail projects.

TIGER Discretionary Grants may be used for up to 80 percent of the costs of a project, but priority must be given to projects for which Federal funding is required to complete an overall financing package and projects can increase their competitiveness by demonstrating significant non-Federal contributions. DOT may increase the Federal share above 80 percent only for projects located in rural areas, in which case DOT may fund up to 100 percent of the costs of a project. Therefore, for projects located in urban areas, based on the statutory requirements of at least 20 percent non-Federal cost share and a minimum grant size of $10 million, the minimum total project size for an eligible project is $12.5 million (where the minimum $10 million TIGER Discretionary Grant request represents 80 percent of the total project cost). The minimum total project size for an eligible project in a rural area is $1 million (where the entire project cost is funded with a TIGER Discretionary Grant). However, the statutory requirement to give priority to projects that use Federal funds to complete an overall financing package applies to projects located in rural areas as well, and projects located in rural areas can increase their competitiveness for purposes of the TIGER program by demonstrating significant non-Federal financial contributions. In the FY2011 competition, on average, urban projects pledged 65% non-Federal funds while rural projects featured more than 46% non-Federal funds. Three TIGER–TIFIA projects will use only 2% TIGER funds but leverage more than $1.8 billion in non-Federal investment. DOT will consider any non-Federal funds as well as funds from the Indian Reservation Roads Program as a local match for purposes of this program, whether such funds are contributed by the public sector (State or local) or the private sector. However, DOT cannot consider funds already expended as a local match.

The 2012 Appropriations Act requires that TIGER funds are only available for obligation through September 30, 2013. The limited amount of time for which the funds will be made available means that DOT will focus on the extent to which a project is ready to proceed with obligation of grant funds when evaluating applications, and give priority to those projects that are ready to proceed sooner than other competitive projects.

The FY 2012 Appropriations Act allows for an amount not to exceed $175 million of the $500 million to be used to pay the subsidy and administrative costs for a project receiving credit assistance under the Transportation Infrastructure Finance and Innovation Act of 1998 (''TIFIA'') program, if it would further the purposes of the TIGER Discretionary Grant program. DOT is referring to these payments as ''TIGER TIFIA Payments.'' The amount of budget authority required to support TIFIA credit assistance is calculated on a project-by-project basis. Applicants for TIGER TIFIA Payments should submit an application pursuant to this notice and a separate TIFIA letter of interest, as described below in Section VI (*TIGER TIFIA Payments*). Unless otherwise

of transportation; and (2) surface transportation facilities also include any highway or bridge project eligible under title 23, U.S.C., or public transportation project eligible under chapter 53 of title 49, U.S.C. Please note that the Department may use a TIGER Discretionary Grant to pay for the surface transportation components of a broader project that has non-surface transportation components, and applicants are encouraged to apply for TIGER Discretionary Grants to pay for the surface transportation components of these projects.

noted, or the context requires otherwise, references in this notice to TIGER Discretionary Grants include TIGER TIFIA Payments.

Due to the limited funding available under this program, applicants that require a substantial amount of funds to complete a financing package should consider whether a TIGER TIFIA Payment may provide more value for their project than a comparable award of grant funds. DOT reserves the right to offer a TIGER TIFIA Payment to an applicant that applied for a TIGER Discretionary Grant even if DOT does not choose to fund the requested TIGER Discretionary Grant and the applicant did not specifically request a TIGER TIFIA Payment.

While TIFIA support has most often been sought for road and bridge projects (including multiple TIGER TIFIA payments for managed lanes projects), TIFIA is a multimodal program. DOT encourages applicants seeking support for large multimodal projects that meet TIFIA eligibility criteria, including major transit projects, to consider TIGER TIFIA Payments as a means for federal support of these projects. In the past two rounds of TIGER Discretionary Grants, two TIGER TIFIA Payments were awarded to transit agencies for the expansion of fixed guideway transit systems.

TIGER grant recipients may apply for funding to support additional phases of a project awarded funds in earlier rounds of this program. However, to be competitive, any phase awarded funding in the past should be at or near completion, and the applicant should provide data about how the project is performing based on the benefits expected in the original application.

The FY 2012 Appropriations Act provides that the Secretary of Transportation may retain up to $20 million of the $500 million to fund the award and oversight of TIGER Discretionary Grants. Portions of the $20 million may be transferred for these purposes to the Administrators of the Federal Highway Administration, the Federal Transit Administration, the Federal Railroad Administration, and the Federal Maritime Administration.

The purpose of this notice is to solicit applications for TIGER Discretionary Grants. This is a final notice.

TIGER Discretionary Grants

II. Selection Criteria and Guidance on Application of Selection Criteria

This section specifies the criteria that DOT will use to evaluate applications for TIGER Discretionary Grants. The criteria incorporate the statutory eligibility requirements for this program, which are specified in this notice as relevant. This section is divided into two parts. Part A (*Selection Criteria*) specifies the criteria that DOT will use to rate projects. Additional guidance about how DOT will apply these criteria, including illustrative metrics and examples, is provided in Part B (*Additional Guidance on Selection Criteria*).

A. Selection Criteria

TIGER Discretionary Grants will be awarded based on the selection criteria as outlined below. There are two categories of selection criteria, ''Primary Selection Criteria'' and ''Secondary Selection Criteria.''

1. Primary Selection Criteria

(a) Long-Term Outcomes

DOT will give priority to projects that have a significant impact on desirable long-term outcomes for the Nation, a metropolitan area, or a region. Applications that do not demonstrate a likelihood of significant long-term benefits in this criterion will not proceed in the evaluation process. The following types of long-term outcomes will be given priority:

(i) *State of Good Repair:* Improving the condition of existing transportation facilities and systems, with particular emphasis on projects that minimize life-cycle costs.

(ii) *Economic Competitiveness:* Contributing to the economic competitiveness of the United States over the medium- to long-term.

(iii) *Livability:* Fostering livable communities through policies and investments that increase transportation choices and access to transportation services for people in communities across the United States.

(iv) *Environmental Sustainability:* Improving energy efficiency, reducing dependence on oil, reducing greenhouse gas emissions and benefitting the environment.

(v) *Safety:* Improving the safety of U.S. transportation facilities and systems.

(b) Job Creation and Near-Term Economic Activity

Job creation and near-term economic activity remain a top priority of this Administration; therefore, DOT will give priority to projects that are expected to quickly create and preserve jobs and promote rapid increases in economic activity, particularly jobs and activity that benefit economically distressed areas as defined by section 301 of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3161) (''Economically Distressed Areas'').[2]

2. Secondary Selection Criteria

(a) Innovation

DOT will give priority to projects that use innovative strategies to pursue the long-term outcomes outlined above.

(b) Partnership

DOT will give priority to projects that demonstrate strong collaboration among a broad range of participants, integration of transportation with other public service efforts, and/or are the product of a robust planning process.

B. Additional Guidance on Selection Criteria

The following additional guidance explains how DOT will evaluate each of the selection criteria identified above in Section II(A) (*Selection Criteria*). Applicants are encouraged to demonstrate the responsiveness of a project to any and all of the selection criteria with the most relevant information that applicants can provide, regardless of whether such information has been specifically requested, or identified, in this notice. Any such information shall be considered part of the application, not supplemental, for purposes of the application size limits specified below in Section VII(D) (*Length of Application*).

1. Primary Selection Criteria

(a) Long-Term Outcomes

In order to measure a project's alignment with this criterion, DOT will assess the public benefits generated by the project, as measured by the extent to which a project produces one or more of the following outcomes.

(i) *State of Good Repair:* In order to determine whether the project will improve the condition of existing transportation facilities or systems, including whether life-cycle costs will be minimized, DOT will assess (i) whether the project is part of, or consistent with, relevant State, local or regional efforts and plans to maintain transportation facilities or systems in a state of good repair, (ii) whether an important aim of the project is to rehabilitate, reconstruct or upgrade

[2] While Economically Distressed Areas are typically identified under the Public Works and Economic Development Act at the county level, for the purposes of this program DOT will consider regions, municipalities, smaller areas within larger communities, or other geographic areas to be Economically Distressed Areas if an applicant can demonstrate that any such area otherwise meets the requirements of an Economically Distressed Area as defined in section 301 of the Public Works and Economic Development Act of 1965.

surface transportation assets that, if left unimproved, threaten future transportation network efficiency, mobility of goods or accessibility of people, or economic growth due to their poor condition, (iii) whether the project is appropriately capitalized up front and uses asset management approaches that optimize its long-term cost structure, and (iv) the extent to which a sustainable source of revenue is available for long-term operations and maintenance of the project. The application should include any quantifiable metrics of the facility or system's current condition and performance and, to the extent possible, projected condition and performance, with an explanation of how the project will improve the facility or system's condition, performance and/or long-term cost structure, including calculations of avoided operations and maintenance costs and associated delays.

(ii) *Economic Competitiveness:* In order to determine whether a project promotes the economic competitiveness of the United States, DOT will assess whether the project will measurably contribute over the long term to growth in the productivity of the American economy. For purposes of aligning a project with this outcome, applicants should provide evidence of how improvements in transportation outcomes (such as time savings and operating cost savings) translate into long-term economic productivity benefits. These long-term economic benefits that are provided by the completed project are different from the near-term economic benefits of construction that are captured in the Job Creation & Near-Term Economic Activity criterion. In weighing long-term economic competitiveness benefits, applicants should describe how the project supports increased long-term efficiency and productivity.

Priority consideration will be given to projects that: (i) Improve long-term efficiency, reliability or cost-competitiveness in the movement of workers or goods, with a particular focus on projects that have a significant effect on reducing the costs of transporting export cargoes, or (ii) make improvements that increase the economic productivity of land, capital or labor at specific locations, particularly Economically Distressed Areas. Applicants may propose other methods of demonstrating a project's contribution to the economic competitiveness of the country and such methods will be reviewed on a case-by-case basis.

Economic competitiveness may be demonstrated by the project's ability to increase the efficiency and effectiveness of the transportation system through integration or better use of all existing transportation infrastructure. This may be evidenced by the project's involvement with or benefits to more than one mode and/or its compatibility with and its connection to other modes and facilities. Applications that demonstrate increases in efficiency for exports will be given priority in the evaluation process.

For purposes of demonstrating economic benefits, applicants should estimate National-level or region-wide economic benefits on productivity and production (*e.g.,* reduced shipping costs or travel times for U.S. exports originating both inside and outside of the region), and should take care not to include economic benefits that are being shifted from one location in the United States to another location. Highly localized benefits will receive the most consideration under circumstances where such benefits are most likely to improve an Economically Distressed Area (as defined herein) or otherwise improve access to more productive employment opportunities for under-employed and disadvantaged populations.

(iii) *Livability:* Livability investments are projects that not only deliver transportation benefits, but are also designed and planned in such a way that they have a positive impact on qualitative measures of community life. This element of long-term outcomes delivers benefits that are inherently difficult to measure. However, it is implicit to livability that its benefits are shared and therefore magnified by the number of potential users in the affected community. Therefore, descriptions of how projects enhance livability should include a description of the affected community and the scale of the project's impact as measured in person-miles traveled or number of trips affected. In order to determine whether a project improves the quality of the living and working environment of a community, DOT will consider whether the project furthers the six livability principles developed by DOT with the Department of Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA) as part of the Partnership for Sustainable Communities, which are listed fully at *http://www.dot.gov/affairs/2009/dot8009.htm.* For this criterion, the Department will give particular consideration to the first principle, which prioritizes the creation of affordable and convenient transportation choices.[3] Specifically, DOT will qualitatively assess whether the project:

(1) Will significantly enhance or reduce the average cost of user mobility through the creation of more convenient transportation options for travelers;

(2) Will improve existing transportation choices by enhancing points of modal connectivity, increasing the number of modes accommodated on existing assets, or reducing congestion on existing modal assets;

(3) Will improve accessibility and transport services for economically disadvantaged populations, non-drivers, senior citizens, and persons with disabilities, or will make goods, commodities, and services more readily available to these groups; and/or

(4) Is the result of a planning process which coordinated transportation and land-use planning decisions and encouraged community participation in the process, such as planning conducted with TIGER II Planning Grants, the Department of Housing and Urban Development's Regional Planning Grants, or the Environmental Protection Agency's Brownfield Area-Wide Planning Pilot Program as well as technical assistance programs focused on livability or economic development planning.

Livability improvements may include projects for new or improved biking and walking infrastructure. However, particular attention will be paid to the degree to which such projects contribute significantly to broader traveler mobility, including for people with disabilities, through intermodal connections, enhanced job commuting options, or improved connections between residential and commercial areas. Projects that appear designed primarily as recreational facilities and do not enhance traveler mobility as described above will not be funded.

(iv) *Environmental Sustainability:* In order to determine whether a project promotes a more environmentally sustainable transportation system, DOT will assess the project's ability to:

(1) Improve energy efficiency, reduce dependence on oil and/or reduce greenhouse gas emissions, (applicants are encouraged to provide quantitative information regarding expected reductions in emissions of CO_2 or fuel consumption as a result of the project, or expected use of clean or alternative

[3] In full, this principle reads: ''Provide more transportation choices. Develop safe, reliable and economical transportation choices to decrease household transportation costs, reduce our nations' dependence on foreign oil, improve air quality, reduce greenhouse gas emissions and promote public health.''

sources of energy; projects that demonstrate a projected decrease in the movement of people or goods by less energy-efficient vehicles or systems will be given priority under this factor); and

(2) Maintain, protect or enhance the environment, as evidenced by its avoidance of adverse environmental impacts (for example, adverse impacts related to air or water quality, wetlands, and endangered species) and/or by its environmental benefits (for example, improved air quality, wetlands creation or improved habitat connectivity).

Applicants are encouraged to provide quantitative information that validates the existence of substantial transportation-related costs related to energy consumption and adverse environmental effects and evidence of the extent to which the project will reduce or mitigate those costs.

(v) *Safety:* In order to determine whether the project improves safety, DOT will assess the project's ability to reduce the number, rate and consequences of surface transportation-related crashes, injuries, and fatalities among drivers and/or non-drivers in the United States or in the affected metropolitan area or region, and/or the project's contribution to the elimination of highway/rail grade crossings, the protection of pipelines, or the prevention of unintended release of hazardous materials.

Evaluation of Expected Project Costs and Benefits: DOT believes that benefit-cost analysis (''BCA'') is an important discipline. For BCA to yield useful results, a robust consideration of costs and benefits is necessary. These include quantified fuel and travel time savings as well as reductions in greenhouse gas emissions, water quality impacts, and public health effects as well as quantification of other costs and benefits that are more indirectly related to vehicle-miles or that are harder to measure. In addition, BCA should attempt to measure the indirect effects of transportation investments on land use and on the portions of household budgets spent on transportation. The systematic process of comparing expected benefits and costs helps decision-makers organize information about, and evaluate trade-offs between, alternative transportation investments.[4]

Therefore, applicants for TIGER Discretionary Grants are generally required to identify, quantify, and compare expected benefits and costs, subject to the following qualifications:

All applicants will be expected to prepare an analysis of benefits and costs; however, DOT understands that the detail of analysis that should be expected (for items such as surveys, travel demand forecasts, market forecasts, statistical analyses) is less for smaller projects than for larger projects. The level of resources devoted to preparing the benefit-cost analysis should be reasonably related to the size of the overall project and the amount of grant funds requested in the application. Any subjective estimates of benefits and costs should still be quantified, and applicants should provide whatever evidence they have available to lend credence to their subjective estimates. Estimates of benefits should be presented in monetary terms whenever possible; if a monetary estimate is not possible, then at least a quantitative estimate (in physical, non-monetary terms, such as crash rates, ridership estimates, emissions levels, *etc.*) should be provided.

The lack of a useful analysis of expected project benefits and costs may be the basis for not selecting a project for award of a TIGER Discretionary Grant to an applicant. If it is clear to DOT that the total benefits of a project are not reasonably likely to justify the project's costs, DOT will not award a TIGER Discretionary Grant to the project.

Detailed guidance for the preparation of benefit-cost analyses is provided in *Appendix A.* Benefits should be presented, whenever possible, in a tabular form showing benefits and costs in each year for the useful life of the project. Benefits and costs should both be discounted to the year 2012, and present discounted values of both the stream of benefits and the stream of costs should be calculated. If the project has multiple parts, each of which has independent utility, the benefits and costs of each part should be estimated and presented separately. The results of the benefit-cost analysis should be summarized in the Project Narrative section of the application itself, but the details may be presented in an attachment to the application if the full analysis cannot be included within the page limit for the project narrative.

Evaluation of Project Performance: Each applicant selected for TIGER Discretionary Grant funding will be required to work with DOT on the development and implementation of a plan to collect information and report on the project's performance with respect to the relevant long-term outcomes that are expected to be achieved through construction of the project.

(b) Job Creation and Near-Term Economic Activity

In order to measure a project's alignment with this criterion, DOT will assess whether the project promotes the short- or long-term creation or preservation of jobs and whether the project rapidly promotes new or expanded business opportunities during construction of the project or thereafter. Applicants are encouraged to provide information to assist DOT in making these assessments, including the total amount of funds that will be expended on construction and construction-related activities by all of the entities participating in the project and, to the extent measurable, the number and type of jobs to be created and/or preserved by the project by calendar quarters during construction and annually thereafter. Applicants should also identify any business enterprises to be created or benefited by the project during its construction and once it becomes operational.[5]

DOT will continue to apply the Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009 issued by the Office of Management and Budget (''OMB'') on April 3, 2009 (the ''OMB Guidance'') to the TIGER Discretionary Grants program

[4] DOT has a responsibility under Executive Order 12893, Principles for Federal Infrastructure Investments, 59 FR 4233, to base infrastructure investments on systematic analysis of expected benefits and costs, including both quantitative and qualitative measures.

[5] The Executive Office of the President, Council of Economic Advisers, (CEA), issued a memorandum in May 2009 on ''Estimates of Job Creation from the American Recovery and Reinvestment Act of 2009.'' That memorandum provides a simple rule for estimating job-years created by government spending, which is that $92,000 of government spending creates one job-year (or 10,870 job-years per billion dollars of spending). More recently, in September 2011, based on further analysis both of actual job-creation experience from transportation projects under the Recovery Act and on further macroeconomic analysis, the CEA determined that a job-year is created by every $76,923 in transportation infrastructure spending (or 13,000 job-years per billion dollars of transportation infrastructure spending). This figure can now be used in place of the earlier $92,000/job-year estimate. Applicants can use this estimate as an appropriate indicator of direct, indirect and induced job-years created by TIGER Discretionary Grant spending, but are encouraged to supplement or modify this estimate to the extent they can demonstrate that such modifications are justified. However, since this guidance makes job creation purely a function of the level of expenditure, applicants should also demonstrate how quickly jobs will be created under the proposed project. Projects that generate a given number of jobs more quickly will have a more favorable impact on economic recovery. A quarter-by-quarter projection of the number of direct job-hours expected to be created by the project is useful in assessing the impacts of a project on economic recovery. Furthermore, applicants should be aware that certain types of expenditures are less likely to align well with the Job Creation & Near-Term Economic Activity criterion. These types of expenditures include, among other things, engineering or design work and purchasing existing facilities or right-of-way.

as a matter of policy, and consistent with applicable Federal laws. Applicants are encouraged to provide information to assist DOT in assessing (1) whether the project will promote the creation of job opportunities for low-income workers through the use of best practice hiring programs and apprenticeship (including pre-apprenticeship) programs; (2) whether the project will provide maximum practicable opportunities for small businesses and disadvantaged business enterprises, including veteran-owned small businesses and service disabled veteran-owned small businesses; (3) whether the project will make effective use of community-based organizations in connecting disadvantaged workers with economic opportunities; (4) whether the project will support entities that have a sound track record on labor practices and compliance with Federal laws ensuring that American workers are safe and treated fairly; and (5) whether the project implements best practices, consistent with our Nation's civil rights and equal opportunity laws, for ensuring that all individuals—regardless of race, gender, age, disability, and national origin—benefit from TIGER grant funding.

To the extent possible, applicants should indicate whether the populations most likely to benefit from the creation or preservation of jobs or new or expanded business opportunities are from Economically Distressed Areas. In addition, to the extent possible, applicants should indicate whether the project's procurement plan is likely to create follow-on jobs and near-term economic activity for manufacturers and suppliers that support the construction industry.

In evaluating a project's alignment with this criterion, DOT will assess whether a project is ready to proceed rapidly upon receipt of a TIGER Discretionary Grant (see *Appendix C: Additional Information on Project Readiness Guidelines* for further details), as evidenced by:

(i) *Project Schedule:* Applicants must include a detailed project schedule in this section of their application, which should include major and minor project milestones. If the project will be completed in individual segments or phases, these segments or phases must be described individually. A feasible and sufficiently detailed project schedule demonstrating that the project can begin construction quickly upon receipt of a TIGER Discretionary Grant,[6] and that the grant funds will be spent steadily and expeditiously once construction starts; the schedule should show how many direct, on-project jobs are expected to be created or sustained during each calendar quarter after the project is underway. Any applicant that is applying for a TIGER Discretionary Grant and does not own all of the property or right-of-way required to complete the project should provide evidence that the property and/or right-of-way owner whose permission is required to complete the project supports the application and will cooperate in carrying out the activities to be supported by the TIGER Discretionary Grant;

(ii) *Environmental Approvals:* Receipt (or reasonably anticipated receipt) of all environmental approvals and permits necessary for the project to proceed to construction on the timeline specified in the project schedule and necessary to meet the statutory obligation deadline, including satisfaction of all Federal, State and local requirements and completion of the National Environmental Policy Act (''NEPA'') process;

To demonstrate satisfaction of this requirement, applicants will be asked to provide assurances with their pre-applications and evidence with their applications that NEPA review is complete or substantially complete and submit relevant draft or final NEPA documentation—preferably by way of a Web site link—for DOT review.

DOT is unlikely to select a project for TIGER Discretionary Grant funding if it involves, or potentially involves, significant environmental impacts and/or is not clearly likely to complete required environmental and regulatory reviews in time to meet the obligation deadline of September 30, 2013.

If an applicant has not substantially completed the NEPA process the applicant should provide information on the project's current status in the NEPA process and an estimate of the latest date that the NEPA process is reasonably expected to be completed. If an applicant has not initiated the NEPA process, the applicant must provide a reasonable justification for why the NEPA process has not yet been initiated as of the date of this notice and an assurance that the necessary environmental reviews can be completed with enough time for any post-NEPA, pre-obligation activities to be completed by June 30, 2013, in order to give DOT comfort that all of the TIGER Discretionary Grant funds are likely to be obligated in advance of the September 30, 2013, statutory deadline. An example of a reasonable justification for why an applicant has not initiated NEPA review would be if, prior to the availability of TIGER Discretionary Grant funds, there was no reasonable expectation of receiving Federal funding for the project. A project selected for award that has not completed the NEPA process may not be permitted to use grant funds for construction and related activities until NEPA is complete and all other necessary environmental approvals have been received.

An applicant seeking to demonstrate timely environmental review and permitting should submit the information listed below with its application:

a. The information required under Sections VII(C)(2)(V) and VII(F)–(G) (*Contents of Applications*) of this notice;

b. Environmental studies or other documents—preferably by way of a Web site link—that describe in detail known potential project impacts, and possible mitigation for those impacts;

c. A description of completed, or planned and anticipated coordination with Federal and State regulatory agencies for permits and approvals;

d. An estimate of the time required for completion of NEPA and all other required Federal, State or local environmental approvals; and

e. An identification of the proposed NEPA class of action (*i.e.,* Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement).

(iii) *Legislative Approvals:* Receipt of all necessary legislative approvals (for example, legislative authority to charge user fees or set toll rates), and evidence of support from State and local elected officials; evidence of support from all relevant State and local officials is not required, however, the evidence should demonstrate that the project is broadly supported;

(iv) *State and Local Planning:* The planning requirements of the operating administration administering the TIGER project will apply.[7] Where required by an operating administration, applicants should demonstrate that a project that is required to be included in the relevant State, metropolitan, and local planning documents, has been or will be included. One way applicants may do this is by providing a link to a Web site showing the planning documents. If the project is not included in the relevant planning documents at the time the application is submitted, applicants should submit a certification from the appropriate planning agency that actions are underway at the time of the application to

[6] Each applicant should demonstrate that any potential grant funding awarded to their project can be obligated no later than June 30, 2013, in order to give DOT comfort that the TIGER Discretionary Grant funds are likely to be obligated in advance of the September 30, 2013, statutory deadline, and that any unexpected delays will not put TIGER Discretionary Grant funds at risk of expiring before they are obligated.

[7] All regionally significant projects requiring an action by the FHWA or the FTA must be in the metropolitan transportation plan, TIP and STIP. Further, in air quality non-attainment and maintenance areas, all regionally significant projects, regardless of the funding source, must be included in the conforming metropolitan transportation plan and TIP. To the extent a project is required to be on a metropolitan transportation plan, TIP and/or STIP it will not receive a TIGER Discretionary Grant until it is included in such plans. Projects not currently included in these plans can be amended in by the State and MPO. Projects that are not required to be in long range transportation plans, STIPs and TIPs will not need to be included in such plans in order to receive a TIGER Discretionary Grant. Freight and passenger rail projects are not required to be on the State Rail Plans called for in the Passenger Rail Investment and Improvement Act of 2008. This is consistent with the exemption for high speed and intercity passenger rail projects under the Recovery Act. However, applicants seeking funding for freight and passenger rail projects are encouraged to demonstrate that they have done sufficient planning to ensure that projects fit into a prioritized list of capital needs and are consistent with long-range goals.

include the project in the relevant planning document;

(v) *Technical Feasibility:* The technical feasibility of the project should be demonstrated by previously performed and/or ongoing engineering and design studies and activities; the development of design criteria and/or a basis of design; the basis for the cost estimate presented in the TIGER application, including the identification of contingency levels appropriate to its level of design; and any scope, schedule, and budget risk-mitigation measures. Applicants must include a detailed statement of work that focuses on the technical and engineering aspects of the project. If the project will be completed in individual segments or phases, these segments or phases must be described individually. For projects generating ongoing operating expenses, an estimate of those expenses and a basis for the estimate must be included. Technical feasibility also includes the technical capacity of the project sponsor, including a staffing and management plan, demonstrated experience in successfully implementing (on-time and on-budget) similar capital investments, and other indications of sponsor and partner technical capacity to construct the project; and

(vi) *Financial Feasibility:* The viability and completeness of the project's financing package (assuming the availability of the requested TIGER Discretionary Grant funds), including evidence of stable and reliable capital and (as appropriate) operating revenue commitments sufficient to cover estimated costs; the availability of contingency reserves should planned capital or operating revenue sources not materialize; evidence of the financial condition of the project sponsor; and evidence of the grant recipient's ability to manage grants. Applicants must demonstrate financial feasibility by including a detailed project budget in this section of their application, which should include a detailed breakdown of how the funds will be spent that provides estimates—both dollar amount and percentage of cost—of how much each activity would cost—*e.g.* preparation, grading, asphalt, *etc.* If the project will be completed in individual segments or phases, a budget for each individual segment or phase must be included.

DOT reserves the right to revoke any award of TIGER Discretionary Grant funds and to award such funds to another project to the extent that such funds cannot be timely expended and/or construction does not begin in accordance with the project schedule. Because projects have different schedules DOT will consider on a case-by-case basis how much time after selection for award of a TIGER Discretionary Grant each project has before funds must be obligated (consistent with law) and construction started through an executed grant agreement between the selected applicant and Cognizant Modal Administration. This deadline will be specified for each TIGER Discretionary Grant in the project-specific grant agreements signed by the grant recipients and will be based on critical path items identified by applicants in response to items (i) through (vi) above. DOT expects that pre-conditions be complete and TIGER Discretionary Grants funds obligated on or before June 30, 2013, in order to give DOT comfort that all TIGER Discretionary Grant funds will be obligated before the statutory deadline of September 30, 2013. By statute, DOT's ability to obligate funds for TIGER Discretionary Grants expires on September 30, 2013, and DOT has no authority to extend the deadline.

2. Secondary Selection Criteria

(a) Innovation

In order to measure a project's alignment with this criterion, DOT will assess the extent to which the project uses innovative technology (including, for example, intelligent transportation systems, dynamic pricing, value capture, rail wayside or on-board energy recovery, smart cards, real-time dispatching, active traffic management, radio frequency identification (RFID), or others) to pursue one or more of the long-term outcomes outlined above and/or to significantly enhance the operational performance of the transportation system. DOT will also assess the extent to which the project incorporates innovations that demonstrate the value of new approaches to, among other things, transportation funding and finance, contracting, project delivery, congestion management, safety management, asset management, or long-term operations and maintenance. The applicant should clearly demonstrate that the innovation is designed to pursue one or more of the long-term outcomes outlined above and/or significantly enhance the transportation system.

DOT will consider the extent to which innovative, multi-modal projects might be difficult to fund under other programs and will give priority to projects that align well with the Primary Selection Criteria but are unlikely to receive funding under traditional programs.

(b) Partnership

(i) *Jurisdictional & Stakeholder Collaboration:* In order to measure a project's alignment with this criterion, DOT will assess the project's involvement of non-Federal entities and the use of non-Federal funds, including the scope of involvement and share of total funding. DOT will give priority to projects that receive financial commitments from, or otherwise involve, State and local governments, other public entities, or private or nonprofit entities, including projects that engage parties that are not traditionally involved in transportation projects, such as nonprofit community groups. Pursuant to the OMB Guidance, DOT will give priority to projects that make effective use of community-based organizations in connecting disadvantaged people with economic opportunities. Letters of commitment and other supporting documentation showing existing or confirmed collaboration, partnerships, *etc.,* should be provided (preferably through a Web site link) to demonstrate alignment with this criterion.

In compliance with the FY 2012 Appropriations Act, DOT will give priority to projects for which a TIGER Discretionary Grant will help to complete an overall financing package. An applicant should clearly demonstrate in the application the extent to which the project cannot be readily and efficiently completed without Federal assistance, and the extent to which other sources of Federal assistance are or are not readily available for the project. DOT will assess the amount of private debt and equity to be invested in the project or the amount of co-investment from State, local or other non-profit sources.

DOT will also assess the extent to which the project application demonstrates collaboration among neighboring or regional jurisdictions to achieve National, regional or metropolitan benefits. Multiple States or jurisdictions may submit a joint application and should identify a lead State or jurisdiction as the primary point of contact. Where multiple States or jurisdictions are submitting a joint application, the application should demonstrate how the project costs are apportioned between the States or jurisdictions to assist DOT in making the distributional determinations described below in Section III(C) (*Distribution of Funds*).

(ii) *Disciplinary Integration:* In order to demonstrate the value of partnerships across government agencies that serve various public service missions and to promote collaboration on the objectives outlined in this notice, DOT will give priority to projects that are supported, financially or otherwise, by non-transportation public agencies that are pursuing similar objectives. For example, DOT will give priority to transportation projects that are coordinated with economic development, housing, water infrastructure and land use plans and policies; similarly, DOT will give priority to transportation projects that

encourage energy efficiency or improve the environment and are supported by relevant public agencies with energy or environmental missions. Projects that grow out of a robust planning process—such as those conducted with TIGER II Planning Grants, the Department of Housing and Urban Development's Regional Planning Grants, or the Environmental Protection Agency's Brownfield Area-Wide Planning Pilot Program as well as technical assistance programs focused on livability or economic development planning—will also be given priority.

III. Evaluation and Selection Process

A. Evaluation Process

TIGER Discretionary Grant applications will be evaluated in accordance with the below discussed evaluation process. DOT will establish a pre-application evaluation team to review each pre-application that is received by DOT on or prior to the Pre-Application Deadline. This evaluation team will be organized and led by the Office of the Secretary and will include members from the relevant modal administrations in DOT with the most experience and/or expertise in the relevant project areas (the ''Cognizant Modal Administrations''). This evaluation team will be responsible for analyzing whether the pre-application satisfies the following key threshold requirements:

1. The project is an Eligible Project;
2. NEPA has been addressed, as described above in Section II(B)(2)(b)(ii) (*Environmental Approvals*);
3. The project is included in the relevant State, metropolitan, and local planning documents, or will be included, if applicable;
4. The project expects to be ready to obligate all of the TIGER Discretionary Grant funds no later than June 30, 2013;[8] and
5. Local matching funds to support 20 percent or more of the costs for the project are identified and committed in applications for projects in urban areas.[9]

To the extent the pre-application evaluation team determines that a pre-application does not satisfy these key threshold requirements, DOT will inform the project sponsor that an application for the project will not be reviewed unless the application submitted on or prior to the Application Deadline can demonstrate that the requirement has been addressed.

DOT will establish application evaluation teams to review each application that is received by DOT prior to the Application Deadline. These evaluation teams will be organized and led by the Office of the Secretary and will include members from each of the Cognizant Modal Administrations. These representatives will include technical and professional staff with relevant experience and/or expertise. The evaluation teams will be responsible for evaluating and rating all of the projects and making funding recommendations to the Secretary. The evaluation process will require team members to evaluate and rate applications individually before convening with other members to discuss ratings.

DOT will not assign specific numerical scores to projects based on the selection criteria outlined above in Section II(A) (*Selection Criteria*). Rather, ratings of ''highly recommended,'' ''recommended,'' ''acceptable,'' or ''not recommended'' will be assigned to projects for each of the selection criteria. DOT will award TIGER Discretionary Grants to projects that are well-aligned with one or more of the selection criteria. In addition, DOT will consider whether a project has a negative effect on any of the selection criteria, and any such negative effect may reduce the likelihood that the project will receive a TIGER Discretionary Grant. To the extent the initial evaluation process does not sufficiently differentiate among highly rated projects, DOT will use a similar rating process to re-assess the projects that were highly rated and identify those that should be most highly rated.

DOT will give more weight to the two Primary Selection Criteria (*Long-Term Outcomes* and *Job Creation & Near-Term Economic Activity*), which will be weighted equally, than to the two Secondary Selection Criteria (*Innovation* and *Partnership*) which will also be weighted equally. The following table summarizes the weighting of the selection criteria, as described in the preceding paragraphs:

Primary Selection Criteria	
Long-Term Outcomes	DOT will give more weight to this criterion than to either of the Secondary Selection Criteria. In addition, this criterion has a minimum threshold requirement. Projects that are unable to demonstrate a likelihood of significant long-term benefits in any of the five long-term outcomes identified in this criterion will not proceed in the evaluation process.
Job Creation & Near-Term Economic Activity.	DOT will give more weight to this criterion than to either of the Secondary Selection Criteria. This criterion will be considered after it is determined that a project demonstrates a likelihood of significant long-term benefits in at least one of the five long-term outcomes identified in the long-term outcomes criterion.
Secondary Selection Criteria	
Innovation & Partnership	DOT will give less weight to these criteria than to the Primary Selection Criteria. These criteria will be weighted equally.

As noted below in Section III(C) (*Distribution of Funds*), upon completion of this competitive rating process DOT will analyze the preliminary list and determine whether the purely competitive ratings are consistent with the distributional requirements of the FY 2012 Appropriations Act. If necessary, DOT will adjust the list of recommended projects to satisfy the statutory distributional requirements while remaining as consistent as possible with the competitive ratings. The Secretary of Transportation will make the final project selections.

B. Evaluation of Eligibility

To be selected for a TIGER Discretionary Grant, a project must be an Eligible Project and the applicant must be an Eligible Applicant. DOT may consider one or more components of a large project to be an Eligible Project, but only to the extent that the components have independent utility,

[8] See footnote 7, above.

[9] For FHWA and FTA committed funds are defined as: ''Funds that have been dedicated or obligated for transportation purposes'' as described in 23 CFR 450.104.

meaning the components themselves, not the project of which they are a part, are Eligible Projects and satisfy the selection criteria identified above in Section II(A) (*Selection Criteria*). For these projects, the benefits described in an application must be related to the components of the project for which funding is requested, not the full project of which they are a part. DOT will not fund individual phases of a project if the benefits of completing only these phases would not align well with the selection criteria specified in this Notice because the overall project would still be incomplete.

C. Transparency of Process

In the interest of transparency, DOT will disclose as much of the information related to its evaluation process as is practical and consistent with law. DOT expects that the TIGER Discretionary Grant program may be reviewed and/or audited by Congress, the U.S. Government Accountability Office, DOT's Inspector General, or others, and has taken, and will continue to take steps to document its decision-making process.

IV. Grant Administration

DOT expects that each TIGER Discretionary Grant will be administered by one of the Cognizant Modal Administration, pursuant to a grant agreement between the TIGER Discretionary Grant recipient and the Cognizant Modal Administration. Service Outcome Agreements and Stakeholder Agreements will be incorporated into the TIGER grant agreements, where appropriate. In accordance with the FY 2012 Appropriations Act, the Secretary has the discretion to delegate such responsibilities to the appropriate operating administration.

Applicable Federal laws, rules and regulations of the Cognizant Modal Administration administering the project will apply to projects that receive TIGER Discretionary Grants.

V. Projects in Rural Areas

The FY 2012 Appropriations Act directs that not less than $120 million of the funds provided for TIGER Discretionary Grants are to be used for projects in rural areas. For purposes of this notice, DOT is defining ''rural area'' as any area not in an Urbanized Area, as such term is defined by the Census Bureau,[10] and will consider a project to be in a rural area if all or the majority of a project (determined by geographic location(s) where majority of project money is to be spent) is located in a rural area. Therefore, if all or the majority of a project is located in a rural area, such a project is eligible to apply for less than $10 million, but at least $1 million in TIGER Discretionary Grant funds, and up to 100% of the project's costs may be paid for with federal funds. To the extent more than a *de minimis* portion of a project is located in an Urbanized Area, applicants should identify the estimated percentage of project costs that will be spent in Urbanized Areas and the estimated percentage that will be spent in rural areas.

VI. TIGER TIFIA Payments

Up to $175 million of the $500 million available for TIGER Discretionary Grants may be used for TIGER TIFIA Payments. Applicants seeking TIGER TIFIA Payments should apply in accordance with all of the criteria and guidance specified in this notice for TIGER Discretionary Grant applications and will be evaluated concurrently with all other applicants. Any applicant seeking a TIGER TIFIA Payment is also required to submit a TIFIA letter of interest concurrent with the TIGER TIFIA Payment application. If selected for a TIGER TIFIA Payment, the applicant must comply with all of the TIFIA program's standard application and approval requirements including submission of a complete TIFIA application and $50,000 application fee (the TIFIA program guide can be downloaded from *http://tifia.fhwa.dot.gov/*).

Applicants should demonstrate that the TIFIA loan will be ready to close on or before June 30, 2013, in accordance with the guidance specified above in Section II(B)(1)(b) (*Job Creation & Near-Term Economic Activity*). DOT's TIFIA Joint Program Office will assist DOT in determining a project's readiness to proceed rapidly upon receipt of a TIGER TIFIA Payment.

Applicants seeking TIGER TIFIA Payments may also apply for a TIGER Discretionary Grant for the same project and must indicate the type(s) of funding for which they are applying clearly on the face of their applications. An applicant for a TIGER TIFIA Payment must submit an application pursuant to this notice for a TIGER TIFIA Payment even if it does not wish to apply for a TIGER Discretionary Grant.

Unless otherwise expressly noted herein, any and all requirements that apply to TIGER Discretionary Grants pursuant to the FY 2012 Appropriations Act, this notice, or otherwise, apply to TIGER TIFIA Payments.

Pre-Application and Application Cycle

VII. Pre-Application and Application Cycle

A. Two Stages of Application Cycle

The application cycle for TIGER Discretionary Grants has two stages:

1. *Pre-Application:* In Stage 1, applicants must submit a pre-application form to the DOT. This step qualifies applicants to submit an application in Stage 2. No application submitted during Stage 2 that does not correlate with a properly completed Stage 1 pre-application will be considered.

2. *Application:* In Stage 2, applicants must submit a complete application package through Grants.gov. If an applicant is seeking a TIGER TIFIA payment, applicants must also submit electronically a TIFIA letter of interest to the TIFIA office at *TIFIACredit@dot.gov.* TIFIA letters of interest must comply with all of the program's standard requirements (the TIFIA program guide can be downloaded from *http://tifia.fhwa.dot.gov/*).

Pre-applications must be submitted to DOT by the Pre-Application Deadline, which is February 20, 2012, at 5 p.m. EST. Final applications must be submitted through Grants.gov by the Application Deadline, which is March 19, 2012, at 5 p.m. EDT. The DOT pre-application system will open on or before February 13, 2012, to allow prospective applicants to submit pre-applications. Subsequently, the Grants.gov ''Apply'' function will open on February 22, 2012, allowing applicants to submit applications. While applicants are encouraged to submit pre-applications in advance of the Pre-Application Deadline, pre-applications will not be reviewed until after the Pre-Application Deadline. Similarly, while applicants are encouraged to submit applications in advance of the Application Deadline, applications will not be evaluated, and selections for awards will not be made, until after the Application Deadline.

Pre-applications (stage 1) must be submitted to the DOT. The pre-application form will be available on the DOT Web site at *www.dot.gov/TIGER* by January 30, 2012, together with instructions for submitting the pre-application form electronically to DOT.

[10] For Census 2000, the Census Bureau defined an Urbanized Area (UA) as an area that consists of densely settled territory that contains 50,000 or more people. Updated lists of UAs are available on the Census Bureau Web site. Urban Clusters (UCs) will be considered rural areas for purposes of the TIGER Discretionary Grant program.

Applications (Stage 2) must be submitted through Grants.gov. To apply for funding through Grants.gov, applicants must be properly registered. Complete instructions on how to register and submit applications can be found at www.grants.gov. *Please be aware that the registration process usually takes 2–4 weeks and must be completed before an application can be submitted.* If interested parties experience difficulties at any point during the registration or application process, please call the *Grants.gov* Customer Support Hotline at 1–(800) 518–4726, Monday-Friday from 7 a.m. to 9 p.m. EST. Additional information on applying through Grants.gov is available in *Appendix B.*

B. Contents of Pre-Applications

An applicant for a TIGER Discretionary Grant should provide all of the information requested below in its pre-application form. DOT reserves the right to ask any applicant to supplement the data in its pre-application, but expects pre-applications to be complete upon submission. Applicants must complete the pre-application form and send it to DOT electronically on or prior to the Pre-Application Deadline, in accordance with the instructions specified at *www.dot.gov/TIGER.* The pre-application form must include the following information:

i. Name of applicant (if the application is to be submitted by more than one entity, a lead applicant must be identified);

ii. Applicant's DUNS (Data Universal Numbering System) number;

iii. Type of applicant (State government, local government, U.S. territory, Tribal government, transit agency, port authority, metropolitan planning organization, or other unit of government);

iv. State(s) where the project is located;

v. County(s) where the project is located;

vi. City(s) where the project is located;

vii. Information about the geographic location of the project for mapping purposes using one of the following methods:

1. A geographic information system (GIS) file that indicates the location of the project;

2. For locating point specific projects, latitude and longitude in decimal degrees to an accuracy of 5 decimal places (*e.g.* 0.12345) using the WGS 84 datum (the default datum used by Global Positioning System (GPS) equipment; or

3. For linear projects on existing roads, route number (Interstate, U.S. Route, or State Route) or road name and the latitude and longitude in decimal degrees to an accuracy of 5 decimal places (*e.g.* 0.12345) of the beginning and ending points of the project;

viii. Project title (descriptive);

ix. Project type: highway, transit, freight rail, intercity passenger rail, marine port, multimodal, or bicycle and pedestrian activity (if the project is a multimodal project, the pre-application form will require that applicants provide additional information identifying the affected modes);

x. Whether the project is requesting a TIGER TIFIA Payment;

xi. Project description (describe the project in plain English, using no more than 50 words (*e.g.* ''the project will replace the existing bridge over the W river on interstate-X between the cities of Y and Z'') do not describe the project's benefits, background, or alignment with the selection criteria here);

xii. Total cost of the project;

xiii. Total amount of TIGER Discretionary Grant funds requested;

xiv. Contact name, phone number, email address, and physical address for applicant;

xv. Congressional districts affected by the project;

xvi. Type of jurisdiction where the project is located (urban or rural, as defined above in Section V (*Projects in Rural Areas*));

xvii. Whether or not the project is in an Economically Distressed Area, as defined in Section II(A) (*Selection Criteria*);

xviii. An assurance that the NEPA and/or environmental review process is complete, substantially complete, or in progress (and the expected outcome of the process) and is expected to be completed in time to meet the obligation deadline of September 30, 2013;

xix. The schedule for completing right-of-way acquisition and final design; approval of plans, specifications, and estimates;

xx. The date that the project is expected to be ready for obligation of grant funds, which should be no later than June 30, 2013, in order to give DOT comfort that the funds will be obligated before they expire on September 30, 2013; and

xxi. An assurance that non-Federal matching funds to support 20 percent or more of the costs of the project are identified and committed (as noted in Section I (*Background*), this requirement does not apply to projects located in rural areas, as defined above in Section V (*Projects in Rural Areas*)).

To the extent the pre-application does not provide adequate assurances for items xvii through xxii, DOT will inform the project sponsor that an application for the project will not be reviewed unless the application submitted on or prior to the Application Deadline can demonstrate that each requirement has been addressed.

C. Contents of Applications

An applicant for a TIGER Discretionary Grant must include all of the information requested below in its application. DOT reserves the right to ask any applicant to supplement the data in its application, but expects applications to be complete upon submission. To the extent practical, DOT encourages applicants to provide data and evidence of project merits in a form that is publicly available or verifiable. For TIGER TIFIA Payments, these requirements apply only to the applications required under this notice; the standard TIFIA letter of interest and loan application requirements, including the standard $50,000.00 application fee, are separately described in the Program Guide and Application Form found at *http://tifia.fhwa.dot.gov/.*

1. Standard Form 424, Application for Federal Assistance

Please see *www07.grants.gov/assets/SF424Instructions.pdf* for instructions on how to complete the SF 424, which is part of the standard Grants.gov submission. Additional clarifying guidance and FAQs to assist applicants in completing the SF–424 will be available at *www.dot.gov/TIGER* by February 23, 2012, when the ''Apply'' function within Grants.gov opens to accept applications under this notice.

2. Project Narrative (Attachment to SF 424)

The project narrative must respond to the application requirements outlined below. DOT recommends that the project narrative be prepared with standard formatting preferences (*e.g.* a single-spaced document, using a standard 12-point font, such as Times New Roman, with 1-inch margins).

A TIGER Discretionary Grant application must include information required for DOT to assess each of the criteria specified in Section II(A) (*Selection Criteria*), as such criteria are explained in Section II(B) (*Additional Guidance on Selection Criteria*). Applicants must demonstrate the responsiveness of a project to any pertinent selection criteria with the most relevant information that applicants can provide, regardless of

whether such information has been specifically requested, or identified, in this notice. Applicants should provide concrete evidence of project milestones, financial capacity and commitment in order to support project readiness. Any such information shall be considered part of the application, not supplemental, for purposes of the application size limits identified below in Part D (*Length of Applications*). Information provided pursuant to this paragraph must be quantified, to the extent possible, to describe the project's benefits to the Nation, a metropolitan area, or a region. Information provided pursuant to this paragraph should include projections for both the build and no-build scenarios for the project for a point in time at least 20 years beyond the project's completion date or the lifespan of the project, whichever is closest to the present.

All applications should include a detailed description of the proposed project and geospatial data for the project, including a map of the project's location and its connections to existing transportation infrastructure. An application should also include a description of how the project addresses the needs of an urban and/or rural area. An application should clearly describe the transportation challenges that the project aims to address, and how the project will address these challenges. The description should include relevant data such as, for example, passenger or freight volumes, congestion levels, infrastructure condition, or safety experience.

DOT recommends that the project narrative generally adhere to the following basic outline, and include a table of contents, maps and graphics that make the information easier to review:

I. Project Description (including information on the expected users of the project, a description of the transportation challenges that the project aims to address, and how the project will address these challenges);

II. Project Parties (information about the grant recipient and other project parties);

III. Grant Funds and Sources/Uses of Project Funds (information about the amount of grant funding requested, availability/commitment of funds sources and uses of all project funds, total project costs, percentage of project costs that would be paid for with TIGER Discretionary Grant funds, and the identity and percentage shares of all parties providing funds for the project (including Federal funds provided under other programs));

IV. Selection Criteria (information about how the project aligns with each of the primary and secondary selection criteria and a description of the results of the benefit-cost analysis):

a. Long-Term Outcomes
i. State of Good Repair
ii. Economic Competitiveness
iii. Livability
iv. Sustainability
v. Safety
b. Job Creation & Near-Term Economic Activity
c. Innovation
d. Partnership
e. Results of Benefit-Cost Analysis

V. Project Readiness and NEPA (information about how ready the project is to move forward quickly, including information about the project schedule, environmental approvals, legislative approvals, state and local planning, technical feasibility, financial feasibility, and stakeholder partnerships and implementation agreements);

VI. Federal Wage Rate Certification (an application must include a certification, signed by the applicant, stating that it will comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code (Federal wage rate requirements), as required by the FY 2011 Continuing Appropriations Act); and

VII. To the extent relevant, the final page of the application should describe (in one page or less) any material changes that were made to the pre-application form.

The purpose of this recommended format is to ensure that applications are provided in a format that clearly addresses the application requirements and makes critical information readily apparent and easy to locate.

D. Length of Applications

The project narrative may not exceed 30 pages in length. Documentation supporting the assertions made in the narrative portion may also be provided, but should be limited to relevant information. If possible, Web site links to supporting documentation (including a more detailed discussion of the benefit-cost analysis) should be provided rather than copies of these materials. At the applicant's discretion, relevant materials provided previously to a Cognizant Modal Administration in support of a different DOT discretionary program (for example, New Starts or TIFIA) may be referenced and described as unchanged. To the extent referenced, this information need not be resubmitted for the TIGER Discretionary Grant application (although provision of a Web site link would facilitate DOT's consideration of the information). DOT recommends use of appropriately descriptive file names (*e.g.,* ''Project Narrative,'' ''Maps,'' ''Memoranda of Understanding and Letters of Support,'' *etc.*) for all attachments. Cover pages and tables of contents do not count towards the 30-page limit for the narrative portion of the application, and the Federal wage rate certification and one-page update of the pre-application form (if necessary) may also be outside of the 30-page narrative. Otherwise, the only substantive portions of the application that should exceed the 30-page limit are any supporting documents (including a more detailed discussion of the benefit-cost analysis) provided to support assertions or conclusions made in the 30-page narrative section.

E. Contact Information

Contact information is requested as part of the SF–424. DOT will use this information to inform parties of DOT's decision regarding selection of projects, as well as to contact parties in the event that DOT needs additional information about an application. Contact information must be provided for a direct employee of the lead applicant organization. Contact information for a contractor, agent, or consultant of the lead applicant organization is insufficient for DOT's purposes.

F. National Environmental Policy Act Requirement

An application for a TIGER Discretionary Grant must detail whether the project will significantly impact the natural, social and/or economic environment. If the NEPA process is completed, an applicant must indicate the date of, and provide a Web site link or other reference to, the final Categorical Exclusion, Finding of No Significant Impact or Record of Decision. If the NEPA process is underway but not complete, the application must detail where the project is in the process, indicate the anticipated date of completion and provide a Web site link or other reference to copies of any NEPA documents prepared.

G. Environmentally Related Federal, State and Local Actions

An application for a TIGER Discretionary Grant must indicate whether the proposed project requires actions by other agencies (*e.g.,* permits), indicate the status of such actions and provide a Web site link or other reference to materials submitted to the other agencies, and/or demonstrate compliance with other Federal, State and local regulations as applicable, including, but not limited to, Section 4(f) *Parklands, Recreation Areas, Refuges, & Historic Properties;* Section 106 *Historic and Culturally Significant Properties;* Clean Water Act *Wetlands and Water;* Executive Orders *Wetlands, Floodplains, Environmental Justice;* Clean Air Act *Air Quality (specifically note if the project is located in a nonattainment area);* Endangered

Species Act *Threatened and Endangered Biological Resources;* Magnuson-Stevens Fishery Conservation and Management Act *Essential Fish Habitat;* and/or any State and local requirements.

H. Protection of Confidential Business Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information that the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI);'' (2) mark each affected page ''CBI;'' and (3) highlight or otherwise denote the CBI portions. DOT protects such information from disclosure to the extent allowed under applicable law. In the event DOT receives a Freedom of Information Act (FOIA) request for the information, DOT will follow the procedures described in its FOIA regulations at 49 CFR § 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

VIII. Project Benefits

DOT expects to identify and report on the benefits of the projects that it funds with TIGER Discretionary Grants. To this end, DOT will request that recipients of TIGER Discretionary Grants cooperate in Departmental efforts to collect and report on information related to the benefits produced by the projects that receive TIGER Discretionary Grants.

Because of the limited nature of this program, these benefits are likely to be reported on a project-by-project basis and trends across projects that were selected for TIGER Discretionary Grants may not be readily available. In addition, because many of these benefits are long-term outcomes, it may be years before the value of the investments can be quantified and fully reported. DOT is considering the most appropriate way to collect and report information about these potential and actual project benefits.

IX. Questions and Clarifications

For further information concerning this notice please contact the TIGER Discretionary Grant program staff via email at *TIGERGrants@dot.gov*, or call Howard Hill at (202) 366–0301. A TDD is available for individuals who are deaf or hard of hearing at (202) 366–3993. DOT will regularly post answers to these questions and other important clarifications on DOT's Web site at *www.dot.gov/TIGER.*

Appendix A: Additional Information on Benefit-Cost Analysis

Each applicant should provide evidence that the expected benefits of the project *justify* the costs (recognizing that some costs and benefits are difficult to quantify). If it is clear that the benefits do not justify the costs, the Department will not award a TIGER Discretionary Grant to the project. Benefits include the extent to which residents of the United States as a whole are made better off as a result of the project.

The best applications are often prepared by transportation agencies that have used in-house economic expertise and cost/benefit analysis to influence the design of the project from the beginning. All Applicants should also consult the BCA Resource Page available on the USDOT TIGER Web site (*http://www.dot.gov/TIGER*) that will provide supplemental information, standard monetized values (where available), and updates for preparing a BCA. If after reading this appendix applicants need additional help, DOT staff are available to answer questions and offer technical assistance until the final application deadline has passed.

This appendix provides general information and guidance on conducting an analysis. In addition to this guidance, applicants should refer to OMB Circulars A–4 and A–94 in preparing their analysis (*http://www.whitehouse.gov/omb/circulars/*). Circular A–4 also cites textbooks on cost-benefit analysis (*e.g.,* Mishan and Quah [11]) if an applicant wants to review additional background material.

In the Executive Summary for any benefit-cost analysis, applicants should provide a project matrix describing the project and what it changes (see below). This can either be in Word or in Excel. The first column provides a description of the current infrastructure baseline (including anticipated changes over the analysis period) and identifies the problem that the project will address. The second column describes how the project would change the current infrastructure baseline. The third and fourth columns describe the impact of that change and the corresponding population that it affects. The fifth column identifies the corresponding societal benefit. The last columns summarize the results and reference where in the analysis they calculate the benefits. The matrix below provides an example of a completed matrix.

Current Status/Baseline & Problem to be Addressed	Change to Baseline/ Alternatives	Type of Impacts	Population Affected by Impacts	Economic Benefit	Summary of Results	Page Reference in BCA
Stop light at lightly used (non-peak) rural intersection / excess waiting time and safety hazard	Replace with roundabout /signal phasing improvement	Reduce wait time for vehicles (non-peak) & reduce accidents (peak)	Number of drivers with reduced wait time & number of accidents/fatalities & injuries per year	Monetized value of reduced travel times, emissions, and accident costs	Estimated dollar value of time savings, reduced pollution, and safety benefits	pp. 15-18 and p.19

If an application contains multiple separate projects (but that are linked together in a common objective), each of which has independent utility, the applicant should provide a separate matrix (and analysis) for each project. The Executive Summary should also include the full cost of a project, including Federal, State, local, and private funding, as well as expected operations and maintenance costs, and not simply the requested grant amount or the local amount.

In addition to the matrix, the applicant should summarize all pertinent data and quantifiable cost and benefit calculations in a single spreadsheet tab (or table in *Word*). It should also summarize all other benefits that are difficult to quantify, and the applicant would also present this at the beginning of the BCA. The following provides a simplified example for expository purposes of discounted benefits from a road project providing travel time savings to local travelers only over the course of five years. In practice, applicants must estimate both benefits and costs for each year after the project's start date and for a period of time of *at least* 20 years in the future (or the project's useful life if it is shorter). If the project will continue to have benefits beyond the end of the analysis period, applicants can include a residual value of the project at the end of the analysis period, and treat that as

[11] E.J. Mishan and Euston Quah, *Cost-Benefit Analysis,* 5th edition (New York: Routledge, 2007).

an additional benefit, discounted from the end of the analysis period.

Calendar Year	Project Year	Affected Drivers	Travel Time Saved (hours)[1]	Total Value of Time Saved ($2008)[2]	Initial Costs ($2008)	Operations & Maintenace Costs ($2008)[3]	Undiscounted Net Benefits	Discounted at 7%
2011	1				$38,500,000	$6,000,000	-$44,500,000	-$41,588,785
2012	2	80,000	1,040,000	$14,248,000		$700,000	$13,548,000	$11,833,348
2013	3	95,000	1,235,000	$16,919,500		$700,000	$16,219,500	$13,239,943
2014	4	100,000	1,300,000	$17,810,000		$700,000	$17,110,000	$13,053,137
2015	5	102,000	1,326,000	$18,166,200		$700,000	$17,466,200	$12,453,159
2016	6	109,000	1,417,000	$19,412,900		$700,000	$18,712,900	$12,469,195
NPV								$21,459,998
1. Number of drivers times three minutes a day (3/60 hours) over 260 workdays								
2. Hours at $13.70 per hour ($2008)								
3. Includes costs from delays to users during construction								

The following sections will help guide applicants through the matrix. This is useful both to fill out the matrix (and in the process to adequately scope and outline the analysis) and to actually carry out the analysis.

Baselines

Applicants should measure costs and benefits of a proposed project against a baseline (also called a ''base case'' or a ''no build'' case). The baseline should be an assessment of the way the world would look if the project did not receive the requested TIGER Discretionary Grant funding. Sometimes, it is reasonable to forecast that that baseline world resembles the present state. However, it is important to factor in any projected changes (*e.g.,* baseline economic growth, increased traffic volumes, or completion of already planned and funded projects) that would occur even in the absence of the requested project.

Baseline assumptions need to incorporate the transportation options with the highest net benefits that would be available in the absence of the project. Baselines should incorporate accurate descriptions of current traffic/shipping patterns. It is also important that the applicant assume the continuation of reasonable and sound management practices in establishing a baseline. Assuming a baseline scenario in which the owner of the facility does no maintenance on the facility and ignores traffic problems and maintenance is not realistic and will lead to the overstatement of project benefits and will affect the rating of the BCA.

Applicants must demonstrate that the proposed project has independent utility. Sub-components of a larger project may have little or no transportation value in the absence of the other components. For example, a ramp to an undeveloped site does not have much utility if the site does not get developed. The correct baseline is then the current level of traffic and not the projected traffic if the site is developed.

Baselines also need to be realistic in the transportation assumptions that they make. If a project would construct a short freight rail spur from a railroad mainline to a particular facility, it is unrealistic to assume that, in the absence of the project, individuals would ship cargo by truck for thousands of miles, whereas they would ship the same cargo by rail with the project. A realistic description of current traffic would have current cargo traffic going by rail for most of the distance, and then by truck for the relatively short distance over which rail transportation is not available.

The applicant must make clear exactly what portions of the project form the basis of the estimates of benefits and costs. It is incorrect to claim benefits for the entire project but only count as costs the costs of the portion of the project funded by the TIGER Discretionary Grant. Thus, it would be incorrect to attribute all the benefits from a new port facility to a TIGER Discretionary Grant when the costs that are counted only cover the portion of the project funded by the TIGER Discretionary Grant, for example, paving a loading area.

There are cases where a grant may accelerate completion of the project that an applicant already was going to build. The benefits and costs in this case should thus be limited to the marginal benefits (and marginal costs) of completing the project in a shorter period of time and including the cost of expending resources on the project sooner than otherwise planned (*i.e.,* a ''now versus later'' comparison).

Alternatives

An applicant should present and consider reasonable alternatives in the analysis. Applicants should evaluate smaller-scale and more focused projects for comparison purposes. For example, if an applicant is requesting funds to replace a pier, it should also analyze the alternative of rehabilitating the current pier. Similarly, if an applicant seeks funds to establish a relatively large streetcar project, it should also evaluate a more focused project serving only the more densely populated corridors of an area. A careful evaluation of the baseline will yield several alternative actions. The analysis should demonstrate that the proposed project is the most cost-effective option of all the alternatives considered.

Affected Population & Types of Impacts

Applicants need to carefully identify the different impacts a project will have. For example, the rationale for many highway projects is to relieve peak-hour congestion which in turn reduces travel times and vehicle emissions. Other highway projects can improve road safety and in turn reduce accidents and corresponding property damage, injuries, and fatalities. It is important that applicants then match the types of impacts to the corresponding affected population (group and number of affected entities). For example, for a passenger project applicants should measure the number of passengers and for a freight project the amount of freight affected.

Applicants should measure affected passenger and freight traffic in passenger-miles and freight ton-miles (and possibly value of freight). If, as is often the case (*e.g.,* projected growth in highway traffic), the affected population is not the same for all years, then the applicant needs to break out affected population annually. Measures of freight traffic might include growing levels of port calls. In some cases, the relevant population is the volume of traffic that the project diverts from one mode to another. Applicants should be realistic as to how the project affects these populations.

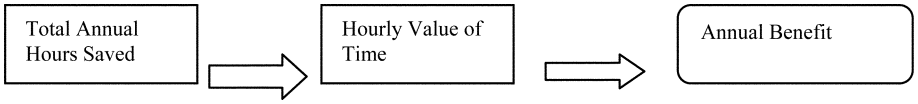
Benefits—Long Term Outcomes

Each application must include in its analysis estimates of the project's expected benefits with respect to each of the five long-term outcomes that DOT specified in Section II(A) (*Selection Criteria*). We recognize that it may in some cases be unclear in which of these categories of outcomes an applicant should list a benefit. In these cases, it is less important in which category an applicant lists a benefit than to make sure that they list and measure it (but only once). The following table maps some of the types of benefits to a long-term outcome. These are some of the primary benefit categories, but this is not an exhaustive list. We describe these categories later.

Long-Term Outcome	Types of Societal Benefits
Livability	Land Use Changes that reduce VMT Accessibility Property Value Increases
Economic Competiveness	Travel Time Savings Operating Cost Savings
Safety	Prevented Accidents (property damage), Injuries, and Fatalities
State of Good Repair	Long-Term Replacement Maintenance & Repair Savings Reduced VMT from not closing bridges.
Environmental Sustainability	Environmental Benefits from Reduced Emissions

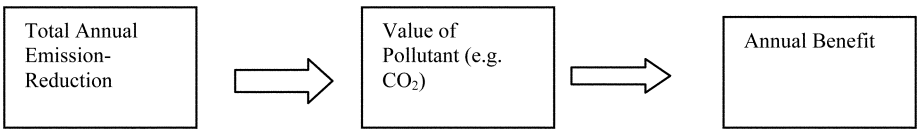
Types of Societal Benefits

Travel time savings can result from transportation improvements whose purpose is to expand capacity or improve state of good repair. Where this is the case, applicants should clearly demonstrate the derivation of the travel time savings to the affected population. If travel time savings vary over time, the applicant must clearly show savings by year. The applicant must also be careful to estimate savings solely from the project funded by the requested grant, and not from other related projects not funded by the requested grant. Once the applicant generates its estimate of hours saved, it should apply the Department's guidance on the value of time to those estimates (*http://ostpxweb.dot.gov/policy/reports.htm*) to monetize them for both business and non-business travelers.



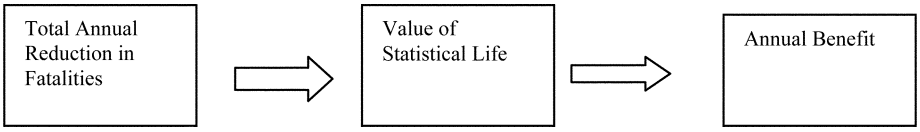
Operating cost savings frequently occur from both freight-related and passenger-related projects. Freight-related projects that improve roads, rails, and ports frequently generate savings to carriers (*e.g.,* fuel savings and other operating cost savings) that they may pass on in whole or in part to shippers by way of lower freight rates. Shippers may, in turn, pass on, in whole or in part, these savings to consumers. Passenger-related projects can also reduce operating costs for passengers by providing lower-cost alternatives to the use of private vehicles or by reducing the operating costs of those vehicles. If applicants are projecting these savings as benefits, they need to carefully demonstrate how the proposed project would generate such benefits. However, applicants must be careful to count the value of the fuel and other operating cost savings (however allocated among carriers, shippers, and consumers) only once in the benefit-cost analysis; it cannot be re-counted in full each time it transfers from one group to the other as this would entail double-counting of the same benefit.

Transportation can generate environmental costs in the form of emissions of ''criteria pollutants'' (*e.g.,* SO_x, NO_x, and particulates) and from the emission of greenhouse gases, such as carbon dioxide (CO_2). Increased traffic congestion results in increased levels of these emissions. Transportation projects that reduce congestion can reduce these emissions and produce *Environmental Benefits* given reduced idling and otherwise constant vehicle-miles travelled. Also, transportation projects that encourage transportation users to shift from more-polluting modes to less-polluting modes can similarly reduce emissions. Applicants claiming these types of benefits must clearly demonstrate and quantify how the project will reduce emissions. Once an applicant has adequately quantified levels of emission reductions, it should estimate the dollar value of these benefits. For sources of information on the social benefits of reducing criteria pollutant emissions, applicants should refer to the online BCA Resource Page (*http://www.dot.gov/TIGER*).



Many infrastructure projects that improve the state of good repair of transportation infrastructure can *reduce long-term maintenance and repair costs.* These benefits are in addition to the benefits of reductions in travel time, shipping costs, and crashes which the applicant should account for separately. Applicants should include these maintenance and repair savings as benefits. Improving state of good repair may also reduce operating costs and congestion by reducing the amount of time that the infrastructure is out of service due to maintenance and repairs, or may prevent a facility (such as a bridge) from being removed from service entirely. The application should also consider differences in maintenance and repair costs when comparing different project alternatives. For example, an applicant can compare the maintenance costs that would be required after rehabilitating an existing pier with those that would be required after building a new one. As part of the data that go into estimating the benefits of improving the state of good repair, applicants should provide accepted measures for assessing an asset's current condition. For example, applicants can use Present Serviceability Ratings (PSR) or the International Roughness Index to discuss pavement condition and bridge sufficiency ratings to discuss the condition of a bridge. As discussed in the section on costs, the Department expects applicants to consider the life-cycle costs of the project when making these comparisons.

Projects can also improve the *Safety* of transportation. A well-designed project can reduce fatalities and injuries as well as reduce other crash costs. The applicant should clearly demonstrate how the project will improve safety. For example, to claim a reduction in fatalities, an applicant must clearly demonstrate how the existence of the project would have prevented the types of fatalities that commonly occur in that area. Applicants should use crash causation factors or similar analyses of causes of crashes to show the extent to which the type of improvements proposed would actually reduce the likelihood of the kinds of crashes that actually had occurred. Alternatively, when only a few cases are involved, the applicant should provide a description of the incidents and demonstrate the linkage between the proposed project and crash reduction. In some cases, safety benefits may occur because of modal diversion from a less safe mode to a safer mode. When applicants claim this type of benefit, they should provide a clear analysis of why the forecasted modal diversion will take place. Once the applicant has established a reasonable count of the incidents that the project will likely prevent, it should apply the Department's guidance on value of life and injuries (*http://ostpxweb.dot.gov/policy/reports.htm*) to monetize them. This and other relevant information on Abbreviated Injury Scale (AIS) are available at the BCA Resource Page (*http://www.dot.gov/TIGER*).



Applicants must carefully net out other effects before taking benefits from *Property Value Increases* (*e.g.* from a transit station). For example, if the property value goes up by the exact same value as the developer's investment then this is not a benefit. Property value increases over and above the developer's investment may potentially be a benefit from the project. The analysis should also consider to what extent an increase in land values induced by the project in one area causes a reduction in land values in some other area. Applicants must also net out any property value increases that result from time savings or other benefits that have already been counted. Applicants can only count the net increase in land value as a benefit. Simply asserting that there is a property tax increase net of time savings is inadequate. The Department expects any applicant claiming these types of benefits to provide a rigorous justification of the benefit. Applicants should note that any claimed societal benefit from a property value increase is only a one-time stock benefit. Applicants can not treat it as a stream of benefits accruing annually. To the extent possible, applicant should use survey methods to estimate the value of the estimate the value of the expected property value increase from transit or other transportation improvements.

Transit and bicycle paths may provide greater accessibility to alternative transportation modes, but they will not actually enhance livability unless people use them, and the desire to use them will depend in part on where these modes go and on the amenities provided with them. One useful source of guidance on measuring benefits of bicycle facilities (particularly for understanding demand estimation) is the Transportation Research Board's National Cooperative Highway Research Program Report 552, *Guidelines for Analysis of Investments in Bicycle Facilities* (Washington: TRB, 2006)

(*Available at http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_552.pdf*). Transit and bicycle paths can also induce land use changes that result in greater density of development and more mixed-use development, thus reducing the number of passenger-miles of transportation needed to access jobs, schools, shopping, and recreational opportunities.

Other

Transfers are not benefits. Analysis should distinguish between real benefits and transfer payments. Benefits reflect real resource usage and overall benefits to society, while transfers represent payments by one group to another and do not represent a net increase in societal benefits. In the case of job creation, for example, every job represents both a cost to the employer (paying a wage) and a benefit to the employee (receiving a wage), so it is a transfer payment, rather than a net benefit. While wages are a transfer payment, increases in the productivity of the labor force, measured by increases in how much workers produce per hour, can be included as a benefit of the project, but these benefits must be carefully measured and justified to be included. With respect to economic development, providing estimates of capital investments or property tax revenues are not legitimate benefits in a benefit-cost analysis. For example, while the tax is a benefit to the tax assessor it is a cost to the taxpayer. These transfers are commonly included in ''economic impact analyses;'' an economic impact analysis is not acceptable as a substitute for a benefit-cost analysis. Other examples of transfers include port/rail projects whose purpose is to take away business from competitors. However, the transportation cost savings (if any) and the like from shifting traffic to a more convenient location would be a benefit. Applicants should not include employment or output multipliers that purport to measure secondary effects as societal benefits because these secondary effects are generally the same (per dollar spent) regardless of what kind of project is funded.

As noted above, the estimate of *Costs* must pertain to the same project as the estimate of benefits. If the TIGER Discretionary Grant is to pay for only part of the project, but the project is indivisible (*i.e.,* no one part of the project would have independent utility), then the applicant should compare the benefits of the whole project to the costs of the whole project, including costs paid for by State, local, and private partners other than the Federal government. In general, applicants should use a life-cycle cost analysis approach in estimating the costs of the project. The Department expects applicants to include operating, maintenance, and other life-cycle costs of the project, along with capital costs. In addition to construction costs, other direct costs may include design and land acquisition. If the time period considered in the analysis is long enough to require the rehabilitation of the facility during the period of analysis, then the costs of that rehabilitation should be included. Applicants should consider external costs, such as noise, increased congestion, and environmental pollutants resulting from the use of the facility or related changes in usage on other facilities in the same network in the analysis. Additionally, applicants should include, to the extent possible, costs to users during construction, such as delays and increased vehicle operating costs associated with work zones or detours. The applicant should correctly discount annual costs to arrive at a present value of the project's cost.

Applicants should *discount future benefits and costs* to present values using a real discount rate (*i.e.,* a discount rate that reflects the opportunity cost of money net of the rate of inflation) of 7 percent, following guidance provided by OMB in Circulars A–4 and A–94 (*http://www.whitehouse.gov/omb/circulars_default/*). Applicants may also provide an alternative analysis using a real discount rate of 3 percent. They should use the latter approach when the alternative use of funds currently dedicated to the project would be for other public expenditures, rather than private investment. In presenting these year-by-year streams, applicants should measure them in constant (or ''real'') dollars prior to discounting. Applicants should not add in the effects of inflation to the estimates of future benefits and costs prior to discounting.

Benefit-cost analyses of transportation projects almost always depend on *forecasts* of projected levels of usage (road traffic, port calls, *etc.*). When an applicant is using such forecasts to generate benefit estimates, it must assess the reliability of these forecasts. If the applicant is using outside forecasts, it must provide a citation and an appropriate page number for the forecasts. Applicants should incorporate indirect effects into their forecasts where possible (*e.g.,* induced demand). Applicants should also take great care to match forecasts of usage levels to the corresponding year. For example, using projected traffic levels for 2030 to generate

benefits for all the earlier years is incorrect. For more information on forecasting, applicants can refer to the forecasting section of FHWA's Economic Analysis Primer (*http://www.fhwa.dot.gov/infrastructure/asstmgmt/primer06.cfm*). While produced for analysis of highway projects, the primer is a good source of information on issues related to all transportation forecasting.

Applicants should make every effort to make the results of their analyses as *transparent and reproducible* as possible. A Department reviewer reading the analysis should be able to understand the basic elements of the analysis and the way in which the applicant derived the estimates. It is inadequate for the applicant only to provide links to large documents or spreadsheets as sources. The Department expects applicants to clearly cite all outside data sources with the corresponding page number (or cell number, for a spreadsheet). For more detailed documentation, applicants must include a thorough verbal description of how they did the calculation. This should include references to tabs and cells in the spreadsheet. This verbal description should include specific sources for all the numbers in the spreadsheet (*i.e.* those that the spreadsheet itself does not calculate). If an applicant uses a ''pre-packaged'' economic model to calculate net benefits, the applicant should provide annual benefits and costs by benefit and cost type for the entire analysis period (including forecast year traffic volumes). In any case, applicants must provide a detailed explanation of the assumptions used to run the model (*e.g.,* peak traffic hours and traffic volume during peak hours, mix of traffic by cars, buses, and trucks, *etc.*). The applicant must provide enough information so that a Department reviewer can follow the general logic of the estimates (and, in the case of spreadsheet models, reproduce them).

Appendix B: Additional Information on Applying Through Grants.gov

Applications (Stage 2) for TIGER Discretionary Grants must be submitted through Grants.gov. To apply for funding through Grants.gov, applicants must be properly registered. Complete instructions on how to register and apply can be found at www.grants.gov. If interested parties experience difficulties at any point during registration or application process, please call the Grants.gov Customer Support Hotline at 1 (800) 518–4726, Monday–Friday from 7 a.m. to 9 p.m. EST.

Registering with Grants.gov is a one-time process; however, processing delays may occur and it can take up to several weeks for first-time registrants to receive confirmation and a user password. It is highly recommended that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application by the deadlines specified. Applications will not be accepted after the relevant due date; delayed registration is not an acceptable reason for extensions. In order to apply for TIGER Discretionary Grant funding under this announcement and to apply for funding through Grants.gov, all applicants are required to complete the following:

1. *Acquire a DUNS Number.* A DUNS number is required for Grants.gov registration. The Office of Management and Budget requires that all businesses and nonprofit applicants for Federal funds include a DUNS (Data Universal Numbering System) number in their applications for a new award or renewal of an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of entities receiving Federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for Federal assistance applicants, recipients, and sub-recipients. The DUNS number will be used throughout the grant life cycle. Obtaining a DUNS number is a free, one-time activity. Obtain a DUNS number by calling 1-(866) 705–5711 or by applying online at *http://fedgov.dnb.com/webform.*

2. *Acquire or Renew Registration with the Central Contractor Registration (CCR) Database.* All applicants for Federal financial assistance maintain current registrations in the Central Contractor Registration (CCR) database. An applicant must be registered in the CCR to successfully register in Grants.gov. The CCR database is the repository for standard information about Federal financial assistance applicants, recipients, and sub-recipients. Organizations that have previously submitted applications via Grants.gov are already registered with CCR, as it is a requirement for Grants.gov registration. Please note, however, that applicants must update or renew their CCR registration at least once per year to maintain an active status, so it is critical to check registration status well in advance of relevant application deadlines. Information about CCR registration procedures can be accessed at www.ccr.gov.

3. *Acquire an Authorized Organization Representative (AOR) and a Grants.gov Username and Password.* Complete your AOR profile on Grants.gov and create your username and password. You will need to use your organization's DUNS Number to complete this step. For more information about the registration process, go to *www.grants.gov/applicants/get_registered.jsp.*

4. *Acquire Authorization for your AOR from the E-Business Point of Contact (E-Biz POC).* The E-Biz POC at your organization must log in to Grants.gov to confirm you as an AOR. Please note that there can be more than one AOR for your organization.

5. *Search for the Funding Opportunity on Grants.gov.* Please use the following identifying information when searching for the TIGER funding opportunity on Grants.gov. The Catalog of Federal Domestic Assistance (CFDA) number for this solicitation is 20.933, titled National Infrastructure Investments.

6. *Submit an Application Addressing All of the Requirements Outlined in this Funding Availability Announcement.* Within 24–48 hours after submitting your electronic application, you should receive an email validation message from Grants.gov. The validation message will tell you whether the application has been received and validated or rejected, with an explanation. You are urged to submit your application at least 72 hours prior to the due date of the application to allow time to receive the validation message and to correct any problems that may have caused a rejection notification.

Note: When uploading attachments please use generally accepted formats such as .pdf, .doc, and .xls. While you may imbed picture files such as .jpg, .gif, .bmp, in your files, please do not save and submit the attachment in these formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

Experiencing Unforeseen Grants.gov Technical Issues

If you experience unforeseen Grants.gov technical issues beyond your control that prevent you from submitting your application by the deadline of March 19, 2012, at 5 p.m. EDT, you must contact *TIGERGrants@dot.gov* or Howard Hill at (202) 366–0301 within the 24 hours following the deadline and request approval to submit your application after the deadline has passed. At that time, DOT staff will require you to provide your DUNS number and your Grants.gov Help Desk tracking number(s). After DOT staff review all of the information submitted and contact the Grants.gov Help Desk to validate the technical issues you reported, DOT staff will contact you to either approve or deny your request to submit a late application through Grants.gov. If the technical issues you reported cannot be validated, your application will be rejected as untimely.

To ensure a fair competition for limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the registration process before the deadline date; (2) failure to follow Grants.gov instructions on how to register and apply as posted on its Web site; (3) failure to follow all of the instructions in the funding availability notice; and (4) technical issues experienced with the applicant's computer or information technology (IT) environment.

Appendix C: Additional Information on Project Readiness Guidelines

As applicants develop their applications, there are some guidelines on project readiness that they should consider. The TIGER Discretionary Grant funds are available for a limited period of time (DOT's ability to obligate the funds expires after September 30, 2013), and DOT may be limited as to when they may obligate the TIGER Discretionary Grant funds to a project if it is not far enough along in the project development process. The application package should provide concrete evidence of project milestones, financial capacity and commitment in order to support project readiness. Each operating administration with the responsibility for obligating the TIGER Discretionary Grant funds has its own regulations, policies, and procedures that they may apply for projects that have been selected for TIGER Discretionary Grant funds. In some cases, an operating administration may obligate a portion of the overall amount of funds that an applicant has been selected

to receive so that such an applicant may use that portion of the TIGER Discretionary Grant funds for eligible pre-construction activities, delaying the balance of the obligation of funds until all pre-construction requirements have been completed.

The guidelines below provide additional details about some of these pre-construction steps if a project element is for pre-construction activities, or requirements before the total award is obligated (including, but not limited to, planning requirements, environmental approvals, right-of-way acquisitions, and design completion) and suggests milestones each project should aim to achieve in order to obligate the full amount of awarded TIGER Discretionary Grant funds, in advance of the obligation deadline of September 30, 2013. Applicants should demonstrate that they can reasonably expect to complete all of these pre-construction steps if a project element is for pre-construction activities, or requirements before the total award is obligated no later than June 30, 2013, so that all the TIGER Discretionary Grant funds are obligated in advance of or by the September 30, 2013, statutory deadline, and that any unexpected delays will not put TIGER Discretionary Grant funds at risk of expiring before they can be fully obligated. DOT may reallocate unobligated TIGER Discretionary Grant funds towards projects that are ready to use TIGER Discretionary Grant funds if a project is not ready for DOT to obligate all TIGER Discretionary Grant funds before the September 30, 2013, statutory deadline. Applicants that are unfamiliar with, or have questions about, the requirements that a proposed project or projects may need to complete in order for the operating administration to obligate TIGER Discretionary Grant funds may contact *TIGERGrants@dot.gov* with questions. The below information is not an exhaustive list of the requirements that a project may need to comply with in order for TIGER Discretionary Grant funds to be obligated by the operating administration that is administering the TIGER Discretionary Grant.

State and Local Planning: Project activities that are focused on refining scope and completing Federal environmental reviews are eligible capital expenses under the TIGER Discretionary Grants Program and are an essential part of project development. A project that receives TIGER Discretionary Grant funds may be required to be approved by the Metropolitan Planning Organization or State in the Long Range Plans and Transportation Improvement Program (TIP)/ Statewide Transportation Improvement Program (STIP). Applicants should take steps to ensure that the project will be included in the relevant plan if the project is required to be included in such planning documents before an operating administration may obligate funds to the project.

If the project is not included in the relevant planning documents at the time the TIGER application is submitted, applicants should submit a certification from the appropriate planning agency that actions are underway at the time of application to include the project in the relevant planning document. If the obligation of TIGER Discretionary Grant funds for construction or other activities is contingent on the project being included in the relevant planning documents, applicants should demonstrate they can reasonably expect to have the project included in such planning documents by March 30, 2013. DOT is using the March 30 milestone since applicants should demonstrate in their project schedule that all additional, necessary pre-construction steps if a project element is for pre-construction activities, or requirements before the total award is obligated will be complete on or before June 30, 2013, and planning must be complete before other pre-construction or other activities can be completed.. The applicant should provide a schedule demonstrating when the project will be added to the relevant planning documents.

Environmental Approvals: Projects should have received all environmental approvals, including satisfaction of all Federal, State and local requirements and completion of the National Environmental Policy Act (''NEPA'') process at the time the application is submitted or should demonstrate, through their project schedule and narrative, that receipt of NEPA approval, and all additional, necessary pre-construction steps if a project element is for pre-construction activities, or other approvals can occur by June 30, 2013.

If the obligation of TIGER Discretionary Grant funds for construction or other activities is contingent on completion of other approvals that can only take place after the environmental approvals process, the applicant should demonstrate, through their project schedule and narrative, that they can reasonably expect to obtain all environmental approvals by March 30, 2013, or other date sufficiently in advance of June 30, 2013. Like planning, the environmental approvals must be obtained prior to completing other pre-construction steps if a project element is for pre-construction activities, or other activities.

To demonstrate that this suggested milestone is achievable, applicants should provide information about the anticipated class of action, the budget for completing NEPA, including hiring a consultant if necessary, and a schedule that demonstrates when NEPA will be complete. The schedule should show how the suggested milestones described in this section will be complied with, and include any anticipated coordination with Federal and State regulatory agencies for permits and approvals. The budget should demonstrate how costs to complete NEPA factor into the overall cost to complete the project. The budget and schedule for completing NEPA should be reasonable and be comparable to a budget and schedule of a typical project of the same type. The applicant should provide evidence of support based on input during the NEPA process from State and local elected officials as well as the public. Additionally, the applicant should provide environmental studies or other documents (preferably by way of a Web site link) that describe in detail known potential project impacts and possible mitigation for these impacts. The applicant should supply sufficient documentation for DOT to adequately review the project's NEPA status.

Right-of-Way and Design: If the obligation of TIGER Discretionary Grant funds for construction or other activities by an operating administration may be contingent on completion of right-of-way acquisition and final design approval, and/or additional approvals contingent on completion of right-of-way acquisition and design, applicants should demonstrate, through their project schedule, that they reasonably expect to have right-of-way and design completed, and completion of any other needed pre-construction steps if a project element is for pre-construction activities, or other approvals by June 30, 2013. Applicants should submit a reasonable schedule of when right-of-way (if applicable), design, and any other required approvals are expected to be obtained. Applicants may expect that DOT may obligate TIGER funds for right-of-way and design completion only after planning and environmental approvals are obtained.

Completion of Obligation: Applicants should plan to have all necessary pre-construction or other approvals and activities completed by June 30, 2013. In some instances, DOT may not obligate for construction or other activities until all planning and environmental approvals are obtained and right-of-way and final design are complete. If a project is selected for a TIGER Discretionary Grant and the TIGER Discretionary Grant funding will be used to complete all of these activities, DOT may obligate the funding in phases, in accordance with the laws, regulations, and policies of the operating administration that is administering the grant.

Issued on: January 25, 2012.

Ray LaHood,

Secretary.

[FR Doc. 2012–1996 Filed 1–30–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2011–0122]

Revision of Form FHWA–1273

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The FHWA is requesting comments on a proposed revision of form FHWA–1273—''Required Contract Provisions Federal-Aid Construction Contracts.'' This form includes certain contract provisions that are required on all Federal-aid construction projects. The revisions are necessary to provide consistency with the current policies of the FHWA and other Federal agencies.

DATES: Comments must be received on or before March 1, 2012.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, 1200 New Jersey Avenue SE., Washington, DC 20590, or submit electronically at *www.regulations.gov* or

fax comments to (202) 493–2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Page 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Gerald Yakowenko, Office of Program Administration, (202) 366–1562, *gerald.yakowenko@dot.gov* or Michael Harkins, Office of the Chief Counsel, (202) 366–4928, *michael.harkins@dot.gov.* Office hours for the FHWA are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Federal eRulemaking portal at: *www.regulations.gov.* Electronic submission and retrieval help and guidelines are available under the help section of the Web site. It is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

As provided in 23 CFR 633.103, Form FHWA–1273 includes contract provisions and proposal notices that are required by regulations promulgated by the FHWA or other Federal agencies. The provisions include non-discrimination, prevailing wage rates, subcontracting, job-site safety and other important requirements that must be included in every Federal-aid construction project. According to 23 CFR 633.104(a), the FHWA will update the form as regulatory revisions occur. Since the form was last revised on March 10, 1994, a number of regulatory revisions have occurred. The revisions that are being proposed by FHWA to form FHWA–1273 will bring the form up to date with current regulatory requirements.

While the revisions proposed by the FHWA are not significant; several revisions are necessary to bring the provisions into conformance with the current policies of FHWA and other Federal agencies. For example, the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, issued a final rule titled: ''Protecting the Privacy of Workers: Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction'' on December 19, 2008. This rule revised the Wage and Hour Division's regulatory policy to better protect the personal privacy of laborers and mechanics employed on covered construction contracts. The rule changed the reporting requirements concerning the use of full social security numbers and home addresses on weekly payroll statements. While the rule became effective on January 18, 2009, the FHWA did not revise form FHWA–1273 at that time and Federal-aid recipients were encouraged to implement the change through supplemental contract provisions.

The proposed revision to form FHWA–1273 will incorporate the changes noted above as well as other important changes to the required contract provisions. A list of the proposed changes and a marked-up version of the changes are available at the following Web site: *http://www.fhwa.dot.gov/programadmin/contracts/1273/.* A marked-up version of the revised form is also available for download and public inspection under the docket number noted above at the Federal eRulemaking portal at: *http://www.regulations.gov.*

The FHWA anticipates issuing a second notice responding to the comments received and requiring the use of the revised form no later than 45 days after the publication date of the second notice.

Authority: 23 U.S.C. 112; 23 CFR 633

Issued on: January 12, 2012.

Victor M. Mendez,

Administrator.

[FR Doc. 2012–1992 Filed 1–30–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0078]

Commercial Driver's license (CDL) Standards; Rotel North American Tours, LLC; Application for Renewal of Exemption; Request for Comments

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for renewal of exemption; request for comments.

SUMMARY: FMCSA announces that Rotel North American Tours, LLC (Rotel), has applied for renewal of its current exemption permitting 22 drivers employed by Rotel and possessing German CDLs, to operate commercial motor vehicles in the United States without a CDL issued by one of the States. Of the 22 named drivers, five drivers are new and will be replacing five drivers who are no longer employed by Rotel. Like the other 17 Rotel drivers operating under the current exemption, the five new drivers are non-residents of the U.S. and holders of German CDLs. Rotel asks that the current exemption, due to expire July 30, 2012, be renewed subject to the terms and conditions of the current exemption for an additional period of 2 years. The five new Rotel drivers would be subject to all the terms and conditions of the renewed exemption. FMCSA requests public comments on Rotel's application.

DATES: If approved, this exemption would be effective from July 31, 2012 through July 30, 2014. Comments must be received on or before March 1, 2012.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2008–0078 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* In the ENTER KEYWORD OR ID box enter FMCSA–2008–0078 and click on the tab labeled SEARCH. On the ensuing page, click on any tab labeled SUBMIT A COMMENT on the extreme right of the page and a page should open that is titled ''Submit a Comment.'' You may identify yourself under section 1, ENTER INFORMATION, or you may skip section 1 and remain anonymous. You enter your comments in section 2, TYPE COMMENT & UPLOAD FILE. When you are ready to submit your comments, click on the tab labeled SUBMIT. Your comment is then submitted to the docket; and you will receive a tracking number.

- *Fax:* 1 (202) 493–2251.
- *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. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov* at any time, and in the ENTER KEYWORD OR ID box enter FMCSA–2008–0078 and click on the tab labeled SEARCH.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation's online privacy policy at *www.dot.gov/privacy* or the complete Privacy Act Statement in the **Federal Register** published on December 29, 2010 (75 FR 82133).

Public Participation: The *www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the *www.regulations.gov* Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Telephone: (202) 366–4325. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from motor carrier safety regulations. Under its regulations, FMCSA must publish a notice of each exemption application in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the application.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for denying or, in the alternative, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which the exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

The FMCSA has granted comparable exemptions for Rotel drivers in the past, beginning in 2008. The most recent Agency notice of final disposition was published on August 2, 2010, granting exemption for the same purpose to 22 Rotel drivers with German CDLs (75 FR 45200). Further information about past Rotel exemption requests and approvals is contained in the docket FMCSA–2008–0078 at *www.regulations.gov.*

Rotel's Request for Renewal

Rotel is a German bus company that has offered German visitors tours of North America by bus for over 35 years. Rotel imports its own buses, which are licensed in the United States and meet all U.S. requirements. German drivers are preferred because they speak the language fluently and perform a variety of services for the visitors in addition to driving.

By letter dated October 21, 2011, Rotel applied for renewal of its current exemption from the requirement that operators of CMVs obtain a CDL from one of the States. The letter is available in the docket for this notice. Rotel asks that the 17 individuals who are currently exempt continue to be exempt from the CDL licensing requirement of 49 CFR 383.23 for an additional 2 years. Rotel asks that five new drivers replacing five of the Rotel drivers who are no longer employed be exempted from the CDL requirements and be subject to the terms and conditions of the renewed exemption. Each of these individuals is a non-resident of the U.S., a holder of a valid German CDL, and an experienced CMV operator. The drivers are, as follows:

Josef Dangl, Reinfried Dangl, Michael Eiler, Klaus Endres, Helmut Erbersdobler, Reinhard Freudenstein, Alexander Friedl, Peter Hess, Gerhard Kinateder, Hermann Lichtenauer, Karl Lippl, Horst Mahl, Franz Manzinger, Fabian Maurer, Rudolf Ramsl, Paul Schlögl, Karl-Heinz Schmitz, Josef Stockinger, Josef Vogl, Klaus Weber, Markus Wölfl, Norbert Zechmesiter

Rotel believes these drivers possess sufficient knowledge, skills, and experience to ensure a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the requirement for a U.S. CDL. If the Agency determines that this application should be granted, the Rotel drivers would be subject to the terms and conditions of the current Rotel exemption. In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comments on Rotel's request for its exemption to allow the 22 Rotel CDL drivers named above to be exempt from 49 CFR 383.23 from July 31, 2012, through July 30, 2014.

Method To Ensure an Equivalent or Greater Level of Safety

Drivers applying for a German-issued CDL must undergo a training program and pass knowledge and skills tests. FMCSA has previously determined that the process for obtaining a German-issued CDL adequately assesses the driver's ability to safely operate CMVs in the U.S.. Therefore, the process for obtaining a German-issued CDL is considered to be comparable to, or as effective as, the requirements of 49 CFR part 383 for obtaining a CDL in the United States.

As with any application for any exemption, FMCSA will review all available records for any possible information that would be relevant to the approval of the exemption.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comments on the renewal of Rotel's exemption from the requirements of 49 CFR 383.23. The FMCSA will review all comments received and determine whether the renewal of the exemption is consistent

with the requirements of 49 U.S.C. 31315 and 31136(e). Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable.

Issued on: January 20, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–1983 Filed 1–30–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number. Currently, the OCC is soliciting comment concerning its extension, without change, of an information collection titled, ''Release of Non-Public Information—12 CFR 4, Subpart C.'' The OCC is also giving notice that it has submitted the collection to OMB for review.

DATES: You should submit written comments by March 1, 2012.

ADDRESSES: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0200, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to: OCC Desk Officer, 1557–0200, by mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Ira L. Mills (202) 874–6055 or Mary H. Gottlieb (202) 874–5090, OCC Clearance Officers, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Release of Non-Public Information—12 CFR 4, Subpart C.

OMB Control No.: 1557–0200.

Form No.: None.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

The information requirements require individuals who are requesting non-public OCC information to provide the OCC with information regarding the requester's legal grounds for the request. Release of non-public OCC information when the requester did not have sufficient legal grounds to obtain the information would inhibit open consultation between a bank and the OCC, thereby impairing the OCC's supervisory and regulatory mission. The OCC is entitled, under statute and case law, to require requesters to demonstrate that they have sufficient legal grounds for the OCC to release non-public OCC information. The OCC needs to know the requester's legal grounds to determine if it should release the requested non-public OCC information.

The information requirements in 12 CFR part 4, subpart C, are located as follows:

- 12 CFR 4.33: Request for non-public OCC records or testimony.
- 12 CFR 4.35(b)(3): Third parties requesting testimony.
- 12 CFR 4.37(a)(2): Current or former OCC employee notifying OCC of subpoena.
- 12 CFR 4.37(a) and (b): Limitation on dissemination of released information.
- 12 CFR 4.39(d): Request for authenticated records or certificate of nonexistence of records.

The OCC uses the information to process requests for non-public OCC information and to determine if sufficient grounds exist for the OCC to release the requested information or provide testimony. This information collection makes the mechanism for processing requests more efficient and facilitates and expedites the OCC's release of non-public information and testimony to the requester.

Type of Review: Regular.

Affected Public: Businesses or other for-profit; individuals.

Estimated Number of Respondents: 195.

Estimated Frequency of Response: On occasion.

Estimated Total Annual Burden: 592 hours.

On November 25, 2011, the OCC published a notice in the **Federal Register** soliciting comment for 60 days on this information collection (76 FR 72764). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 25, 2012.

Michele Meyer,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 2012–2011 Filed 1–30–12; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8939

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The 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 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8939, Allocation of Increase in Basis for Property Acquired From a Decedent.

DATES: Written comments should be received on or before April 2, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Allocation of Increase in Basis for Property Acquired From a Decedent.

OMB Number: 1545–2203.

Form Number: Form 8939.

Abstract: Section 6018 of the Internal Revenue Code requires this return to be filed by an executor the fair market value of all property (other than cash) acquired from the decedent is more than $1.3 million; in the case of a decedent who was a nonresident not a citizen of the United States, the fair market value of tangible property situated in the United States and other property acquired from the decedent by a United States person is greater than $60,000; or appreciated property is acquired from the decedent that the decedent acquired by gift within three years of death and a gift tax return was required to be filed on the transfer to the decedent. Section 6018(e) also requires executors who must file Form 8939 to provide the same information to recipients of the property as the executor must provide to the IRS.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit groups, Not-for-profit institutions, Farms, Federal Government, State, Local, or Tribal Governments.

Estimated Number of Respondents: 48,000.

Estimated Time per Respondent: 51 hours 43 minutes.

Estimated Total Annual Burden Hours: 2,482,080.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 25, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–1971 Filed 1–30–12; 8:45 am]

BILLING CODE 4830–01–P

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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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LIST OF PUBLIC LAWS

This is the final list of public bills from the first session of the 112th Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 1540/P.L. 112–81

National Defense Authorization Act for Fiscal Year 2012 (Dec. 31, 2011; 125 Stat. 1298)

H.R. 515/P.L. 112–82

Belarus Democracy and Human Rights Act of 2011 (Jan. 3, 2012; 125 Stat. 1863)

H.R. 789/P.L. 112–83

To designate the facility of the United States Postal Service located at 20 Main Street in Little Ferry, New Jersey, as the "Sergeant Matthew J. Fenton Post Office". (Jan. 3, 2012; 125 Stat. 1869)

H.R. 1059/P.L. 112–84

To protect the safety of judges by extending the authority of the Judicial Conference to redact sensitive information contained in their financial disclosure reports, and for other purposes. (Jan. 3, 2012; 125 Stat. 1870)

H.R. 1264/P.L. 112–85

To designate the property between the United States Federal Courthouse and the Ed Jones Building located at 109 South Highland Avenue in Jackson, Tennessee, as the "M.D. Anderson Plaza" and to authorize the placement of a historical/identification marker on the grounds recognizing the achievements and philanthropy of M.S. Anderson. (Jan. 3, 2012; 125 Stat. 1871)

H.R. 1801/P.L. 112–86

Risk-Based Security Screening for Members of the Armed Forces Act (Jan. 3, 2012; 125 Stat. 1874)

H.R. 1892/P.L. 112–87

Intelligence Authorization Act for Fiscal Year 2012 (Jan. 3, 2012; 125 Stat. 1876)

H.R. 2056/P.L. 112–88

To instruct the Inspector General of the Federal Deposit Insurance Corporation to study the impact of insured depository institution failures, and for other purposes. (Jan. 3, 2012; 125 Stat. 1899)

H.R. 2422/P.L. 112–89

To designate the facility of the United States Postal Service located at 45 Bay Street, Suite 2, in Staten Island, New York, as the "Sergeant Angel Mendez Post Office". (Jan. 3, 2012; 125 Stat. 1903)

H.R. 2845/P.L. 112–90

Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Jan. 3, 2012; 125 Stat. 1904)

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